



JUDICIAL REFORM INDEX
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Introduction

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

ABA ROLI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, 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 a decade of working in the field on this issue, ABA ROLI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

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

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criterion may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

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

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal,



method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

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

Larkins, *supra*, at 615.

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

Methodology

In designing the JRI methodology, ABA ROLI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary* and the *Bangalore Principles on Judicial Conduct*. In addition, these criteria also rely upon norms elaborated in regional documents, such as the *Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”*; the *European Charter on the Statute for Judges*; the *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*; the *Arab Justice Conferences’ Beirut and Cairo Declarations on Judicial Independence*; and the *Caracas Declarations of the Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts*. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

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

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

Despite this general conclusion, ABA ROLI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral." Cf. Cohen, *The Chinese Communist Party and 'Judicial Independence': 1949-59*, 82 HARV. L. REV. 972 (1969) (suggesting that the degree of judicial independence exists on a continuum from "a completely unfettered judiciary to one that is completely subservient"). Again, as noted above, ABA ROLI has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, ABA ROLI determined that such an attempt at overall scoring would be counterproductive.

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

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

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

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

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



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

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

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Assessment Team

The Moldova JRI 2009 assessment team was led by Kathy Ladun, an American attorney, with the assistance of ABA ROLI Moldova Staff Attorney Dumitrita Bologan. Other members of the assessment team were former Moldova Country Director Stephen Larrabee, former Legal Specialist Leslie Reed, and Staff Attorneys Olimpia Iovu and Michaela Vidaicu, all with ABA ROLI's Moldova office. The team received strong support from ABA ROLI's staff in Washington, including Director of the Research and Assessments Office Simon Conté, Research Coordinator Olga Ruda, Europe and Eurasia Division Director Donna Wright, former Program Manager Laura Berger, and Program Officer Megan Niedermeyer. ABA ROLI Legal Analyst Jessie Tannenbaum served as editor and prepared the report for publication. The conclusions and analysis are based



on interviews conducted in Moldova in June 2009 and relevant materials reviewed at that time. Records of relevant authorities and a confidential list of individuals interviewed are on file with ABA ROLI. We are 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 Judicial Reform Index (JRI) for Moldova reveals a judiciary where reform is dramatically visible in some areas and scarcely apparent in others. Over the last two years, the Moldovan judiciary has been the beneficiary of significant international investment in infrastructure and in technical assistance, which has provided courts with modern equipment and software and judges with both technical and substantive trainings. At the same time, the judiciary remains burdened by the perception among many that judicial independence is compromised by political interference, and is unable to overcome the prevailing public opinion that the judiciary is corrupt. For example, changes to applicable law have created a judicial appointment and qualification system that is intended to bolster the transparency and impartiality of the process. Yet, other amendments altered the composition of governing judicial bodies in such a way as to reduce the number of judges in favor of political appointees.

Of the 30 factors analyzed in this JRI assessment, the correlations assigned for four factors (those relating to judiciary's contempt and subpoena powers and enforcement of judgments, judicial buildings, code of ethics, and computers and office equipment) improved since 2007, while three factors (minority and gender representation, judicial jurisdiction over civil liberties, and judicial immunity) suffered a decline. Overall, only one factor, on the code of judicial ethics, received a positive correlation in 2009, while 19 factors received neutral correlations. The remaining ten factors, including those related to adequacy of judicial salaries, judicial security, judicial immunity, improper influence in judicial decision-making, and publication of judicial decisions, continue to carry negative correlations. In some factors, although major changes to the law did occur, it was deemed premature to justify an upgrade in the correlation at this stage in their implementation. The Analysis/Background discussion for each factor describes these changes.

Positive Aspects Identified in the 2009 Moldova JRI

- There have been **notable improvements in both the initial training for judicial candidates and the continuing education for sitting judges**. The first class of judicial trainees graduated from the National Institute of Justice (NIJ) in March 2009, and now 80% of candidates for first-time judicial appointments must be filled by the NIJ graduates. The **NIJ's 18-month initial training program is generally viewed as a positive development**, aimed at ensuring the entry of a well-trained and professional cadre of new judges into the Moldovan judiciary. However, problems did arise with the placement of the NIJ's first graduating class into vacant judicial positions. Additionally, starting January 1, 2008, **judges must attend at least 40 hours of continuing legal education (CLE) per year**. The NIJ offers its CLE program free of charge to the judges, and relies on international donors to fund the program.
- A **comprehensive new Judicial Ethics Code**, published with commentary, **took effect on January 1, 2008**. Some 80% of judges were trained on the new Code, and **ethics courses have been incorporated into the NIJ's initial training curriculum**. The commitment to ethics was cited as one of the reasons for the recent **increase in the number of disciplinary actions brought against judges**. In an effort at greater transparency, the Superior Council of Magistracy (SCM) publishes decisions of disciplinary hearings on its website, and summaries are also included in the Supreme Court of Justice bulletin which is distributed to courts.
- As part of the Moldova Governance Threshold Country Program implemented by the Millennium Challenge Corporation, the **Moldovan judiciary received a multi-million dollar donor investment in infrastructure and technology over the last two years**.



Among others, this funding provided for the distribution to all district and appellate courts of new computers and equipment, case management software, and audio recording equipment, with the intention of improving the administration of justice. It is still too early to assess the impact of this investment on the judiciary.

- Recent amendments to the law and regulations related to enforcement of judgments aim to make ***the procedure for enforcement less cumbersome and more effective***. The ***rate of execution of judgments***, while still under 50%, ***has improved over the last two years***, although enforcement of judgments against municipalities remains a problem.

Concerns Relating to Judicial Independence and Accountability

- The ***amendments to the composition of the SCM and its disciplinary and qualification boards***, described as hastily adopted by Parliament without consultation with civil society or the judiciary, are ***viewed as an attempt by the executive to infringe judicial independence***. In the case of the SCM and its qualification board, the proportion of judges to non-judges has been reduced. In the case of the disciplinary board, in addition to reducing the number of judges, Parliament also introduced lay members appointed by either the SCM or the Ministry of Justice (MOJ). This ***increase in the number of politically appointed members raises concerns that judicial independence will be compromised***.
- Despite the SCM's lobbying efforts to have a ***Department of Judicial Administration (DJA)*** established under its auspices, it ***was ultimately set up under the MOJ***, a move interpreted as ***an effort by the executive to maintain control over the judiciary's finances***. The DJA is uniformly regarded as very weak and understaffed, and lacking in the capacity to adequately oversee the administration of the judiciary. While the DJA is responsible for developing the annual draft budget for the courts, ***2009 marked the first time the SCM presented the proposed judiciary budget directly to Parliament***.
- Under certain circumstances, ***judges can face personal liability for damages for an infringement of rights and freedoms caused by court judgments***. With the SCM's consent, the Prosecutor General (who also sits on the SCM) may bring a criminal case against a judge for deliberately ruling erroneously. Judges express fears that they ***may face criminal charges for rulings that are unpopular with the prosecutors***. An amendment eliminating the requirement for SCM consent before instituting a criminal proceeding against a judge passed Parliament but was vetoed by the President.

Concerns Relating to Judicial Corruption

- Widespread perceptions of corruption continue to plague the judiciary. In one survey, ***nearly 75% of those surveyed considered corruption in the courts a very serious problem***. Actions alleged to have been taken by some judges during the April 2009 unrest, including the issuance of group arrest warrants directly from police stations, bolster this perception. Meanwhile, ***judges believe the perception of corruption is worse than the reality***. They blame this on a poor understanding by the public of the nature of the adversarial legal system, which leads litigants to jump to the conclusion that they lost a case because of corruption and not because of the merits of the case.
- ***Low salaries for judges***, especially on the district courts, ***continue to be an issue***. While some interviewees believed that increasing the salaries would remove the temptation of corruption from judges, others opined that it would make little difference in resisting political influence. Judges also consistently complain that the chronically ***high turnaround among court staff is directly related to the extremely low pay offered for the positions***.

Concerns Relating to Transparency of the Judiciary

- **Public access to court proceedings remains problematic** for many courts, where **lack of adequate space is a continuing issue**. In district courts, **the majority of hearings are held in judges' offices**, which are small in size and effectively preclude the attendance by anyone other than the parties. Members of the media report that they are generally given access to hearings, with the significant exception of cases of a political nature. Journalists did express frustration at what they perceive as **inconsistent policies on press access within courts**. In 2009, each court was to hire or designate a public relations specialist charged with communicating with the media and the public.
- Attorneys report that it is difficult to adequately prepare for a case due to a **lack of access to case files and court documents at the criminal investigation stage**, and that objections made to judges regarding this are frequently overruled. Although every individual has the right to seek access to non-confidential court documents, in practice, **access to copies of judicial decisions is generally limited to the parties in the case**. A plan to have all district and appellate court decisions publish online is being implemented. The SCJ and the Constitutional Court already publish their judgments online.

Concerns Relating to Inefficiency of Judicial Proceedings

- While the number of cases filed with the courts has actually decreased, **most judges report having excessive caseloads** which negatively impact the quality of their work. Some interviewees criticize the SCM for **failure to conduct an assessment of the judiciary's needs related to the number of judicial positions in the various courts**. The SCM decision to admit 10 judicial trainees each year to the NIJ is also perceived as random and not indicative of the actual number of judicial vacancies. While the SCM can temporarily transfer judges from one court to another, it wants the authority to redistribute positions among courts if it determines that caseloads in individual courts so warrant.
- Court **proceedings are hampered with delays and postponements**, the majority of which are **due to failure to appear** by parties, witnesses, experts, prosecutors, or attorneys. Deficiencies in the notification system make some **judges reluctant to exercise their contempt and subpoena powers**. Chronic failure of attorneys to appear appears to be particularly acute, although advocates counter that they do not receive timely notice or that some judges are unresponsive to timing conflicts with other courts' hearings.

Other Concerns

- While the MOJ was supposed to assume the authority for judicial police from the Ministry of Interior in 2007, the transfer of responsibility did not go smoothly. The result is that **courts have been left to contract with a state-owned security company and pay for guards out of their budgets**, which many courts reportedly **cannot afford due to lack of funds**. Court presidents regularly complain to the SCM about the lack of security for parties and judges. In April 2009, a bomb was found and defused at the SCJ building, underscoring the need for adequate security.
- The **Association of Judges of the Republic of Moldova** (AJRM), of which some 93% of judges are members, **is not very active or effective in lobbying for the rights and interests of judges**. Many judges expressed disappointment with the work of the Association, and thought that it should be taking a stronger role and position in advocating for the judiciary's interests and independence.

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.¹ 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 members of other Christian denominations and Jews.²

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 1812, the eastern half of Moldavian principality (known as Bessarabia) between the Prut and Nistru Rivers became part of the Russian Empire, 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 reportedly 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,

¹ The assessment team did not review any legal information from Transnistria or conduct any assessment interviews there. Thus, the description of the Moldovan judiciary and the conclusions reached in this report generally do not apply to Transnistria.

² 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 the 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. Three protesters were killed, scores were injured, and over 100 were detained, while the Parliament building was partially burned and ransacked. The Communist Party lost its majority in new elections held in July 2009.

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. 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 judiciary in Moldova.

Legal Context

Moldova adopted its post-Soviet Constitution in 1994, replacing the Soviet era Constitution of April 15, 1978. *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 judicial protection of individual rights and freedoms, due process, privacy, freedom of expression and assembly, the right to vote, and other rights contained within the Universal Declaration of Human Rights. *Id.* art. 4, Chapter II. Moldova is a parliamentary republic with separate legislative, executive (consisting of the President and Government), and judicial branches. *Id.* arts. 1, 6.

Legislative power is vested in a unicameral **Parliament**, consisting of 101 members elected for four-year terms. *Id.* arts. 60, 63. The Parliament passes laws, provides legislative interpretations, ratifies or terminates international treaties, approves the national budget, declares states of emergency or war, calls referenda, passes bills of amnesty, and has a wide range of other powers. *Id.* arts. 66, 74. Parliament also chooses two out of 12 members of the Superior Council of Magistracy [hereinafter SCM]³, selects two of the six judges of the Constitutional Court, and, on the proposal of the SCM, appoints the President and judges of the Supreme Court of Justice [hereinafter SCJ]. *Id.* arts. 116, 122.

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 proposed Government appointees are subject to a vote of confidence by a majority of Parliament members. *Id.* art. 98. If the Prime Minister and Government do not receive a vote of confidence 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 Prime Minister is nominated by the President, but his/her appointment, program, and other Government members must be

³ This will change to four out of 12 members of the SCM under new amendments that take effect in November 2009.

confirmed by a majority vote of confidence from Parliament. *Id.* art. 98. Parliament also 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* [hereinafter MO], the official bulletin of Moldova. *Id.* arts. 79, 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. Moldova also has a Constitutional Court, which formally is not part of the judiciary and is independent of all branches of government, to rule on constitutional issues. These courts and their jurisdictions are described more fully below.

Moldova's 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. In the hierarchy of laws, the Constitution has the highest legal force, while ratified international agreements have superiority over domestic law in areas involving human rights. *Id.* arts. 4, 7. Domestic laws include constitutional, organic, and ordinary laws. Constitutional laws amend the Constitution, and can be initiated by petition of at least 200,000 voters, by at least one third of Parliament members, or by the Government. Any proposed amendment to the Constitution must be submitted to Parliament together with an advisory opinion of the Constitutional Court, adopted by a vote of at least four of its judges. At least two-thirds of Parliament members must then vote to adopt the constitutional law. *Id.* art. 141. 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 Parliament members, following at least two readings. Ordinary laws are those not required to be constitutional amendments or organic laws, and a majority vote of deputies present in Parliament is sufficient to adopt them. *Id.* art. 74.

Moldova has been a member state of the Council of Europe since 1995. It ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter European Convention] in 1997. As a signatory to the Convention, Moldova has acceded to the jurisdiction of the European Court of Human Rights [hereinafter ECHR] in Strasbourg. Moldova is among the top 10 countries with regard to the number of applications filed with the ECHR.

History of the Judiciary

The judiciary of contemporary Moldova followed the Romanian structure and laws until the 1940 annexation of Bessarabia by the Soviet Union. The status and progress of judicial reform in Moldova cannot be fully understood without recognizing this legacy of the decades it spent as part of the Soviet Union. During the Soviet era, there was virtually no separation of powers, with the result that the judiciary, together with the executive and legislative bodies, formed a single government subject to the Communist Party. At that time, the Moldovan judicial system had two tiers of courts, consisting of local courts and the Supreme Court of the Moldavian SSR, which was subordinated to the Supreme Court of the Soviet Union. Judicial review of first instance court decisions consisted of only cassation review and extraordinary review; appellate review was not authorized. Courts at times took an active role in investigating cases, and trials did not employ the adversarial principle. 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 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 telephone a judge to instruct him/her on 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.



In June 1994, Parliament adopted the Concept Paper for Judicial and Legal Reform, with the goal of both creating a new status and set of functions for the courts and modifying the status of judges. Moldova's 1994 Constitution established the legal foundation for the organization and functioning of the judiciary, with four tiers of courts of general jurisdiction. The projected judicial reform was largely implemented by 1996, after Parliament enacted the necessary enabling legislation. On November 21, 2002, a constitutional amendment eliminated the second tier of courts (the tribunals) and created multiple courts of appeal in place of the single Court of Appeal. Specialized courts were also established, pursuant to the authority granted by Const. art. 115(2). This includes the Economic Circuit Court and Economic Court of Appeal formed to hear economic matters and trade-related litigation; and the Military Court set up to hear matters involving military personnel as defendants.

Despite reform efforts and new legislative strategies, the Council of Europe "adamantly declared in September 2007 that the judiciary requires further reforms in order to 'guarantee the independence of the judiciary and increase the effectiveness and professionalism of the courts; improve the enforcement of judicial decisions; and undertake institutional reform.' In addition, there is a need to 'improve the working environment of the judiciary, by improving the training and working methods and by eliminating corruption within the system'." FREEDOM HOUSE, *Moldova, in NATIONS IN TRANSIT 2008: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA* at 416 (2008) [hereinafter NIT 2008]. In the face of growing perceptions that the judiciary was weak and lacked independence, Parliament adopted in 2007 a Strategy and Action Plan on Strengthening the Judiciary for 2007-2010, with the aim of increasing the transparency and efficiency of the courts. This coincided with the start in May 2007 of the two-year, USD 27 million initiative, the Moldova Governance Threshold Country Program [hereinafter MGTCP], implemented by the Millennium Challenge Corporation [hereinafter MCC] and managed by the United States Agency for International Development, which aimed to assist the Moldovan Government in effecting policy and system reforms to promote good governance, reduce corruption, and improve public sector service delivery, particularly in the judicial, tax, and health sectors.

Structure of the Courts

Courts of General Jurisdiction

Moldova has a three-tiered system of courts of general jurisdiction, consisting of district courts, courts of appeal, and the SCJ. There are currently 486 authorized judicial positions in Moldova's courts of general jurisdiction (including 44 investigating judges in the district court), with 417 sitting judges.

The **district courts** consider and decide all first instance cases – civil, criminal, and administrative – not assigned by law to another court (e.g., a specialized court). See ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON THE ORGANIZATION OF THE JUDICIARY art. 26 (Law No. 514-XIII, *adopted* Jul. 6, 1995, *last amended* Feb. 3, 2009) [hereinafter LOJ]. Cases are generally tried by a single judge; however, extremely complex criminal cases or those of major social importance or involving exceptionally serious crimes are heard by a three-judge panel. Each district court has a president and a vice president. Since 2003, an investigating judge has been assigned to each district courts; these judges are responsible for pretrial procedure in criminal cases, such as issuing warrants for searches or wiretaps and orders for pretrial detention. There are 46 district courts with a total of 353 authorized judicial positions and 303 sitting judges. *Id.* Annex 1.

Five **courts of appeal** have appellate and cassation jurisdiction over district court decisions. In appellate review, the court reevaluates both the application of the law to the facts and the facts themselves, while in cassation review, the court is limited to reviewing the application of the law to the facts as found by the lower instance court. In intellectual property and certain exceptionally serious crimes (such as treason, espionage, terrorism, and genocide), the courts of appeal also have first-instance jurisdiction over cases arising within their territorial jurisdiction. *Id.* art. 36.

Judges hear cases in panels of three. Each court has a president and a vice president. Courts of appeal are located in five regions in the country (Chisinau, Balti, Bender, Cahul, and Comrat) and have 77 authorized judicial positions, with 67 sitting judges. *Id.* Annexes 1, 3.

The **SCJ** is described as “the supreme court that ensures the correct and uniform implementation of legislation by all courts of law.” *Id.* art. 43(1). As the highest court of cassation, it reviews judgments of the courts of appeal and performs extraordinary review of closed cases to determine if reopening them is appropriate. *Id.* arts. 43-44. The SCJ also has first instance jurisdiction over crimes alleged to have been committed by the President of Moldova. The SCJ has 49 authorized judicial positions (of which 47 are currently filled), including the President and three Vice Presidents, divided into Civil/Administrative, Economic, and Criminal Colleges. Each of the Vice Presidents serves as a president of a College. The SCJ also had 7 posts allocated for assistant judges, however, this position was eliminated by law no. 306-XVI (*adopted* Dec. 25, 2008). Cases are heard by a single judge or panels of three or five judges depending on the nature of the extraordinary review. The SCJ also has a Plenum that consists of all its judges, which may issue non-binding general explanatory decisions on both substantive and procedural laws, in order to instruct lower courts on the proper interpretation and application of laws in various categories of cases.

Specialized Courts

The **economic courts** have jurisdiction over economic cases – i.e., those involving the protection of the rights and legal interests of individuals or legal entities while engaged in entrepreneurial activity or other activity of economic character. One first instance court, the Economic Circuit Court, has been established in Chisinau, with a court president, a vice president, and 10 other judges – although Parliament could establish additional courts. The Economic Court of Appeal, also in Chisinau, hears appeals from the Economic Circuit Court and has first instance jurisdiction in cases provided by law, such as insolvency. The Economic Court of Appeal has 10 authorized judicial positions (with nine sitting judges), including a president and a vice president. The SCJ's Economic College hears cassations from this court's decisions.

The **Military Court**, located in Chisinau, has jurisdiction over criminal cases involving military personnel and civil cases for damages caused by military personnel within the territory of Moldova. Although the law contemplates establishing other first instance military courts, Parliament has not done so. The court consists of a president and two other judges. Either a single judge or a three-judge panel tries cases. Appeals are heard by the courts of appeal, while the SCJ has cassation jurisdiction over decisions of the Military Court.

Constitutional Court

The **Constitutional Court** is formally not part of the judiciary and is independent of any other public authority. Located in Chisinau, the Court is the sole entity that exercises constitutional jurisdiction in Moldova. CONST. art. 134; LAW OF THE REPUBLIC OF MOLDOVA ON THE CONSTITUTIONAL COURT art. 1 (Law No. 317-XIII, *adopted* Dec. 13, 1994, *last amended* Oct. 23, 2008) [hereinafter LCC]. It is charged with determining the constitutionality of laws, decisions of Parliament, presidential decrees, orders of the Government, other official actions, and ratified international treaties; interpreting the Constitution; and confirming the results of national referenda and presidential and parliamentary elections. CONST. art. 135; LCC art. 4. Six judges of the Constitutional Court are selected, two each, by Parliament, the Government, and the SCM for terms of six years. CONST. art. 136. The Court examines cases in plenary sessions, at which a quorum of at least four judges is required. LCC art. 23. Laws and regulations become null and void immediately upon the Court holding them unconstitutional. The Court's judgments, decisions, and advisory opinions are final and cannot be appealed. CONST. art. 140; LCC arts. 26, 28.

Judicial Administration

The **SCM** is an independent body, charged with ensuring the proper functioning of the judicial system and guaranteeing its independence. Among its many competences, the SCM is responsible for the appointment, transfer, promotion, discipline, removal, and professional evaluation of judges, and with presenting the draft budget for the courts before Parliament. Const. art. 123; LAW OF THE REPUBLIC OF MOLDOVA ON THE SUPERIOR COUNCIL OF MAGISTRACY art. 4 (Law No. 947-XIII, *adopted* Jul. 19, 1996, *last amended* Dec. 25, 2008) [hereinafter SCM LAW]. The SCM currently consists of 12 members: seven judges elected by the General Assembly of Judges; two law professors elected by a two thirds vote in Parliament (one proposed by the governing party and the other by the opposition); and three *ex officio* members (the President of the SCJ, the Minister of Justice, and the Prosecutor General).⁴ SCM LAW art. 3; *see also* CONST. art. 122. Elected members of the SCM have a four-year mandate. The SCM also has two boards operating under its auspices, the Qualification Board and the Disciplinary Board, as well as a newly formed Judicial Inspection Unit [hereinafter JIU]. SCM LAW arts. 7-7¹.

The Ministry of Justice [hereinafter MOJ] also has a **Department of Judicial Administration [hereinafter DJA]**, which was established in November 2007 and began functioning in spring 2008. This action came after the SCM proposed to Parliament the establishment of a DJA under its authority – a recommendation that was approved by Parliament but rejected by the President of Moldova. The Government then issued the decision establishing the DJA under the MOJ. *See generally* DECISION OF THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA “ON ESTABLISHING THE DEPARTMENT OF JUDICIAL ADMINISTRATION” (Decision No. 670, *adopted* Jun. 15, 2007, *as amended* Oct. 16, 2007) [hereinafter DJA DECISION]. The DJA is responsible for a host of judicial administration functions, such as working with the courts to develop the annual draft budget for presentation to the SCM, which would then present it to Parliament; overseeing the judicial information system, including the installation of audio recording equipment and case management software; collecting and generating statistical reports; and generally advising the MOJ on proposals for legislation. *See generally* DECISION OF THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA “ON APPROVING THE REGULATIONS AND STRUCTURE OF THE DEPARTMENT OF JUDICIAL ADMINISTRATION” (Decision No. 1202, *adopted* Nov. 6, 2007) [hereinafter DJA REGULATIONS].

Conditions of Service

Qualifications

All candidates for judicial appointment must satisfy the following general requirements: be a citizen of Moldova exclusively (the holding of any other citizenship is not permitted as of May 2008); have full legal capacity; have a university law degree; graduate from the National Institute of Justice [hereinafter NIJ]; have no criminal record; and have a good reputation, knowledge of the state language, and an officially issued medical certificate that verifies good health. The previous minimum age requirement of 30 years old has been eliminated. Up to 20% of judicial positions within a three-year period following the establishment of the NIJ in 2006 may be filled by candidates who have not graduated from the NIJ but fulfill other general requirements, as well as have five years of relevant experience and pass the capacity exam before the SCM Qualification Board. Relevant experience includes, *inter alia*, serving as a member of Parliament, a law professor at an accredited institution, a prosecutor, investigator, attorney, Ombudsman, notary, enforcement agent, court consultant, or court secretary. LAW ON THE STATUS OF JUDGE arts. 6-7 (Law No. 544-XIII, *adopted* Jul. 20, 1995, *last amended* Dec. 25, 2008) [hereinafter LSJ]. Candidates for the position of a court of appeal judge must have at least six years of experience

⁴ Recent amendments that take effect in November 2009 will reduce the number of non-*ex officio* judge members on the SCM from seven to five, while increasing the number of law professors from two to four (with candidates proposed by at least 20 members of Parliament and approved by a simple majority vote).

as a judge, while SCJ candidates require at least 10 years of judicial experience. *Id.* Military judges must also be active military officers or be given a military rank before appointment.

To be qualified to serve on the Constitutional Court, an individual must be a Moldovan citizen, with higher legal education, significant professional competence, and at least 15 years of legal or scholarly experience. In addition, an individual may not be over 70 years of age in order to be appointed to the Constitutional Court. CONST. art. 138; LCC art. 11.

Appointment and Tenure

The President of Moldova appoints judges to district courts, courts of appeal, the economic courts, and the Military Court upon the proposal of the SCM. The initial appointment of a district court judge is for a five-year term, and thereafter, a judge may be reappointed until the mandatory retirement age of 65, which applies to all other judges of the courts of law. CONST. art. 116; LSJ art. 11. The President also appoints presidents and vice presidents of those courts for four-year terms upon the proposal of the SCM. LOJ art. 16.

Parliament appoints the President, Vice Presidents, Vice Presidents of Colleges, and other judges of the SCJ, also upon the proposal of the SCM. CONST. art. 116.

Parliament, the Government, and the SCM each appoint two judges to the Constitutional Court. CONST. art. 136. Judges serve for no more than two six-year terms and must not be over 70 years of age in order to be appointed to the Court. LCC arts. 5, 11. There is no mandatory retirement age. Judges of the Constitutional Court elect the President of the Court. *Id.* art. 7.

Training

The NIJ, established by law in 2006, is a public institution which implements an 18-month initial training program for judicial and prosecutorial candidates, as well as a continuing legal education [hereinafter CLE] program for judges, prosecutors, and others involved in the judiciary. The first class of 10 judicial trainees graduated in March 2009. *See generally* ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON THE NATIONAL INSTITUTE OF JUSTICE (Law No. 152-XVI, *adopted* Jun. 8, 2006) [hereinafter NIJ LAW] The NIJ program involves intensive classroom work and a six-month internship in a district court under the supervision of the court president. Graduation from the NIJ has been incorporated into law as a general requirement for judicial appointment. However, up to 20% of judicial appointments during a three-year period may still be filled by non-NIJ graduates with five years of relevant legal experience who pass the capacity examination before the SCM Qualification Board. LSJ art. 6.

Since January 1, 2008, judges are required to complete at least 40 hours a year of CLE. Participation in CLE is a major consideration in judicial promotions. NIJ LAW art. 19. The NIJ is in charge of developing the curriculum with input from the SCM, among others. Courses are free of charge. At the moment, the SCM assigns judges to attend specific classes. The curriculum covers a wide range of topics, including ECHR case law, criminal law and procedure, practical skills including problem solving and judicial reasoning, as well as the newly adopted Code of Judicial Ethics. Additionally, with the rollout of new Integrated Case Management System [hereinafter ICMS] software to courts in 2009, training was conducted through the NIJ for all court personnel and judges.

Moldova JRI 2009 Analysis

While the correlations drawn in this assessment may serve to give a sense of the relative status of certain issues present, ABA ROLI would underscore that these factor correlations and conclusions in the Moldova JRI 2007 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Moldova JRI 2002. 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 to future JRI assessments. ABA ROLI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

Judicial Reform Index Factor		Correlation 2007	Correlation 2009	Trend
I. Quality, Education, and Diversity				
Factor 1	Judicial Qualification and Preparation	Neutral	Neutral	↔
Factor 2	Selection/Appointment Process	Neutral	Neutral	↔
Factor 3	Continuing Legal Education	Neutral	Neutral	↔
Factor 4	Minority and Gender Representation	Positive	Neutral	↓
II. Judicial Powers				
Factor 5	Judicial Review of Legislation	Neutral	Neutral	↔
Factor 6	Judicial Oversight of Administrative Practice	Neutral	Neutral	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Positive	Neutral	↓
Factor 8	System of Appellate Review	Neutral	Neutral	↔
Factor 9	Contempt/Subpoena/Enforcement	Negative	Neutral	↑
III. Financial Resources				
Factor 10	Budgetary Input	Neutral	Neutral	↔
Factor 11	Adequacy of Judicial Salaries	Negative	Negative	↔
Factor 12	Judicial Buildings	Negative	Neutral	↑
Factor 13	Judicial Security	Negative	Negative	↔
IV. Structural Safeguards				
Factor 14	Guaranteed Tenure	Neutral	Neutral	↔
Factor 15	Objective Judicial Advancement Criteria	Neutral	Neutral	↔
Factor 16	Judicial Immunity for Official Actions	Neutral	Negative	↓
Factor 17	Removal and Discipline of Judges	Neutral	Neutral	↔
Factor 18	Case Assignment	Neutral	Neutral	↔
Factor 19	Judicial Associations	Negative	Negative	↔
V. Accountability and Transparency				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Neutral	Positive	↑
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Neutral	Neutral	↔
Factor 24	Publication of Judicial Decisions	Negative	Negative	↔
Factor 25	Maintenance of Trial Records	Negative	Negative	↔
VI. Efficiency				
Factor 26	Court Support Staff	Negative	Negative	↔
Factor 27	Judicial Positions	Negative	Negative	↔
Factor 28	Case Filing and Tracking Systems	Negative	Negative	↔
Factor 29	Computers and Office Equipment	Negative	Neutral	↑
Factor 30	Distribution and Indexing of Current Law	Neutral	Neutral	↔



I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>Judicial candidates are required to have a higher legal education and, starting in 2007, 80% of judicial positions are to be filled by candidates who have completed an 18-month initial training program at the NIJ. The training is provided free of charge, and candidates receive a stipend. The intensive curriculum covers a broad range of substantive and procedural law topics, and includes a six-month internship in a district court under the supervision of the court president. The quality and success of the program remains to be determined, as the first class graduated in March 2009; however, candidates, trainers, and judges speak positively about the program.</p>		

Analysis/Background:

Individuals who seek appointment as a judge in Moldova must hold only Moldovan citizenship and have: full legal capacity, a university law degree, graduated from the NIJ, no criminal record, a good reputation, knowledge of the state language, and an officially issued medical certificate that verifies good health. LSJ art. 6(1) (*as amended by ORGANIC LAW ON THE AMENDMENT AND COMPLETION OF CERTAIN LEGISLATIVE ACTS art. II(6) (Law No. 247-XVI, adopted Jul. 21, 2006 [hereinafter 2006 AMENDMENTS])*). The requirement that a judicial candidate be a graduate of the NIJ was put into law in 2006, and the first class of judicial trainees graduated in March 2009. The law also provides for up to 20% of judicial positions within a three-year period following the establishment of the NIJ to be filled by candidates who have not graduated from the NIJ but fulfill other general requirements, as well as have five years of relevant experience and pass the capacity exam before the SCM Qualification Board. *See* LSJ art. 6(2); *see also* SCM REGULATION ON ORGANIZATION AND HOLDING OF CONTEST FOR FILLING VACANT COURT JUDGE, CHIEF JUDGE AND DEPUTY JUDGE POSITIONS AND FOR PROMOTION TO HIERARCHICALLY HIGHER COURTS § 4 (SCM Decision No. 68/3, Mar. 1, 2007) [hereinafter SCM HIRING REGULATION]. Relevant experience includes, *inter alia*, serving as a member of Parliament, a law professor at an accredited institution, a prosecutor, investigator, attorney, Ombudsman, notary, enforcement agent, court consultant, or court secretary. LSJ art. 6(2).

The criteria for appointment set forth in the LSJ also apply to Economic Circuit Court and Military Court appointments, with the addition that a candidate for a Military Court position must also be an active officer in the military or be given a military rank before appointment. *See* LAW ON THE ECONOMIC COURTS art. 21 (Law No. 970-XIII *adopted* Jul. 24, 1996, *last amended* Nov. 29, 2007) [hereinafter ECON. COURTS LAW]; LAW ON THE SYSTEM OF MILITARY COURTS art. 19 (Law No. 836-XIII, *adopted* May 17, 1995, *last amended* Nov. 29, 2007) [hereinafter MILITARY COURTS LAW]. Candidates for the position of a court of appeal judge must have at least six years of service as a judge, while SCJ candidates require at least 10 years of judicial experience. LSJ art. 6(3) (as amended by 2006 AMENDMENTS art. II(6)); *see also* LAW ON THE SUPREME COURT OF JUSTICE art. 11 (Law. No. 789-XIII, *adopted* Mar. 26, 1996, *last amended* Dec. 25, 2008) [hereinafter SCJ LAW]. To be qualified to serve on the Constitutional Court, an individual must be a Moldovan citizen, with higher legal education, significant professional competence, and at least 15 years of legal or scholarly experience. LCC art. 11(1).

No minimum age requirement exists for a judicial candidate. The previous requirement that a candidate be at least 30 years old has been eliminated. See 2006 AMENDMENTS art. II(6). For district, appellate, and SCJ judges, the mandatory retirement age is 65. See LSJ art. 11(1). Constitutional Court judges may not be more than 70 years old upon appointment to the Court, but there is no mandatory retirement age. LCC art. 11(2).

Eighteen universities in Moldova are accredited to teach law. Moldova State University [hereinafter MSU] has the largest law department, with some 4,200 students enrolled to study law, about 53% of whom are full-time students with the remainder in the part-time program. In 2005, Moldova began to implement the Bologna Process, a part of the 1999 Bologna Declaration on the European Space for Higher Education, which aims at a convergence of higher education standards in Europe. At MSU, under the Bologna Process, law students are offered a four-year, university-level undergraduate degree program (known as licentiate), with the option of an additional 1.5 years of study to obtain a master's degree. This 4+1.5 program was designed with the plan that the law will eventually be amended to require candidates for judicial and prosecutorial positions to have master's degrees in law. This amendment to the applicable law has not yet occurred.

The Bologna Process implementation has resulted in changes to the MSU law school curriculum with regard to which courses are mandatory or optional, and to introducing credit hours and syllabi for courses. Professors have varying comprehension of the goals of the process and differing opinions on its effectiveness so far. Some observed that they see no difference in the quality of lawyers produced now versus under the pre-Bologna curriculum. Interviewees thought the quality of education offered law students was simply not very good irrespective of the Bologna Process. Students are typically taught through lecture rather than interactive teaching techniques, and are expected to memorize materials rather than being taught to reason, analyze, and present arguments on problems. An internship is required of all students before graduation, but it usually involves observation of court proceedings with little, if any, activity required of the student. MSU's law department does have clinical programs which allow students to research and work on actual cases with lawyers. However, the clinics only take a small number of students. The Labor Relations and Environmental Law Clinics, for example, have 39 students enrolled.

The NIJ, established by law in 2006 after repeated recommendations from the international community, including, among others, the Council of Europe is a public institution which implements an 18-month initial training program for judicial and prosecutorial candidates as well as a CLE program for judges and prosecutors. NIJ LAW arts. 2, 14(1). The NIJ also has a mandate to offer initial and continuous training for other persons who contribute to the well-functioning of justice, including court clerks and bailiffs. *Id.* art. 4(1)(d).

The NIJ is administered by a 13-member Council, comprised of seven judges selected by the SCM, four members designated by the Prosecutor General, one member designated by the MOJ, and one law professor appointed by the MSU. Council members serve a four-year term with the right to re-election once. *Id.* art. 6. The Council hires an Executive Director to run the Institute. An admission committee organizes the admission contest for incoming judicial and prosecutorial trainees. *Id.* Art. 13(3). The NIJ's Council in coordination with the SCM and Prosecutor General approves the composition of the admission committee before July 1 of each year. It is currently composed of representatives from the PG office, the SCM, the SCJ and Moldova's Government Agent to the ECHR. The process of selecting candidates for the NIJ's first class of judicial trainees commenced in 2007, with the announcement about the application process posted by the Prosecutor General and the SCM and published in professional journals. Applicants sat for a two-day written and oral examination administered by the admission committee. The SCM provided an opinion on the number of places available for initial admission training of judges. SCM LAW art. 4(2)(d). In 2007, the NIJ received 42 applications for admission to the judicial prong of the initial training program, and 10 individuals were accepted. In 2008, 25 applications



were received and 10 accepted. Trainees receive 50% of a trial judge's salary while enrolled in the Institute. NIJ LAW art. 14(4).

The academic year for the NIJ commences in October. Trainees are first sent to courts to observe proceedings for two weeks. Then the formal classroom component begins. In the first semester of classes, judicial and prosecutorial trainees attend the same courses, which cover lectures on general subject matter such as criminal law and procedure, civil law and procedure, ECHR jurisdiction, and legal rhetoric. Trainers include law professors, SCJ judges, and prosecutors. In the second semester of studies, judicial and prosecutorial trainees attend separate classes. Judicial trainees cover 12 subjects in specialized areas of the law, including further study of criminal and civil procedure, special trial procedures, the qualification of crimes, and labor, family, and property law. At the end of each semester, trainees take exams. Trainees may retake an examination once if they fail the first time. The third semester, lasting from June until December, is an internship program where trainees are assigned by the NIJ to specific district courts. Trainees receive assignments from the president of the court, such as drafting decisions and conclusions for judgments. At the end of the six-months internship, the trainees present a report on their internship and their work product to the Institute. The presidents of their respective courts also attend this session to speak to the quality of the trainees' work product. Trainees receive a grade for their internship. Finally, trainees return to the NIJ for their last semester of coursework, covering subjects that include juvenile law, anti-corruption, court administration, mediation, investigative activity, and judicial ethics. Trainees must then pass a final written and oral exam before a graduation committee. *Id.* art. 17(3).

Graduates receive a certificate which shows their average grade. *Id.* art. 17(6). Grades are very important, as individuals with higher grades will be at the top of the list when positions are offered. *See id.* art. 18(2). Graduates are obligated by law to "take part in any open contest" for judicial positions during the three years after graduation. *Id.* art. 18(3). Graduates who fail to participate in the job contest without a valid reason may be required to reimburse the NIJ for the stipend received. *Id.* art. 18(4). The first class of 10 trainees who were admitted in 2007 graduated in March 2009. Issues related to their appointment to judicial positions immediately emerged and are further discussed in Factor 2 below.

Overall, trainees found the curriculum to be challenging and satisfactory. The specialized criminal and civil procedure courses were identified as particularly interesting because the trainers, the SCJ Court judges, taught from materials taken from actual cases before the Court. Some noted a gap in coursework and thought a rearrangement of the number of hours on certain courses could alleviate it. For example, no customs or tax law were covered in the curriculum, while judicial ethics was given 24 hours of course time. Additionally, some felt the internship program was too subjective to allow for fair and proper grading.

Interviewees uniformly expressed the opinion that the NIJ is a good idea. Criticism was voiced about the curriculum, which is perceived as too analytical with insufficient emphasis on practical skills training. Along these lines, one recommendation was for fewer law professors and more practitioners to be utilized as trainers. Others questioned the decision to admit 10 candidates a year without ever having conducted an assessment of the needs of the judiciary. In the view of some observers, the lack of planning with regard to the number of people admitted to the NIJ initial training program will result in a failure to meet the needs of the judiciary and ultimately will negate the purpose of the NIJ. Many observers also commented on the elimination of the minimum age of 30 for judicial candidates. The first class of judicial trainees admitted to the NIJ was an average age of 27-28 years old, many with experience in the legal field and/or master's or doctoral degrees. The second class admitted to the NIJ is an average of 23 years old, directly from undergraduate studies, with no significant work experience. Critics say these candidates will be too young and inexperienced to serve as respected, effective judges, and suggest that, in lieu of a minimum age requirement for judicial positions, a minimum legal work experience requirement be introduced.

Factor 2: Selection/Appointment Process

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>The appointment of new judges to district courts is based on objective criteria: either graduating from the NIJ program or passing a capacity exam and demonstrating sufficient relevant experience. The first experience of appointing NIJ graduates to judicial vacancies has proven to be frustrating and disappointing due to the lack of clarity in the interpretation of relevant laws. The appointment system is perceived with distrust and suspicion that the executive branch has undue influence over the entire process. Recent amendments to the composition of the SCM have only fueled this distrust, as the number of political appointees on the SCM has increased and the number of judges has decreased.</p>		

Analysis/Background:

The President of Moldova appoints judges to the district courts, courts of appeal, and the Economic and Military Courts upon proposal of the SCM. CONST. art. 116(2); LSJ art. 11(1) (*as amended by 2006 AMENDMENTS art. 1(11)*); SCM LAW art. 4(1)(a); LOJ art. 16(3). Judges of the SCJ are appointed by Parliament upon proposal of the SCM. CONST. art. 116(4); LSJ art. 11(2); SCJ LAW art. 9. For the six judges on the Constitutional Court, two are appointed by Parliament, two by the Government and two by the SCM.⁵ CONST. art. 136(2).

The SCM is, by law, an independent body intended to be the guarantor of the independence of judicial authority. SCM LAW art. 1(1). As of June 2009, the SCM consisted of 12 members: seven judges elected at the General Assembly of Judges; two law professors elected by a two-thirds vote in Parliament (one proposed by the governing party and the other by the opposition); and three *ex officio* members (the President of the SCJ, the Minister of Justice, and the Prosecutor General). SCM LAW art. 3; *see also* CONST. art. 122. In February 2009, new amendments came into effect, which alter the composition of the SCM. *See* ORGANIC LAW ON THE AMENDMENT AND COMPLETION OF CERTAIN LEGISLATIVE ACTS art. IV(1) (Law No. 306-XVI, *adopted* Dec. 25, 2008 [hereinafter 2008 AMENDMENTS]). Beginning in November 2009, the SCM will still have 12 members, including the same three *ex officio* members; however, the number of judge members elected by the General Assembly of Judges will decrease from seven to five, while the number of law professors will increase from two to four (with candidates proposed by at least 20 members of Parliament and approved by a simple majority vote). SCM LAW art. 3. Elected members of the SCM have a four-year mandate. *Id.* art. 9(1). In addition, under the latest amendments, the judges elected to the SCM are temporarily released from their judicial duties for the term of the mandate, in order to serve full-time on the SCM. *Id.* art. 3(5). Up until now, only

⁵ The Constitution was amended in 2000 to provide that Parliament, the SCM, and the Government each appoint two judges to the Constitutional Court, instead of the prior system which provided that Parliament, the SCM, and the President each appoint two judges to the Court. *See* CONSTITUTIONAL LAW ON THE AMENDMENT AND COMPLETION OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA (Law No. 1115-XIV, *adopted* Jul. 5, 2000). However, the LCC was never amended accordingly, and thus still provides for two appointments by the President. *See* LCC art. 6. The amendment to the Constitution is the governing law, as the Constitution is the supreme law of the country and laws or other legal acts and regulations in contradiction with the provisions of the Constitution have no legal power. CONST. art. 7. The practice since 2000 has been that the Government appoints two of the Constitutional Court judges.



the President of the SCM was seconded from the bench for the entire term, while the other judges were seconded for alternating one year periods. The SCM also has two boards operating under its auspices, the Qualification Board (discussed below) and the Disciplinary Board, as well as a newly formed judicial inspection unit (discussed in Factor 17 below).

The SCM oversees the organization of the hiring competition for judicial vacancies. *Id.* art. 4(1)(d). The vacancy announcement is published on the SCM website, <http://www.scm.md>, in the MO (the official bulletin of Moldova), in the SCJ Bulletin, as well as in other mass media. SCM HIRING REGULATION § 24. Applicants are required to submit all necessary documentation to the SCM, including their curriculum vitae, two letters of recommendation, and other supporting documents. *Id.* § 11. During the three-year period following the graduation of the first class from the NIJ, the SCM is obligated to fill 80% of vacancies with NIJ graduates and the remaining 20% with candidates who satisfy, *inter alia*, the professional experience requirements set forth in the LSJ. *Id.* § 4; LSJ art. 6(2); *see also* Factor 1 above for a more detailed description of this requirement. The NIJ graduates participate in the hiring competition based on their certificates of graduation and on their average scores without having to take the capacity examination before the Qualification Board. SCM HIRING REGULATION § 15.

For those non-NIJ graduate candidates, after the SCM verifies that they have met the application criteria as stipulated by law, including a minimum of five years of relevant work experience, the files of the candidates are sent to the Qualification Board for administration of the capacity examination. *Id.* § 12. The Qualification Board, which, as of June 2009, was composed of 12 members who serve four-year terms, consists of four SCJ judges, one judge from each of the five courts of appeal (elected by their respective courts), and three MSU law professors named by the SCM. *See* LAW ON THE BOARD OF QUALIFICATION AND ATTESTATION OF JUDGES arts. 2, 3 (Law No. 949-XIII, adopted Jul. 19, 1996, last amended Dec. 25, 2008) [hereinafter QUALIFICATION BOARD LAW]. The Board holds capacity examinations for filling judicial vacancies, submits recommendations to the SCM on appointments and promotions, and conducts attestation of sitting judges. *Id.* art. 7. Beginning in November 2009, the Board's composition will change to six judges (two each from the SCJ, the courts of appeal, and the district courts), to be elected by judges at their respective court level, and six law professors, three of whom are to be appointed by the SCM and the other three by the MOJ. *See* QUALIFICATION BOARD LAW art. 2(1) (*as amended by* 2008 AMENDMENTS art. V(1)).

The capacity examination is held at least twice a year. *Id.* art. 17(2). The oral component covers subjects that include civil and criminal procedure, civil, criminal, administrative, constitutional, economic, and labor law, as well as matters related to the status of the judge and the organization of the judiciary. *Id.* art. 20(1)(a). The entire Board sits for every candidate and the oral examination is open to the public, although typically nobody other than the candidates attend. For the written portion of the examination, applicants must prepare two procedural documents solving hypothetical cases. *Id.* art. 20(1)(b). Each answer, in both the written and oral portions, is allocated 10 points, and candidates must achieve 75% of the total number of points to pass the exam. *Id.* arts. 20(3)-(4); SCM HIRING REGULATION § 14. The results of the exam are valid for three years; if a candidate wishes to compete for a judicial position after that time, he/she will have to retake the exam. QUALIFICATION BOARD LAW art. 20(5); SCM HIRING REGULATION § 17. The Board then submits to the SCM a decision on the passing of the exam, which lists the candidates' scores. The results of the exam are posted on the SCM's website. QUALIFICATION BOARD LAW art. 21(2).

The SCM interviews all candidates recommended by the Board at a public hearing, after which the SCM meets in closed session to select their candidate for the vacancy. In the case of positions open to the NIJ graduates, the graduates pick first from among vacancies put up for the competition in decreasing order of their general average grades, and the remaining vacancies are then offered to those vetted by the Qualification Board. If individuals have identical grades, the selection is done by lottery. SCM HIRING REGULATION § 26. The President of the SCM then

forwards the SCM's proposal on the appointment, along with the candidate's personnel file, curriculum vitae, and a draft decision, to the President of Moldova.

The Moldovan President may reject a proposed candidate for a judicial position upon discovery of "incontestable proof" of the incompatibility of the candidate with the position, violation of the law, or violation of legal procedures concerning appointment and promotion. See LSJ art. 11(3). However, the President may only reject the candidate one time. In the event the President rejects the candidate, the SCM's judicial inspection unit is charged with drafting an analysis of the President's reasons for the rejection and presenting it to the SCM. *Id.* art. 7¹(6)(d). The SCM may then propose another candidate, or with a vote of two thirds of its members, the same candidate for that vacancy. See *id.* art. 11(5); SCM LAW art. 19(4); LOJ art. 16(5). Within 30 days of receiving the resubmitted proposal of the earlier-rejected candidate, the President of Moldova must adopt a decree appointing the candidate to judicial office. LSJ art. 11(5).

With regard to the appointment of judges in general, interviewees noted that the process as set forth in corresponding law appears to create a transparent, fair, and objective appointment process within an independent judiciary. However, they believe that, in reality, an independent appointment and nomination process is not guaranteed due to political interference. See FREEDOM HOUSE, *Moldova* at 404, in *NATIONS IN TRANSIT 2008: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA* (2008) [hereinafter *NIT 2008*]. The presence of *ex officio* members on the SCM, including the Minister of Justice and the Prosecutor General, as well as the changes made to the composition of the SCM and its Boards in 2009 are seen as an effort to influence the judiciary by the executive branch. The number of judges on the SCM and the Qualification Board has been reduced, while the number of law professors was doubled. The requirement that some professors for the SCM be proposed by the parliamentary opposition was eliminated, and the MOJ is now given the authority for three appointments to the Qualification Board. The result is a change in the proportion of judges to non-judges, to the detriment of judges, and a corresponding increase in the percentage of members who will be politically appointed. It was also reported that the changes to the SCM composition have been adopted hastily, in an emergency procedure in the last sessions of the outgoing Parliament, without consultation with the civil society, the international organizations, or even the judiciary.

Critics complained that the qualification examination itself is sometimes carried out *pro forma* and that the Board already has a candidate in mind despite the exam results. In addition, several sources reported that, while judicial vacancies are supposed to be advertised, this does not always happen, particularly in district courts outside Chisinau. Candidates proposed by other judges or interested individuals are submitted as potential appointees without having gone through a hiring competition. In addition, critics perceive influence by the executive branch on the SCM citing as an example that, when the Moldovan President rejects candidates for appointment, the SCM rarely invokes its power to resubmit a candidate for mandatory approval by the President. According to the SCM, however, that it has resubmitted initially rejected candidates seven times in the last two years.

The appointment of the first NIJ graduates to judicial positions has proven to be difficult, controversial, and frustrating for all parties involved. At the first hiring competition held since the NIJ graduates had become eligible to compete, both the NIJ graduates and the candidates who had successfully completed the qualification exam attended. The NIJ graduates were given priority for the 14 vacant positions. Only two graduates accepted proposed appointments, the only two positions that were located in or near Chisinau. The SCM then called a new meeting for these vacancies on June 18, 2009. After what was described as a long and heated discussion, the rest of the NIJ graduates again rejected the remaining vacancies that were located throughout Moldova, and expressed a desire to stay and work in Chisinau. See Victor Mosneag, *Judges' Caprice*, ZIARUL DE GARDA at 14 (Jun. 18, 2009).. The President of the SCM told journalists that the law does not permit selective participation in hiring competitions by the NIJ graduates; rather, they are obligated to compete for all vacancies. *Id.* In fact, while the NIJ Law provides that NIJ graduates "shall take part" in the contest for vacancies, it also states that those "who have not



passed successfully the contest for available vacancies ... shall further take part in any open contest for the above mentioned positions during three years after graduation from the Institute.” NIJ LAW arts. 18(1), 18(3). Further, in the event of a graduate’s failure to participate in the contest for the vacancies without a valid reason, the SCM may require him/her to reimburse to the NIJ’s account the stipend received during the period of initial training. *Id.* art. 18(4). The corresponding SCM regulation states that “the graduates of the National Institute of Justice are obliged to participate in all announced contests for filling judicial vacancies.” SCM HIRING REGULATION § 18. The SCM interprets “shall take part” to mean that an NIJ graduate must not only participate in all job competitions, but also accept the position, if offered one in a hiring competition. The SCM is reported to have sent a request to Parliament for clarification of the meaning of the words “shall take part,” and to have sent a recommendation to the NIJ that the Institute seek restitution of the stipends received by those graduates who have refused positions.

The NIJ graduates disagree with the SCM’s position and believe they are in compliance with the law and are “taking part,” as required by law, as long as they agree to participate in competitions – but that they maintain the right to refuse vacancies over a three-year period. All of the NIJ graduates currently reside in Chisinau. Reasons for the refusal to take positions outside the capital included the fact that they could not afford to maintain two residences, as their families would stay in Chisinau, and judges would have to pay for their housing in the towns where their courts are located. Some candidates stressed that a decision to take an appointment elsewhere is truly a lifetime decision, since they are not offered the possibility of accepting a regional district court position now but with an opportunity to compete for positions closer to or in Chisinau as they become available in the future. Graduates want a clear set of rules, and some confessed that they would never have enrolled in the program if they had been informed that they would have to accept positions outside of Chisinau. Bitterness was expressed as well because the SCM did propose candidates for Chisinau vacancies earlier in 2009, and the NIJ graduates thought that those positions should have been held open until they graduated and became eligible to compete.

Meanwhile, from the SCM’s end, there are calls for the 80/20 quota to be abolished. The SCM members point out that they cannot keep open the 12 vacancies rejected by the NIJ graduates, but that if they fill them with qualification exam candidates, it will be in violation of the 80/20 division, and thus of the law. Some observers believe that the crisis regarding the judicial appointments of the first NIJ graduating class ultimately advances what they perceive as the SCM agenda to maintain control over the process of selecting and appointing judges. This year’s class of trainees will be asked to sign a statement that they understand the requirement to accept any vacancy and that refusal warrants the refund of the stipend to the NIJ. Both parties and observers agree that the entire situation reflects a failure of the system as initially established and negatively impacts the NIJ, the judiciary, and the country, as international observers watch the work and progress of the nascent NIJ closely.

Factor 3: Continuing Legal Education

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>Judges are required to attend 40 hours of CLE annually, and the NIJ is charged with running the CLE program in accordance with the curriculum approved by the SCM. While the NIJ accepts input from judges on the subjects offered, judges do not have input into what courses they take in the current (i.e., the first) year of the program. The SCM assigns judges to attend specific courses, which are free of charge. The CLE component of the NIJ's program is nearly 100% donor-driven.</p>		

Analysis/Background:

Judges are obligated to take at least 40 hours a year of CLE. NIJ LAW art. 19(2). This mandatory CLE requirement was put in place January 1, 2008 (*see id.* art. 22(2)), and coincided with the establishment of the NIJ, which, in addition to the initial training for judges also develops and provides CLE programs for sitting judges. The NIJ submits certificates of attendance for judges participating in a training to the SCM, which is responsible for maintaining the personnel files for district and appellate court judges. SCM LAW art. 4(7). Judges have a legal and ethical obligation to continue their studies in order to execute their duties adequately and to maintain their qualifications at a high level. *See* LSJ art. 15(4) (*as amended by* 2006 AMENDMENTS art. II(14)); *see also* JUDICIAL CODE OF ETHICS art. 5(1)(b) (*promulgated by* SCM Decision No. 366/15, Nov. 29 2007). Attendance at CLE is also a major criterion considered in whether to promote a judge. LSJ art. 20(3). A judge may be called before the attestation board for failure to improve his/her professional skills. *See* QUALIFICATION BOARD LAW art. 23(4). Additionally, judges must sit at least once every three years for an attestation exam in order to confirm their qualification ranking. SCM REGULATION ON ORGANIZATION AND HOLDING OF ATTESTATION OF JUDGES § 3(f) (SCM Decision No. 318/13, Oct. 11, 2007) [hereinafter ATTESTATION REGULATION]. Judges who have a "superior" qualification rank are exempt from both the attestation exam and the CLE requirement. *Id.* § 6(b). This effectively excludes the SCJ Court justices from taking CLE courses.

The NIJ operates the CLE schedule based on two six-month semesters. Staff in the NIJ compose a strategy for continuing training and a corresponding action plan for its implementation. The schedule of proposed courses is formulated after receiving input from various sources, including the MOJ, the SCJ, judges, prosecutors, and national and international partners including the Council of Europe. The SCM must approve the strategy and offers comments on the action plan. SCM LAW art. 4(2)(b). After the action plan is finalized, the NIJ's Council approves the syllabi and educational curriculum for the CLE courses. NIJ LAW arts. 7(1)(a), 7(1)(c). The SCM makes a list of which judges will attend which training by semester and sends the information to the respective court presidents, who notify the individual judges of their training schedules. Newly appointed judges are sent to attend a one-week course, which covers a variety of topics such as judicial ethics, ECHR case law, problem solving, and group work.

The NIJ has no full-time trainers. The 50–60 trainers, who were selected on a competitive basis and approved by the Institute's Council, work on a part-time basis or are paid by the course. They represent a mixture of judges, prosecutors, and law professors. In 2008, the NIJ offered 134 training courses and trained 1,714 judicial personnel, which includes judges and court support staff. The high number represents the numerous and repetitive trainings held on the new



ICMS software. As discussed in Factor 28 below, due to the time it took to roll out the system, trainings were repeated for staff to refresh them on what they had learned earlier about the system. Additionally, 12 ethics trainings were held and attended by 360 judges, while 185 judges attended CLE courses on the European Convention on Human Rights.

CLE is provided free of charge for judges. See LSJ art. 14(4) (*as amended by 2006 AMENDMENTS art. II(13)*). Many of the courses are held in the Institute, while the MCC assisted the NIJ in setting up three regional training centers (in Chisinau, Balti, and Comrat) where training on the new case management program has taken place.

Finances are a concern for the NIJ. Its budget has grown steadily since its establishment: MDL 1 million (approximately USD 90,000)⁶ in 2007, MDL 8 million (approximately USD 720,000) in 2008, and MDL 17 million (approximately USD 1,530,150) in 2009. However, most of the funding has been allocated for construction and renovation costs on the partially-reconstructed facility. The NIJ's CLE program was described as entirely reliant on donor support. International donors provide not only the funding, but also the expertise for many courses. For example, the ethics trainings were sponsored by the MCC, while the Norwegian Mission of Rule of Law Advisers to Moldova [hereinafter NORLAM] has taught a variety of courses in the criminal law field as well as a course on how to develop reasoning in written judgments. The Council of Europe funded ECHR training, and also currently sponsors publication of the NIJ's bulletin and training materials. As a consequence of shortfalls in programmatic funding, the NIJ is yet to begin training of new enforcement officers, a function it is tasked with under the law. NIJ LAW art. 4(1(d)).

Judges generally spoke positively about the mandatory CLE requirement. Many thought that the courses were interesting and worthwhile, and did not feel that 40 hours was an excessive requirement. Judges interviewed were aware that they could propose topics for courses, although none had actually done so. Some discontent was expressed about the fact that individual judges do not currently have a choice as to which courses they attend, but must do so per the schedule the SCM puts together. One of the future plans of the NIJ is to have a website with a link that would ultimately allow judges to decide and sign up for their choice of courses. The NIJ is also working on creating a computerized database with the names of attendees, the courses attended, the number of hours, and the certificates awarded, which would allow for easy calculation of the number of hours an individual has completed. Currently, the only way to calculate whether a judge has completed the 40-hour minimum of CLE is to calculate it from the attendance certificates in a judge's personnel file.

⁶ In this report, Moldovan lei (MDL) are converted to United States dollars (USD) at the approximate rate of conversion when this report was drafted (USD 1.00 = MDL 11.11).

Factor 4: Minority and Gender Representation

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

Conclusion	Correlation: Neutral	Trend: ↓
<p>While the Constitution prohibits discrimination on any grounds, effective May 2008, citizens of Moldova holding dual citizenship may no longer be appointed to judicial positions. Although Moldova does not maintain statistics on the ethnic and religious composition of the judiciary, women make up approximately 30% of the judges. Interviewees reported no cases of discrimination against women or minorities in the judiciary. Language was identified as an occasional obstacle for exclusively Russian speakers, who noted that the NIJ trainings are often offered only in Moldovan and not translated into Russian.</p>		

Analysis/Background:

The Constitution provides for equality before the law. All citizens are guaranteed freedom from discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, political choice, personal property, or social origin. CONST. art. 16. There are no additional norms applicable specifically to the judiciary that provide for ensuring the equality in representation of women or ethnic and religious minorities within the judiciary.

Effective May 2008, Moldovan citizens with dual citizenship may no longer be candidates for judgeship positions. See LSJ art. 6(1) (*as amended by ORGANIC LAW ON AMENDMENT AND COMPLETION OF CERTAIN LEGISLATIVE ACTS (Law No. 273-XVI, adopted Dec. 12, 2007)*). Previously, the law required Moldovan citizenship but did not preclude those with dual citizenship from competing for a position as judge. Under these recent amendments, a person wishing to be a candidate for a judicial position must hold exclusively Moldovan citizenship. Similar amendments were introduced into other laws, including those relating to prosecutors, combating economic crime and corruption, and security and information service. The amendment was widely viewed as an effort by the ruling party to weaken the opposition, which had many individuals holding dual Moldovan-Romanian citizenship. The Constitutional Court upheld the amendments in May 2009. See Decision of the Constitutional Court of the Republic of Moldova No. 9 (May 26, 2009) This action came despite an ECHR decision in November 2008 which found the amendment was neither justified nor proportionate. See *Tanase and Chirtoaca v. Moldova*, ECHR No. 7/08 (Nov. 18, 2008). The Government appealed the ECHR decision.⁷

Moldova has a multi-ethnic population, with ethnic Moldovans comprising the dominant group. According to the 2004 census, 75.8% of the people were ethnic Moldovans, 8.4% Ukrainians, 5.9% Russians, 4.4% Gagauz, 2.2% Romanians, 1.9% Bulgarians, and 0.4% Roma. NATIONAL OFFICE OF STATISTICS OF THE REPUBLIC OF MOLDOVA, *MOLDOVA IN NUMBERS: A STATISTICAL SUMMARY 2006* at 11 (2006). With regard to religion, 93.7% of the population identifies themselves as Orthodox Christians. There are also members of other Christian denominations and Jews. *Id.*

⁷ After interviews and research for this report had been completed, with the loss of the Communist majority in Parliament following the July 2009 election, the formation of a coalition among former opposition parties, and the establishment of a new Government, the new Parliament's first major decision was to reverse this law and the ban on public servants holding dual citizenship. See *New Moldovan Parliament Scraps Ban on Dual Citizenship*, RADIO FREE EUROPE/RADIO LIBERTY (Sept. 17, 2009), available at <http://www.rferl.org/articleprintview/1825239.html>.



The judiciary does not keep statistics on the ethnic or religious affiliations of judges. According to interviewees, ethnic minorities, with the exception of the Roma, are serving as judges in the Moldovan judiciary. None of the ethnic minority judges interviewed reported any examples of discrimination against them based on their ethnicity. However, the issue of language was raised. Exclusively Russian speakers said they did feel different than their ethnic Moldovan colleagues at times due to their poor knowledge of the state language. One judge commented that the CLE courses at the NIJ were not being translated into Russian, while Russian-speaking court clerks pointed out that they had a challenge when they had to learn the new ICMS software, which has been developed only in the state language.

According to the 2004 census, women made up an estimated 52.1% of the population. In the legal field, an estimated 50% of law students at the MSU are women. At the NIJ, women made up 50% of the first graduating class and comprise 100% of the second class. Overall, approximately 35% of all sitting judges in Moldova are women. This represents an increase from 2007, when women made up roughly 33% of the judiciary. See ABA ROLI, JUDICIAL REFORM INDEX FOR MOLDOVA: VOLUME II at 22 (2007) [hereinafter 2007 MOLDOVA JRI]. Two of the SCJ colleges are chaired by women, and women also make up 50% of the Constitutional Court judges and are represented in leadership roles. By comparison, women make up 27% of registered advocates. See ABA ROLI, LEGAL PROFESSION REFORM INDEX FOR MOLDOVA: VOLUME II at 38 (2009) [hereinafter 2009 MOLDOVA LPI].

GENDER COMPOSITION OF THE JUDICIARY IN MOLDOVA

Court Level	No. of Sitting Judges	No. of Female Judges	As % of Total
Constitutional Court	6	3	50
SCJ	47	19	40
Courts of Appeal	76	36	47
District Courts	318	99	31
TOTAL	447	157	35

Source: SCM. The number of judges for courts of appeal includes the Economic Court of Appeals, while the number of judges for the district courts includes the Economic Circuit Court and the Military Court.

Interviewees reported no instances of gender discrimination in judicial appointments. Female judges interviewed by the assessment team likewise stated that they had not experienced discrimination in their careers due to their gender.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>The Constitutional Court has the authority to determine the ultimate constitutionality of legislation and official acts, and its decisions are enforced. Individuals do not have standing to petition the Court. A court of general jurisdiction may suspend proceedings and submit an issue via the SCJ to the Constitutional Court, but this rarely occurs. The Court came under criticism from opposition parties in the spring of 2009 for decisions related to disputed parliamentary elections.</p>		

Analysis/Background:

The Constitutional Court is the sole authority of constitutional jurisdiction in Moldova. CONST. art. 134(1); LCC art. 1(1). The Court is independent and subject only to the Constitution. CONST. art. 134(2); LCC art. 1(2). It is charged with guaranteeing the supremacy of the Constitution, ascertaining the implementation of the principle of the separation of state powers, and guaranteeing the responsibility of the state towards the citizen and the citizen towards the state. CONST. art. 134(3); LCC art. 1(3). Its jurisdiction extends to reviewing the constitutionality of laws, regulations, and decisions of Parliament, presidential decrees, Government resolutions and orders, and ratified international treaties, as well as to interpreting the Constitution. CONST. art. 135(1)(a)-(b); LCC art. 4(1)(a)-(b). In addition, the Court has a role in the political sphere, with its mandate to decide issues dealing with the constitutionality of political parties, to confirm the results of national referenda and of parliamentary and presidential elections, and to ascertain the circumstances which justify the dissolution of Parliament or impeachment of the President. CONST. art. 135(1)(d)-(h); LCC art. 4(1)(d)-(h). With regard to the judicial sphere, the Constitutional Court reviews exceptional challenges to the constitutionality of legal acts upon petition by the SCJ, which may act *sua sponte* or at the request of other courts. CONST. art. 135(1)(g); LCC art. 4(1)(g); SCJ LAW art. 16(b).

The acts of the Constitutional Court are final and cannot be appealed. They enter into force from the date of their adoption or publication in the MO, Moldova's official bulletin. CONST. art. 140; LCC art. 26(5). A normative act declared unconstitutional becomes null and void and unenforceable from the moment the Court passes judgment. LCC art. 28(2). The President or Government have two months from the time of publication of the judgment to amend or appeal any of their normative acts found unconstitutional. *Id.* art. 28¹. The Government is given three months to present to Parliament a draft law amending or repealing the unconstitutional normative act, and Parliament is obliged to give priority to hearing such draft law. *Id.* According to the Constitutional Court, all decisions issued since 1995 have been executed.

The President of Moldova, the Government, the Minister of Justice, the SCJ, the Economic Court of Appeal, the Prosecutor General, a member of Parliament, a parliamentary faction, the Ombudsman, and the People's Assembly of Gagauzia have the standing to petition the Constitutional Court. *Id.* art. 25; SCJ LAW art. 16(b); ECON. COURTS LAW art. 20(1)(a). Citizens do not have the right to petition the Court directly. If a constitutional issue is raised with regard to a relevant act in the course of a trial and the trial court agrees, it may request that the SCJ refer the issue to the Constitutional Court and suspend proceedings pending a decision. CIVIL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA art. 12¹ (Law No. 225-XV, adopted May 30, 2003, last amended Feb. 3, 2009) [hereinafter CIV. PROC. CODE]; CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA art. 7(3) (Law No. 122-XV, adopted Mar. 14, 2003, last amended Feb. 3,



2009) [hereinafter CRIM. PROC. CODE]. Upon review of the case, the SCJ Plenum may forward the issue to the Constitutional Court to decide. SCJ LAW art. 16(b). In practice, this is rarely done. In 2007, the Constitutional Court received no requests from the SCJ, and it received only four requests in 2008.

In 2007, 27 petitions were filed with the Constitutional Court, of which nine were rejected. The Court issued 34 decisions and found one normative act unconstitutional. In 2008, 24 petitions were filed. The Court rejected 11 filings and issued decisions in 28 cases, finding 10 acts unconstitutional. One reason offered for the low number of petitions was the agreement by the Moldovan Government in 2007 to submit all proposed draft legislation to the Council of Europe for review prior to submitting them to Parliament. See NIT 2008 at 404. In the view of one judge, one way Moldova benefits from utilizing this expertise is that fewer complaints about draft laws are raised to the Constitutional Court. The Court also recognizes that limited access to the institution keeps the number of petitions down as well. To this end, the Constitutional Court assembled a working group to address whether citizens should have the right to petition the Court directly. The working group is in favor of a constitutional amendment to allow this. The group met with political leaders and NGO representatives, who also expressed support for the idea. Presently, they are finalizing a draft amendment and hope to present the concept to Parliament in the fall of 2009. One of the key issues to address in this context is how the Constitutional Court can handle what is certain to be a deluge of complaints from citizens. One of the hopes is that the expanded access to the Constitutional Court could detour the many claims that are now going before the ECHR.

During 2009, the Constitutional Court has had a number of its decisions criticized. In particular, this involves the Court's actions related to the April 2009 elections. The apparent ruling party victory in the elections sparked claims of fraud from opposition groups and, ultimately, unrest in the capital, which resulted in three deaths, dozens of injuries, and hundreds of reported detentions. See *What is Behind Unrest in Moldova?*, BBC NEWS (Apr. 8, 2009), available at <http://news.bbc.co.uk/2/hi/europe/7989780.stm>. According to some observers, the Court's decisions related to the elections revealed its bias toward the ruling party. Overall, the Court issued four elections-related rulings:

- a decision ordering the recount of votes (see Decision of the Constitutional Court of the Republic of Moldova No.1 (Apr. 12, 2009));
- an opinion confirming the legality of parliamentary elections (see Advisory Opinion of the Constitutional Court of the Republic of Moldova No. 1 (Apr. 22, 2009));
- a decision validating 101 mandates of the candidates on the electoral list (see Decision of the Constitutional Court of the Republic of Moldova No. 7, (Apr. 22, 2009); and
- an opinion ascertaining the existence of circumstances which justify dissolution of Parliament (see Advisory Opinion of the Constitutional Court of the Republic of Moldova No. 2 (Jun. 12, 2009).

The Court also rejected a petition outright, with no corresponding reasoning, from opposition parties claiming fraud in the elections. See Dumitru Pulbere, *Nobody Can Press on Constitutional Court Judges*, MOLDOVA.ORG (Aug. 4, 2009), available at <http://politicom.moldova.org/news/dumitru-pulbere-nobody-can-press-on-constitutional-court-judges-203123-eng.html>. In June 2009, opposition parties made a public declaration, in which they accused the Court of acting illegally and showing bias. In response, the Court issued its own declaration denying these accusations as ungrounded attacks.

Many interviewees expressed disappointment with the Constitutional Court and believe it could have acted more courageously, which ultimately could have resulted in a better situation in the country after April's elections. Observers viewed the rejection of the opposition petition without justification and without reviewing the corresponding opposition materials as bad practice which tarnished the Court's respectability. Sources within the Court explained the decision not to review the opposition materials by the pressure and constriction of the 10-day deadline under which the Court labored in order to determine the legality of the elections.

Factor 6: Judicial Oversight of Administrative Practice

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>The judiciary has the authority to review administrative acts and to compel the government to act. The number of administrative cases is growing. Enforcement of judgments against central administrative bodies is reported to be getting easier to accomplish, while enforcement of judgments against municipalities remains problematic.</p>		

Analysis/Background:

Moldova has the legal framework for citizens to bring complaints against the actions of government bodies. Any person whose rights have been violated by a public authority through an administrative ruling or failure to reply in a timely manner to an application is entitled "to obtain acknowledgement of those rights, the cancellation of the ruling and payment of damages." CONST. art. 53(1); CIV. PROC. CODE art. 277. No specialized administrative courts exist; instead, the district courts, the courts of appeal, and SCJ are given jurisdiction over various administrative actions. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON ADMINISTRATIVE COURT art. 6(1) (Law No. 793-XIV, adopted Feb. 10, 2000, last amended Jun. 7, 2007) [hereinafter ADMIN. COURT LAW]. District courts have first instance jurisdiction over administrative claims related to public authorities and civil servants within the entities at the village or town level. *Id.* art. 7(1). Appellate courts have first instance jurisdiction in administrative matters related to raions, municipalities, and autonomous territorial units. *Id.* art. 8(1). In addition, the Chisinau Court of Appeals hears cases in the first instance related to the administrative acts of Parliament, the President, and the Government. CIV. PROC. CODE art. 33(3)(a). Appellate courts conduct cassation review for judgments of the district courts. ADMIN. COURT LAW art. 8(7). The SCJ conducts cassation review of judgments issued by the courts of appeal. *Id.* art. 10(3). The Administrative Court Law is intended to supplement the procedural norms set forth in the Civ. Proc. Code, which governs administrative review of cases unless otherwise provided by the Administrative Court Law. *Id.* art. 34(1); see also CIV. PROC. CODE art. 278.

The first step in an administrative review is usually for the party to request by preliminary petition to the issuing public authority that the administrative act in question be repealed. ADMIN. COURT LAW art. 14(1). The public authority has 30 days to respond. *Id.* If the party is not satisfied with the answer provided or did not receive an answer within the prescribed time, the party has 30 days to file a petition with the competent court for administrative review for repeal of the act and damages. *Id.* art. 16(1). In certain instances provided for by the law, the interested party may file the petition directly with the court, foregoing the preliminary administrative petition stage. *Id.* art. 16(2). The burden of proof is on the administrative body in cases where nullification of an act is sought, while in the case of determination of damages and reparation, the burden of proof lies with both parties. *Id.* art. 24(3). The court may dismiss the case; repeal the acts in whole or in part, or oblige the administrative body to issue the act or to deliver a certificate or any other document required by the plaintiff; order the record of an administrative offence expunged; or order the payment of damages for delay in enforcement of the decision. *Id.* art. 25(1). The court may also award both material and moral damages if it deems it warranted to repair harm caused by the illegal administrative act or the failure to resolve the preliminary petition in a timely manner. *Id.* art. 25(3)-(4). The final judgment is delivered to the administrative body, which must execute the judgment within the time specified by the court or, if no time is provided by the court decision, within 30 days. *Id.* art. 32(1)-(2). The head of the public authority may be held liable for failure to execute the judgment. *Id.* art. 32(3).



Judges identified a trend toward an increase in administrative cases in their courts. They believe this is due to citizens' now having more knowledge of their rights before the administrative bodies. The increased caseload and the specialized nature of the cases has lead judges to call for the creation of separate courts or, in the case of the SCJ, a separate college for administrative review. Advocates confirmed that they have had many illegal firing cases and, in particular, national social insurance cases over the past couple of years, and that they have confronted the problem of judges' not being adequately informed of the specialized procedures which apply to the relevant public authorities.

Enforcement of judgments against administrative bodies is reported as problematic, although improvements have been noted. Interviewees reported that enforcement of judgments involving the central administrative bodies is easier than in the past. However, parties continue to have a difficult time enforcing decisions against the municipalities, especially in cases where they have been awarded living spaces or the market value thereof by the municipalities. The ECHR has handed down six judgments in favor of the injured parties against municipalities related to the provision of living space. *See, e.g., Prodan v. Moldova*, ECHR No. 49806/99, (May 18, 2004); *Dumbraveanu v. Moldova*, ECHR No. 20940/03 (May 24, 2005). Despite this fact, the municipality of Chisinau in particular continues to be non-cooperative and maintains that the costs for executing these judgments should come from the national budget and not the local budget. At the end of 2008, the number of unexecuted judgments against the municipality was 108, and as of June 2009, that number had grown to 307. *See* Factor 9 below for more information on the execution of judgments.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

Conclusion	Correlation: Neutral	Trend: ↓
The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties as guaranteed by the Moldovan Constitution and the ratified European Convention on Human Rights. Incidents in April 2009 have created at least the appearance of the judiciary flouting those rights and liberties related to arrest and pretrial detention.		

Analysis/Background:

The Constitution guarantees fundamental rights and freedoms for citizens, aliens, and stateless persons, except as otherwise provided by law. These rights and freedoms include, *inter alia*, the right to be presumed innocent (*see* CONST. art. 21); the right to life (*see id.* art. 24); the right not to be subjected to torture or to cruel, inhuman, or degrading punishment or treatment (*see id.*); the right to be informed without delay of the grounds for arrest (*see id.* art. 25); the right to obtain legal defense (*see id.* art. 26); the right to freedom of movement (*see id.* art. 27); the right to private and family life (*see id.* art. 28); the right to privacy of correspondence (*see id.* art. 30); the right to freedom of expression (*see id.* art. 32); the right to access information (*see id.* art. 34); the right to education (*see id.* art. 35); the right to health protection (*see id.* art. 36); the right to vote and be elected to public office (*see id.* art. 38); the freedom of assembly and political association (*see id.* arts. 40-41); the right to work (*see id.* art. 43); and the right to private property (*see id.* art. 46). The State is charged with the foremost duty of respecting and protecting the individual. *See id.* art. 16(1). The human rights and freedoms guaranteed by the Constitution are to be implemented in accordance with the Universal Declaration of Human Rights and other conventions and treaties to which Moldova is a signatory. *Id.* art. 4(1). International law prevails

where a conflict exists between international human rights conventions and treaties signed by Moldova and national law. *Id.* art. 4(2). Everyone has the right to go to court to protect his/her legitimate rights, freedoms, and interests, and no law may restrict access to justice. *Id.* art 20. All courts are required to administer justice in a manner that protects the rights and fundamental freedoms of citizens. LOJ, art. 4(1).

In the last two years, international observers have reported that the government is becoming more responsive to bringing the legal system and legislative framework in line with international standards with regard to the protection of human rights and freedoms. However, they also point out that practice and attitudes have not changed accordingly. See, e.g., AMNESTY INTERNATIONAL, *Human Rights in Republic of Moldova*, in AMNESTY INTERNATIONAL REPORT 2008, available at <http://www.amnesty.org/en/region/moldova/report-2008>; U.S. DEPARTMENT OF STATE, *Moldova*, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2008 (Feb. 25, 2009) [hereinafter STATE DEPT. HUMAN RIGHTS REPORT] (finding that while the government generally respected human rights, reports of corruption, arbitrary detention, and illegal searches remained). The European Union annual progress report on Moldova noted “substantive progress in governance and reform over the last years” but also reported widespread ill-treatment by police and concerns regarding freedom of expression. See COMMISSION OF THE EUROPEAN COMMUNITIES, IMPLEMENTATION OF THE EUROPEAN NEIGHBORHOOD POLICY 2008: PROGRESS REPORT REPUBLIC OF MOLDOVA, A COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL at 2, 5 (Apr. 23, 2009) [hereinafter EU PROGRESS REPORT].

Events of April 2009 further called into question much of the perceived progress. When asked whether the protection of human rights has improved over the last couple of years, one interviewee responded that before April 7, 2009, there could be differing opinions on the issue, but that after April 7, the only answer is “No.” The rioting that followed the parliamentary elections on April 5, 2009 resulted in hundreds of allegations of ill-treatment, torture, and illegal detention. Moldova already faced a big challenge as a result of numerous ECHR judgments finding its pretrial detention procedures in violation of the right to liberty. The ECHR has ruled that Moldova was not meeting minimum standards for arrest warrants, failing to provide justification, using boilerplate language, and not explaining how the law applies to the facts of the actual case. See, e.g., *Muşuc v. Moldova*, ECHR No. 42440/06 (Nov. 6, 2007); *Stepuleac v. Moldova*, ECHR No. 8207/06 (Nov. 6, 2007) (finding unlawful detention where no reasonable suspicion that applicant committed crime was provided, and the reason for detention was that case files had already been submitted to trial court). The Constitution requires that a person be informed of the reasons for detention and arrest, and charges against him/her, without delay and in the presence of defense counsel, either chosen by the detainee or appointed *ex-officio*. CONST. art. 25(5). Interviewees reported that in April 2009, investigating judges left their courthouses to go to police stations to expedite the hearing of requests for arrest warrants, and they issued “group” warrants for the detention of 20–30 people at a time. Advocates stated that they were also unable to meet with clients and often could not determine where their clients were being held. Estimates of the number of persons detained during this period ranged between 170 and 600. At the time interviews for this JRI were conducted in June 2009, three people remained in detention.

Critics also view the trials brought after the April events as politically motivated. In particular, the Mayor of Chisinau, Dorin Chirtoaca, was charged on June 12, 2009 with organizing mass disorder and an attempted coup d'etat. The crime carries a maximum sentence of 15 years imprisonment. Mr. Chirtoaca is a member of the opposition Liberal Party and publicly condemned police actions during the demonstrations. See *Moldova: Serious human rights concerns remain*, Amnesty International Public Statement (June 22, 2009). Two civil society organizers, Natalia Morari and Ghenadie Brega, were also charged with organizing mass disorder and are awaiting trial. *Id.*

The Center for Human Rights of Moldova, essentially the Moldovan Ombudsmen's Office, was established to ensure the enforcement of citizen's constitutional rights and freedoms. See LAW



OF THE REPUBLIC OF MOLDOVA ON PARLIAMENTARY ADVOCATES arts. 1, 11(3) (Law No. 1349-XIII, *adopted* Oct. 17, 1997, *last amended* Jun. 12, 2008) [hereinafter LAW ON OMBUDSMEN]. The Ombudsmen have authority to intervene *ex officio* and to visit any penitentiary institution or place of detention. *Id.* art. 23¹. One criticism lodged about this office was a perceived delay in responding to the April events; namely, that Ombudsmen representatives waited a week after the April riots before visiting detention centers. The Ombudsmen's office, meanwhile, reports that it did ultimately visit all detention facilities in question and is now investigating specific cases of abuse. A report from the office is expected in the fall of 2009.

With regard to the work of the Ombudsmen generally, interviewees thought that the institution was still struggling to solidify its role as an advocate for human rights in Moldova. One area where the Ombudsmen are credited with successful intervention relates to the enforcement of judgments against state bodies. The institution follows up on complaints with the respective state body, seeking an explanation for the delay and then forwarding a recommendation to the MOJ for review. Apparently, this process has been successful in achieving the execution of numerous judgments. The number of walk-in complaints to the Ombudsmen's offices has risen over the years; in 2007, 1,714 written petitions were received and 1,003 walk-in complaints registered, while in 2008, 1,402 written petitions and 2,174 walk-in complaints were registered, which suggests that citizens are more aware of the institution. Still, one critic observed that the institution seems to be more about report writing than about action.

On the issue of the right to a free defense attorney, in 2007, Parliament passed a new law that put in place a legal aid program administered jointly by the MOJ, the Moldovan Bar, and the Legal Aid Council. *See generally* ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON LEGAL ASSISTANCE GUARANTEED BY THE STATE (Law No. 198-XVI, *adopted* Jul. 26, 2007, *last amended* Dec. 25, 2008). Five territorial legal aid offices operate and are in charge of assigning attorneys to indigent criminal defendants. *Id.* art. 14. Police have been instructed to call the territorial office when a suspect needs an attorney, rather than the reportedly common former practice of calling their attorney-friends to represent the suspect. Interviewees thought this was a small, early positive step in guaranteeing adequate legal defense and, ultimately, in achieving a stronger legal system. At a minimum, the program holds the attorneys accountable, as they cannot receive their salary without reporting on the status of the case. If the territorial office determines the attorney is not adequately representing the client, the attorneys will be struck from the legal aid providers list, and a disciplinary complaint will be lodged with the Bar. *Id.* art. 36. For more information on the program, see 2009 MOLDOVA LPRI at 49.

The ECHR also plays a role in shaping the Moldova's legal system. Since Moldova ratified the European Convention in 1997, the number of petitions lodged with the ECHR by Moldovan petitioners seeking to redress violations of their rights has steadily increased. The statistics for the last few years confirm that trend.

APPLICATIONS AGAINST MOLDOVA LODGED IN THE ECHR

Year	Applications Lodged		Percentage of Total
	Moldova	Total	
2006	621	47,733	1.3
2007	887	41,716	2.13
2008	1,147	49,861	2.3

Source: ECHR, SURVEY OF ACTIVITIES 2006 at 40, 47; ECHR, SURVEY OF ACTIVITIES 2007 at 57; ECHR, SURVEY OF ACTIVITIES 2008 at 131.

In 2007, the ECHR issued 60 judgments on petitions involving Moldova and found at least one violation of the European Convention in 59 of those cases. The majority of the violations involved the right to a fair trial and the right to liberty. In 2008, the ECHR issued 33 judgments involving Moldova and found at least one violation of the Convention in 28 of those cases. The right to a fair trial, the right to an effective remedy, and the protection of property represented the majority

of the violations. Whenever a judgment is handed down, the Moldovan press covers it thoroughly. The average citizen is aware of the ECHR at least in terms of how much it is costing Moldova. For instance, Moldova was ordered to pay EUR 2.535 million in damages in the case of *Oferta Plus SRL v. Moldova*, ECHR No. 14385/04 (Feb. 12, 2008), and faced steep damages in other cases as well: *Bimer SA v. Moldova*, ECHR No. 15084/03 (Jul. 10, 2007) (EUR 520,000); *Banca Vias v. Moldova*, ECHR 32760/04 (Nov. 6, 2007) (EUR 301,000); *Nistas GmbH v. Moldova*, ECHR No. 30303/03 (Dec. 12, 2006) (EUR 64,900); and *Venera-Nord-Vest Borta AG v. Moldova*, ECHR 31535/03 (Feb. 13, 2007) (EUR 31,300). See *More Than One Third of ECHR Decisions Against Moldova Have Been Implemented with Delay*, MOLDOVA.ORG (Jul. 14, 2008), available at <http://social.moldova.org/news/more-than-one-third-of-echr-decisions-against-moldova-have-been-implemented-with-delay-134381-eng.html>.

Concrete changes are being identified as a result of what some see as the relentless onslaught of unfavorable ECHR judgments against Moldova. In April 2008, new legislation provided the regulatory framework for enforcing the decisions of the ECHR. See EU PROGRESS REPORT at 4. As discussed in Factor 9 below, amendments were also made to the law and code related to the enforcement of judgments, which some observers say has improved the process. Attorneys even noticed that courts are more concerned now to assure procedures are followed to avoid a potential ECHR claim. One area where no improvement has been noted concerns privatization cases. Critics maintain that these cases are inevitably politically motivated and continue despite ECHR judgments finding state action in such cases to be a violation of the right to private property.

Judges demonstrated a very broad awareness and knowledge of the ECHR cases. At every court level, judges confirmed that the ECHR judgments would be discussed at weekly staff meetings. Investigating judges, for whom the judgments often directly relate to pretrial detention matters, know the ECHR rulings in detail. All ECHR cases against Moldova are discussed at the SCJ roundtables with investigating judges. The ECHR case law is also part of both the initial training curriculum at the NIJ and the CLE offerings for judges, and has formed the basis for a CLE program for prosecutors as well. NORLAM designed a training for prosecutors to examine pretrial detention applications and identify how they did not meet the minimum ECHR standards. Interviewees noted that very few attorneys in Moldova work competently with the ECHR issues. While defense attorneys are aware of the European Convention, practical application of it during trial is rare. As a result, human rights issues are rarely raised before the lower-level courts. According to some interviewees, challenges regarding human rights and freedoms should ideally be raised first in the country, within the domestic legal system, and should not be happening for the first time before the ECHR.

Factor 8: System of Appellate Review

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>The reversal of judicial decisions exclusively through the judicial appellate process is well-established in law and in practice. The ECHR has ruled that a blanket prohibition on considering a waiver of the state tax to file an appeal was a violation of the European Convention, and also found that extraordinary review procedures may be used in a way incompatible with the rule of law. Moldova subsequently adopted amendments to the respective provisions to eliminate the elements found to be objectionable by the ECHR.</p>		



Analysis/Background:

The right to appeal judicial decisions is guaranteed by the Constitution. CONST. art. 119; *see also* CIV. PROC. CODE art. 15. It is a well-established practice in Moldova that judicial decisions may be reversed only through the judicial appellate process. In ordinary review of a decision, the appellate court may review the case by appeal, which means it may reevaluate the facts and the application of the law to the facts and receive new evidence, or by cassation, which allows the court to consider only the application of the law to the facts by the lower-level court.

Moldova's courts of appeal are authorized to review district court decisions of their respective regions and the Military District Court by appeal or cassation. CIV. PROC. CODE arts. 358, 399(1); CRIM. PROC. CODE art. 38(2)-(3). The Economic Court of Appeal is authorized to hear by appeal first instance decisions of the Economic District Court. ECON. COURTS LAW art. 17(b). The SCJ is authorized to review decisions of the courts of appeal by cassation. CIV. PROC. CODE art. 399(2); CRIM. PROC. CODE art. 39(2). Several judges interviewed by the assessment team recommended a switch to cassation review only at the appellate court level. As grounds, they stressed the heavy caseloads and the time needed for an appeal, which requires a full review of the case and possibly hearing new evidence. Meanwhile, judges at the SCJ level complained that attorneys often do not understand the limitations on cassation review and frequently argue for a review of the facts.

Generally, in a civil case, the right to appeal extends to both parties. CIV. PROC. CODE art. 360. The appellant has 20 days from notification of the final decision of the court to file the appeal. *Id.* art. 362. In a criminal case, the prosecutor and defendant both have the right to appeal. CRIM. PROC. CODE art. 401. The appeal in a criminal case must be filed within 15 days from delivery of the sentence. *Id.* art. 402. Appellants are required to pay a state tax when submitting an appeal in a civil case. CIV. PROC. CODE art. 437(2). As of January 2008, a court may exempt an individual from paying state tax or a portion thereof, depending on his or her financial situation. *Id.*, art. 85(4) (*as amended* by Law No. 286-XVI adopted Dec. 20, 2007, effective Jan. 1, 2008). Previously, the procedure code prohibited courts from granting fee waivers. This amendment was in response to the ECHR's ruling in *Clionov v. Moldova*, No. 13229/04, Oct. 9, 2007, where the Court held that the then-existing blanket prohibition on waiving court fees raised an issue regarding the right to a fair trial and the appellant's right to access a court.

The Moldovan judicial system also has a system of extraordinary review of criminal judgments, which permits a request for annulment or revision to be filed after a decision has become final. CRIM. PROC. CODE arts. 39(3), 452, 458. The ECHR has condemned the practice several times in judgments against Moldova. In *Bujnița v. Moldova*, ECHR No. 36492/02 (Jan. 16, 2007), the applicant's 2001 acquittal of rape was reversed by the SCJ at the request of the prosecutor. The ECHR found insufficient grounds to grant the annulment given no new facts or breach of procedural guarantees. The Court noted that the state failed to strike a fair balance between the interests of the applicant and the need to ensure the effectiveness of the criminal justice system. Following the ECHR judgment, the SCJ confirmed the applicant's acquittal. In *Asito v. Moldova*, ECHR No. 40663/98 (Apr. 24, 2007), the Chamber of the Economic Court of Appeals and the SCJ, at the request of the Prosecutor General, set aside final judgments in favor of the applicant company, which were issued in 1996 and 1997 by the Arbitration Court. The ECHR stated that the power vested in the Prosecutor General under then-existing Article 38(3) of the Economic Courts Law to challenge final judgments at any time "cannot be regarded as compatible with the rule of law." *Id.* That provision gave the Prosecutor General the authority to appeal to the Economic Court of Appeal about final arbitration court decisions, if provisions of the procedural and material law were violated. The case was resolved in April 2007, when the ECHR accepted a settlement between the parties. The ECHR asked Moldova for clarification on whether these types of extraordinary review initiated by the Prosecutor General are still possible, and the Economic Courts Law article in question was repealed in April 2007. The Criminal Procedure Code articles allowing for extraordinary review of final judgments in criminal cases were also amended to permit such review only in the case where the Prosecutor General is requesting an

annulment of the judgment in favor of the defendant. See CRIM. PROC. CODE art. 452 (as amended by Law No. 264-XVI, adopted Jul. 28, 2006).

Factor 9: Contempt/Subpoena/Enforcement

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

Conclusion	Correlation: Neutral	Trend: ↑
<p>By law, judges have adequate subpoena and contempt powers, but their exercise in practice is insufficient. Problems with the notification procedure contribute to the chronic failures to appear in court by attorneys, parties, and witnesses, and thus to delays in proceedings. There has been a positive trend with regard to the enforcement of judgments. While the agency in charge of enforcements is still plagued with staff shortages and budget shortfalls, it has reportedly become easier to enforce judgments against central administrative bodies.</p>		

Analysis/Background:

Judges have the authority to maintain order in their hearings. Attorneys, parties, witnesses, and other attendees can be warned, removed, and ultimately fined for behavior which breaches the order of the court. CRIM. PROC. CODE art. 334; CIV. PROC. CODE art. 196. Demonstrating disrespect of the court is subject to administrative responsibility, in the form of a fine of 10-50 conventional units⁸ (MDL 200-1,000, or USD 18-90), which increases to 50-100 conventional units (MDL 1,000-2,000, or USD 90-180) in the case contempt committed by official persons. See CODE ON CONTRAVENTIONS OF THE REPUBLIC MOLDOVA art. 317(1) (Law No. 218-XVI, adopted Oct. 24, 2008, last amended Feb. 3, 2009) [hereinafter CONTRAVENTIONS CODE]. If a prosecutor or defense attorney is found in contempt, the court may also notify the Prosecutor General, the Bar, and the MOJ. CRIM. PROC. CODE art. 334(3); CIV. PROC. CODE art. 196(5). Judges have the authority to summon witnesses in both civil and criminal cases. See CRIM. PROC. CODE art. 90(7)(1); CIV. PROC. CODE art. 136(1). Unjustified failure to appear is grounds for imposition of a fine. CRIM. PROC. CODE art. 201(4)(3); CIV. PROC. CODE art. 207(2). The court may also order the police to forcibly bring in a witness who has failed to appear without justification. CRIM. PROC. CODE art. 90(9); CIV. PROC. CODE art. 207(3). Both the prosecutor and the defendant are now obligated, under amendments adopted in July 2008, to ensure the presence of witnesses and parties at the hearing in a criminal case. CRIM. PROC. CODE art. 351(4). In civil cases, district courts have the power to hear a case *in absentia*, provided there is proof of summons of the party and the party offers no grounds to justify his/her absence, but they rarely do so. CIV. PROC. CODE art. 205(4). In a criminal case, unless the defendant absconded or consented, in the case of a petty crime, the defendant must be present at the proceedings. CRIM. PROC. CODE arts. 66(2)(12), 321. This requirement has been consistently upheld. See ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE [hereinafter OSCE] TRIAL MONITORING PROGRAM FOR THE REPUBLIC OF MOLDOVA, ANALYTIC REPORT: OBSERVANCE OF FAIR TRIAL STANDARDS AND CORRESPONDING RIGHTS OF PARTIES DURING COURT PROCEEDINGS at 26 (Jun. 2008), available at http://www.osce.org/documents/mm/2008/06/31833_en.pdf [hereinafter OSCE TRIAL MONITORING REPORT].

None of the judges interviewed by the assessment team had invoked the contempt provisions of the procedural codes during their hearings due to disorderly conduct. In general, such conduct in the hearings was reported to be at a minimum. Some described incidences of belligerence

⁸ Conventional units are calculated at MDL 20 (approximately USD 1.8) per unit. CONTRAVENTIONS CODE art. 34(1).



between parties or witnesses and defendants, but judges were able to control the situation. They did express concern that, because security is either so weak or non-existent, in the event of a serious incident, they would be relatively powerless to control it. Judges themselves have been observed acting rudely and in a manner not befitting their position. The OSCE monitors observed judges treating attorneys with a lack of respect and disregarding their requests more frequently than those from prosecutors. *Id.* at 27.

Several judges interviewed spoke of having imposed fines on individuals for unjustified failures to appear, which contributed to unduly delaying the proceedings. Such fines, however, appear to be quite rare in practice. For example, according to a recent MCC survey of judges, court staff, advocates, and court users, only 1% of judges responded that they always sanction parties for failure to appear, and an additional 4% said they use sanctions often; while 54% of judges do so rarely, and 26% never sanction such behavior. MGTC, PUBLIC MONITORING OF COURTS OF THE REPUBLIC OF MOLDOVA at 14 (Mar. 2009), *available at* http://mip3-projects.md/documents/131-Court_Public_Monitoring_Report.pdf [hereinafter MCC MONITORING SURVEY]. Similarly, 20% of attorneys stated that failure to appear is not sanctioned at all, while 57% agreed that it was sanctioned only rarely. *Id.* A full 70% of the public did not know of anyone who was ever sanctioned for failure to appear in court, compared to only 17% reporting knowing of sanctions being imposed. *Id.* at 17.

Participants on all sides of the judicial process agree that failure to appear at hearings is an endemic problem. Overall, the MCC survey estimated that, on average, each second hearing is postponed, while more than three quarters of court users surveyed had reported at least one trial postponement, with the average case experiencing three postponements. *Id.* at 15-16. The OSCE's monitoring project found that 64% of all postponements were due to the absence of prosecutor, defense attorney, defendant, witness, or victim. OSCE TRIAL MONITORING REPORT at 32. The MCC survey similarly found that trial postponements were most often due to failure of one or both parties to appear (as evidenced by responses from two thirds of judges, 85% of court staff, and 74% of advocates); attorneys' failure to appear (confirmed by 30% of court staff and 16% of advocates); and failure to appear by witnesses (confirmed by 30% of court staff, 9% of attorneys, and 20% of the public). MCC MONITORING SURVEY at 14, 17. Some judges did point out that in their courts, failure to appear had become less of an issue in criminal cases after introduction of the amendment to Criminal Procedure Code making prosecutors responsible for the appearance of the relevant actors.

With regard to the absence of witnesses, judges recognize that they have subpoena power, but point out that it is a lengthy and not always reliable process. This is confirmed by the findings of the recent MCC survey. Overall, 27% of judges, 12% of court staff, and 13% of attorneys have expressed strong dissatisfaction with the existing notification system, and an additional 43% of judges, 44% of court staff, and 56% of attorneys stated they were dissatisfied. *Id.* at 11-12. Due to cost constraints, judges typically use regular mail for notification purposes first, and the addresses and post office are not considered reliable. According to the MCC survey, nearly 90% of summonses are delivered via regular mail, compared to approximately 60% delivered by registered mail. *Id.* at 11. Although 46% of judges surveyed believe that registered mail is the best means of notification (*see id.*), even using registered mail with proof of receipt does not guarantee that the witness will arrive. Witnesses often claim they are too busy or lack funds to travel to the court, while others have gone abroad. Other reasons for parties' and witnesses' failure to appear include lack of interest and irresponsibility, late notification, or concerns about security. *Id.* at 14, 17. In one case, the judge held eight hearings before the witness showed up to testify.

The complaint that attorneys fail to appear is repeated at all levels of the judiciary. At the SCJ level, one source estimated that as many as 10% of cases are postponed daily because of the absence of attorneys. The SCJ has not fined any attorneys for this; however, in the spring of 2009, the Economic College of the Court did send a letter to the Moldovan Bar to highlight the lack of respect being exhibited by licensed attorneys with their failure to appear. Attorneys,

meanwhile, argue that they often do not receive timely notice of hearings through the mail, or find that they have a conflict with the date due to other court hearings. Some courts have had meetings with prosecutors and attorneys to try and address this problem, and judges report that the situation has improved in these courts because of the effort at better communication.

The Department for the Execution of Judicial Decisions [hereinafter ED] within the MOJ is the institution charged with overseeing the enforcement of judgments. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON FORCED EXECUTION SYSTEM arts. 2-3 (Law No. 204-XVI, *adopted* Jul. 6, 2006, *last amended* Dec. 11, 2008). The Department suffers from high turnover (45% from 2007 to June 2009) and an acute staff shortage. As of June 2009, only 298 out of 323 positions for enforcement agents were filled. Officials cite the very low salary, MDL 890 (approximately USD 80) per month, as the reason why they are unsuccessful in recruiting new staff. In 2007, of 72,057 civil and economic judgments brought to the ED, 35,686 were closed (50.9%), and of those cases, 24,224 (34.5%) were actually executed versus being closed for other reasons (i.e., withdrawal of claim, settlement, etc.). See ENFORCEMENT DEPARTMENT 2007 ANNUAL REPORT, INFORMATIVE BULLETIN OF THE ENFORCEMENT DEPARTMENT No. 2, published on Feb. 26, 2008 by Order of the Enforcement Department Director No. 87, at 4. In 2008, of 57,460 civil and economic judgments filed with the ED for execution and 34,105 (63.6%) were closed, of which 22,802 (42.5%) were actually executed. ENFORCEMENT DEPARTMENT 2008 ANNUAL REPORT, INFORMATIVE BULLETIN OF THE ENFORCEMENT DEPARTMENT No. 4, published on Apr. 2, 2009 by Order of the Enforcement Department Director No. 119, at 10.

Obstacles to enforcement often cited include the ED staff turnover, a cumbersome process for identifying assets, and the frequent absence of debtors who go abroad. Despite these issues, the rate of execution of judgments, while still under 50%, has improved. Some credit this to a steady stream of the ECHR judgments against Moldova on the issue, which they say focused attention on the problem and resulted in changes in government bodies' attitudes towards enforcing judgments, as well as in changes in the regulations aimed at improving the procedure. By the end of 2008, the ECHR handed down 46 judgments against Moldova related to the failure or substantial delay in executing final court judgments by the state administrative bodies or state-owned companies.

In order to get a judgment enforced, a creditor requests an enforcement order from the court and then brings this to one of the ED offices located throughout the country. When the term of voluntary execution expires, the enforcement agent issues a decision commencing the enforcement procedure and requiring the debtor to pay the amount of the debt plus enforcement costs. This decision is sent to the creditor and debtor within three days. There is no state tax or fee for enforcement; however, under recent revisions to the Enforcement Code, a creditor will be provided with the estimated cost of enforcing the judgment and then given a choice as to whether to advance that money to the ED or to pay directly. Costs include transportation, storage and sale of debtor's goods, the forced opening and closing of rooms, movement or removal of obstructions, remuneration of specialists, experts, and other persons involved in the process of enforcement, and travel expenses of the enforcement agent. See REGULATION ON PROCEDURE OF DETERMINATION OF EXPENSES FOR PERFORMANCE OF ENFORCEMENT ACTIONS §§ 2, 24 (Decision of the Government of the Republic of Moldova No. 285, *adopted* Apr. 13, 2009). The creditor is reimbursed for the advanced funds upon the sale of the debtor's goods. Within the ED, this change in procedure is viewed positively, because part of the problem with enforcing judgments in the past was the lack of budgetary funds to cover enforcement agents' costs. By contrast, attorneys commenting on the new procedure are skeptical that this new procedure will improve efficiency of the ED, and believe it puts too much of a burden on the creditor who has to pay high sums upfront.

Other changes were also made to the laws on financial institutions and real estate, enabling enforcement agents to access and track shares and registered property. In addition, the Civil Procedure Code, the Execution Code, and the Criminal Procedure Code were amended to allow for creditors with final judgments to take judicial action against the authorities responsible for



failure to execute the judgment. In particular, a creditor has the right to go to court to seek compensation of material and/or moral damage, as well as the reimbursement of costs. Civ. Proc. Code arts. 28(1)(e), 61(2), 90(h), 247(3). Several judgments have reportedly already been handed down in this type of action against the Ministry of Finance [hereinafter MOF], as well as one against a municipal authority. Similarly, there is a possibility to bring criminal charges at the discretion of the Prosecutor General against individuals for intentional non-enforcement of court judgments. CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA art. 320 (Law No. 985-XV, *adopted* Apr. 18, 2002, *last amended* Feb. 3, 2009). To date, the Prosecutor General has refused to pursue this procedure although the ED has requested it.

One persistent obstacle to enforcement of judgments remains municipalities. At the end of 2008, the number of unexecuted decisions against municipalities numbered 224; by June 2009, that number had grown to 322. The ECHR has issued several decisions against Moldova based on the failure by municipalities to execute judgments, most often relating to the provision of housing or market value payments for housing. *See, e.g., Dumbraveanu v. Moldova*, ECHR No. 20940/03 (May 24, 2005). As discussed in Factor 6 above, municipalities have refused to enforce them. The ED is authorized to pursue the enforcement of unexecuted ECHR decisions. In these cases, the municipalities maintain that the funds to provide living space should come from the national budget and not the local budget. ED has the authority now to garnish the bank accounts of the local authority, but only up to 20% of the overall budget can be garnished. In Chisinau, for example, judgments add up to over USD 1 million, which will take a long time to cover through garnishment. Despite garnishment, sanctions, and the threat of criminal charges, the municipality remains steadfast in its refusal to comply.

A few proponents advocate radical changes to the enforcement system. Some interviewees proposed a private bailiff service as a solution, while others thought that moving the ED to be under the courts, rather than the MOJ, which was the case prior to 2002, would be a better arrangement. Opponents commented that courts should not be given this additional power, and that it is appropriate for the executive branch to oversee the process. One interviewee saw no need in private bailiffs if state enforcement agents were able to receive a percentage of the judgment amount upon execution. Currently, the government takes 5% of the judgment amount, but it goes to the state budget, and none of it is put back into enforcement agents' salaries.

III. Financial Resources

Factor 10: Budgetary Input

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>The judiciary has an opportunity to influence the amount of money allocated to it. 2008 marked the first year that the SCM, rather than the MOF, presented the draft budget for the courts directly to Parliament. Efforts by SCM to have a DJA established under its auspices failed, and the Government of Moldova issued a decision placing the department, which is responsible for drafting court budgets and overseeing expenses, under the MOJ. Each court president has control over his/her court budget and how such funds are expended. The amount of money allocated to the judiciary is considered inadequate.</p>		

Analysis/Background:

Parliament is to approve the budget for the courts as part of the overall state budget. See CONST. art. 121(1). The MOJ is responsible for providing material and financial support to district and appellate courts. LOJ art. 23(2) (*as amended by 2006 AMENDMENTS art. I(10)*). As of 2008, the MOJ's DJA is charged with collecting the draft budgets from each district and appellate court and sending them to the SCM. DJA REGULATIONS. The SCM examines, approves, and proposes the draft budget prepared by DJA to Parliament. LOJ art. 22(1); SCM LAW art. 4(4)(c). The budget for the courts, once passed by Parliament, is included in the state budget with separate line items for each court. LOJ art 23(2) (*as amended by 2006 AMENDMENTS art. I(10)*). The funds are provided to each court in a lump sum, and courts may use the funds on whatever expenses they have except for salaries, which are established by a separate law. Each court reports monthly on its finances to the DJA, which then submits the reports to the MOF.

The DJA sends expenditure ceilings, which are provided based on the MOF's calculations and are generally tied to the previous year's budget, to the district and appellate courts, and instructs the courts to submit proposals within those ceilings for the next year's budget. If the DJA notices what is considered to be an excessive amount requested in a court's budget, it follows up and determines whether the request is warranted. The DJA compiles the individual court requests into a single proposed budget and sends it to the SCM. The SCM may alter the requests, but it has never done so in practice, and will present the final proposal to Parliament.

The SCM proposed and defended its draft budget for the courts directly to parliamentary committees and to Parliament for the first time in 2008. Prior to 2008, the MOJ, after meeting with court presidents and the SCM to finalize budget requests, was responsible for submitting the budgets for courts to the MOF, and the MOF then presented the budgets to Parliament. This new role of the SCM in the adoption of the court budgets has been applauded by observers as a step in the right direction for establishing the independence of the judiciary from the Government. However, at the same time as the SCM took on this new role, it also lost a battle to gain control over the court budget drafting and oversight process. In 2006, the SCM unsuccessfully lobbied to gain complete control over the court administration process, including budget development. As part of the proposal, SCM sought for a DJA to be established under its authority. See 2007 MOLDOVA JRI at 37-38. While Parliament approved the plan, the President of Moldova rejected it, and it was not passed into law. A Government decision in November 2007 did establish the DJA, but within the MOJ hierarchy and not under the SCM. See *generally* DJA DECISION. While the



DJA came into existence effective January 1, 2008, it was not staffed and operational until June 2008.

At best, critics view the DJA as an unnecessary bureaucratic barrier between the courts and their funding. In this view, the DJA is a small office with little actual power, yet it is the main liaison with the MOF regarding the establishment of expenditure ceilings. Interviewees commented that the need to go through the DJA to address the MOF on expenditure ceilings unduly complicates and prolongs the resolution of issues, and that direct access by the courts to the MOF would be an easier and more effective procedure. One judge pointed out that, back in 2005, when appellate courts had control of their own budgets by interacting directly with the MOF, a problem could easily be solved in two weeks by contacting the MOF. Now, any issue at all takes at least a month to resolve, because the court has to go through the DJA first. Other respondents, however, contended that one of the reasons that the MOJ was given the responsibility of managing financial matters for the court in the 2006 Amendments was because certain courts utterly failed to manage their own budgets through the MOF. This lack of managerial experience or aptitude is evidence, according to the DJA's supporters, that the DJA is necessary for a better-functioning judiciary. At worst, critics believe the establishment of the DJA under the MOJ is a blatant effort to exert executive control over the judiciary. The SCM continues to be tied to the executive branch through the DJA, which some see as a sign that the executive is unwilling to give up power and, therefore, influence over the money used to fund the judiciary.

The SCJ prepares, submits, and defends its own budget directly to Parliament for approval. SCJ LAW art. 3(d). The Constitutional Court also prepares and submits its draft budget, along with the preliminary advisory opinion of the MOF, directly to Parliament. LCC art. 37(2). The Military Court president prepares a draft budget for submission to Parliament, which approves the budget, and funding is then disbursed through the Ministry of Defense. MILITARY COURTS LAW art. 27.

In 2008, the SCM lobbied for a commitment guaranteed by law that a minimum of 1% of the national budget be allocated annually to the judiciary. The Government rejected this, but did negotiate and agree to an increase in the Government's initial amount, which it wanted to give the judiciary for 2009. Judges interviewed by the assessment team were unanimous in their opinion that more funding for the judiciary was necessary. They pointed out that, despite what Parliament approved for 2009, in reality, the court budgets were slashed by 20%. This across the board 20% reduction in all state expenditures was ordered by the Government in response to the global economic crisis. The results for some courts are that their payment orders are no longer being honored by the Treasury, which has resulted in vendors cutting the provision of goods and services. Judges and secretaries spoke of having to purchase their own office supplies and ink because funding has been cut so severely.

JUDICIAL BUDGETS IN MOLDOVA, 2008-2009 (IN MILLIONS)

Court Level	2008		2009		Increase, %
	MDL	USD	MDL	USD	
District Courts	76.07	6.78	85.34	7.61	12.2
Courts of Appeal	19.13	1.71	21.52	1.9	12.5
Economic Court	5.16	0.46	5.35	0.47	3.1
SCJ	20.1	1.79	24.8	2.22	23.9
Constitutional Court	5.99	0.53	5.7	0.51	-4.8
TOTAL judicial budget*	120.46	10.74	137.01	12.2	13.6
% of state budget	0.82%		0.77%		
% of GDP budgeted to courts	0.18%		0.23%		

Source: LAW OF THE REPUBLIC OF MOLDOVA ON STATE BUDGET FOR 2008 at Annex No. 1 (Law No. 254-XVI, adopted Nov. 23, 2007); LAW OF THE REPUBLIC OF MOLDOVA ON STATE BUDGET FOR 2009 at Annex No. 1 (Law No. 244-XVI, adopted Nov. 21, 2008). The calculation based on the 2009 GDP represents the Government's forecast.

* Total judicial budget does not include the amount allocated to the Constitutional Court, while the 2009 total is the original amount approved and does not take into account the subsequent 20% reduction imposed on the national budget.

Courts do not receive any percentage of the taxes or fees collected for court services; rather, the money goes to the MOJ. Clerks' offices in the courts do not handle any cash. Parties pay state taxes and fees for court services at the bank and present the receipt to the clerk.

Factor 11: Adequacy of Judicial Salaries

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

Conclusion	Correlation: Negative	Trend: ↔
Judges were mixed in their opinions as to whether their salaries were enough to support their families, although agreement exists that for new district court level judges, it is a struggle. Judges reported that their entitlement to a housing allowance is rarely fulfilled. Judges believed that low salaries reflected a lack of respect for the judiciary.		

Analysis/Background:

Judges' compensation is set by the Law on the System of Salaries in the Budget Sector. See LAW ON THE SYSTEM OF SALARIES IN THE BUDGET SECTOR art. 1 (Law No. 355-XVI, adopted Dec. 23, 2005, last amended Dec. 25, 2008) [hereinafter SALARY LAW]; see also LSJ art. 28. The base judicial salary ranges from MDL 4,200 (USD 378) for a district court judge to MDL 8,800 (USD 792) for the Presidents of the SCJ and the Constitutional Court. SALARY LAW at Annex No. 3. Salaries are adjusted for years of work experience. *Id.* art. 13. Judges are also entitled to a salary supplement based on the qualification rank they have received from the SCM's Qualification Board. *Id.* at Annex 9. After the age of 50, most judges are entitled to a pension, and senior judges may receive both a pension and salary, which in effect doubles their income. LSJ art. 32(1).

BASE JUDICIAL SALARIES IN MOLDOVA

Court	Position	Monthly Salary	
		MDL	USD equivalent
Constitutional Court	President	8,800	792
	Judge	7,500	675
SCJ	President	8,800	792
	Vice President	7,500	675
	Judge	6,000	540
Courts of Appeal	President	6,000	540
	Vice President	5,600	504
	Judge	5,200	468
Economic Court of Appeal	President	6,000	540
	Vice President	5,600	504
	Judge	5,200	468
District Courts	President	5,200	468
	Vice President	4,700	423
	Judge	4,200	378
Economic Circuit Court	President	5,200	468
	Vice President	4,700	423
	Judge	4,200	378
Military Court	President	5,200	468
	Vice President	4,700	423
	Judge	4,200	378

Source: SALARY LAW at Annex 3.

QUALIFICATION RANK SUPPLEMENT

Qualification Degree	Monthly Supplement	
	MDL	USD equivalent
Superior	500	45
1	400	36
2	350	32
3	300	27
4	250	23
5	200	18

Source: SALARY LAW at Annex 9.

Opinions varied among judges as to whether their salaries were adequate. Generally, district court level judges said they struggled to support their families with the salaries they receive. Court presidents and higher level court judges more often responded that their salaries were sufficient although low. They did recognize that, with the base district court judge salary, judges struggled to make ends meet. Several judges recalled fondly the system before the enactment of the Law on Salaries in 2005, when judges' salaries were a fixed percentage of the base salary of the President of Moldova. In their view, that system demonstrated greater respect for judges. They also noted that when the new system was adopted, a choice was made by the President of Moldova not to give to the judges salaries equivalent to members of Parliament and the Government ministers. This was taken as further proof of the lack of respect toward the judiciary by the executive.

Judges frequently mentioned that the law requires that they be provided with a housing allowance or supplement. LSJ art. 30. If a judge does not have his/her own housing, local administrative bodies are obliged to provide a judge with an apartment or house within no more than six months of appointment. After a judge serves for 10 years, he/she is entitled to gain title to the property at

no cost. *Id.* art. 30(2). In practice, judges said that this housing provision is not implemented and thought it should be. In fact, the NIJ graduates offered the lack of the provision of housing, or at least of a housing supplement, as one of the reasons why they did not want to accept positions outside of Chisinau where their families resided. Meanwhile, critics of this law consider that it is a dangerous tool that can be used to influence the impartiality of judges by using the promise of housing to garner obedience from a judge.

A theme commonly heard in Moldova is that a link exists between the judges' low salaries and alleged corruption in the judiciary. See NIT 2008 at 404 (noting the lack of sufficient financial resources “is still a cause for corruption and does not create optimal conditions for effective trials.”) The law itself draws the connection and provides that ensuring judges' material and social welfare is one of the means of enforcing judicial independence. LSJ art. 17(g). Many interviewees thought that higher salaries would result in lower levels of corruption in the judiciary. Some observers thought that the pension system, which allows a senior judge to double his or her income, disadvantaged younger judges and made them vulnerable to corruption. New judges viewed the possibility of engaging in corruption as a temptation that could be curbed with a salary increase that would elevate their standard of living and make supporting their families easier. Still other observers were of the opinion that a salary increase would do nothing to combat political pressure which they see as the main form of corruption currently affecting the system. See Factor 20 below for an in-depth discussion of improper influences in the judiciary.

Factor 12: Judicial Buildings

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

Conclusion	Correlation: Neutral	Trend: ↑
<p>Courthouses are generally conveniently located and easy to find. However, many courthouses lack sufficient courtrooms and many judges use their offices to conduct hearings. A donor-sponsored pilot court project has resulted in three district courthouses getting nearly complete makeovers. In addition, several court presidents are in the process of implementing state-financed renovations on their buildings.</p>		

Analysis/Background:

The state is obligated to provide the premises and other financial and material means necessary for the operation of the judiciary. See LOJ art. 23(1) (*as amended by 2006 AMENDMENTS art. 1(10)*). Generally, the courthouses are conveniently located in town centers and easy to find. However, conditions of the courthouses vary greatly, although the majority of courthouses seem to be in need of improvements. For instance, according to one recent survey, 10% judges and 5% of court staff find courtroom conditions poor; and an additional 36% of judges and 34% of court staff responded that courtrooms needed improvement. MCC MONITORING SURVEY at 17-18. Advocates' opinions were even less favorable, with 60% of advocates assessing the courtroom conditions negatively and 30% stating they needed improvement. *Id.* at 18. As many as 30% of courthouses lack any waiting rooms, and in those courts that do have them, 11% of judges, 10% of court staff, and 37% of attorneys rated them as poor; while 24% of judges, 21% of court staff, and 33% of advocates rated them as needing improvement. *Id.* at 17-18. Further, as many as 75% of courts reportedly do not have separate entrances for defendants and victims in criminal cases. *Id.* at 18.

As discussed in Factor 10 above, individual courts have control over their budgets and may request funds in their budgets for renovations or construction. The DJA monitors the activity for



major structural renovations. Some courts have been very successful in obtaining sufficient annual funds to carry out comprehensive repairs and remodeling, while others have started ambitious renovations only to have their completion delayed as funding ran out. By contrast, those courts designated as pilot courts and earmarked for reconstruction by the MCC program had extensive and full renovations carried out expediently and smoothly with donor funds over the last two years.

The Cahul Court of Appeals has completed a renovation paid for from the state budget, which resulted in an accessible, modern courthouse. The Cahul District Court is in the midst of state-funded extensive repairs and reconstruction. The building, with only two courtrooms and no capacity to have computers, had been untouched since 1954. While the building is still under construction now, the end result will be five courtrooms and updated technology and wiring. The court president had initially agreed to sponsorship of various components of the renovation (e.g., the set up of the internal phone network by a local company), but then decided to use only state funds in a move to avoid any appearance of impropriety. This dependency on the state budget for the renovation has resulted in a cut in the court's renovation funds over the years and an extension of the deadline for completion of the project from four to six years.

The Comrat Court of Appeals started a renovation project in 2006 with state funds, commencing a process described as frustrating and very bad. Delays in renovation work, problems with the work itself, and a rejection of the court's request for further construction funds has meant that the process has stalled before completion, leaving the court in a state of perpetual reconstruction. By contrast, the Comrat District Court, which along with Ungheni, Rezina and Chisinau's Botanica courts, is one of four district courts selected as pilot courts by the MCC program, was gutted and rebuilt in the last two years. Three courtrooms have been renovated and have sufficient space for the public gallery. The criminal defendants come in to the building through a separate entrance, although none of the courtrooms have a separate holding area or dock for criminal defendants, which is typical in Moldovan courtrooms. The court president hoped to receive funds to install one in the coming year. A separate room for attorneys and clients to meet is available near the clerk's office, which was also reconstructed to create a user-friendly, glassed-in counter area. Filing space, at least for now, is adequate, and the courthouse is modern and well-equipped.

Courthouses which have not been earmarked for any public renovation funds or pilot programs often present run-down, cramped, and non-user friendly environments. In the Orhej District Court, for instance, the building is in a dilapidated state, with an entryway consisting of an empty hallway of closed doors with little signage or staff visible, while parties are crowded into the hallway upstairs awaiting their turn for hearings in judges' offices. Indeed, only the Military Court, where three judges sit for a much smaller caseload than the average district court judge, reported that all hearings take place in the courtroom. Elsewhere, it is common practice in district courts to hold hearings in the judges' offices. This was confirmed both by the OSCE trial monitoring, which found that 51% of hearings were held in offices, and by the MCC's court users survey, where those polled reported that half of court hearings were held in judges' offices. See OSCE TRIAL MONITORING REPORT at 21; MCC MONITORING SURVEY at 19. Among the judges surveyed, only 36% always and 17% usually hold hearings in courtrooms, while 7% of judges always and 21% of judges usually conduct trials in their offices. MCC MONITORING SURVEY at 18. While the insufficient number of courtrooms is the primary reason offered for the use of offices for hearings and trials, OSCE also found that judges sometimes preferred the office to the courtroom. OSCE TRIAL MONITORING REPORT at 21.

NUMBER OF COURTROOMS IN MOLDOVAN COURTHOUSES

Courts	No. of courtrooms	No. of sitting judges	Judge/courtroom ratio
District Courts	107	318	2.97
Courts of Appeal	24	76	3.2
SCJ	7	47	6.7

Source: DJA; SCM.

The MCC is in the process of drafting a country-wide assessment of the physical condition and suitability of courthouses in Moldova. The goal of the assessment, which is to be published in the fall of 2009, is to assist the state in prioritizing capital budgetary expenditures for the court system and to increase accountability and transparency for how funds for capital works projects are allocated. See *The MGTCP is Conducting a Comprehensive Assessment of all Court Facilities in Moldova* (Feb. 20, 2009).

The SCJ occupies two buildings in Chisinau. One building is undergoing extensive renovations due to be completed later in 2009, the other one, which also houses the SCM, appears to be in good upkeep. In 2009, the Parliament approved the allocation of property to the SCJ for construction of a courthouse which would allow for all the SCJ staff and judges to be in one building; however, no actual construction has started due to lack of funds for the project. The Constitutional Court has elegant and well-furnished premises in a location accessible to the public.

Factor 13: Judicial Security

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

Conclusion	Correlation: Negative	Trend: ↔
<p>While the law provides for judicial police at courthouses, the reality is that internal wrangling between the MOJ and Ministry of Interior has resulted in a collapse of judicial security. An interim solution proposed by the Government is for courts to contract with a state-owned security company. Some courts have done this, while others cite lack of funds and have been left with no guards on duty during the day. In April 2009, a bomb was found and defused in the SCJ building.</p>		

Analysis/Background:

As of May 2007, the MOJ replaced the Ministry of Interior [hereinafter MOI] as the state body obligated to provide courts of law with judicial police. See LOJ art. 50 (1) (*as amended by 2006 AMENDMENTS* arts. I(17), VI(2)). The Government approves the police personnel necessary for the courts upon the proposal of the MOJ and the SCM or, in the case of the SCJ, at the proposal of the President of the SCJ. *Id.* art. 50(2); SCJ LAW art. 26(2). Courts, including court presidents and, in the course of proceedings, individual judges, have authority over the judicial police at their disposal. See CONST. art. 121(3); LOJ art. 50(3). The Constitutional Court is also guaranteed security under law. See LCC art. 41. The Ministry of Defense is responsible for providing military guards for the Military Court, with the number of guards to be established jointly by the MOJ and Ministry of Defense. MILITARY COURTS LAW art. 26(1).

The transfer of authority over the judicial police to the MOJ from the MOI did not go as planned. According to interviewees, problems ensued when the MOI refused to transfer its equipment and vehicles over to the MOJ, and the process was therefore put on hold until 2011. The result is a



security limbo in most courts. While the MOI police still accompany criminal defendants to, during, and from court appearances, and appear to have one or two officers stationed at courts of appeal buildings, they do not regularly guard district courthouses. The proposed interim solution was for courts to contract individually with, and to pay out of their budgets, a state-owned security company. In Comrat, the district court pays the company for a nighttime guard and intervention protection, which means the security company will respond to the court if a panic button at a judge's workspace is pressed. Other courts, however, have been unable or unwilling to contract with the company due to lack of funding, which has effectively left them with no security. One judge described the situation with security in his court as "painful" and noted that three retirees currently act as night watchman during the week. Judges generally are dissatisfied with security within the court as further evidenced by MCC Monitoring Survey, where 56% of the judges surveyed thought that the courts do not offer all necessary protection for the safety of the parties. MCC Monitoring Survey at 18. In addition, no separate entrances exist for the defendant and plaintiff in criminal hearings in three-quarters of courthouses. *Id.* The SCM confirms that it receives many complaints from court presidents about the lack of security for parties and judges.

The question of adequate security was raised in April 2009 when a construction worker discovered a bomb containing over a kilogram of plastic explosives on the first floor of the SCJ building under renovation. See *Police Don't Yet Know Who Put Explosive at Supreme Court*, MOLDOVA AZI (May 6, 2009), available at <http://www.azi.md/en/print-story/2790>. The bomb was defused and removed without incident or injury. Yet even in mid to late June, security for the Court building remains an individual guard positioned on the first floor stairwell landing, with no ability to observe the entryway or foyer of the building.

A notable exception to the problematic security situation is the Cahul Court of Appeal, which has two guards, one from the police and one from the state-owned security company. Visitors must check in at the security desk and pass through a metal detector and secured turnstile before entering further into the building. The public is only allowed on the first floor, and a very sophisticated video monitoring system is in place.

The Constitutional Court contracts with the state-owned security company for its guards. While no incidents have been reported at the Court, some concerns were voiced regarding whether the guards were sufficiently well trained to handle any security incidents, should they arise.

If a judge, a member of his/her family, or their property is threatened, the state is obliged to provide appropriate measures of security. LSJ art. 27(1). Judges, in general, were aware of the existence of this measure, although no one interviewed had ever heard of a case where it was invoked. Direct security threats against judges are rare in Moldova.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>District court judges are initially appointed for a five-year term, after which they may pass an attestation exam and be reappointed until the mandatory retirement age of 65. Judges of the courts of appeal and the SCJ hold office until reaching the mandatory retirement age of 65. Constitutional Court judges serve up to two six-year terms, with no mandatory retirement age. The five-year initial appointment period is viewed by some as a means to influence the work of young judges in a way favorable to the government.</p>		

Analysis/Background:

Judges on courts of law are “irremovable under law.” CONST. art. 116(1). Judges at the district court or specialized court level are appointed for an initial five-year term, after which they may be reappointed for guaranteed tenure and serve until the mandatory retirement age of 65. *Id.* art. 116(2); LSJ art. 11(1). In order to receive this reappointment, the judge must pass an attestation exam administered by the SCM Qualification Board and be proposed for appointment by the SCM to the President of Moldova. See Factor 15 below for a detailed description of the attestation procedure. The President may reject a proposal once for “incontestable proof” of the incompatibility of the candidate with the position, violation of law or of legal procedures concerning appointment and promotion. LSJ art. 11(3). If the SCM, with a vote of two-thirds of its members, resubmits the candidate's name for reconsideration, the President is obligated to appoint the candidate. *Id.* Judges at the court of appeal and the SCJ level, who require, respectively, a minimum of six and ten years of experience as a judge, are appointed until the mandatory retirement age of 65. CONST. arts. 116(2), 116(4); SCJ LAW art. 10.

Judges of the Constitutional Court are appointed for a six-year term and may be reappointed only once. CONST. art. 136(1); LCC arts. 5(2), 6(1). No mandatory retirement age exists for Constitutional Court judges; 70 years old is the maximum age for appointment. LCC art. 11(2).

A judge may be removed by the President or Parliament, as appropriate, only upon recommendation of the SCM. SCM LAW art. 4(1)(a); LSJ art. 25(1). Grounds for involuntary removal include: (1) professional incapacity; (2) commission of any disciplinary violation set forth in the LSJ; (3) entry into force of a final court judgment convicting the judge of a crime; (4) loss of Moldovan citizenship; (5) ill health making the judge incapable of working, as evidenced by a medical certificate; and (6) entry into force of a final judgment establishing incapacity or limited legal capacity. LSJ art. 25(1)(e)-(j), (l). A Constitutional Court judge may be removed in the case of: (1) a long illness (more than four months) that has incapacitated the judge; (2) conviction of a crime; (3) engaging in any other public or private salaried work, except for research and academic activities; and (4) a breach of the oath of office and professional duties. LCC art. 19(1). The Constitutional Court itself enforces these grounds. *Id.* art. 19(1); see Factor 17 below for details on disciplinary proceedings.

The judicial mandates as set forth by law are generally respected in practice. Nevertheless, some interviewees viewed the initial five-year appointment period as a tool of the state to keep a check on younger judges and make sure they are complying with political will. Young judges are perceived as being particularly vulnerable to influence by the executive branch. See, e.g., STATE DEPT. HUMAN RIGHTS REPORT.



In addition, several sources reported that they heard the executive branch intended to reinstate a re-attestation of all judges in the fall of 2009. If judges did not pass the process, they would be removed. Apparently, draft amendments to applicable laws had already been drawn up, and a few initial meetings with key players held. Respondents perceived this as a blatant attempt by those in power to weed out so-called undesirable judges. Others pointed out that such a plan is unconstitutional, since a judge with lifetime tenure cannot be dismissed before retirement age but for a disciplinary violation or crime. It remains to be seen what will happen with the plan, in particular, following the elections in July 2009 when the ruling party lost its majority.

Factor 15: Objective Judicial Advancement Criteria

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>Under the SCM regulations and controlling law, a system is in place for judicial advancement that sets forth objective criteria for appointment, including passage of an attestation exam and demonstration of the skills necessary to take on the higher ranking positions. Some reports suggest that the system is at times disregarded.</p>		

Analysis/Background:

Judges may be promoted to the position of vice president or president of the court or be appointed to a higher court. Judges also progress through the ranks of qualification degrees while serving in their current positions. The SCM's Qualification Board is in charge of administering an attestation exam for each of these three categories of advancement: appointment to the position of vice president or president of a court, appointment to a higher court, and awarding of qualification ranks. LSJ art. 13(1); QUALIFICATION BOARD LAW art. 23(3); ATTESTATION REGULATION § 3.

Vacancies for the position of vice president and president of the court or vacant positions on the courts of appeal and the SCJ are publicly advertised by the SCM. SCM HIRING REGULATION § 26. Candidates are to submit references testifying to their professional and moral qualities and information on their judicial work experience. They are also required to sit for the attestation exam. *Id.* § 16. By law, work experience and attendance at CLE are the major criteria considered in the promotion of a judge. LSJ art. 20(3). The SCM submits the candidate's file to the Qualification Board, which administers the attestation exam. SCM HIRING REGULATION § 21. Candidates who have passed the attestation exam within the past 12 months and who have no disciplinary sanctions imposed do not need to retake the exam, and will be admitted directly into the competition for filling the respective positions. *Id.* § 22. In addition, the SCJ judges who are applying for the positions of the SCJ President, Vice President, or an SCJ college President or Vice President do not need to take the attestation exam. ATTESTATION REGULATION § 6(b). For those candidates who do sit for the exam, they must be prepared to answer questions in the following areas of law: civil and criminal law, civil and criminal procedure, administrative law, constitutional law, labor law, land law, housing law, family law, legislation, the organization of the judiciary, and ECHR procedure and case law. *Id.* § 26. At the exam, each candidate selects a ticket that contains questions on five subjects from the above-mentioned subject areas, and then proceeds to respond to these questions before the Board. *Id.* § 12. The Qualification Board is also charged with evaluating the candidate's psychological abilities and assessing his/her capacity to make decisions and assume responsibility. *Id.* For the latter, the candidate must present a project to the Board, in which he/she demonstrated the skills specific to the leadership position and identifies his/her managerial, communication, and human resource management

skills. *Id.* After the candidate has answered the Board's questions, the members of the Board withdraw to deliberate and decide by a simple majority vote whether to propose the individual for appointment. *Id.* § 28. The Board then immediately notifies the judge-candidate of its decision, which may be appealed to the SCM within seven days. *Id.* § 29. If an appeal is lodged, the SCM examines the case within one month of receiving the relevant materials, and the candidate is informed in a timely manner of the date of the SCM session which will address the appeal. SCM LAW art. 22(1)-(2). The SCM may accept, amend, or reject the Qualification Board's decision. *Id.* art. 22(3). If no appeal has been lodged, the Board submits its decision to the SCM for validation. *Id.* art. 21(1). Within one month of receipt of the materials, the SCM considers the candidates' results of the attestation exam, their previous judicial work experience, and other relevant data, including their publications, length of service, and any advanced degrees. SCM HIRING REGULATION § 27. The SCM makes a public announcement about its selection decision and the results of the competition and submission of candidates to the President of Moldova (in the case of district and appellate court judges), or to Parliament (in the case of the SCJ judges). *Id.* § 29. The SCM's decisions may be appealed to the Chisinau Court of Appeals by any interested person within 15 days of issuance. SCM LAW art. 25.

As is the case with recommendations for first-time judicial appointments and for reappointment to guaranteed tenure, the SCM must propose its candidates for presidents or vice presidents of district or appellate courts to the President of Moldova, or to Parliament – for those positions at the SCJ level. *Id.* art. 19(1). If the President or Parliament rejects the proposed candidate, the SCM may propose another candidate for the position or may re-propose the same candidate with a vote of two-thirds of its members. In the case of district and appellate court level proposals, the President must adopt a decree accepting the appointment no later than 15 days after the SCM's resubmission of the same candidate. LOJ art. 16(5). In the case of the SCJ level appointments, the SCM may resubmit its candidate to Parliament, but Parliament is under no obligation to accept the proposal. SCJ LAW art. 9(2). District and appellate court presidents are appointed for a four-year term and can hold no more than two successive terms. LOJ art. 16(3). The SCJ President and Vice President are also appointed for a four-year term; however, there are no restrictions on the number of terms they may serve. SCJ LAW art. 9(1).

Despite the existence of this very detailed procedure for appointing court presidents and vice presidents, interviewees reported that the procedure has at times been disregarded, and that individuals have been directly approached about taking the positions and subsequently nominated. Thus, critics claim the process is really not transparent. The SCM, however, insists that the procedure is followed.

The attestation exam is also given to judges for the awarding of qualification rankings and, once every three years, for confirmation of the qualification rank which they hold. LSJ art. 13(1); ATTESTATION REGULATION § 3(f). This includes investigating judges and judges on specialized courts. A judge who performs his/her responsibilities poorly or who does not improve his/her professional skills may be subject to attestation more frequently than once every three years, but not more than once a year. QUALIFICATION BOARD LAW art. 23(4). The goal of continued attestation requirements for judges is to allow for the assessment of their professionalism and knowledge, to stimulate their development, and to increase the responsibility for keeping up to date and observing legislation. *Id.* art. 22. Judges who hold the highest qualification rank, which typically includes the SCJ judges, are exempt from the attestation requirement. ATTESTATION REGULATION § 6(a); LSJ art. 13(2). Six qualification ranks exist for judges. A new judge is appointed with no rank, and has six months to go through the attestation process and be awarded the fifth 5 rank. QUALIFICATION BOARD LAW art. 23. A judge may twice skip a level, if he is proven to be highly professional and holds advanced degrees or other merits. *Id.* art. 29(3). The superior rank may only be awarded by the President of Moldova. *Id.* art. 27(2).



JUDICIAL QUALIFICATION RANKS IN MOLDOVA

Qualification Rank	Minimum Years of Service Prior to Eligibility for Higher Rank	Positions Corresponding to the Qualification Rank
Superior	N/A	President, Vice President, and judges of the SCJ; judges of Constitutional Court
1	N/A	Judges of the SCJ; assistant judges of Constitutional Court; and presidents and vice presidents of courts of appeal
2	5	Judges of courts of appeal
3	5	Judges of courts of appeal; presidents and vice presidents of district courts
4	4	Presidents, vice presidents, and judges of district courts
5	2	Presidents, vice presidents, and judges of district courts

Source: QUALIFICATION BOARD LAW arts. 27, 29; LCC arts. 21, 35(5).

The attestation exam procedure is identical to that described above for candidates for court president and vice president positions. The subjects tested are also the same, except that judges taking the attestation exam to obtain or confirm their qualification rank are not tested on the national jurisprudence related to the organization of the judiciary. ATTESTATION REGULATION § 12.1. Investigating judges and judges of specialized courts are tested on subjects relevant to their areas of expertise. *Id.* §§ 12.2, 12.3. Where the judge has taken the exam in an effort to obtain a higher ranking, the Qualification Board decides whether to award the higher ranking. QUALIFICATION BOARD LAW art. 26(3). Where the judge is sitting for the exam to confirm his/her existing ranking, the Board issues an advisory note on the correspondence of the judge's level of professional knowledge to the position and rank he/she holds. *Id.* art. 26(2). If the Board determines that a judge's level of professional knowledge does not correspond to his/her position, it may propose to lower his/her ranking, or if the judge already holds the lowest or no rank, the Board must recommend that the SCM dismiss the judge. ATTESTATION REGULATION § 18. The decision of the Qualification Board is subject to the same appeals procedure as described above. The SCM may accept, amend, or reject the Board's decision. A judge who did not pass the attestation exam and/or received a reduced rank is ineligible for promotion to a president or vice president position or a hierarchically superior court for one year. LSJ art. 20(5).

In practice, the Qualification Board, at least in the last four years, has not faced the situation where it has recommended dismissal for a judge's poor performance on the attestation exam. In cases where judges did poorly on the exam, the Board has given them a six-month time period before retaking the exam. Generally, they pass the second time. In the words of one interviewee, it is as if a different person walks through the door the second time, one who has studied and prepared thoroughly. Judge after judge described how nervous and stressed they were walking into their attestation exams; however, all of them thought it was a good and worthwhile process. Interviewees were proud that they had passed the exam before what they considered an esteemed Board. Some did think that the number of subjects tested was excessive. Outside observers cautioned that the process could be manipulated and used to punish or remove judges for political reasons. Others criticized the qualification ranking system which gives the President the sole authority to award superior rankings because they fear it can allow for inappropriate political influence on the judiciary.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Negative	Trend: ↓
<p>Judges have immunity for actions taken in their official capacity, although the law does allow for redress actions to be taken under certain circumstances against judges for damages awarded as a result of a court judgment which is later found to infringe fundamental rights and freedoms. A proposed amendment which eliminated the requirement that the Prosecutor General seek consent prior to initiating a criminal investigation against a judge passed Parliament but was not signed into law by the President.</p>		

Analysis/Background:

Judges have broad immunity under law. A judge may not be detained, searched, or, except for cases of flagrant crime, arrested or held criminally liable without with the consent of both the SCM and either the President of Moldova or Parliament, as appropriate. LSJ art. 19(5) (*as amended by 2006 AMENDMENTS art. II(15)*). The consent of the SCM is also necessary for a judge to be subject to responsibility for an administrative offence. *Id.* art. 19(6). If a judge is detained for suspicion of having committed an administrative infraction, he/she must be released immediately after identifying himself/herself as a judge. *Id.* Criminal investigation against a judge may only be commenced by the Prosecutor General. *Id.* art. 19(4). If the Prosecutor General has submitted a proposal to the SCM for instituting criminal proceedings against a judge, the SCM may give its consent or refuse the proposal “on the basis of the principle of the inviolability of the judge.” SCM LAW art. 23(1). The Prosecutor General does not take part in the SCM’s deliberations on these matters. *Id.* art. 23(2). The JIU, set up under the SCM, is charged with verifying the Prosecutor General’s requests for consent. *Id.* art. 7¹(6)(c); *see also* Factor 22 below.

Constitutional Court judges are also immune from liability for their votes or opinions expressed in their official capacity. LCC art. 13(2). Constitutional Court judges can only be detained, arrested, searched, except for flagrant offences, or criminally tried with the consent of the Constitutional Court. *Id.* art. 16(1). If consent is granted, the SCJ is authorized to try the case in the first instance. *Id.* art. 16(2). However, this provision has never been incorporated into the Criminal Procedure Code, which still provides for first instance jurisdiction of the SCJ only in cases of crimes committed by the President of Moldova. CRIM. PROC. CODE art. 39(1). Legal norms regarding criminal procedure within national laws may only be applied if they have been incorporated into the Criminal Procedure Code. *Id.* art. 2(4). Therefore, jurisdiction over infractions committed by Constitutional Court judges would be determined just as it is for any other defendant and will fall to either the courts of appeal or district courts, depending on the nature of the criminal offense charged. *See id.* arts. 38(1), 36. A Constitutional Court judge must be released upon detention once he/she identifies himself, unless he/she is detained during the commission of a felony, in which case the Constitutional Court must be informed and issue a decision on detention within 24 hours. CONSTITUTIONAL JURISDICTIONAL CODE OF THE REPUBLIC OF MOLDOVA art. 10(3) (Law No. 502-XIII, *adopted* Jun. 16, 1995, *last amended* Oct. 23, 2008) [hereinafter CJC].

Judges on courts of law have immunity from liability for their opinions expressed while exercising their official duties, as well as for judgments passed in their official capacity, unless they have been found guilty of criminal abuse. LSJ art. 19(3). A judge may be punished only for deliberately issuing an illegal sentence, decision, conclusion, or order. CRIM. CODE art. 307. In order to pursue such a case, the Prosecutor General must seek consent from the SCM and, respectively, the President or Parliament. Judges are among the public servants who can face personal liability, if it is shown that they intentionally or by gross negligence issued decisions



which are later found by the ECHR to have violated the European Convention or fundamental human rights and Moldova must pay damages as a result of such judgment. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON THE GOVERNMENT AGENT art. 17(1)-(2) (Law No. 353-XV, *adopted* Oct. 28, 2004, *last amended* Feb. 3, 2009). The SCM is informed of such decisions within 30 days of their issuance, and the Prosecutor General may commence a regress action against the judge within a year of the date on which the State paid the damages. *Id.* art. 17(3)-(4). In fact, a judge may be held personally liable for any of his/her judgments that result in the State paying compensation for violations of fundamental human rights and freedoms, regardless of whether there is an ECHR decision, where it is shown that the judge committed in bad faith or by gross negligence a judicial error which caused the injury. LSJ art. 21¹(4). A redress action may be brought against the judge only with the consent of the SCM. *Id.* art. 21¹(6). An individual may bring a redress action for material damages for an infringement of rights and freedoms caused by judgments in civil trials only when there has already been a determination, through a final court judgment, that the judge caused the infringement and is criminally accountable for the decision. *Id.* art. 21¹(5). No such precondition exists for an individual to bring a redress action in a criminal trial. To date, no redress actions have been brought against judges under this law.

Judges expressed significant concerns about provisions allowing for redress actions to be brought against them, although they conceded that it was more acceptable where a judge's criminal liability had been demonstrated. With regard to criminal prosecution of judges for their decisions, the Prosecutor General reported three actions had been brought in the last two years. All involve district court judges whose decisions were reversed on appeal and who, according to the Prosecutor General, deliberately ruled erroneously. This includes a case against a Cahul District Court judge who issued a five-year suspended sentence to two women convicted of trafficking in persons when the law requires a sentence of seven to ten years. The judge cited mitigating circumstances for this deviation, but the law prohibits consideration of mitigating circumstances where an extremely serious crime is at issue. The court of appeals reversed the district court judge's decision and sentenced the two women to prison terms. The Prosecutor General, with the consent of the SCM, is currently pursuing a criminal case against the judge. Interviewees' opinions on this case were mixed. There were some supporters of the action, but most judges thought that the case was more appropriate for disciplinary proceedings within the SCM rather than a criminal prosecution. The case also added to fears of judges that the Prosecutor General has too much power over the judiciary, since he already sits on the SCM and is authorized, with consent, to bring such actions against the judges.

In 2008, the Prosecutor General was among the proponents of draft amendments to curb judges' immunity. The amendments would have allowed for the Prosecutor General to pursue criminal prosecution of judges upon merely informing the SCM and either the President (for district and appellate court judges), Parliament (for the SCJ judges), or the Constitutional Court, as opposed to the current requirement that the Prosecutor General obtain their consent. Advocates of the change argued that it was necessary in order to fight corruption in the judiciary, because the consent requirement ties the hands of the Prosecutor General and makes it practically impossible to pursue criminal investigations against judges. The SCM aggressively lobbied Parliament to vote against the amendment. The Council of Europe also issued two expert opinions urging the rejection of the amendments. One Council of Europe opinion, from an Estonian judge, warned that without the current balancing mechanism in place, "it creates at least theoretically possibility for intentional abuse and unlawful influencing of court powers." Daimar Liiv, Council of Europe Expert Opinion No. 1719 on the Draft (Amendment) Act to Amend Some Legislative Act at 5, (May 3, 2007). The second Council of Europe opinion, written by the Deputy Secretary General of the International Association of Judges, emphasized the "current reality of Moldova, where most of the guarantees for the independence of judges are seriously compromised and that threats with eventual civil or criminal responsibility will become an easy instrument in the hands of the political authorities for influencing the judges." Giacomo Oberto, Council of Europe Expert Opinion No. 1719 on the Draft (Amendment) Act to Amend Some Legislative Act at 7 (May 3, 2007). Despite the Council of Europe's opinions and SCM's opposition, Parliament passed the amendment. The President, however, did not sign the amendments into law. Several

respondents credited the President's rejection of the bill to an aggressive lobbying campaign by its opponents, including the SCM. Thus, the current judicial immunity framework is still in place.

Factor 17: Removal and Discipline of Judges

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>Judges may be removed from office only for specified misconduct through a process that is intended to be initiated based on objective criteria and to offer the judge due process. Respondents noted improved transparency of the process, and the SCM confirms that it has renewed its focus on enforcing the Code of Ethics, which has resulted in an increase in the number of proceedings brought. Some, however, continue to question whether the system is being used fairly.</p>		

Analysis/Background:

The SCM Disciplinary Board is charged with examining cases related to the disciplinary liability of judges. LAW ON THE DISCIPLINARY BOARD AND DISCIPLINARY LIABILITY OF JUDGES art. 1(1) (Law No. 950-XIII, *adopted* Jul. 19, 1996, *last amended* Dec. 25, 2008), [hereinafter DISCIPLINARY BOARD LAW]. As of June 2009, the Board consisted of nine members who serve four-year terms, including three judges from each of the SCJ, the courts of appeal, and the district courts, all elected by assemblies of their respective courts. *Id.* arts. 1(2), 2(1), 3(1). Members of the SCM and the Qualification Board, as well as presidents and vice presidents of courts are not eligible to serve on the Disciplinary Board. *Id.* art. 2(2). As of November 2009, the composition of the Disciplinary Board will change in accordance with 2008 amendments to the Disciplinary Board Law. The number of members will increase to 10, comprised of five judges and five law professors. Of the five judges, two will come from the SCJ, two from the courts of appeal, and one from the district courts, elected by the general assemblies of their respective courts. *Id.* arts. 2(1). (3)(1). Of the five law professors, two are to be appointed by the SCM and three by the MOJ. *Id.* art. 3(6).

The LSJ sets forth specific grounds for disciplining a judge, including:

- failure to act impartially;
- deliberate or negligent failure to interpret or apply legislation uniformly, unless justified by changes in the court practice;
- interfering with the activities of another judge or attempting to influence public authorities, institutions, or civil servants to further one's personal or family interests;
- disclosure of information regarding deliberations or confidential proceedings;
- engaging in public activities of a political nature;
- failure to comply the terms for adjudication of cases without valid reasons;
- failure to comply with requirements for declaring income and property;
- unjustified refusal to perform a job-related duty;
- failure to comply with the terms for drafting and issuing copies of judicial decisions;
- unjustified absences or failure to be present at work during normal working hours;
- undignified attitude toward colleagues, advocates, and other participants in a case while performing professional duties;
- serious or systematic violation of judicial ethics;
- using judicial position to obtain inappropriate benefits;
- engaging in non-judicial activities without the SCM's authorization; and



- publicly agreeing or disagreeing with colleagues' decisions in order to interfere with their work.

See LSJ art. 22(1). A reversal or modification of a judgment is not, in itself, grounds for disciplinary liability unless the judge deliberately decided the case contrary to law or did so negligently and it resulted in substantial damages. *Id.* art. 22(2); DISCIPLINARY BOARD LAW art. 9(2). Additional grounds for disciplinary liability specific to court presidents are: (1) failure to report judges' disciplinary violations to the SCM; (2) failure to comply with requirements for random assignment of cases; and (3) failure to organize the activity of the court. LSJ arts. 22(1)(f), 22(1)(l); DISCIPLINARY BOARD LAW art. (9)(3).

A judge is subject to disciplinary liability for a period of six months from the date the disciplinary violation occurred, excluding time the judge was sick or on vacation, but in no case later than one year from the date of the violation. DISCIPLINARY BOARD LAW art. 11. Disciplinary sanctions include issuing a warning, reprimand, severe reprimand, reducing the qualification rank, proposing the removal of the court president or vice president, and proposing the removal of the judge. *Id.* art. 19(2). The nature, consequences, and seriousness of the violation, the personality of the judge, the degree of fault, and other relevant circumstances are to be taken into account in determining which sanction to apply. *Id.* art. 19(3).

Any member of the SCM is entitled to initiate disciplinary proceedings against a judge. DISCIPLINARY BOARD LAW art. 10(1). If the judge at issue is a member of the SCM or the Disciplinary Board, then at least three SCM members must propose the initiation of disciplinary proceedings. *Id.* art. 10(2). Proceedings can be initiated only after it has been verified that grounds exist to hold the judge liable, and the judge in question has been asked for a written explanation. *Id.* art. 12(1). At this point, the judge can challenge the Board's decision to initiate proceedings at the request of the SCM member. This results in what was described as a rather flawed procedure, in that by law, the Board's decision is appealable to the SCM, the very body behind the initial request. The SCM decision on the appeal is then itself appealable to the court. Interviewees thought that the SCM should be eliminated from the chain, and that the SCM's decision to initiate disciplinary proceedings should be appealable directly to the court.

If grounds are found, the Disciplinary Board hears the case within a month of receiving the file. *Id.* art. 16. Once proceedings have been instituted, the judge must be given an opportunity to review the relevant materials and is entitled to provide explanations, present evidence, and request additional verifications. *Id.* art. 12(2). The president of the Disciplinary Board may order a Board member to conduct supplementary verification of the grounds for the proceeding. *Id.* art. 14. The board may request supplementary documents and materials and any relevant case files for cases in which a judge is alleged to have violated the law. *Id.*

At the disciplinary hearing itself, at least two-thirds of the Board's members must be present. *Id.* art. 15. In practice, all nine members regularly participate in all hearings. The judge's attendance is mandatory, although an unfounded failure to appear is grounds for the Board to hear the matter *in absentia*. *Id.* art. 17(1). The person who initiated the proceedings is entitled to participate in the proceedings, as are other judges. *Id.* art. 17(2). The judge in question is entitled to have representation (*id.* art. 17(1)), although this rarely happens in practice. Relevant reports, documents, and other materials from the disciplinary case file are read into the record. The judge has the right to ask questions and respond, and witnesses may be brought in to testify, although the latter is reported to have never happened in practice. *Id.* art. 18(3). After the hearing is complete, the Board deliberates in closed session. *Id.* art. 18(5). The Board's decision, to be adopted by a simple majority of its members present at the hearing, is issued in writing and signed by participating members. *Id.* art. 20(1). The decision must contain, *inter alia*, the facts of the case, the judge's defense arguments, a description of the evidence, and the reasons for the holding. *Id.* art. 21. The majority decision is read out at a Board session. *Id.* art. 20(3). Dissenting opinions are also permitted; however, they are not announced during the session. *Id.* art. 20(2)-(3). The judge in question or the person who initiated the proceedings may appeal the

Board's decision to the SCM within 10 days of its adoption. *Id.* art. 23. The SCM may affirm, amend, or reverse the decision. SCM LAW art. 22(3). The SCM decision may be appealed to the Chisinau Court of Appeal within 15 days of its issuance. *Id.* art. 25. Decisions that are not appealed are submitted within seven days to the SCM for validation. *Id.* art. 21(1). Under this procedure, the SCM may question members of the Disciplinary Board, the judge, or the complainant for additional information, and then may validate, reject, or amend the Board's decision. *Id.* art. 21(3)-(4). If an SCM member was present at the hearing of the Disciplinary Board, he/she may not participate in the validation procedure for that decision.

The disciplinary sanction expires after one year of its imposition, providing the judge was not the subject of new disciplinary proceedings. DISCIPLINARY BOARD LAW art. 24(1). The sanction may be expunged after six months, if the judge has not committed any new violation and has demonstrated irreproachable behavior and a conscientious attitude toward work. *Id.* art. 24(2).

The following table shows the number of disciplinary proceedings and sanctions imposed by the SCM since 2007.

DISCIPLINARY PROCEEDINGS AGAINST JUDGES, 2007–JUNE 2009

	2007	2008	2009 (as of June)
Disciplinary proceedings	11	15 ⁹	23
Warnings	3	6	4
Reprimands	4 ¹⁰	6	1
Severe reprimands	1	-	-
Removals recommended	-	-	1
Proceedings terminated	3	4	2

Source: SCM.

Constitutional Court judges may be dismissed from office for violations of the judges' obligations and the oath of office, conviction of a crime, and engaging in activities incompatible with the judicial office. LCC art. 19(1). A disciplinary proceeding may be brought only on the basis of a written complaint from the SCM, Parliament, or the Government – that is, the authorities competent to appoint judges to the Court. CJC art. 84(1). Upon receipt of the complaint, the Court President appoints a two-judge commission to investigate. *Id.* art. 84(2); LCC art. 19(3). If the commission considers the complaint well-grounded, it drafts a report to the Court, which then holds a hearing. CJC art. 84(4). If the Court finds a disciplinary violation, it may issue against the judge one of the following sanctions: a warning, a reprimand, or a dismissal from office. *Id.* art. 84(6). To date, no judge on the Constitutional Court has been disciplined under these procedures.

Judges are very aware that the number of cases brought by the Disciplinary Board has increased, and have observed that many judges are getting sanctioned for what is perceived as even the smallest violation regarding delays, timeframes, and conduct. Judges also mentioned improved transparency with regard to the proceedings. Court presidents are now kept informed of cases and actions, and the final decisions are disseminated to court presidents to discuss with judges on their courts. The decisions are also published in the SCJ's Ethics Bulletin in redacted form. The SCM confirms that they have started to monitor the work of judges more closely and to enforce all the provisions of the new Ethics Code. The SCM has also been more active in modifying the Board's decision in order to apply a more severe sanction than that recommended by the Board. In one case, the more severe sanction was dismissal, to which the Board agreed. In another case, a judge, who was accused of being rude, swearing in court, and smoking during a trial, denied everything, and the original complainant withdrew the complaint. The court

⁹ Two complaints concerned the same judge, and thus were consolidated into one proceeding.

¹⁰ The SCM subsequently changed two reprimands into severe reprimands.



secretary was not interviewed. The Board dismissed the case due to lack of evidence. The SCM reversed the Board's decision and sanctioned the judge. In its decision, it cited complaints by other parties who had appeared before that judge. Interviewees pointed out that the Board is obligated to rule based on materials in the case file and testimony at the hearing, and this case highlights the need for better prepared case files. If there are other materials relevant to the case, they should be supplied to the Board. Observers are waiting to see if the JIU, when it becomes fully operational, will help accomplish this goal. Critics view the SCM's ability to modify the Disciplinary Board's decision under its validation authority as a dangerous tool that belies the system of due process in place to discipline judges, since despite all the objective and transparent procedures implemented by the Board to reach a decision, the SCM can simply change it upon review.

While judges perceive the SCM as being stricter toward them, interviewees felt that this awareness did not extend to the public, who perceive the judiciary as corrupt and believe the SCM functions as a trade union for judges. The Disciplinary Board is aware of the public's poor perception of the judiciary and brings that awareness into its work. One case pending before it at the time of the interviews for this JRI assessment involved a judge allegedly to have taken a bribe in April 2007. Regardless of the merits of this case, the statute of limitations, which requires the complaint to be brought within six months but not later than one year of the act, has expired. The Board is delaying its decision to dismiss the case on procedural grounds, because of fears of how the public will react when citizens who do not understand the procedural intricacies of the system will likely jump to the conclusion that the Board has been corrupted.

On the issue of corruption, the fact that every member of the SCM, including the *ex officio* members, the Prosecutor General, the SCJ President, and the Minister of Justice, have the authority to initiate disciplinary proceedings was cited as a means for possible manipulation of the process. Earlier in 2009, the Prosecutor General initiated a disciplinary proceeding against a district court judge who had acquitted three individuals. The court of appeal reversed the district court decision, but by then, the three individuals had fled the country. The Disciplinary Board dismissed the proceedings because no evidence of deliberate wrongdoing or corruption was brought forward, and found that the judge had the right to adopt the decision. The case is viewed as a blatant attempt at intimidation of judges by the Prosecutor General, who simply did not like the outcome of the trial. Some observers believe that the *ex officio* members of the SCM should not be permitted to initiate proceedings, because this can result in the Prosecutor General and the Minister of Justice using their positions to impact the independence of the judiciary. This authority also puts pressure on judges who may be concerned that they are vulnerable to a disciplinary proceeding for rulings which upset the Prosecutor General and the Minister of Justice. The same critics view the changes to the structure of the SCM and its Boards with the same suspicion regarding attempts by the executive branch to diminish judicial independence. The number of judges on the Disciplinary Board has been reduced from nine to five, and three of the members, law professors, will be political appointees. Meanwhile, proponents of the new system argue that having lay members on the Disciplinary Board improves the citizens' perception of the entity which is seen as a mechanism for judges to protect their own.

Factor 18: Case Assignment

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>By law, criminal, civil, and administrative cases are to be assigned to judges randomly. Most courts still rely on a handwritten ledger system, where cases are distributed according to an alphabetical list of judges, but the ICMS software with an electronic case assignment system is being rolled out to district and appellate courts. Pilot courts report general satisfaction with the program. Judges may be removed from a case only for good cause, such as a conflict of interest or a serious illness. Unduly heavy workload is not grounds for disqualification.</p>		

Analysis/Background:

The presidents of district courts, courts of appeal, and specialized courts oversee the random assignment of cases to judges in their courts. LOJ arts. 27(1)(j), 39(1)(a); ECON. COURTS LAW arts. 15(1)(b), 20(1)(c); MILITARY COURTS LAW art. 14(b). In the SCJ, the Presidents of each college assign cases to judges within that college. SCJ LAW art. 8(1)(b). As a general rule, civil, criminal, and administrative cases are to be assigned to judges in a random manner, with the exception of cases where a judge is unable to hear a case due to objective reasons. LOJ art. 6¹(1); *see also generally* SCM REGULATION ON RANDOM ASSIGNMENT OF CASES IN COURT (SCM Decision No. 68/3, *adopted* Mar. 1, 2007) [hereinafter SCM CASE ASSIGNMENT REGULATION]; *see also* CRIM. PROC. CODE art. 344. Failure by a court president to observe the random assignment of cases constitutes a disciplinary violation. SCM CASE ASSIGNMENT REGULATION § 2; *see also* LSJ art. 22(1)(f). While the new ICMS software, which provides for electronic case assignment, is being rolled out to district and appellate courts as part of the MCC program, as of June 2009, the majority of courts were still assigning cases manually. Under this system, cases are recorded in order of their arrival by the registrar's office and assigned a number. The court president maintains a list of judges in the court in alphabetical order. Upon receiving a new case file from the registrar's office, the court president assigns that case to the next judge on the list. Thus, the first case goes to the first judge on the list, the second case to the second judge, and so on. Any departure from the list can be done only in the event of a judge's serious illness or other justified reasons, which must be delineated in a written order from the court president reassigning the case to another judge. SCM CASE ASSIGNMENT REGULATION § 10; LOJ art. 6¹(1); CRIM. PROC. CODE art. 344. The assessment team revealed that at least one court deviated from this system for civil cases and scheduled one judge to be on duty for a one-week period, during which all newly filed civil claims would go to that judge. Judges in that court were eagerly awaiting the electronic case assignment system.

The ICMS software is being installed throughout the Moldovan judiciary, having been piloted in the Chisinau Botanica, Comrat, Rezina, and Ungheni district courts earlier in 2009. Users reported general satisfaction with the software, and most interviewees felt that it was a more objective system than what they had previously. They did note many glitches at the start, but said that they were able to work them out with the technical support teams. The electronic program is reported to only consider the number of pending cases a judge has and not their complexity, which has resulted in some unfair distribution of cases. It also had to be programmed to take into account judges' vacation periods. The programmers are working to adjust the software accordingly. The Chisinau Court of Appeal began using the electronic case assignment component of ICMS on June 1, 2009, but they were still keeping their handwritten registries of case assignment as they worked through their issues with the software. The MCC's ICMS program did not extend to the SCJ, which still does manual case assignment; however, the Court



is in the process of developing its own software. The Orhej District Court plans to have the ICMS system operational after January 2010.

Judges are required to recuse themselves from cases where a conflict of interest exists. CIV. PROC. CODE arts. 50, 52(1); CRIM. PROC. CODE arts. 33, 34(1). Grounds for recusal in a civil case include having participated in the prior trial of the case as a witness or an expert; familial relationship with trial participants or their representatives; having expressed an opinion about the case; having a direct or indirect personal interest in the outcome of the case; and other circumstances which raise doubts about impartiality. CIV. PROC. CODE art. 50(1). In criminal cases, grounds for recusal include a direct or indirect personal or familial interest in the case; participation in the case previously as a witness or an expert; previous work on the case in any other non-governmental or governmental authority; expressing an opinion on the guilt or innocence of the defendant in earlier matters; or other circumstances that cast a reasonable doubt on the judge's impartiality. CRIM. PROC. CODE art. 33(2). In addition, a judge must withdraw from any case where he/she previously participated as a judge. CIV. PROC. CODE art. 49(1)-(3); CRIM. PROC. CODE art. 33(3). Parties may also request the recusal of a judge on the same grounds. CIV. PROC. CODE art. 52(1); CRIM. PROC. CODE 34(2). In a criminal case, if the request for recusal is submitted repeatedly and in bad faith, with the purpose of delaying the proceedings, confusing the court, or another malicious intent, the court examining the case may fine the person engaged in submitting such requests. CRIM. PROC. CODE 34(4).

Factor 19: Judicial Associations

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

Conclusion	Correlation: Negative	Trend: ↔
Moldova has a judicial association, of which most judges are members. Its stated aims are to protect and promote the interests of the judiciary. The association is not very active or effective.		

Analysis/Background:

Judges have the right under law “to create and be affiliated with trade unions or other organizations so as to represent their interests, to improve their professional skills and defend their status.” LSJ art. 14(3). The Association of Judges of the Republic of Moldova [hereinafter AJRM], a registered non-governmental organization founded 15 years ago, aims to defend the rights and interests of judges, to improve the system of justice, and to contribute to ensuring the independence of the judiciary. See STATUTE OF THE ASSOCIATION OF JUDGES OF THE REPUBLIC OF MOLDOVA arts. 2-3 (AJRM Decision No. 1, *adopted* Nov. 3, 2001). The Association has the right to represent and protect the legitimate rights and interests of its members and to have its own mass media information sources and publications. *Id.* art. 4.

An estimated 93% of judges (390 out of 420) are reported to be members of the AJRM. Membership is voluntary, and dues constitute 1% of a judge's salary, deductible directly from the judges' payments. The Association had an office in one of the SCJ's buildings before the renovation commenced, and will get a new office in the same building upon completion of the construction. The paid staff of the AJRM consists of an accountant and a secretary. The AJRM Board meets every last Friday of the month, and all members meet annually at the AJRM Congress. The Association puts together a bulletin, THEMIS, as often as it can manage, usually twice a year. The bulletin, which focuses on decisions of the SCM or the SCJ and commentary, is paid for from the membership dues, and a hard copy is sent to each court.

Generally, judges expressed dissatisfaction with the work of the AJRM. Some respondents described the AJRM as benign and lacking initiative, while others reminisced about the situation eight to ten years ago when, in their view, the Association was a force that fought for judicial reform. Reasons proffered for the perceived drop in effectiveness and activity of the Association over the last decade ranged from political pressure and fear to questioning the AJRM leadership's commitment, willingness, and capacity to seek improvements in the status of judges.

Consensus exists among the AJRM members interviewed by the assessment team that actions taken in the last year and a half by Parliament and the executive impacted the status of judges and the judiciary negatively. Specifically, they cited the change to the composition of the SCM and its Boards, as well as the failed effort to get the DJA set up under the SCM rather than the MOJ. In both situations, interviewees felt that the AJRM should have taken a strong role and position in advocating for judges' interests, but it failed to do so. While some among the leadership do not believe that the Association should engage in lobbying, the majority of those interviewed on this subject would like to see more initiative displayed, and believe that the AJRM should initiate dialogue with authorities on issues related to judges' interests. However, respondents confessed that they do not know how to start this process, as they have no experience in lobbying. Thus, potentially there is a will on the part of the AJRM members to increase the activity and visibility of the Association, but they lack the expertise to do so.



V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

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

Conclusion	Correlation: Negative	Trend: ↔
Despite constitutional and legal guarantees of judicial independence, undue influence on the judiciary by other branches of power, in particular by the executive, remains a serious concern. The perception of corruption within the judiciary is widespread, especially with respect to political interference in the judiciary. Judges expressed frustration with the widespread public perception of corruption.		

Analysis/Background:

The Constitution guarantees the independence of the judiciary by declaring judges “independent, impartial, and irremovable under the law.” CONST. art. 116(1); *see also* LSJ art. 1(3); LOJ art. 1(1). In adjudicating cases, judges are independent and subject only to the law. CIV. PROC. CODE art. 20(2); CRIM. PROC. CODE art. 26(1). Interference in the administration of justice is prohibited and subject to criminal or administrative liability. LOJ art. 13(1)-(2); CIV. PROC. CODE art. 20(2); CRIM. PROC. CODE art. 26(4). Any *ex parte* influence or attempted influence on a judge’s official activity is punishable by an administrative fine of 100-150 conventional units (MDL 2,000-3,000, or USD 180-270), which increases to 200-400 conventional units (MDL 4,000-8,000, or USD 360-720) if an offense is committed by an official person; and/or administrative detention of up to 15 days. CONTRAVENTIONS CODE art. 317(2). Attempting to impede a comprehensive, complete, and objective consideration of a case or to obtain the rendering of an illegal judgment is punishable by a fine of 200-500 conventional units (i.e., MDL 4,000-10,000, or USD 360-900), correctional labor of 180-240 hours, or imprisonment of up to three years. CRIM. CODE art. 303(1). If the interference is committed by someone using their official position, the punishment increases to a fine of 400-600 conventional units (MDL 8,000-12,000, or USD 720-1,080) or up to four years of imprisonment. *Id.* art. 303(3). Judges are also under an ethical obligation to not influence another judge or to use their office as a means to influence the outcome of other cases. ETHICS CODE art. 9(4). The law prohibits active and passive corruption. Active corruption is the promising, offering, or giving to an official person of goods and services in exchange for carrying out an action related to the official’s position. It is punishable by a fine of 2,000-4,000 conventional units (MDL 40,000-80,000, or USD 3,600-7,200) or up to five years of imprisonment. CRIM. CODE art. 325(1). Passive corruption involves the official person demanding or receiving offers, money, or other advantages not due to him/her for the purpose of taking an action or abstaining from the action. If a judge is convicted of this offense, he/she is punishable by a fine of 1,000-3,000 conventional units (MDL 20,000-60,000, or USD 1,800-5,400) or imprisonment from 7 to 15 years. *Id.* art. 324(3).

Despite the legal framework in place to protect the judiciary from outside influence, corruption in the judiciary is perceived to be a widespread and serious problem. The 2008 Human Rights Report for Moldova stated that “official pressure and corruption remained problems. There continued to be credible reports that local prosecutors and judges occasionally asked for bribes in return for reducing charges or sentences, and observers asserted that courts were sometimes politically influenced.” *See* STATE DEPT. HUMAN RIGHTS REPORT. The NIT 2008 report on Moldova noted that “Moldova’s national governance continues to be marked by tight presidential control over the legislature, executive and judiciary.” *See* NIT 2008 at 402. Moldova’s score in Transparency International’s Corruption Perception Index has declined over the last two years. In 2008, Moldova ranked 109 out of 180 countries, with a score of 2.9 on a 10-point scale (with a

score of 10 representing the absence of perceived corruption, and a score below 5 an indicator of serious perceived levels of domestic corruption). See TRANSPARENCY INTERNATIONAL, 2008 CORRUPTION PERCEPTIONS INDEX, available at http://www.transparency.org/policy_research/surveys_indices/cpi/2008. This is compared to the 2006 score of 3.2 and a ranking of 79 out of 163 countries. In 2009, data shows that the judiciary tied with the business sector as the institution considered the most affected by corruption in the country, beating out political parties, Parliament, and public officials. See TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION BAROMETER 2009, available at http://www.transparency.org/policy_research/surveys_indices/gcb/2009. In a recent court monitoring survey conducted by MCC, 44% of the public surveyed agreed strongly and 30% agreed that corruption in the Moldovan district court system is a very serious problem; while 24% and 34%, respectively, considered judges very corrupt and somewhat corrupt. See MCC MONITORING SURVEY at 28. Similarly, 61% of advocates agreed that corruption is a very serious problems in Moldova's district courts, while 42% felt that judges were not honest and trustworthy. *Id.* at 26. These figures stand in sharp contrast to the judges surveyed on the same question, with 28% agreeing that corruption is a very serious problem and 53% strongly disagreeing that people within the judiciary use their positions to obtain improper or illegal gain. *Id.* at 24.

Interviewees confirmed the substance of these international indicators. The same joke was repeated in a few different interviews: A judge walks into his office and tells his court secretary that today he will be at his most objective, because both parties had paid him equally. 20% of the public surveyed by MCC stated that the judge involved in their case was not impartial, due primarily to having received a bribe (43%), interference from public authorities (21%), and private interests of the judge (12%). *Id.* at 28. Respondents believed that both monetary corruption and political influence exist, but that the latter was the more serious threat at the moment, citing the example of judges regularly postponing politically sensitive cases when it would be to the benefit of the executive. In the case of monetary corruption, of those judges who had been approached with bribe offers, the offers came from parties themselves (35%), the parties' friends and relatives (15%), defense attorneys (30%), and public authorities (10%). *Id.* at 25. Several sources mentioned the return of telephone justice. One interviewee described these phenomena as the politicization of justice. The rulings of the Constitutional Court related to the April 2009 elections were frequently referenced with regard to these phenomena. See Factor 5 above for a more detailed analysis on these rulings. In addition, the changes made to the composition of the SCM and its Boards are perceived by many as attempts at diminishing the independence of the judiciary. See Factors 2, 15, and 17 above for additional information on these changes. Attorneys relayed their experiences before certain courts, where they just assume their clients will lose against state bodies or politically favored opposing parties and know that they will at the very least end up bringing the case to the SCJ, if not the ECHR.

Statistics show that no judges have been tried for corruption in the last two years, although interviewees pointed out that corruption is very difficult to prove. Many judges, meanwhile, express frustration at what they perceive as being made the scapegoat for everything that is wrong in the society. In fact, 94% of judges surveyed by MCC reported never having witnessed anyone offering a court staff, an advocate, or a judge any bribe or favor in order to affect the outcome of the case or obtain other court favors, and 82% of judges stated they had never been offered a bribe. MCC MONITORING SURVEY at 25. Only 6% of court employees reported having been offered a bribe. *Id.* at 26. This is contrasted with 26% of advocates and 14% of the public reporting having witnessed bribes being offered. *Id.* at 27-28. Some judges admitted that there were, and always will be, some bad judges, but that in their view, the public perception of corruption is worse than the reality. They believe that citizens lack knowledge of the judicial system and immediately jump to the conclusion that a judge is corrupt when they lose a judgment.

Interviewees regard the new Ethics Code, the institution of the NIJ, increased transparency of the disciplinary system, and overall legal reforms as positive developments, but they stress that no significant change is possible without political will.



Factor 21: Code of Ethics

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

Conclusion	Correlation: Positive	Trend: ↑
A new judicial code of ethics with commentaries was adopted in 2007. The Code is enforceable by the SCM's Disciplinary Board. Ethics courses are a part of both the NIJ's initial training program and the CLE program. Some 80% of all judges received ethics training in the past year.		

Analysis/Background:

The SCM approved a new Judicial Code of Ethics on November 29, 2007. The earlier code, adopted in 2000, was very brief, with 30 one-sentence rules governing judicial behavior. The new Code, which took effect January 1, 2008, is intended to provide more concrete rules in specific areas, with corresponding explanatory passages on the meaning and application of the rules for the conduct of judges.

The new Code, published with commentaries that were drafted with the MCC's support, contains five chapters covering issues such as judicial independence and impartiality, judges' duties and obligations, incompatibilities and interdictions, and liability. The 15 articles contained within these chapters cover a wide range of conduct, including recusal in light of conflict of interest or potential conflict of interest (*see* ETHICS CODE art. 9(2)); a prohibition on *ex parte* communications (*id.* art. 7(3)); a ban on supporting political candidates or taking part in political activities (*id.* art. 9(1)(d)-(f)); a requirement to act in a dignified, patient, and courteous manner during proceedings (*id.* art. 6(1)); and a prohibition on cell phone usage during hearings (*id.* art. 9(1)(h)). The rules are binding on judges, and breach of the rules may result in a disciplinary proceeding and, potentially, a finding of liability of a judge. ETHICS CODE art. 15; *see also* LSJ art. 22(k) (defining the systematic or serious violation of judicial ethics as a disciplinary violation). In addition, a violation of certain other sections of LSJ art. 22 will also constitute a violation of ethical norms as provided in the Code. Specifically, the following violations are also all considered breaches of ethical norms: a violation by the judge of his/her obligation of impartiality; interference by a judge with the judicial activity of other judges, or with the activities of other institutions or authorities to solve a petition; claiming or accepting to solve personal or family interests other than within the legal provisions in force; failure to preserve the secrecy of deliberations or confidentiality; public political activities; unjustified recusal; undignified attitude at work; obtaining undue benefits; and expressing an opinion in public on other judges' judgments in order to interfere with their activity. ETHICS CODE COMMENTARY art. 15. The SCM and its Disciplinary Board are authorized to enforce the Code.

A new edition of the Code, which will contain not only the Code and commentary, but also the SCM's and Disciplinary Board's decisions and international ethics sources, is expected to be published in 2009. Meanwhile, in April 2008, the SCJ, with MCC funding, began publication of an ethics bulletin. The bulletin is issued quarterly and is distributed to all judges. Each edition published thus far has contained interviews, ethics news (such as reports on trainings and international conferences), and summaries of the disciplinary proceedings held within that period. With the MCC project and funding wrapping up at the end of September 2009, the SCM expressed its intention to carry on with the bulletin's publication.

Training on the new Code, conducted through the NIJ and sponsored by the MCC, took place in 2008 and early 2009, with more than 80% of Moldovan judges attending one of the sessions. In

addition, ethics is a regular offering within the NIJ's CLE program, and 24 academic hours of ethics are taught as part of the initial training curriculum for judges and prosecutors at the NIJ.

Also in 2008, the SCM approved Standards of Conduct for Court Staff. See SCM Decision No. 95/5 (Mar. 20, 2008). The 25 rules, which cover such areas as professionalism, confidentiality, and non-discriminatory conduct, are mandatory for court staff, and breach of the provisions could result in disciplinary liability. *Id.* at Rule 24.

The judges interviewed for this assessment all demonstrated awareness and knowledge of the new Ethics Code and confirmed that they had attended training on it. They also believed that their colleagues had the same level of knowledge and understanding of the Code. Many were eager to discuss aspects of the Code which they thought were important or challenging. New judges felt that avoiding the appearance of impropriety would be a difficult concept to uphold in small towns in particular, where everyone knows everyone and frequently socializes together. Others commented on the conflict of interest provisions, such as disqualification of a judge who has taken part in pretrial proceedings from hearing a criminal case, and the problems that ensue in small towns with courts that have few judges. Most judges shared the opinion that, in general, they and their colleagues strive to abide by the Code, and those who do not are the exceptions. The increase in the number of disciplinary actions over the last year and a half was cited as an example that ethics was being taken seriously, and that the SCM was monitoring the work of all judges more closely now.

Factor 22: Judicial Conduct Complaint Process

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

Conclusion	Correlation: Neutral	Trend: ↔
Any citizen may file a complaint concerning judicial conduct against a judge, and a system is in place to register and investigate complaints. It is still too early to tell whether the JIU, the new inspection unit set up within the SCM, will be an effective mechanism for investigating complaints.		

Analysis/Background:

The SCM is charged with reviewing citizens' complaint against the allegedly unethical conduct of a judge. SCM LAW art. 4(3)(a). Any complaints sent to other institutions, such as the DJA, Parliament, the President, and the Ombudsman, are generally forwarded to the SCM.

A complaint brought to the SCM is sent to the JIU, which is tasked with examining complaints regarding the breach of ethical obligations by judges. *Id.* art. 7¹(6)(b); REGULATION ON THE ORGANIZATION, JURISDICTION, AND FUNCTIONING OF JUDICIAL INSPECTION UNIT § 12 (SCM Decision No. 321/13, *adopted* Oct. 11, 2007) [hereinafter JIU REGULATION]. The complaint is assigned to one of the JIU's inspector-judges, and the SCM notifies the judge in question that a complaint has been filed against him/her. JIU REGULATION § 12. Disciplinary proceedings can be initiated only after it has been verified that grounds exist to hold the judge liable, and the judge has been given an opportunity to provide a written explanation. DISCIPLINARY BOARD LAW art. 12(1). The JIU inspector-judge is in charge of following up on the complaint, ascertaining the facts, collecting material documents and evidence, and compiling the case file. JIU REGULATION § 12. Where the inspector-judge finds no grounds for proceeding, the President of the SCM notifies the complainant of this in writing. If a determination is made that the complaint has merit, a member of the SCM initiates disciplinary proceedings against the judge. DISCIPLINARY BOARD LAW art.



10(1). However, interviewees reported that, in practice, in the case of a first-time minor infraction, an SCM member may contact the judge directly, to inform him/her of the lapse and warn him/her that formal proceedings could be initiated if further lapses occur.

The JIU was established by law in 2007, but it only became operational in March 2009. Even as of June 2009, it was not yet fully staffed, with only three of five of its inspector-judge positions filled. Inspector-judges serve no more than two four-year consecutive terms until the mandatory retirement age of 65. SCM LAW art. 7¹(2). They are chosen by a majority vote of the SCM and must hold an undergraduate degree in law, have at least 10 years of legal experience, and enjoy good reputation. *Id.* art. 7¹(3).

No official statistics on the number of complaints filed is available, but unofficial estimates put the number at over 1,000 a year. The DJA estimated that about 415 complaints against judges had been lodged with the MOJ in 2008, all of which were forwarded to the SCM. Approximately one quarter of all petitions brought to the Ombudsmen office are related to the justice sector. In 2007, 472 of 1,714 written petitions received and 273 of 1,003 walk-in complaints registered related to justice sector. In 2008, 401 of 1,402 petitions and 459 of 2,174 walk-in complaints registered related to the justice sector. One reason offered for the large percentage of such petitions was the low level of trust citizens have in the judicial system. While the majority of petitions relate to dissatisfaction with the outcome of a trial, on which the Ombudsmen take no further action, the office also receives complaints regarding the violation of the right to a fair trial due to excessive delay, delays in executing judgments, the right to free access to justice, and obvious mistakes and unbecoming behavior by the judge. Complaints related to individual judges are forwarded to the SCM. Of the 25-30 such complaints forwarded in 2008, the SCM rejected all of them and notified the Ombudsmen's office on the basis of the same form letter, citing the inviolability of the judiciary. The Ombudsman publicly criticized the SCM for its actions in its 2007 annual report, where it expressed regrets for the SCM's cursory examination of complaints. CENTER FOR HUMAN RIGHTS OF THE REPUBLIC OF MOLDOVA, REPORT ON HUMAN RIGHTS OBSERVANCE IN THE REPUBLIC OF MOLDOVA IN 2007 at 162 (2008). While the SCM notes that the majority of complaints it receives directly or through other state bodies are frivolous – most often based upon the dissatisfaction of the losing party – the creation of the JIU is partially intended to stem criticism that the SCM does not give due attention to complaints and to create an effective investigative and inspection mechanism.

A large number of complaints concern delays in cases or failure to adhere to timeframes established by law. The inspector-judge is mandated to visit courts to follow up on complaints, as well as to inspect the work of judges, the efficiency of the court, and the overall compliance of the court with procedural regulations. JIU REGULATION § 12; *see also* SCM LAW art. 7¹(6)(a). Respondents were of the opinion that it was premature to determine whether the JIU will be effective in its mission. They were skeptical given the difficulties that the SCM has had even getting the JIU set up for over a year after it was authorized to start operations.

Factor 23: Public and Media Access to Proceedings

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>By law, court proceedings are generally open to the public. In practice, the use of judges' offices for most hearings presents a logistical restriction on the number of people who can attend the hearings. The public is also reportedly unaware of their right and/or uninterested in being able to attend court proceedings. Access by journalists to hearings is usually dependent on the will of the presiding judge, and is often restricted in high-profile cases.</p>		

Analysis/Background:

Hearings in all courts of law are public, except as otherwise provided by law. CONST. art. 117; see also CRIM. PROC. CODE arts. 18(1), 316(1); CIV. PROC. CODE art. 23(1). In a criminal case, a judge may close proceedings to the public to respect morality, public order, or national security; when required to protect the interests of minors or the private life of parties in the proceeding; or to the extent the court considers this measure strictly necessary when, due to special circumstances, publicity may damage the interests of justice. CRIM. PROC. CODE art. 18(2). The judge is also required to hear testimony by a minor victim or witness in a closed hearing. *Id.* art. 18(2¹). In a civil case, a court hearing may be closed to protect information considered a state secret, trade secret, or other information for which disclosure is forbidden by law; or to prevent disclosure of information related to parties' intimate life, information which may harm parties' honor, dignity, or professional reputation, or harm public order or morality. CIV. PROC. CODE art. 23(2)-(3). A judge is required to issue a written order containing the reasons for the decision to close the hearing. CRIM. PROC. CODE art. 18(2); CIV. PROC. CODE art. 23(5). The Constitutional Court also conducts its hearings in public, except for instances when publicity could threaten state security or public order. CJC art. 13(1).

The right to a public hearing is generally observed from a technical standpoint, as the judge does not formally close the hearing. A total of 80% of judges surveyed by the MCC strongly agree or agree that members of the general public are allowed full access to all hearings, except those where the law provides for closed hearings. MCC MONITORING SURVEY at 21. However, practical considerations often make attendance by the public difficult. For instance, OSCE monitors observed that, because hearings are frequently held in judges' offices, the limitations of space and even adequate seating mean that the public is effectively precluded from attending. OSCE TRIAL MONITORING REPORT at 8. One interviewee relayed the experience of having a defendant argue that his right to a fair trial was being violated because of the cramped, poor conditions of the judge's office. The judge reportedly postponed the trial until the time when a courtroom would be available, but was later criticized by the appellate court for adding to delay of the case. Judges interviewed by the assessment team reported that they would have no problems letting in the general public, but pointed out that this rarely happens in practice. According to the MCC survey, 45% of advocates and 46% of the public surveyed thought that the general public was not allowed to access court hearings. MCC MONITORING SURVEY at 21.

Courts are obliged to post information about the hearing schedule in a public venue at least three days prior to the scheduled hearing date. CRIM. PROC. CODE art. 353(2). OSCE monitors found that, at least as of 2006, this requirement was only sporadically implemented. OSCE TRIAL MONITORING REPORT at 23. However, the situation appears to have improved in this regard. The courts visited for this assessment had bulletin boards in their lobbies or at the entrances with the daily or weekly hearing schedules. The Cahul Court of Appeal has a computer terminal in its lobby, where users can access the schedule, court decisions, and other information about the court. Interviewees cautioned, however, that the courts are only as informative as they want to be. For example, in hearings related to the April 2009 unrest, observers found they could not, or it was very difficult to, obtain information about where and when hearings would be held. The courts simply did not post it.

Journalists reported that they are usually given access to court hearings, with the significant exception of trials involving cases of political nature. In such instances, they have been turned away or removed from the courtroom at the instigation of the judge. Courts do not have internal rules or regulations governing access by media to the court. By law, audio and video recording and photography are permitted in a hearing only in accordance with procedural legislation. LOJ art. 14(3). Audio and video recording or photography in court hearings is allowed at the discretion of the presiding judge, and only during the opening of the hearing and the final pronouncement of the decision. CRIM. PROC. CODE art. 316(3); CIV. PROC. CODE art. 18(2). Violators of the provision in a civil hearing may be sanctioned by a fine up to 20 conventional units (MDL 400, or USD 36) and a confiscation of the recording. CIV. PROC. CODE art. 18(3). The Criminal



Procedure Code lacks a similar provision on fines, but individuals could still be sanctioned for demonstrating lack of respect toward the court. See CONTRAVENTIONS CODE art. 317(1). Journalists complained that courts were not consistent with their policy on recording, citing for examples where they were given permission to take photographs in a corridor one week, but had their camera confiscated the next. Through an MCC initiative, public relations specialists have been appointed in 10 courts in 2009, with most courts designating a judge or counselor to this position rather than hiring on a new employee, especially given budget constraints. The goal of this initiative is to help courts better communicate with the media, and thereby create a more positive image of courts among the public. Some judges questioned the need for this position and noted that traditionally the court president handled such matters. The program is too new to know what impact it will have.

Factor 24: Publication of Judicial Decisions

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

Conclusion	Correlation: Negative	Trend: ↔
<p>Judicial decisions are pronounced publicly. Access to copies of judicial decisions is generally limited to parties in the case, despite a law which grants any individual the right to view the document. Plans are in place to require all courts to start publishing their decisions online in 2010, and the SCJ and the Constitutional Court already do publish their judgments online.</p>		

Analysis/Background:

Judicial decisions are required to be read out publicly. LOJ art. 10(2); CRIM. PROC. CODE arts. 340(1), 418(3); CIV. PROC. CODE arts. 23(9), 237(1); CJC art. 13(3). A copy of a verdict must be provided to a detained criminal defendant immediately, but not later than within three days of its announcement in court. CRIM. PROC. CODE art. 399(1)-(2). Other participants in proceedings are notified in writing that the verdict has been prepared, and are entitled to receive a copy upon request. *Id.* art. 399(2). In civil cases, copies of decisions are to be mailed to participants who did not appear at the hearing within seven days of being written. CIV. PROC. CODE art. 259. Parties have the right to receive a copy of a court decision upon request, and the first copy is to be provided without payment of the state tax. *Id.* art. 85(3). In addition, every individual has the right to seek official information, including that held by courts, except for information designated as limited access, such as state secrets, personal data, or trade secrets. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON ACCESS TO INFORMATION arts. 4(1), 5(2)(a), 7 (Law No. 982-XIV, adopted May 11, 2000, last amended May 29, 2003).

In practice, the requirement that judgments be pronounced publicly is generally observed. OSCE TRIAL MONITORING REPORT at 23. Obtaining a court judgment is, however, more problematic. Despite what the law says, many court staff work under the presumption that only parties may be given access to court documents, including judgments. In one case, a court employee said that, in the event of a request by a non-party for a court document, the court president would be consulted before the request would be approved or denied. Journalists confirmed these obstacles and reported that their best approach was to contact the parties' attorneys, who would then facilitate obtaining the requested documents from the court. Even attorneys respond they have problems accessing court documents and case files during the criminal investigation stage, where they are denied access to materials or are given only limited access before a pretrial detention hearing. The ECHR found Moldova in violation of article 5 of the European Convention in a case where access to the case file was denied the defendant. See *Turcan and Turcan v. Moldova* §§ 61-64, ECHR No. 39835/05 (Jan. 23, 2008). Attorneys complained that the lack of

access makes adequate preparation for the hearings difficult, if not impossible. Objections made to the judge on these grounds are usually overruled.

Under a 2007 amendment to the LOJ, decisions of district courts, courts of appeal, and the SCJ are to be published online. See LOJ art. 10(4) (effective upon creation of necessary conditions, but not later than Jan. 1, 2010); see also SCM REGULATION ON THE ONLINE PUBLICATION OF COURT DECISIONS art. 1 (SCM Decision No. 472/21, Dec. 18, 2008). District courts and courts of appeal have started the process of setting up their own website, with a few courts already online. The Constitutional Court and the SCJ already publish their decisions and advisory opinions on their respective websites, <http://www.constcourt.md> and <http://www.scj.md>. Through an MCC-funded project, more than 4,000 decisions have been published to date on the SCJ website.

Interviewees expressed the view that the lack of access to court judgments directly impacts the perception that the judiciary is not transparent and corrupt. Moreover, they thought that ready public access to judgments might hold judges more accountable for their chronically poorly written and reasoned decisions. An improvement of the quality of decision writing was also connected to combating the common perception of the losing party that there must have been corruption in the case, in that a well-reasoned decision would support the verdict.

Factor 25: Maintenance of Trial Records

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

Conclusion	Correlation: Negative	Trend: ↔
<p>The current practice in Moldovan courts is to take longhand minutes, which are later transcribed and which summarize key components of the hearing. The minutes are considered to be of varying reliability. The law has been amended to require audio recording of hearings and to make them available to parties, and courts are in the process of installing audio recording equipment. However, court secretaries report difficulties arising from operating the audio recording equipment.</p>		

Analysis/Background:

Court secretaries prepare the minutes of hearings, which summarize the course of the court proceedings. CIV. PROC. CODE art. 275(1); CRIM. PROC. CODE art. 83(2)(2). In civil cases, the minutes are to contain, *inter alia*, the orders of the judge, statements, motions, and explanations of the parties, and the testimony of witnesses and experts. CIV. PROC. CODE art. 274(2). The minutes are to be prepared and signed within five days of the hearing. *Id.* art. 275(4). Parties then have five days to obtain a copy of the minutes and raise objections to them, after which the presiding judge has five days to rule on them. *Id.* arts. 275(5¹)-(6), 276. In criminal cases, court secretaries are to make full and accurate records of the actions and decisions of the court, the requests, objections, declarations, and explanations of all participants at the hearing, and other circumstances. CRIM. PROC. CODE arts. 83(2)(2), 336(3). The minutes must be completed and signed by both the presiding judge and court secretary within 48 hours of the hearing. *Id.* art. 336(4). Parties may obtain copy of the minutes and review them within five days of signing, and then have three days to file objections. *Id.* art. 336(5)-(6). As a general rule, minutes are to be typed out using a computer; however, if this is not possible, the minutes may be handwritten and then retyped using a computer. *Id.* art. 336(1); CIV. PROC. CODE art. 275(1).

Parties to the proceedings have the right to obtain a copy of the minutes. CIV. PROC. CODE art. 276¹(1); CRIM. PROC. CODE art. 336(8). However, if a case was heard in closed proceedings,



parties are only allowed to review the minutes and make extracts of relevant information. Civ. PROC. CODE art. 276¹(2); CRIM. PROC. CODE art. 336(9). According to the MCC survey, 32% of judges strongly agree and 37% agree that trial participants are always provided with completed minutes of the proceedings to sign. MCC MONITORING SURVEY at 20. Responses differed among advocates and court users, however, with 41% of advocates and 53% of the public surveyed stating that trial minutes were not presented for signature. *Id.* at 21. In addition, 16% of the public respondents who did receive the minutes for signature complained that the document was not complete or contained inaccurate information. *Id.* at 22.

By law, judicial hearings are to be recorded by video or audio means or by stenography, which is to be immediately transcribed. LOJ art. 14(1). MCC purchased 153 sets of audio recording equipment and corresponding software, enough for all district and appellate courtrooms in the country. Installations started in January 2009, and at the time of the interviews for this assessment, MCC was in the process of delivering the equipment to courts. As of June 2009, the equipment was being initiated in the pilot courts selected by MCC (Rezina, Comrat, and Ungheni district courts) and the Chisinau Court of Appeals, while other district and appellate courts were in various stages of the installation process. Therefore, in the majority of courts, court secretaries still either type the minutes onto computers or take the minutes by longhand and later transcribe them onto computers. Minutes taken on witness testimony remain in handwritten form, as the notes taken by the court secretary are put before the witness to sign at the actual hearing. Procedural codes were amended to make use of the recording equipment mandatory and to provide parties with the right, upon their request, to obtain a copy of the recording. Civ. PROC. CODE arts. 275(2), 276¹(1); CRIM PROC. CODE arts. 336(2), 336(8). The draft regulation on audio recording of court hearings was prepared but remained unsigned by the SCM as of June 2009, due to continued negotiation with the MOJ over who will have to provide the CD-ROMs for saving copies of recordings. Court presidents, who are struggling to provide even toner and paper to their courts due to budget cutbacks, are unwilling to take on this extra expense.

Opinions were mixed in those pilot courts that have started using the audio recording equipment, and no court had started using the equipment for transcription in the courtroom. Court secretaries, who all confirmed they received training on the new system, complained that it triples their workload, because they still take the minutes by longhand and later transcribe the recording. A typical day will have five or six hearings, for which the secretary has to listen to the recording to take the minutes. The equipment is installed only in the courtrooms, an intentional decision by the MCC; yet approximately 50% of hearings are held in judges' offices, which means that most hearings will not be recorded. In the appellate courts, additional logistical problems were identified. Cases are heard in three-judge panels, which means three court secretaries accompany their judges into the courtroom – yet only one computer has been set up. The panel may sit all day and hear as many as 75 cases, with the judge-reporter position alternating among the three judges from case to case. The secretaries and judges complain that one computer requires them to shift position every time a new case is called, which prolongs the workday.

As for the reliability of the minutes, the fact that they are only summaries of the proceedings leaves them vulnerable to omission. Some claims were made that judges order that certain statements or objections of counsel made during a hearing are not in the minutes. There are indications that witnesses who have to sign their minutes before leaving the courtroom rarely read them or verify them for accuracy. OSCE TRIAL MONITORING REPORT at 11. The goal behind the audio recording system, if it is ever fully implemented, is to eliminate such issues.

VI. Efficiency

Factor 26: Court Support Staff

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

Conclusion	Correlation: Negative	Trend: ↔
<p>Each judge has a court secretary, and courts have departments charged with handling incoming and pending cases and their corresponding files. Judges at the district and appellate court levels do not have support staff to assist in legal research, although the need appears acute. Court staff turnover is high, reportedly due to the heavy workload and low salary.</p>		

Analysis/Background:

Judges at the district and appellate court levels generally have a court secretary assigned to them, to keep the written record of proceedings, to maintain the case files, and to provide overall administrative and logistical support to enhance the effectiveness of the administration of justice. LOJ art. 48; *see also* ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON STATUS AND ORGANIZATION OF WORK OF COURT SECRETARIES arts. 1-2 (Law No. 59-XVI, *adopted* Mar. 15, 2007) [hereinafter LAW ON COURT SECRETARIES]. To be eligible for appointment as a court secretary, a candidate must be a citizen of Moldova who permanently resides in the country, have legal education, full legal capacity, no criminal convictions, speak the state language, and be medically suitable to perform the work duties. *Id.* art. 11. Court secretaries are appointed to office by presidents of their respective courts, based on the results of a competition organized for each court. *Id.* arts. 12-13. Court secretaries must also pass a three-months initial training program at the NIJ prior to assuming their duties. *Id.* art. 14.

District and appellate court judges do not have legal assistants or another category of staff responsible for assisting the judges with legal research. Court of appeal presidents have an advisor, who assists with the administrative functioning of the court. Each judge on the SCJ is assigned a legal assistant, who conducts substantive legal research, prepares applicable law for cases, and assists in drafting decisions. Assistants must have an undergraduate degree in law and at least three years of legal experience.¹¹ SCJ LAW art. 4(3). Constitutional Court judges are assisted by six assistant judges, who prepare all case materials, conduct legal research, and assist in drafting decisions. LCC art. 35(1). These individuals must have an undergraduate degree in law and at least ten years of professional experience in legal or scholarly field. *Id.* art. 35(2). By law, they are given the same status as the courts of appeal judges. *Id.* art. 35(3).

Each court has a registrar's office and archives to receive pleadings and to maintain court records and case files; a documentation service to keep track of legislation and jurisprudence and to run the court library; and an administrative service to handle administrative matters and ensure the proper functioning of the courthouse. LOJ arts. 45(1), 46, 47(1), 49. The staff within these departments includes court clerks, typists, translators, and file clerks. The court president has the authority to hire and fire staff, while the MOJ is responsible for establishing the list of personnel positions which a court will have. *Id.* art. 45(2)-(3). Additionally, as part of the MCC program to improve administrative efficiency and managerial practices in courts, a recommendation to establish a new staff position of court administrator has been accepted and introduced to courts.

¹¹ Until recently, the SCJ also had seven positions allocated for assistant judges, but these positions were not in use under the existing SCJ structure. These positions were eliminated in December 2008.



Some courts have already hired or reassigned a current staff member to this position, which entails overseeing human resource issues, technical support, and contracts with vendor. In general, it covers many of the same duties previously performed by district court vice presidents and by appellate court advisors. The number of court personnel employed as of June 2008 in the district courts and courts of appeal were 1,228 and 337, respectively.

Judges at the district and appellate court levels interviewed by the assessment team uniformly declared the need for legal assistants to be assigned the courts. Their heavy caseloads give them very little time to prepare properly for cases. Turnover among court staff is a chronic problem, due reportedly to excessive work load and minimal salary. Judges expressed frustration that they could not attract qualified candidates or that, if they did, they left soon after starting, some as soon as within two weeks. Court staff shared this frustration. Interviewees openly scoffed at the idea that their salaries would be sufficient to support their families. The average court clerk at the district court level earns MDL 600-900 (USD 54-81), and MDL 700-1,000 (USD 63-90) at the appellate level. SALARY LAW at Annex 4.

Factor 27: Judicial Positions

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

Conclusion	Correlation: Negative	Trend: ↔
<p>The SCM may propose to Parliament an increase in the number of judges; however, the last three attempts to do so have yielded negative results. Judges complain of very heavy workloads, which they blame, to some extent, on vacancies going unfilled.</p>		

Analysis/Background:

Parliament approves the number of judges at district and appellate court levels and in specialized courts at the proposal of the SCM and, in the case of the Military Court, based on an additional advisory note of the MOJ. LOJ art. 21; MILITARY COURTS LAW art. 11. Parliament also approves the location, number, and territorial jurisdiction of district courts and appellate courts, at the proposal of the SCM. LOJ art. 21. The number of judges on the SCJ and the Constitutional Court is set by law. SCJ LAW art. 4(1); LCC art. 6(1); CONST. art. 136(1). Judges may not be permanently transferred to another court without their consent. CONST. art. 116(5); LSJ art. 20(1). The SCM, however, does have the authority to transfer temporarily a judge to another court. LSJ art. 20(2); SCM LAW art. 20(2).

As of December 31, 2008, Moldova had 447 sitting judges in its courts of general jurisdiction, specialized courts, and the Constitutional Court. The following table shows the number of judicial positions authorized, as well as the number of sitting judges.

NUMBER OF JUDGES AUTHORIZED AND APPOINTED

Court Level	Number of Judges		Vacancy Rate, %
	Authorized	Appointed	
District Courts ¹²	353	303	14.2
Courts of Appeal	77	67	13
SCJ	49	47	4.1
Economic Circuit Court	12	12	0
Economic Court of Appeal	10	9	10
Military Court	3	3	0
Constitutional Court	6	6	0
TOTAL	510	447	12.4

Source: LOJ Annex 1. LCC art. 35; SCM.

Most judges interviewed by the assessment team described themselves as overworked. District court judges may hear 10 to 15 cases a day, and point out that the situation only worsens if a vacancy goes unfilled. Appellate court judges described an assembly line-like atmosphere, where a panel of judges could have up to 60-75 hearings scheduled in one day. They did note that there is an automatic expectation that at least 10% of parties would fail to show. At the SCJ, caseloads are also heavy, with panels hearing 50-60 cases daily. Complaints like this from judges are one of the reasons why the SCM has petitioned Parliament three times over the last two years for an increase in the number of judges. One request was still pending when Parliament dissolved after the April 2009 elections, and the previous two requests had been rejected.

At the same time as judges' workloads appear to have worsened, statistics show a decline in the number of cases in all courts filed over the last three years.

CASELOADS OF MOLDOVAN COURTS, 2006-2008

Types of cases		2006	2007	2008
Criminal cases	Filed	13,517	12,824	9,912
	Decided	13,912	13,126	9,808
	Pending	2,075	1,773	1,877
Civil cases	Filed	57,857	56,622	53,827
	Decided	56,582	57,895	51,992
	Pending	8,521	7,248	9,083
Administrative cases	Filed	10,5239	103,852	96,766
	Decided	105,412	104,202	96,335
	Pending	1,403	1,053	1,484
Total	Filed	181,944	178,667	165,926
	Decided	179,810	180,621	163,539
	Pending	13,426	11,472	13,859

Source: DJA.

This phenomenon of fewer overall cases but more work leads the majority of respondents to conclude that an increase in the number of judges is not necessary. Instead, several alternative solutions have been proposed, and some even partially implemented. One is to create a more efficient court by redistributing duties and taking day-to-day administrative tasks outside of the hands of judges. The creation of the court administrator position, described in Factor 26 above, is a response to this. Another step being advocated is an assessment of workloads per court and, if necessary, a redistribution of the number of judges assigned to certain courts. Currently, Parliament sets, at the SCM's proposal, the number of judges overall and the number of judges

¹² The number of judges includes 44 investigating judges.



assigned to each court in the country. The SCM wants the discretion to move positions around if it determines that caseload warrants this, so that if a vacancy became available in a court that is not very busy, it could be allocated to one that is. At the moment, the SCM does not have this authority, but can only transfer a judge temporarily. Finally, interviewees called for simplifying procedures for default judgments and review of administrative offences. Procedural law was changed in 2008 to grant prosecutors the discretion to waive prosecution and fine the individual directly where a minor infraction was at issue. It was estimated that within 12 months, the new procedure spared the courts 8,000 hearings.

Factor 28: Case Filing and Tracking Systems

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

Conclusion	Correlation: Negative	Trend: ↔
<p>A new automated ICMS system is being rolled out to all district and appellate courts as part of the MCC project. A comprehensive training program for all judges and court personnel, who will be using the system, was conducted in 2009. It is too early to assess the results of the system, since only a handful of courts had already started using it.</p>		

Analysis/Background:

The MCC financed the development of the automated ICMS system for use in district and appellate courts. Among other functions, the ICMS provides for the creation of electronic case registration and files, electronic scheduling of hearings, electronic random case assignment, and generation of judicial statistics. See *Moldovan Courts Will Have a New Electronic System to Manage their Courts*, MCC Press Release (Feb. 25, 2009). The system is programmed to allow for the electronic transfer of case information to a higher court in the event of an appeal. The implementation plan also foresees ICMS being connected to court websites, to allow for the posting of final decisions directly from the court's system. The system had been installed in 10 courts as of June 2009, and a total of 43 courts are to receive it by the end of September 2009, the date when the MCC project closes. The software is provided free of charge, so that courts do not have to pay any licensing fees for the product. The only cost to be covered is maintenance, which is estimated at MDL 890,000 (USD 81,108) annually.

In some of the courts that had been piloting the software since January 2009, court clerks spoke of needing time to adjust and learn the system, although they now demonstrated familiarity with it. Staff who spoke exclusively Russian said that it took even longer to learn the software, since it is available in Moldovan only, but that repetition and a dictionary were making it easier. Everyone interviewed on the subject confirmed they had undergone extensive training on the program. Additionally, MCC-paid teams of consultants were sent to the courts at the start of implementation, in order to be on hand to answer any questions or assist with any problems as users began to work with ICMS. In those courts where the system had just been installed, the registrar's office was still manually registering cases as it adapted to using the new software during the transition from hardcopies to computer. A deadline had been set for full conversion to electronic case management.

ICMS is intended to replace the manual case registration and management system used by most courts. Under the manual system, when a new claim is filed, the registrar's office registers the document in either a ledger or on the computer (although some courts did both) and assigns it a number. The file is then sent to the president of the court for assignment to a judge. The case

file is usually kept with the judge for the duration of the trial, at which point it is returned to the registrar's office. If the case is appealed, the file is sent to the appellate court.

The MCC's ICMS program did not extend to the SCJ, which has its own electronic case management software, which can be searched by party name or case number. Information input into the system includes the case number, party names, identification of the claim, and the decision adopted.

All the interviewees with experience on ICMS agreed that it was a good development for the court, although some staff were intimidated by the newness of it. Concerns have been expressed about the ability of the courts and the MOJ to continue the rollout and implementation of the ICMS after MCC withdraws from Moldova in September 2009. At this point, it is too early to assess the impact the introduction of the system will have on the judiciary. Ultimately, ICMS is aimed at improving judicial efficiency through better record keeping, accuracy, and information sharing.

Factor 29: Computers and Office Equipment

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

Conclusion	Correlation: Neutral	Trend: ↑
<p>Courts have a sufficient number of computers and other technical equipment due to a donor-driven project that supplied 900 computers to the judiciary. Interviewees expressed concerns about maintenance and training as donor support for information technology ends in September 2009.</p>		

Analysis/Background:

The state has the obligation to provide premises and other financial and material means necessary for the good operation of the judiciary. LOJ art. 23(1). The law is silent as to what material means are considered necessary for a court. In general, courts have a phone system, Internet, and a working photocopier. Further, under the MCC program, 900 computers, 254 printers, and 52 servers and related equipment have been delivered to district, appellate, and specialized courts, the SCJ, the MOJ, and the NIJ during 2008-2009. In courts visited for this assessment, every judge and staff member who needed a computer had one. The funding of such a significant quantity of equipment was a necessary step for the MCC judicial reform project that envisions a judicial information system up and running in all courts by January 2010. The system entails the full implementation of ICMS, audio recording of hearings, and the publication of all court decisions on individual courts' websites. See Factors 18, 24, and 28 above for additional information on these components of the MCC program.

Technical support and maintenance of the equipment and software products is to be taken on by the MOJ as MCC closes its program in September 2009. Estimated costs for maintenance are MDL 890,000 (USD 81,108) annually. Interviewees expressed serious concerns about the judiciary's very limited institutional capacity to manage information technology. After two years, MCC finally pushed the MOJ to execute a contract with the Center for Specialized Telecommunications, a state-owned enterprise; however, disputes had already arisen at the time of the JRI interviews regarding payment and responsibilities. Judges echoed the fear that a lack of IT support could result in the entire investment collapsing, and noted that they were already running out of toner and ink cartridges and lack the funds to purchase replacements.



MCC's two-year program was initially intended to run through March 2009, but was extended until September 2009. As one respondent commented, it took a while for the courts' resistance to wane. The result is that courts are receiving a deluge of expensive equipment and software, and the introductions they need to use it, at the very end of the project, but are basically being told to sink or swim as the donor departs. Hopes are high that the system will be implemented successfully and fully, but this model of donor support was identified by many interviewees as one with a major drawback – no ability to monitor how the program will be implemented or whether it will continue.

Factor 30: Distribution and Indexing of Current Law

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

Conclusion	Correlation: Neutral	Trend: ↔
Judges have access to current domestic laws and jurisprudence in a timely manner. Every court has access to MOLDLEX, a searchable, electronic database of, <i>inter alia</i> , legislative materials, SCJ and Constitutional Court decisions and ECHR judgments.		

Analysis/Background:

The MO, Moldova's official gazette, published weekly, contains laws, presidential decrees, and governmental decisions and ordinances. See CONST. art. 76, 94(1), 102(4). The MO also publishes Constitutional Court decisions and advisory opinions (see LCC art. 26(4)), as well as the ECHR decisions. Courts must pay a subscription fee to receive the MO, and while the SCJ and the Constitutional Court judges receive individual copies, many lower court presidents, in a budget-conscious move, decided to receive only a few copies, which are then kept either in the court library or on file and accessible to the other judges.

Electronic publication of legal materials and judges' access to those materials has improved over the last two years. The Constitutional Court and the SCJ publish their decisions and advisory opinions on their respective websites, <http://www.constcourt.md> and <http://www.scj.md>. Lower court judges and advocates interviewed by the assessment team both noted how much easier their jobs have become due to the fact that they no longer have to wait for hardcopies of the SCJ decisions. Commentators did suggest, however, that the Court's website should provide for a more sophisticated electronic search engine of decisions that would allow for identification of the lower court judge or at least the court from which the appealed decision originated. At the moment, decisions are listed in chronological order and searchable only by party name. Most district and appellate courts have not yet begun to publish their decisions online, although a plan is in place to bring most courts online with individual websites in 2010. There are exceptions; notably, the Cahul Court of Appeal has been publishing its decisions online for the last two years. See *also* Factor 24 above for a more detailed discussion on publication of court decisions.

The Constitutional Court publishes its rulings and decisions annually in a book, which is provided to all courts. The SCJ also prepares a bulletin every three to six months, which includes all reversed decisions. The SCJ justices then conduct seminars with lower court judges throughout the regions, to discuss the decisions published in the bulletin.

With the establishment of Internet connections in the court system, all courts can also have access to MoldLex, a searchable electronic database of, *inter alia*, laws, codes, parliamentary decisions, presidential decrees, governmental orders, SCJ and Constitutional Court decisions,

and sources of international law, such as the ECHR decisions and international treaties. Individual judges in the Constitutional Court and SCJ have access to MoldLex on their computers, while in appellate courts and district courts, a specific individual is often designated to be given access to MoldLex for the court. For example, in Botanica District Court in Chisinau, the investigative judge is able to upload MoldLex, while in the Economic Court of Appeal, the counselors have access. Courts pay an installation fee of EUR 230 (about USD 299) to install a database with legislation only, plus a weekly update fee of EUR 20 (approximately USD 26). To get both legislation and case law, MoldLex charges EUR 300 (approximately USD 429) for installation and EUR 35 (USD 46) for weekly updates.

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://lex.justice.md>, and the Moldovan Bar's website, <http://www.avocatul.md/leg.php>.

The Constitutional Court and the SCJ both have libraries and staff with access to hardcopy and online legal sources in order to conduct substantive legal research. Appellate courts have counselors on staff who keep track and inform judges of changes to legislation relevant to their cases, and also update the hardcopy codebooks which the judges use in court. District courts, however, have neither libraries nor staff to assist in substantive legal research. District court judges are left to rely on resources they have accumulated over the years individually, on MoldLex in as much as they can access it, on the MOJ's database, and on updates regarding jurisprudence and the law provided at the weekly staff meetings.¹³ It is common practice for district and appellate courts to discuss amendments to relevant legislation and reversals of decisions by higher courts at the weekly staff meeting.

¹³ It should be noted that as of March 2008, only 57% of judges and 32% of court staff reported having access to the Internet at the courthouse. Most of the judges with Internet connections (84%) do use it to access various electronic legal databases described in this Factor. MCC MONITORING SURVEY at 22.

List of Acronyms

ABA/CEELI	American Bar Association/Central European and Eurasian Law Initiative
ABA ROLI	American Bar Association Rule of Law Initiative
AJRM	Association of Judges of the Republic of Moldova
CJC	Constitutional Jurisdictional Code
CLE	Continuing Legal Education
DJA	Department of Judicial Administration
ECHR	European Court of Human Rights
ED	Department for Execution of Judicial Decisions
ICMS	Integrated Case Management System
JIU	Judicial Inspection Unit
JRI	Judicial Reform Index
LCC	Law on the Constitutional Court
LOJ	Law on the Organization of the Judiciary
LPRI	Legal Profession Reform Index
LSJ	Law on the Status of Judge
MCC	Millennium Challenge Corporation
MDL	Moldovan Lei
MGTCP	Moldova Governance Threshold Country Program
MO	<i>Monitorul Oficial al Republicii Moldova</i> (official gazette)
MOF	Ministry of Finance
MOI	Ministry of Interior
MOJ	Ministry of Justice
MSU	Moldova State University
NIJ	National Institute of Justice
NORLAM	Norwegian Mission of Rule of Law Advisers to Moldova
OSCE	Organization for Security and Cooperation in Europe
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
SSR	Soviet Socialist Republic
USD	United States Dollar