



# **PROSECUTORIAL REFORM INDEX**

**FOR**

# **MOLDOVA**

***June 2008***

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## Introduction

The Prosecutorial Reform Index (PRI) is a tool developed by the American Bar Association's Rule of Law Initiative. Its purpose is to assess a cross-section of factors important to prosecutorial reform in transitioning states. In an era when legal and judicial reform efforts are receiving more attention than in the past, the PRI is an appropriate and important assessment mechanism. The PRI will enable the ABA, its funders, and the local governments themselves, to better target prosecutorial reform programs and monitor progress towards establishing accountable, effective, and independent prosecutorial offices.

The ABA embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in prosecutorial reform. There are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after working in the field on this issue for over 20 years in different regions of the world, the ABA has concluded that each of the 28 factors examined herein may have a significant impact on the prosecutorial 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 PRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the prosecutorial system in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's prosecutorial 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 PRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's prosecutorial system.

## Methodology

The ABA was able to borrow heavily from the Judicial Reform Index (JRI) and Legal Profession Reform Index (LPRI) in terms of structure and process. However, the limited research on legal reform that exists tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, “[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary.” Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI and LPRI, the ABA concluded that many factors related to the assessment of the prosecutorial system are difficult to quantify and that “[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism.” ABA/Central European and Eurasian Law Initiative, *Judicial Reform Index: Manual for JRI Assessors*. (2001).

The ABA sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental norms, such as those set out in the *United Nations Guidelines on the Role of Prosecutors*; the *International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*; *Council of Europe Recommendation R(2000)19 ‘On the Role of Public Prosecution in the Criminal Justice System*; and the *American Bar Association Standards for Criminal Justice: Prosecution Function*.

In creating the PRI, the ABA was able to build on its experience in creating the JRI, the LPRI, and the more recent CEDAW Assessment Tool and Human Trafficking Assessment Tool in a number



of ways.<sup>1</sup> For example, the PRI borrowed the JRI's factor "scoring" mechanism and thus, as with the LPRI, was able to avoid the difficult internal debate that occurred with the creation of the JRI. In short, the JRI, the LPRI, and now the PRI employ factor-specific qualitative evaluations. Each PRI 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 regulations and practices pertaining to its prosecutorial 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." Like the JRI and LPRI, the PRI foregoes any attempt to provide an overall scoring of a country's reform progress since attempts at aggregate scoring based on this approach could be counterproductive.<sup>2</sup>

The results of the 28 separate evaluations are collected in a standardized format in each PRI country assessment. As with the JRI and LPRI, the PRI utilizes an assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast performance of different countries in specific areas and—as PRIs are updated—within a given country over time. There are two main reasons for borrowing the JRI's and LPRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI and LPRI enabled the speedier development of the PRI. The second is uniformity. Creating uniform formats will enable the ABA eventually to cross-reference information generated by the PRI into the existing body of JRI and LPRI information. This will eventually give the ABA the ability to develop a much more complete picture of legal reform in target countries.

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

The PRI was designed to fulfill several functions. First, local government leaders and policymakers can utilize the findings to prioritize and focus reform efforts. Second, the ABA and other rule of law assistance providers will be able to use the PRI results to design more effective programs related to improving the quality of the prosecutorial system. Third, the PRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the prosecutorial system in countries where the PRI is implemented. Fourth, combined with the JRI and LPRI, the PRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fifth, PRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of prosecutors in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the prosecutorial function.

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<sup>1</sup> CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002. The Human Trafficking Assessment Tool is based on the UN Trafficking Protocol and was developed in 2004-2005.

<sup>2</sup> For more in-depth discussion on this matter, see Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 Am. J. Comp. L. 605, 611 (1996).

## Acknowledgements

The ABA would like to thank the team that developed the concept and design of the PRI, including the project coordinators Simon Conté, Director of the ABA Rule of Law Initiative's Research and Assessments Office, and Mary Greer, the ABA Rule of Law Initiative's Senior Criminal Law Advisor, as well as a splendid team of research assistants - Jasna Dobricik, Malika Levarlet, Lada Mirzalieva, Jaspreet Saini, and Gideon Wiginton. In addition, the ABA gratefully acknowledges the contributions made to this project by a number of valued colleagues, including Wendy Patten, Carson Clements, Olga Ruda, Andreea Vesa, and Monika Jaworska.

During the year-long development process, input and critical comments were solicited from a variety of experts on prosecutorial reform matters. In particular, the ABA would like to thank the members of its PRI Expert Working Group, who helped to revise the initial PRI structure and factors: Mark Dietrich, Barry Hancock, Christopher Lehman, Martin Schöteich, Irwin Schwartz, and Raya Boncheva, as well as those submitting written comments: Wassim Harb, Woo Jung Shim, Antonia Balkanska, and Feridan Yenisy

## Assessment Team

The Moldova PRI 2008 assessment team was led by Matthew Olmsted and Jim Calle with strong support from the ABA's staff in Chisinau, Moldova and Washington, D.C. including: Senior Criminal Law Advisor Mary Greer, Director of Research and Assessments Simon Conté, Regional Directors Robert Lochary and Karen Kendrick, Country Director Stephen Larrabee, Senior Staff Attorneys Olimpia Iovu, Catalina Cataraga and Mihaela Vidaicu. The conclusions and analysis are based on four weeks of interviews conducted in Moldova over a period of months commencing in December 2007 and ending in June, 2008, along with some additional relevant documents and information received through January 2009. Records of relevant authorities and a confidential list of individuals interviewed are on file with the ABA. 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 2008 Prosecution Reform Index (“PRI”) for Moldova is occurring at a time of significant ongoing change in the country’s legal framework. There have been substantial and continuous revisions of the Republic of Moldova’s constitution, criminal procedure code, criminal code and the myriad laws that govern the Prosecutor General’s Office [hereinafter “PGO”]. The pace of change that started with Moldova’s independence in 1991 has accelerated in recent years as the country has tried to position itself for eventual selection into a program that would lead to membership in the European Union. Moldova has simultaneously been subject to increasing political influence from the Russian Federation as it seeks to re-assert a “sphere of influence” over its former republics.

Moldova has moved far in revamping its legal framework so that it more closely resembles that of a modern, western democracy, but its legal culture has lagged far behind in adopting and integrating these changes. More precisely, Moldova has moved to a criminal justice system in which prosecutors – often unwillingly – must now share power with judges, lawyers, defendants, witnesses and victims. To be fair, Moldova has been trying to accomplish in less than two decades the types of changes that evolved over more than 400 years in places like England and Germany. With this in mind, it is perhaps not surprising that there were nineteen negative, six neutral and three positive correlations in the 28 factors measured in this PRI.

Moldova’s three positive correlations reflect an advance in educating prosecutors, prosecutors’ freedom to associate and the country’s work in combating transnational crime. The nineteen negative correlations reflect ongoing PGO struggles to free itself from improper outside influences that result in human rights violations, politically motivated prosecutions, poor public perception and poor relations with all other parties in the criminal justice system. The remaining correlations were all rated neutral, reflecting partially successful efforts in the indicated areas.

The PRI assessment team faced several hurdles to properly assessing each correlation. The most significant was the PGO’s election to not provide requested documents and not respond to several series of questions posed to the prosecutor general. Although the PGO initially expressed enthusiasm about the PRI, it ultimately elected to do no more than allow some of its prosecutors to be interviewed. This election deprived the assessment team of internal documents, assessments and insight into the PGO’s internal workings. The assessment team nevertheless had the opportunity to review dozens of documents and interview numerous volunteers – some with substantial PGO experience – who provided important factual support for some of the documented findings within each factor.

### Positive Aspects Identified in the 2008 Moldova PRI

- The creation of the National Institute of Justice represents a critical step forward in Moldova’s efforts to ensure that its prosecutors are sufficiently educated and trained. It ultimately should ensure that prosecutors have the educational background to become partners in guaranteeing the human rights of all parties.
- Prosecutors have created three associations including two that promote the interests of current prosecutors and one that promotes the interests of retired prosecutors. These associations indicate that prosecutors are free to establish associations.
- The PGO cooperates in the international investigation and prosecution of transnational crime being investigated by other countries by conducting investigations, holding

hearings to examine witnesses and experts, seeking and agreeing to extraditions, and prosecuting suspects identified by other countries.

- The PGO appears to have sufficient input into its budget and receives sufficient resources – considering Moldova's poverty – to adequately perform its functions.
- Although pay is often cited as a factor contributing to corruption, the salary and benefits given to prosecutors adequately compensate them given the country's limited resources.

## **Major Concerns Identified in the 2008 Moldova PRI**

- Prosecutors at all levels are subject to improper pressure. The PG is subject to the direct pressure and influence of the president, the Communist Party and members of Parliament who collectively are believed to use the PGO as a weapon against political opponents. Lower level prosecutors are subject to improper pressure from superiors – often in the form of verbal instructions - resulting in some politically motivated prosecutions.
- Although Moldova has significantly improved the legal framework needed to combat corruption, the public has no confidence that the PGO can effectively investigate crimes by public officials and any human rights violations emanating there from.
- Prosecutors fail to cite and thereby demonstrate a purposeful ignorance of a growing body of binding international legal precedent detailing their obligations to actively uphold a defendant's human rights. Although there has been some recent evidence of improvements, prosecutors fail to adequately investigate claims of torture, seek to detain people without legal justification and acquiesce in a system that arrests people first and develops evidence thereafter.
- Prosecutors exert improper influence over judges who respond to this pressure by disregarding a defendant's right to be presumed innocent and sometimes convicting otherwise innocent defendants.
- Prosecutors refuse to acknowledge and accept the role played by defense attorneys in safeguarding a defendant's fair trial rights.
- The PGO's dysfunctional relationships with the most important criminal investigative authorities contribute to the number and severity of human rights violations against defendants.
- There is a substantial belief that nepotism, favoritism and one's ability to follow orders play a substantial and unfair role in determining whether prosecutors are promoted, retained and rewarded. The PGO's use of cash and valuable gifts also gives rise to the appearance of impropriety.
- The PGO suffers from substantial turnover – up to 15% percent annually – that deprives the office of experienced prosecutors for difficult cases and mentors to assist the many new prosecutors joining the office.
- Prosecutors fail to efficiently close cases because of their inordinate focus on trials instead of plea bargaining and other effective means to reach resolutions in criminal cases.

## Moldova Background

### Geographic and Political Context

The Republic of Moldova [hereinafter “Moldova”] is located in Southeastern Europe and is a former republic of the Soviet Union. Moldova borders Ukraine to the north and east, Ukraine and Romania to the south, and Romania to the west. The country covers a land area of 33,843 square kilometers and has a multiethnic population of 4,324,450 people (2008 estimate), mostly consisting of ethnic Romanians/Moldovans, but with a significant representation of ethnic Ukrainians and Russians. Moldova is made up of 32 *raions*, 3 municipalities (Chisinau, Balti, and Bender), 1 autonomous territorial unit (Gagauzia) and 1 territorial unit (Stinga Nistrului).

Moldova obtained its independence from the former Soviet Union on August 27, 1991. The first President to be elected following independence was Mircea Snegur, a former Communist Party official. According to the Freedom House, “Moldova’s transition is stagnating. A relative champion of post-Soviet, democratic reforms in the 1990s, Moldova has lost ground since 2001, when the Party of Moldovan Communists [hereinafter “PCM”] came into power. Moldova remains a country with significant levels of political pluralism, but existing elements of democracy in the country are neither consolidated nor guaranteed to last. Moldova remains the poorest nation in Europe, and it has a secessionist conflict with the region of Transnistria<sup>3</sup> in the east, which is supported by Russia. Against such a background, Moldova has also failed to accelerate political and economic reforms.” FREEDOM HOUSE, NATIONS IN TRANSIT 2008.

### Legal Context

The Constitution of the Republic of Moldova [hereinafter “CRM”] declares that Moldova is a sovereign, unitary and independent state, governed by the rule of law. The CRM guarantees the separation of powers between legislative, executive and judicial branches. The CRM requires that the three branches of power “cooperate in the exercise of their prerogatives.” CRM Art. 6.

Legislative authority resides in a unicameral **Parliament** consisting of 101 deputies elected for four-year terms. In addition to passing laws, Parliament is responsible for providing legislative interpretations, ratifying or denouncing international treaties, approving the national budget, conducting investigations and hearings, calling referenda, and passing bills of amnesty. Parliament elects the President and, by a vote of confidence, approves the list of members of the Government and the Government’s proposed program. Parliament can also dismiss the Prime Minister and the Government by a simple majority vote of no confidence. The Prosecutor General is appointed by the Parliament following the proposal of its President. Parliament approves the annual budget for the Public Prosecutor’s Office. The Prosecutor General submits an annual report to the Parliament.

The **President of Moldova** is the head of state and shares executive power with the Government. Parliament elects the President for a four-year term by a secret vote. The President is limited to two consecutive terms. He/she designates a candidate for the office of Prime Minister, who must request a vote of confidence from Parliament for the proposed members of the Government and its program. All laws passed by Parliament are submitted to the President for promulgation. After the President promulgates a law, it must be published in the official government gazette, *Monitorul Oficial* (“M.O.”) to enter into force. In addition to promulgating or vetoing laws passed by Parliament, the President has authority to issue decrees, which are published in the M.O.

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<sup>3</sup> Transnistria has a separate legal system and does not abide by the Moldovan laws. Therefore, the region is not part of this assessment.

The Government consists of a Prime Minister (who leads the Government and coordinates the activity of its members), vice prime ministers, ministers, and other members specified by organic law. It is responsible for implementing the domestic and foreign policy of the state and for exercising oversight of public administration. The Government issues decisions, ordinances<sup>4</sup>, and dispositions to carry out the laws. The Prime Minister signs and the responsible minister counter-signs all decisions and ordinances prior to publication in M.O.

The **Judiciary** consists of district courts, courts of appeal, the Supreme Court of Justice [hereinafter “SCJ”], and specialized economic and military courts. Moldova also has a Constitutional Court, which is not formally part of the judiciary, that interprets the constitution and determines the constitutionality of parliamentary laws and decisions, presidential decrees, government decisions and orders and international treaties. The President of Moldova appoints judges, proposed by the Superior Council of Magistracy [hereinafter “SCM”], to district courts, courts of appeal, economic courts, and the Military Court. Parliament appoints the SCJ’s senior judges following their nomination by the SCM. The president appoints assistant judges to the SCJ. Parliament, the Government and the SCM each appoint two judges to the Constitutional Court.

The PGO, also known as the **Public Prosecutor’s Service**, is an independent body<sup>5</sup> even though the Law on the Public Prosecutor’s Service [hereinafter “LPPS”] indicates it is part of the judiciary. The Prosecutor General [hereinafter “PG”] is an *ex officio* member of the Supreme Council of Magistrates, the top governing body for judges, though prosecutors do not currently have the status of magistrates who are given certain privileges and immunities not enjoyed by prosecutors.

The President of Parliament selects the PG who is approved and appointed by Parliament. The PGO is an integrated and centralized system as specified in the LPPS. The general hierarchical structure of the prosecutorial system is as follows: Prosecutor General Office, Gagauzia Prosecution Office, district (*raionale*), municipal and sector prosecution offices, and specialized prosecution offices (military, transport, anticorruption, etc.). Within this structure, the hierarchy of prosecutors, depending on the position they hold within the prosecutorial system, is as follows: a) PG; b) PG first deputy and deputies; c) prosecutors – PGO subdivision heads and their deputies; d) territorial prosecutors and prosecutors (heads) of specialized prosecution offices and their deputies. The Prosecutor of Gagauzia and his deputies are hierarchically superior to prosecutors (heads) in municipality (*Comrat*) and cities of Gagauzia. The Chisinau municipal prosecutor and his deputies are hierarchically superior to prosecutors (heads) of the sector prosecution offices of the municipality. Heads of subdivisions, territorial prosecutors and prosecutors (heads) of the specialized prosecution offices and their deputies are hierarchically superior to the prosecutors subordinated to them. Upon the PG’s recommendation, Parliament approves and modifies the number of prosecution offices, their location, circumscription, structure and personnel. Superior prosecutors can rescind decisions by subordinate prosecutors. There are approximately 1,000 prosecutors working in offices throughout the country.

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<sup>4</sup> Parliament may authorize the Government to issue ordinances that enable Parliament’s agenda. After the limited time authorized by law, only Parliament can suspend, repeal, or amend the ordinances.

<sup>5</sup> LAW ON THE PUBLIC PROSECUTOR’S SERVICE [hereinafter “LPPS”] Art. 2(1).

## History of the Prosecution Service

### *Soviet Era (pre-1992)*

In 1812, following the Russian-Turkish War, the territory of the Moldavian principality between the Prut and Nistru rivers was incorporated into the Russian Empire as a separate province called Basarabia. Following the 1917 Bolshevik Revolution, Basarabia regained its independence and in 1918, the National Council of Basarabia voted to unite the country with Romania. Its judiciary followed the Romanian structure and laws until 1940, when the Soviet Union annexed Basarabia and eventually made the Moldavian Soviet Socialist Republic (MSSR) one of the fifteen republics of the USSR. During this period, the PGO was under the Union of the Supreme Soviet and it reported to the Communist Party. The Communist Party's system of government did not incorporate a separation of powers between the executive, judicial and legislative systems as is common today in most western nations. Instead all the political organs of state operated in tandem for the benefit of the Communist Party.

### **1992-2003**

After independence, the Republic of Moldova began reforming the PGO. The 1992 Law on the PGO adopted the doctrine of a separation of power between the branches and it ended the PGO's supervisory role of the judiciary. This sudden independence of the judiciary created a tension between prosecutors and judges that continues to this day. The Law also directed the PG to protect the rights of Moldovan citizens instead of protecting the rights of the state. Previously the PGO had been used to protect the interests of the Communist Party and its members as opposed to being an instrument of justice.

Reform at the PGO proceeded slowly because of significant resistance from judges, mass media, political parties and civil society - all of whom feared that the PG wanted to assume some of the powers of the Soviet Union's Committee for State Security (KGB). The reforms that did pass made the PGO more democratic and allowed some of the PG's decisions to be challenged in court. Although the PGO had a certain degree of autonomy within the hierarchical system during the Soviet era, its autonomy grew following Moldova's independence as it became less an instrument of power for the ruling political party and more an instrument of justice.

The first reformers heatedly debated whether the PGO should answer directly to Parliament or to the **Ministry of Justice** [hereinafter "MOJ"]. Two Parliamentary committees – one to reform the judiciary and law enforcement and one to reform the Constitution – advocated two different positions. The predominant view was that the PGO should be part of the MOJ because it performed an executive function. Opponents worried that the political nature of the MOJ would influence the PGO resulting in politically motivated prosecutions. They believed the PGO should be part of the judiciary because it shared the judiciary's main goal of pursuing justice. The issue remained deadlocked for years, forcing the PGO to continue operating pursuant to the country's 1978 Constitution. In 1994, the PGO was designated as part of the judiciary though advocates for the PGO's attachment to the MOJ continue their fight to this day.

In 1995, Moldova adopted an adversarial legal system that eliminated the judiciary's independent inquiry into and prosecution of criminal matters and relegated all prosecutions to the PGO.<sup>6</sup> Before this reform, the PGO had responsibility for about 47 percent of all criminal cases. The judiciary handled the rest without the assistance of the PGO. The PGO's increased caseload resulted in the PG telling Parliament in 1995 that his office could no longer perform its general supervision over the government's ministries while simultaneously prosecuting a caseload that had increased by more than 100 percent. The PGO's supervisory authority over the ministries, a

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<sup>6</sup> LPPS Art. 9.

power that has been criticized by Council of Europe [hereinafter “COE”] experts, was a holdover responsibility dating to Soviet times. Between 1995 and 1998, the PGO stopped exercising its supervisory authority. A constitutional amendment in 2000 appeared to legally terminate the PGO’s supervisory authority, though subsequent laws governing the PGO have continued to include supervisory authority over the ministries within the PGO’s competencies. A pending draft Law on the Public Prosecutor’s Service<sup>7</sup> [hereinafter “draft LPPS”] would – once and for all – eliminate this competency from the PGO thereby bringing the law in line with current PGO practice.<sup>8</sup>

## **2003-2008**

In 2003, the PGO was given the authority to conduct criminal investigations.<sup>9</sup> This change meant that the PGO now had three roles: (1) investigating and prosecuting certain crimes, (2) leading criminal investigations conducted by criminal investigation authorities, and (3) supervising compliance with the law. In previous decades, the PGO, Ministry of Internal Affairs [hereinafter “MIA”], and Secret Service all conducted criminal investigations, but the 2003 reform dropped the concept of investigating institutions in favor of investigating officers, also known as “criminal investigators.” The criminal investigators work within the MIA, Center for Combating Economic Crimes and Corruption [hereinafter “CCECC”] and the Customs Service. The reforms also gave the PGO general supervisory authority over all criminal investigations that were to be prosecuted by its office and the general responsibility to ensure that criminal investigations were complete before a prosecution was initiated. The practical effect of these changes meant that criminal investigators started giving the PGO less than complete investigation files. The PGO then had to finish the investigation and complete the investigation file. The 2003 reforms also created the new position of investigative judge. These positions are often given to former prosecutors. Investigative judges have primary responsibility for authorizing the detention and release of suspects, issuing search and seizure warrants and determining whether a suspect should be placed in a medical institution. Although Investigative Judges were introduced to foster greater protection of the rights of suspects and accused, this has not been the effect. For example, several respondents commented that the number of pretrial detentions have increased since this reform. Instead, prosecutors and defence attorneys view investigative judges as simply another bureaucratic layer in the criminal justice system. As in 1995, the PGO found the 2003 reforms increased its workload at a time when it was already struggling with the limited resources allocated to it.

## ***The Prosecution Service Today and Tomorrow***

Today, the PGO continues to play a large role in the administration of justice. The current legal authority for the PGO’s status, role, scope of activity and structure comes from CRM articles 124 and 125, the LPPS, relevant parts of the Criminal Procedure Code [hereinafter “CPC”], the Law on the Reward of the Prosecutors and Investigators from the Public Prosecutor’s Service and their Disciplinary Responsibility and other laws. The PGO’s current competencies include:

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<sup>7</sup> See draft LAW ON THE PROSECUTOR’S SERVICE, approved by the Government and sent to Parliament for final approval as of January 2009.

<sup>8</sup> A Council of Europe expert who reviewed the draft LPPS said the draft legislation is intended “to establish the prosecution service of Moldova as a body whose primary purpose would be that of criminal prosecution and which would no longer operate the elements of general supervision which the prosecution service in Moldova has inherited from the old Soviet prokuratura model.” *Opinion on the New Draft Legislation on the Public Prosecutor’s Service of Moldova*, James Hamilton, JOINT PROGRAMME BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN COMMISSION ON INCREASED INDEPENDENCE, TRANSPARENCY AND EFFICIENCY OF THE JUSTICE SYSTEM OF THE REPUBLIC OF MOLDOVA at 2.

<sup>9</sup> LPPS Art. 10.

- Conducting criminal investigations and prosecutions
- Representing the general interests of society such as in enforcing the law, preserving order, and protecting citizens' rights and freedoms
- Representing the State in court proceedings including but not limited to initiating civil court proceedings to seek and collect damages inflicted on the State and, where required by law, participating in civil and administrative proceedings
- Overseeing preliminary investigations, detention facilities and penitentiary institutions
- Overseeing the execution of military laws
- Ensuring international cooperation in the field of justice when appropriate
- Examining and issuing resolutions on petitions and complaints from citizens
- Exercising other competencies provided by the law
- Representing and initiating proceedings on behalf of people with special needs such as juveniles, the poor, disabled persons and the elderly.<sup>10</sup>

The PGO is also responsible for initiating regression actions pursuant to the Law on the Governmental Agent. Regression actions involve the initiation of civil court proceedings against individuals whose intentional or grossly negligent conduct resulted in the State having to pay amounts either determined by a court, or by agreement for damages caused to an individual or entity. This responsibility includes pursuing regression actions against judges, prosecutors and law enforcement officers who are the cause of adverse decisions by the European Court of Human Rights [hereinafter "ECtHR"]. As of October 1, 2008, the ECtHR had issued 126 judgments against Moldova, and all but one found a violation of the European Convention for the protection of Human Rights and Fundamental Freedoms [hereinafter "ECHR"]. Nevertheless, the PGO has initiated few regression actions in the courts, perhaps in part, because members of the judiciary have voiced hostility to a legal procedure they fear will be used against them for political purposes. In the two reported instances in which regression actions were initiated<sup>11</sup>, the Superior Council of Magistracy blocked one regression lawsuit against a judge by reasoning that there was no evidence the judge intentionally delivered an illegal decision. In the other case, the PGO successfully recovered €500 from a former transportation ministry official who had failed to enforce a final court judgment thus resulting in an ECtHR judgment against Moldova.

The PGO's role, status and power remain a constant topic of discussion within Parliament, the MOJ and other sources of power within the government. While the PGO has seen the scope of its responsibilities increase in recent years, some Parliamentarians want to decrease the PGO's power and functions.

As this report was being prepared for publication, there were several pending draft laws that, if passed, would impact the PGO. A pending draft LPPS combines into one law several existing laws governing the organization, status and budget of the PGO and its prosecutors. The most notable changes include:

- The creation of a Superior Council of Prosecutors [hereinafter "Prosecutors' Council"] that will oversee and make recommendations regarding the appointment, promotion, transfer, stimulation, suspension or dismissal of prosecutors. The Council's creation would

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<sup>10</sup> LPPS Art. 9.

<sup>11</sup> *Economicescoie Obozrenie* newspaper, November 7, 2008.

represent a move toward greater democratization of the PGO since its powers had previously been concentrated with the PG alone.

- The creation of a Disciplinary Board that would be subordinate to the Superior Council of Prosecutors. The Board would oversee all disciplinary actions including the imposition of sanctions against prosecutors. The draft law specifically precludes the PG from participating on the Board, a move that would give the Board greater autonomy in its actions and reduce the perception that prosecution discipline is largely based on political considerations. (See Factor 19 below.)
- A broader authority for prosecutors to supervise operative investigations conducted by the MIA and the Security and Information Service. This change may address the adversarial relationships that currently exist between the PGO, the MIA and the Security and Information Service in regard to their scope of responsibility during investigations. (See Factor 21 below)
- The elimination of the PGO's previous supervisory authority over government ministries and the judiciary.

There is also a pending draft law that would decriminalize many of the offenses detailed in the existing Criminal Code [hereinafter "CC"] and thereby reduce the PGO's responsibility to investigate and prosecute such lower level offenses. The intent of the amendments is to focus the PGO's efforts and resources on more serious offenses. The pending draft laws noted in this section have not been evaluated and are not part of the assessment that follows.

## Conditions of Service

### ***Qualifications***

An applicant for prosecutor must be a Republic of Moldova citizen permanently domiciled in the country who meets the following minimum requirements<sup>12</sup>:

- Licensed in law<sup>13</sup>
- Full legal capacity
- Necessary length of service for the respective position
- Good reputation
- No criminal record
- Knows the State language
- Capable, from a medical point of view, of exercising the prosecutor's competencies
- Passed the qualification exam

Current prosecutor applicants are now also required to enter and successfully complete a course of study at the NIJ, a comprehensive training program for prosecutors and judges that began functioning in September 2007. (The NIJ program is more fully discussed in Factor 1 below.) After the NIJ graduates its first class of prosecutors, LPPS Art. 19 will be amended to require NIJ graduation.

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<sup>12</sup> LPPS Art. 19

<sup>13</sup> This provision refers to possessing a law degree from an accredited institute of higher learning and is not a reference to being a member of the Moldovan Bar Association, which issues licenses to law graduates wishing to be criminal defense attorneys.

The law also provides for certain classes of people to be appointed as prosecutors without the necessity of graduating from the NIJ if they can pass the qualification exam and fall within one of the following categories:

- People who have worked for at least five years as a Parliament member, Chamber of Accounts member, law professor at an accredited institution, prosecutor, criminal investigator, officer of criminal investigation, lawyer, ombudsman, notary, legal advisor, judge assistant, bailiff, consultant or court-clerk.
- People who have worked for at least five years in a legal position on the Constitutional Court, Superior Council of Magistrates or public authorities.

The number of people from these categories who may be appointed to prosecutor is limited to 20 percent of the available positions during a 3-year period. These exceptions to NIJ graduation will remain the same even after the NIJ graduates its first students and it is not known whether these categories of people are in fact sufficiently skilled to begin working as prosecutors. The positions of territorial prosecutor, prosecutor of a specialized prosecutor's office, and head of a structural subdivision require at least five years of prior prosecution experience.

### ***Appointment and Tenure***

Parliament appoints the PG to a five-year term after nomination by the Speaker of Parliament. The PG can be reappointed once and may hold the office for a total of 10 years. The PG, with Parliament's approval, appoints a first deputy PG and additional deputies to assist him in discharging the duties of his office. The PG appoints the Prosecutor General of Gagauzia following his nomination by the People's Assembly of Gagauzia. The PG has direct control over subordinate prosecutors. His duties include issuing orders and resolutions; revoking, suspending or canceling illegal resolutions issued by subordinate prosecutors; creating the structure of and allocating operating funds for prosecution bodies; and conferring special and military ranks on prosecutors<sup>14</sup>.

Parliament can dismiss the PG at the suggestion of the Speaker of Parliament based on the PG's incompatibility with the office as established by law, the PG's inability to fulfill his duties because of sickness for at least four consecutive months, and the PG's conviction of a crime.

The PG appoints new prosecutors to a five-year term from a list of candidates<sup>15</sup>. Prosecutors can be dismissed based on resignation, end of term, repetitive disciplinary offences, failure to meet qualifications, criminal conviction, loss of citizenship, refusal to take an oath, sickness, refusal to accept a transfer or death. A dismissal order can be appealed.

### ***Training***

The specific educational requirements to become a prosecutor are detailed in Factor 1 below. Moldovan prosecutors are also mandated to continue their legal education following graduation from the NIJ by taking at least 40 hours annually of continuing legal education courses at the NIJ. See Factor 2 below. The NIJ is currently putting this system in place. Prosecutors participate in periodic trainings most often organized by large international donors such as the European

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<sup>14</sup> The highest special and military ranks are conferred by Moldova's President.

<sup>15</sup> The current Law of the Public Prosecutor's Service does not indicate how the "list of candidates" referenced in Art. 22(1) of the law is developed. Presumably a list of candidates who have successfully completed the National Institute of Justice will be forwarded to the PG once the first set of graduates complete the institute's course of study in April 2009.



Commission, the U.S. Department of Justice and the Organization for Security and Cooperation in Europe.

## Moldova PRI 2008 Analysis

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

### Table of Factor Correlations

<b>I. Qualifications, Selection, and Training</b>		
Factor 1	Legal Education	Positive
Factor 2	Continuing Legal Education	Negative
Factor 3	Selection: Recruitment, Promotion, and Transfer	Negative
Factor 4	Selection Without Discrimination	Negative
<b>II. Professional Freedoms and Guarantees</b>		
Factor 5	Freedom of Expression	Negative
Factor 6	Freedom of Professional Association	Positive
Factor 7	Freedom from Improper Influence	Negative
Factor 8	Protection from Harassment and Intimidation	Neutral
Factor 9	Professional Immunity	Neutral
<b>III. Prosecutorial Functions</b>		
Factor 10	Discretionary Functions	Negative
Factor 11	Rights of the Accused	Negative
Factor 12	Victim Rights and Protection	Negative
Factor 13	Witness Rights and Protection	Negative
Factor 14	Public Integrity	Negative
<b>IV. Accountability and Transparency</b>		
Factor 15	Public Accountability	Negative
Factor 16	Internal Accountability	Negative
Factor 17	Conflicts of Interest	Neutral
Factor 18	Codes of Ethics	Negative
Factor 19	Disciplinary Proceedings	Negative
<b>V. Interaction with Criminal Justice Actors</b>		
Factor 20	Interaction with Judges	Negative
Factor 21	Interaction with Police and Other Investigatory Agencies	Negative
Factor 22	Interaction with Representatives of the Accused	Negative
Factor 23	Interaction with the Public/Media	Negative
Factor 24	International Cooperation	Positive
<b>VI. Finances and Resources</b>		
Factor 25	Budgetary Input	Neutral
Factor 26	Resources and Infrastructure	Neutral
Factor 27	Efficiency	Negative
Factor 28	Compensation and Benefits	Neutral

## I. Qualifications, Selection, and Training

### Factor 1: Legal Education

***Prosecutors have the appropriate legal education and training necessary to discharge the functions of their office, and should be made aware of the ideals and ethical duties of their office, of the protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by international law..***

Conclusion	Correlation: Positive
<p>The NIJ represents a substantial undertaking by Moldova to ensure its prosecutors are adequately educated and trained. The NIJ curriculum supplements and expands on the general theoretical legal education provided by the country's law schools. Importantly, the NIJ educates candidates on the basic internationally recognized rights of the criminally accused. There is concern that the NIJ, which is in its initial stages, has too many responsibilities and will be unable to meet all of its obligations.</p>	

#### Analysis/Background:

LPPS Articles 19 and 21 mandate that prosecutors be domiciled Moldovan citizens, possess a law degree and be a NIJ graduate. Prosecutors have always had to possess a law degree, but the requirement for NIJ graduation is new and represents one in a series of changes taking place in the mandated educational path for candidates wishing to become a prosecutor.

Moldova's Ministry of Education and Youth has accredited 14 law schools: four main law schools and several smaller ones. They are located in the main cities of Chisinau, Balti, Comrat and Cahul, with the majority of schools being located in Chisinau. The total number of law graduates from the schools could not be ascertained but, for instance, the Moldova State University Law School graduated 1,213 students in 2008. The largest and oldest law schools are at Moldovan State University (1959), the Police Academy (1990-91), and the International Free University from Moldova (1992). The law schools typically offer undergraduate programs with similar course offerings that last four or five years. The main courses often include the Theory and History of Law, Constitutional Law, Administrative Law, Civil Law, Civil Procedure Law, Criminal Law, Criminal Procedure Law, Public International Law, Private International Law, Human Rights Protections and others. Students may also complete short internships with various private or public organizations such as the PGO, Courts of Law or nongovernmental organizations. Law schools recently introduced courses on European Union law and European criminal law. There are also unaccredited law schools whose graduates are ineligible to become prosecutors because they will not be recognized as having a law degree. More recently, the government ordered a reduction in the number of students who could be admitted to the law schools.

Law school professors generally have academic backgrounds with little to no practical law experience. Law schools prefer professors with PhDs, but have had to rely on instructors without the degree, in part because the number of law schools rapidly increased following Moldova's independence in 1991. Law professors generally focus on the theoretical understanding of law. A common complaint by current and former law students is that professors lecture students and do not employ interactive teaching methods nor solicit questions. Textbooks are expensive and often out of date because of the cost to update them. Law students are rarely taught practical skills such as how to interview witnesses, prepare court filings, or make oral arguments to a judge. Nevertheless some law schools are beginning to incorporate interactive teaching methods and practical, skill-building courses taught by practitioners in legal clinics. Law school admission,

examination grades and ultimately graduation are occasionally subject to corrupt practices. The majority of law schools have part-time students.

Law schools do not provide instruction on the PGO or its work. Prosecutors sometimes teach classes and occasionally sit on licensing commissions, but students are not taught how to investigate and prosecute a case. Although students can elect to complete a two-week PGO internship, they often found that there were no openings or that prosecutors were too busy to instruct them. As a result, many students dropped out of the internship or were told by prosecutors who already had three and four interns not to return. Although many law schools around the world do not offer prosecution-specific classes, their absence in Moldova adds to the educational deficit suffered by students interested in becoming prosecutors.

The education available to Moldovan law students results in applicants who are insufficiently skilled to be prosecutors, a situation that is shared by many if not most countries around the world. In the 1990s, the PGO sought to remedy this situation by lobbying for an independent training facility for prosecutors. The 1992 Law on the Prosecutor's Service mandated in-house training, but no training resulted because of an absence of funds. In 1996, the government created the Judicial Training Center [hereinafter "CENTER"], which was intended to provide prosecutors with one month of training but, in reality, it did not meet even this modest goal. Later the Center began offering daylong or 2-day seminars for small groups taught by unpaid volunteers on various legal topics. In 2004, the PGO created its own training program that focused more on practical skills and provided three months of intense classroom study followed by a nine-month PGO internship for 25-30 students. The training concluded with another month of classroom instruction and a three-hour final exam that very few candidates failed to pass. Prosecutors and trainers, who were experienced but not compensated for working with interns, taught the classes and supervised the interns. Successful applicants were placed throughout the PGO based on their exam scores with those scoring higher being placed in Chisinau or the other urban areas. Although the PGO training program was a significant improvement over earlier programs, the approximately 200 prosecution candidates who completed the training were still found to lack the basic and essential skills needed to immediately and effectively function as prosecutors.

In recent years, Parliament initiated reforms to address the university and post-graduate education of law students and prosecution candidates.<sup>16</sup> Numerous schools closed and the best law educators concentrated at the remaining institutions. Law school curriculums have also been changing with some institutions introducing courses on international law, the ECtHR, ethics and witness interviewing techniques.

In July 2006, the Law on the National Institute of Justice [hereinafter "NIJ LAW"] created the NIJ that replaced both the Judicial Training Center and the PGO's independent training program. Moldova provides the operating funds for the NIJ. The COE and other international organizations donated furniture and computers. Art. 4 of the NIJ Law details the NIJ's competencies which included developing a national strategy for the initial and continuous training of judges, prosecutors, court clerks and bailiffs and then providing this training.

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<sup>16</sup> In 1997, Parliament adopted the Law on the Evaluation and Accreditation of Educational Establishments in the Republic of Moldova that set accreditation standards. In 1999, Parliament adopted the Law on Licensing Specific Types of Activities. Although later abrogated, this law imposed some strict licensing requirements that many of private universities were unable to meet to become accredited by the Ministry of Education. In 2001, Parliament adopted a new Law on Licensing Specific Types of Activities that transferred the licensing function from the Ministry of Education to the Licensing Chamber of the Republic of Moldova. In June 2008 this law was renamed to the Law on Regulating the Entrepreneurial Activity by Licensing.



Arts. 5 and 9 of the NIJ Law created a 13-member Council [hereinafter "NIJ COUNCIL"] that selects an Executive Director after an open competition for the position. Together the NIJ Council and Executive Director manage the NIJ. Art. 6 of the NIJ Law states that the NIJ Council is comprised of 7 judges selected by the Superior Council of Magistracy, 4 prosecutors selected by the General Prosecutor, 1 representative selected by the Ministry of Justice, and 1 law professor selected by the Senate of the State University of Moldova. Commentators have noted the Council's imbalance towards judges that ensures a judge will always be the Executive Director. Some respondents claim that the Council's judicial members have blocked PG ideas for NIJ change. They note that the Council's composition is not representative of the current class that includes 20 prosecution and 10 judicial candidates, a ratio likely to persist because of an anticipated judicial vacancy rate of only one to three positions annually.

NIJ admission is accomplished by an open competition for anyone who otherwise meets the criteria for becoming a judge or prosecutor. Art. 13 of the NIJ Law details the admission process and mandates that it be open and transparent. The NIJ establishes the number of open candidate positions and announces the date of the competition examination at least 60 days in advance. After its announcement in 2007 for the first NIJ class, the NIJ received six applicants for each prosecution position and four applicants for each judicial position. The written examination consists of 100 multiple choice questions on the civil and criminal codes, civil and criminal procedure codes, constitutional issues and the LPPS. Students who pass the written examination are given an oral examination that includes factual scenarios requiring the application of relevant laws. The students present their oral answers to a panel of experts. Examination grades are posted at the NIJ and on its website. Respondents reported a very high degree of transparency with candidates being given the examination answers after the test so they could assess their own score and compare it against the scores posted with their names at the NIJ.

Successful candidates begin an 18-month, 4-semester course of study taught by prosecutors, judges and university professors. Candidates receive a 2,100-lei (€ 142) monthly stipend, which is equivalent to half the 4,200-lei salary of a new magistrate.<sup>17</sup> The NIJ publishes its curriculum on its website so candidates and the public understand how prosecutors are trained.

The NIJ instructors were recruited from throughout the Moldovan justice system. They include Constitutional Court and Supreme Court judges, experienced prosecutors with backgrounds in anticorruption and human rights, and law professors from several universities. The NIJ's permanent teaching staff is paid the same as Court of Appeals judges.<sup>18</sup> Visiting teaching staff are paid teaching stipends that supplement their salaries from other professional positions. Respondents reported that their NIJ instructors were more friendly and approachable than their university professors. Respondents also said instructors were willing to give students individual guidance and periodic assessments of their progress.

In the first year, prosecution and judicial candidates are combined and they study criminal law and procedure, civil law and procedure, ECHR and international treaties, rhetoric, foreign languages and computer skills. These courses are intended to supplement but not duplicate similar university-level courses. For instance, NIJ students focus more on the rights of defendants, victims and witnesses while studying the criminal procedure code.

Prosecutorial and judicial candidates study separately in the second semester when courses focus more on practice than theory. Prosecution candidates learn investigative methods and how to investigate specific crimes such as corruption, trafficking in persons and juvenile cases. They also study human rights, a topic referenced throughout the remainder of the candidate's course of

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<sup>17</sup> NIJ LAW, Art. 14.

<sup>18</sup> NIJ LAW., Art. 11(1).

study. Students work with actual criminal cases and study prosecution files in which prosecutors committed errors so they can learn not to repeat these mistakes. In the third semester, the candidates are assigned a tutor who assists them in completing a four-month internship at the PGO where they work on real cases. The final semester consists of a few theory and practical seminars including ethics and preparations for the final exam. Respondents report a rigorous but fair examination process with very little apparent favoritism. Upon graduation, prosecution candidates receive a certificate and are required to apply for a position in the prosecution office.

The NIJ's first class of judicial and prosecutorial candidates commenced in October 2007 and is scheduled to graduate in April 2009. Until then, the PG is continuing to fill vacancies with candidates who have not graduated from the NIJ. Even after the first class of prosecutors graduate from the NIJ program, the LPPS allows the PGO to fill 20 percent of available prosecutorial positions during a 3-year period with certain classes of people (e.g., law professors, criminal investigators and judges with five years of experience) who have not graduated from the NIJ.

Moldovan university graduates, as is the norm in Europe, are not fully equipped to work as prosecutors upon graduating. The specific skills needed to be an effective prosecutor are continuing to evolve as the PGO, in practice, moves more toward an adversarial system that will require substantial knowledge in the elements of offenses, proper procedures, human rights standards and trial skills. Although there are frequent reports of prosecutorial deficits in the courtroom – see Factors 2, and 11 through 14 - the NIJ appears to represent a positive evolution in the government's efforts to equip new prosecutors with the skills and knowledge they need to rapidly integrate and contribute to a modern prosecution system. It will not be possible to measure the NIJ's success in preparing candidates for the rigors of working in the prosecution service until several classes have completed their education and joined the PGO.

## **Factor 2: Continuing Legal Education**

***In order to maintain and improve the highest standards of professionalism and legal expertise, prosecutors undergo continuing legal education (CLE) training. States sponsor sufficient and appropriate CLE training, which is professionally prepared on specific issues and is relevant to the prosecutors' responsibilities, taking into account new developments in the law and society.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
The NIJ does not currently have the capacity to provide CLE to all prosecutors who, as a result, have not yet been able to meet the annual requirement for 40 CLE hours. The NIJ's current inability to provide CLE instruction in the regions makes it difficult for prosecutors in the regions to meet the CLE requirement. The NIJ relies too heavily on international donors to fund CLEs and these donors force the presentation of fairly specialized courses that do not focus on the many new skills needed by prosecutors.	

### Analysis/Background:

The PGO previously tried to meet its prosecutors' CLE obligation by developing its own CLE program. The PGO divided Moldova into eight zones and organized trainings in each zone. Prosecutors in Chisinau attended CLE programs at the PGO's office while prosecutors elsewhere attended CLE in their district offices. Travel costs were reimbursed. Experienced prosecutors taught the mostly skills-based programs. A concurrent attempt to develop programs with



university professors was less successful. Trainings were offered as frequently as every week. Prosecutors would select from a list of topics and the trainings would be developed based on requests. One respondent said the trainings treated all prosecutors the same regardless of experience. Another respondent said there was no firm definition of CLE and, as a result, people claimed CLE credit for conferences and roundtables regardless of their content or educational value. One respondent said these trainings were "adequate" and "not entirely useless." Many prosecutors did not complete CLE and some were disciplined.

NIJ Law Art. 19 and draft LPPS Art. 44 require prosecutors to complete at least 40 hours of CLE annually. LPPS Art. 32 was amended in 2007 and now mandates that the NIJ organize or sanction all CLE courses. Prosecution trainings and meetings in district offices that are not sanctioned by the NIJ no longer count towards the 40-hour requirement. Art. 19 of the NIJ Law mandates that the NIJ submit an annual CLE program for judges and prosecutors to the NIJ Council for approval. In addition, Art. 20 of the NIJ Law provides that the NIJ will provide CLE training for court clerks and bailiffs as approved by the Superior Council for Magistracy and Ministry of Justice. Some respondents believe the NIJ's obligations to train court clerks and bailiffs in addition to judges and prosecutors will overextend the NIJ's capacity.

The NIJ started enforcing the 40-hour CLE requirement in January 2008. The NIJ maintains a card for all judges and prosecutors and tracks the completion of CLE. More than 1,600 people have attended NIJ CLE courses. The NIJ has presented CLE courses on corruption, trafficking in persons, refugees, trial skills and other subjects. The NIJ intends to present CLE courses in five cities around the country and at the PGO and the SCM. However, as of May 2008, it had only presented CLE courses at its Chisinau campus. The NIJ, which is trying to establish a hostel or hotel at the NIJ, paid for the costs of travel and lodging for prosecutors outside of Chisinau.

International organizations or local NGOs propose, fund and present the vast majority of CLE courses. The COE sponsored a seminar on the ECtHR and its decisions following a series of adverse ECtHR decisions against Moldova. The NIJ and COE intended to repeat the course 16 times in 2008 to ensure widespread accessibility for judges and prosecutors. The COE and MOLICO (a joint anti-corruption project of the COE, the European Commission and the Swedish International Development Cooperation Agency) are sponsoring a 5-day training for the PGO's anticorruption office and others to learn how to identify and investigate corruption cases. Respondents indicated that the NIJ relies too heavily on requests for specific CLE courses and on third-party funding and organization for CLE. Several respondents suggested that the NIJ focus on CLE courses that provide a basic understanding of trial procedure or trial skills. For instance, the Organization for Security and Cooperation in Europe [hereinafter "OSCE"] has been conducting a trial monitoring program in Moldova. In its November 2006 six-month report [hereinafter "OSCE 2007 TRIAL MONITORING PROGRAMME 6-MONTH REPORT"], OSCE trial monitors noted that some prosecutors did not appear to understand the proper order for examining witnesses during a trial and, in some cases, did not appear to understand procedural terms.<sup>19</sup> Respondents also questioned whether the NIJ, in the absence of international assistance, has the specialized capacity to provide relevant courses for specialized prosecutors such as those who work at the Anticorruption Prosecutor's Office [hereinafter "ACPO"], and the Center for Combating Trafficking in Persons [hereinafter "CCTP"].

The NIJ's few independently organized CLE courses have been organized and staffed by the PGO. The NIJ plans on developing a list of up to 60 CLE topics that will be circulated to judges and prosecutors. Once selections are made, the NIJ will develop the most requested CLE

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<sup>19</sup> *Preliminary Findings on the Experience of Going to Court in Moldova*, OSCE 2007 TRIAL MONITORING PROGRAMME FOR THE REPUBLIC OF MOLDOVA, 6-MONTH ANALYTICAL REPORT, 6 November 2006, at 34.

courses. In developing CLE courses, the NIJ considers prosecution requests, the opinions of the Council of Europe and civil society, and the practice in other countries.

Moldovan prosecutors have faced inconsistent CLE standards and generally have not been held to a national standard that ensured the completion of relevant CLE courses. Prosecutors have demonstrated substantial deficits in courtroom procedures, the protection of human rights (see Factor 11) and trial skills that have only recently been addressed with some new CLE offerings. The NIJ represents an ambitious effort to provide substantial and relevant CLE courses to prosecutors, but its initial efforts have been inconsistent and have failed to provide courses outside of Chisinau. The NIJ must create a realistic and systematic strategy for providing basic and relevant CLE to all prosecutors instead reacting solely to specific requests for CLE.

### **Factor 3: Selection: Recruitment, Promotion, and Transfer of Prosecutors**

*Prosecutors are recruited, promoted, and transferred through a fair and impartial procedure based on objective and transparent criteria, such as their professional qualification, abilities, performance, experience, and integrity. While political elements may be involved, the overall system should foster the selection of qualified individuals with integrity and high professional qualifications.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
Although the NIJ has introduced substantial transparency in the selection of prosecution candidates, there is a widespread belief that nepotism, favoritism and one's ability to follow orders from superiors, instead of objective, written criteria, play an important if not decisive role in a prosecutor's retention, promotion and reward. The PGO does not appear to have written criteria for promotions and transfers.	

#### Analysis/Background:

Before the NIJ was created, the PG set up a Commission that tested and recommended candidates for prosecutor. The PG did not publish vacancies or the dates of examination contests. The Commission included prosecutors and university professors and it sent a list of recommended candidates to the PG who made the final selection. The process was opaque and citizens largely believed that favoritism, nepotism and money determined who was selected and promoted as a prosecutor. The NIJ's creation has addressed many of these concerns.

LPPS Art. 19 and 21(1) provide that a prosecution candidate must satisfy certain minimum attributes, described in the Moldovan Background section of this report. However, LPPS Art. 21(2) provides an alternative path for entry into the PGO. With at least five years of experience and a passing mark on the capacity examination, the following individuals may be considered for a prosecution position: parliament member, Chamber of Accounts member, titular legal professor at an accredited institute of higher education, prosecutor, criminal investigator, criminal investigation officer, lawyer, ombudsman, notary, legal advisor, judicial assistant, bailiff, consultant (councilor), court clerk, or a person holding a legal position in the apparatus of the Constitutional Court, Superior Council of Magistrates or public authorities. Art. 21(2) limits the number of people who may be appointed as prosecutors through this alternate means of entry to no more than 20 percent of the total number of open prosecution places in a three-year period. One respondent believed that this 20 percent limit will be reached in most years. Art. 18 of the NIJ Law provides that NIJ graduates will compete for prosecution vacancies based on the competition detailed in the LPPS. However, Articles 17(6) and 18(2) of the NIJ Law state that



graduates seeking a prosecution position will be allowed to select from the available open positions based on their graduation scores. As a result, it is unclear exactly how prosecution candidates will be selected from the NIJ pool of graduates.

LPPS Art. 16 states that the PG will be appointed by Parliament after nomination by the Speaker of the Parliament. It also states that the PG appoints his first deputy and all other deputies with Parliament's approval. Newly appointed PGs, with Parliament's approval, routinely replace the first deputy and all other deputies with people of his own choosing.

The PG may promote a prosecutor by executing a signed order. LPPS Art. 24 states that prosecutors shall be advanced based on their demonstrated organizational and decisional capacities as evidenced by a hierarchically superior prosecutor. The law does not provide for appealing the denial of a promotion. Art. 26 allows the PG to reward prosecutors for their work, initiative and promptness with cash, valuable gifts, honorable mentions, higher rank or honorable insignia. Arts. 28, 29, and 30 detail the reasons and procedure for disciplining, suspending or terminating a prosecutor. A prosecutor may appeal such decisions to a court. The existing LPPS does not address transfers of prosecutors from one office to another.

Prosecutors generally receive oral performance evaluations, receiving a written evaluation only every 3-5 years. There were reports of some prosecutors getting monthly performance evaluations that focused on the quality of their work and the number of files successfully completed. Although the PG apparently approved performance and promotion criteria two years ago, this criteria does not seem to be in writing. Respondents reported varying criteria for promotion that included job performance, case closures, dedication, ethics and the absence of prior violations of discipline or law, particularly human rights violations. Several respondents said the promotion process was rigorous and fair.

Despite the apparent use of some promotion criteria and the transparency of the NIJ selection process, there remains a strong belief among many of those interviewed for this assessment that favoritism and nepotism continue to play a role in the selection of new prosecutors and the reward and promotion of existing prosecutors. The COE experts have criticized the PGO's current ability to unilaterally promote or terminate prosecutors as too centralized. Several years ago, a newly appointed PG unilaterally terminated 60 senior prosecutors because they were all over 50 years old, the age at which prosecutors may elect to retire. A COE expert also criticized the use of cash and valuable gifts as a means of motivating prosecutors and said rewards of this type raise an appearance of impropriety. There is also a strong belief among those interviewed that promotions are based on who follows the orders of their superiors as opposed to objective, performance-related criteria. See Factor 7 below.

Draft LPPS Art. 81 creates a Prosecutors' Council and Disciplinary Board. The draft LPPS provides that the Prosecutors' Council would develop or apply rules for prosecutors' hiring (Art. 38), promotion (Art. 59), transfer (Art. 65), suspension (Art. 66) and dismissal (Art. 67) - all subject to the PG's approval. Art. 103 of the draft law give the Disciplinary Board the exclusive right to examine all allegations of prosecutor misconduct warranting possible discipline. Art. 114 of the draft law provides that the Board's decisions can be appealed to the Prosecutors' Council and then to a court of law.

The PGO suffers a high turnover rate among both new and experienced prosecutors. Only approximately 15% of prosecutors have more than 15 years experience and most prosecutors are relatively new. Respondents attribute the high turnover to low salaries, lack of incentives for honest and experienced prosecutors, high caseloads and staff reductions. Moreover, approximately every three years the PGO has been restructured by the incoming PG who removes existing managers and installs those of his own choosing, and creates, merges or liquidates various offices within the service. This high rate of turnover has persisted for several

years and it has reduced the level of experience within the PGO which, in turn, has precipitated even higher turnover and an absence of seasoned prosecutors to train and guide new prosecutors.

The PGO's selection, evaluation and promotion system is not transparent and there appears to be no written criteria that prosecutors can rely on in determining the fairness of the current system. As a result, the actual criterion is unknown. In addition, there remains a substantial perception that selection, evaluation, promotion are based on improper considerations such as nepotism, favoritism and the adherence to questionable orders as opposed to experience, performance and integrity.

#### **Factor 4: Selection Without Discrimination**

*The recruitment, promotion, and transfer of prosecutors at every level of hierarchy shall not be unfairly influenced or denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, national, social or ethnic origin, physical disabilities, or economic status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a citizen of the country concerned.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
Moldova's Constitution expressly prohibits discrimination based on race, nationality, ethnic origin, language, religion, sex, political choice, personal property and social origin. Although little statistical data is collected, it is apparent that women represent a substantial percentage of prosecutors but they are not yet represented in the PGO's top ranks. Moldovan citizens with dual Romanian citizenship are prohibited from holding a prosecution position. Although not adjudicated, this appears to be a direct violation of the Constitution's prohibition against discrimination based on nationality and a violation of the European Convention on Human Rights.	

#### Analysis/Background:

CRM Art. 16 states that all citizens are equal before the law and public authorities and that there will not be any discrimination based on race, nationality, ethnic origin, language, religion, sex, political choice, personal property and social origin. Moldova is also a state party to the United Nations-sponsored International Convention on the Elimination of all Forms of Racial Discrimination [hereinafter "CERD"] that prohibits racial discrimination by State institutions.

LPPS Art. 19 was amended in December 2007 and it now expressly prohibits Moldovans with dual Romanian citizenship from holding a position within the PGO. Similar amendments to the Law on Combating Economic Crime and Corruption and the Law on the Security and Information Service also ban dual citizens from employment in the CCECC and the Security and Information Service. The prohibition against dual citizens becoming prosecutors appears to violate Art. 3 of Protocol No. 1 to the European Convention on Human Rights. See *Case of Tanase and Chirtoaca v. Moldova*, ECtHR, 18 November 2008, para. 115 [finding that a law prohibiting Moldovan citizens with dual citizenship from becoming parliament members was not proportionate to the government's legitimate aim of ensuring loyalty to Moldova which could be achieved through an oath].

The PGO does not appear to collect statistical employment data correlating to race, nationality, ethnic origin, language, religion, sex, political choice, personal property and social origin. Nevertheless, there are numerous women in the prosecution ranks and there are some offices



where women represent 50 percent of all prosecutors. The current NIJ class of prosecution candidates has eight women out of 20 students compared with five women out of 10 students in the NIJ's class of judicial candidates. Although respondents believed there were no women among the PG's higher ranks, the PGO's website indicates the PGO's nine-member governing body (Collegium) includes one woman who also heads the department supervising the MIA and the Customs Service's criminal investigation work. The website also noted that the PGO's department for international relations and European integration is run by a woman. Moldova has a substantial Roma population but it is unclear whether Roma members have applied for prosecution positions. There appear to be no other ethnic minorities in Moldova.

## II. Professional Freedoms and Guarantees

### Factor 5: Freedom of Expression

***Prosecutors, like other citizens, are entitled to freedom of expression, belief, association, and assembly. In exercising these rights, prosecutors should always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.***

Conclusion	Correlation: Negative
The LPPS and the PGO fail to provide guidance to prosecutors on the limitations they face in exercising their internationally recognized right to free expression. Prosecutors are not generally free to speak about their pending or closed cases, and there are no internal or public guidelines setting forth parameters when prosecutors are allowed to so comment. There are reports of prosecutors being severely reprimanded for criticizing the PG or talking about the PGO's inner workings. There is no published protocol guiding or protecting prosecutors when reporting corruption or addressing how such reports are to be resolved.	

#### Analysis/Background:

Moldova has adopted and ratified the ECHR. ECHR Art. 10 states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

CRM Art. 32 states:

- (1) All citizens are guaranteed the freedom of opinion as well as the freedom of publicly expressing their thoughts and opinions by way of word, image or any other means possible.
- (2) The freedom of expression may not harm the honor, dignity or the rights of other people to have and express their own opinions or judgments.
- (3) The law shall forbid and prosecute all actions aimed at denying and slandering the State or the people. Likewise shall be forbidden and prosecuted the instigations to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or other actions threatening constitutional order.

The PGO's Code of Ethics [hereinafter "ETHICS CODE"] requires prosecutors "not to disseminate information that would prejudice the honor, dignity and prestige of the Prosecutor's Office bodies or other public authorities."<sup>20</sup> See ETHICS CODE, Section 4.1(d). Prosecutors are also prohibited from making false or misleading statements about the PGO's activities and strategies; making unauthorized statements about case materials or requests by undercover operatives; disclosing secret information; or disclosing information learned solely by virtue of the position held by the prosecutor. See *Guidelines on Eliminating the Factors of Corruptible Conduct in the Activity of Civil Servants of the Prosecution's Bodies*, Art. 5.1 [hereinafter "Guidelines"].

The current LPPS's only prohibition on prosecutors' free speech prohibits them from participating in public activities of a political nature. LPPS Art. 27. In light of the wide range of possible conduct that could be construed as being either public or political, this prohibition is too vague to adequately inform a prosecutor about the specific conduct that must be avoided. The LPPS otherwise does not address a prosecutor's right of expression and, in particular, fails to set forth a protocol to obtain authorization to make statements about the "materials, case folders, or petitions" referenced in Art. 5.1(g) of the Guidelines. The various applicable laws also fail to detail whether prosecutors have a right to express their opinions and suggestions freely within the PG's office.

Another important freedom of expression component is a prosecutor's ability to identify and report on corrupt activities and abuses of power within their own offices. In general, prosecutors should feel free to raise corruption issues within their offices since there are often no other agencies or bodies policing the PGO to ensure no corruption exists. Despite the importance of self-policing in this area, Moldova and the PGO have failed to adopt measures that provide effective and appropriate protection for prosecution whistleblowers despite having agreed to do so by signing two separate international agreements. In 1999, Moldova signed the Council of Europe's Criminal Law Convention on Corruption of 27 January 1999 and the Council of Europe's Civil Law Convention on Corruption of 4 November 1999. The two laws became effective as to Moldova in 2004 and mandated that it adopt effective measures to protect people and employees who report corruption offenses in good faith to the proper authorities. See *Case of Guja v. Moldova*, ECtHR, 13 February 2008, para. 32 [noting that neither the Internal Regulations of the Prosecutor's Office nor Moldovan legislation contained any provision concerning the disclosure by employees of acts of wrongdoing at their place of work]. In addition, Section 4.1(d) of the Ethics Code could be construed as prohibiting legitimate whistle-blowing by prosecutors.

There is a pending draft Law on Whistleblower Protection that provides protections for "citizen" whistleblowers but the law does not address the difficult circumstances of a prosecutor reporting corruption within the public prosecutor's service or the CCECC. The need to address a

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<sup>20</sup> See Factor 18 for a detailed review of the Ethics Code.



prosecutor's particular situation if they become whistleblowers is highlighted by the fact, as noted in Factor 5 below, that prosecutors would rather resign than initiate criminal prosecutions against CCECC employees.

A pending draft LPPS contains one relevant provision. Art. 36(2) states:

Prosecutors are subjected to a regime of prohibitions according to which they cannot: ... (b) be members of any party or political formation, or carry out or take part in political activities, or express or manifest in any way their political beliefs in the exercise of their professional duties; ... (d) publicly express their opinion concerning case-files and cases under investigation, or concerning cases on which they hold information by virtue of their positions.

The pending draft LPPS retains the same failings of the current LPPS law in that it does not detail the parameters of a prosecutor's right to free speech, contain a protocol for seeking permission to speak with the media or create an internal system for addressing claims of government corruption or abuse of power. Likewise it solidifies the prohibition against prosecutors engaging in any political activity even if they engage in such activities during their personal time.

Several respondents said freedom of expression at the public prosecutor's service has eroded in recent years. Prosecutors are officially discouraged from making public statements about internal matters such as prosecutor selection, discretion or promotion. Published reports indicate that a violation of this nondisclosure obligation can result in termination. See *Case of Guja v. Moldova*, ECtHR, 13 February 2008 [finding that applicant's termination from PGO for disclosing to the media letters written to PG and Deputy PG that he believed exhibited undue influence on law enforcement violated applicant's freedom of expression]. Prosecutors sometimes made statements about resolved cases but they can be sanctioned for internally criticizing their office to superiors. Prosecutors were able to write and publish discussions on the law in professional publications.

Prosecution respondents were frequently reluctant to discuss the PGO's internal workings. This atmosphere of secrecy was further amplified by the authors' inability to meet with the PG about this assessment and by the PG's apparent refusal to answer numerous written questions submitted by consensus long in advance of this publication's deadline.

Moldovan prosecutors appeared to be constrained to a far greater degree than prosecutors in other countries. The LPPS and PGO provide very little guidance to prosecutors regarding their ability to speak about the public prosecutor's service, their pending or closed cases and the law generally. They also fail to provide any guidance regarding a prosecutor's right to exercise free speech while off-duty in such areas as politics or crime prevention. In addition, as found by the ECtHR in *Guja*, there is no written protocol and no legal protections for prosecutors who want to report suspected corruption inside or outside their office.

## Factor 6: Freedom of Professional Association

*Public prosecutors have an effective right to freedom of professional association and assembly. They are free to join or form local, national, or international organizations to represent their interests, to promote their professional training and to protect their status, without suffering professional disadvantage by reason of their participation or membership in an organization.*

<b><u>Conclusion</u></b>	<b><u>Correlation: Positive</u></b>
Prosecutors are free to join professional associations and unions. There are two associations and one union representing the interests and rights of active and retired prosecutors. Prosecutors are not represented by a professional union that seeks to improve salaries or working conditions.	

### Analysis/Background:

Art. 41 of Moldova's Constitution guarantee the right of citizens to freely associate 'in parties or other social and political organizations.' The State is responsible for protecting this right and upholding the legitimate interests of social organizations. Social organizations can be declared unconstitutional if they fight against political pluralism, the principles of the rule of law or the sovereignty and independence or territorial integrity of the country. Art. 42 of the Constitution guarantee all employees the right to join trade-unions in order to defend their rights.

LPPS Art. 23(1)(d) guarantees the prosecutors' right to join a nongovernmental organization to represent their rights. Art. 54 of a pending draft LPPS provides that prosecutors are "entitled to join professional organizations and other organizations having as the goal representation and protection of professional rights."

The PGO's website indicates the existence of three associations of prosecutors. The Association of Prosecutors of the Republic of Moldova was started in 2005 with 670 members. This association ensures the independence of prosecutors, defends prosecutors' rights and professional and social interests, and provides material and moral support to prosecutors in need. Respondents said this association was inactive as of June 2008. The Association of Retired Prosecutors of the Republic of Moldova also started in 2005. The union has about 90 members and it defends the rights and interests of retired prosecutors and promotes the good image of the prosecutor's service in society. Member fees and voluntary donations from members and sponsors fund this association. This association was more a social group than a lobbying organization. The Union of Prosecutors was created in 2006 and it seeks to help prosecutors buy apartments at below-market prices. The website reported that 93 prosecutors had benefited from the union's assistance.

## Factor 7: Freedom from Improper Influence

***Prosecutors are able to perform their professional functions without improper interference from prosecutorial and non-prosecutorial authorities.***

<b><u>Conclusion</u></b>	<b><u>Correlation: Negative</u></b>
Moldova has a legal framework that guarantees the PGO's freedom and independence. In practice, prosecutors at every level are subject to pressure from members of Parliament, the government, powerful economic entities and their own superiors. This pressure is often communicated to first-line prosecutors via unwritten "telephone" orders. It is widely believed that these telephone orders must be obeyed for prosecutors to be considered for promotion and retention.	

### Analysis/Background:

The PGO is an independent institution within the judiciary. LPPS Art. 2(1). The PGO remains independent in its relations with other public entities and it is responsible for guiding criminal investigation authorities in their investigations and conducting some of its own investigations while representing the interests of society. LPPS Art. 2(2). LPPS Art. 2(3) states that the Service "carries out its activities on the basis of the principles of lawfulness, promptness, proportionality, impartiality and hierarchical control."

CRM Art. 125(1) and LPPS Art. 16(2) provide that the PG is appointed by Parliament. LPPS Art. 16(5) limits the PG to two five-year terms. LPPS Art. 16(11) states that Parliament may dismiss the PG for only three reasons: (1) incompatibility with the office as established by law, (2) impossibility of fulfilling duties due to health for a long and continuous period of at least 4 months, or (3) upon a final criminal conviction. Under CRM Art. 125(2) and LPPS Art. 16(3)-(4) the PG, who is superior to all other prosecutors, selects his first deputies and deputies with Parliament's approval. LPPS Arts. 125(3) and (5) states that prosecutors are hired for five-year terms and are obligated only to the law.

CPC Art. 51(3) states: "Carrying out his duties in criminal proceedings, the prosecutor shall be independent and shall be subjected only to the law. He shall also follow the written instructions of the higher prosecutor." CC Art. 303(2) prohibits interference of any type with the activity of criminal investigation bodies which includes the PGO, and it provides for fines and/or prison for violations. In addition, prosecutors face liability for corruption under CC Art. 324 (prohibiting the passive acceptance of money or valuable gifts, services or privileges), CC Art. 325 (prohibiting the active solicitation of money or valuable gifts, services or privileges), CC Art. 326 (prohibiting the trafficking of influence), CC Art. 327 (prohibiting abuses of power by high ranking officials), and CC Art. 330 (prohibiting a civil servant from accepting illicit compensation or advantages in exchange for an official act or omission). Prison and fines may result from violating these laws.

The pending draft LPPS details a number of measures to protect a prosecutor from undue influence. Art. 57 is titled "Guaranteeing prosecutor's autonomy" and some of its more important provisions allow prosecutors to request that a superior's orders be in writing, to refuse orders that are obviously illegal or that infringe on the prosecutor's "judicial consciousness" and to appeal a supervisor's orders to the next hierarchically superior supervisor.

Draft LPPS Art. 81 also creates the Prosecutors' Council that is the "prosecutors' self-administration and representative body." The Prosecutors' Council is "the guarantor of prosecutors' autonomy, objectivity and impartiality." Art. 82 states that the Prosecutors' Council

will have 12 members including the PG, the SCM chairperson, two PGO prosecutors, six prosecutors from the territorial and specialized prosecutor's offices, and two law experts from civil society proposed by the Board of the Public Prosecutor's Service. The PG and SCM chairperson are permanent members and all other Prosecutors' Council members are subject to election by acting prosecutors in "a secret, direct and free vote."

The vast majority of respondents, many with an intimate knowledge of the PGO, report an erosion in prosecutors' independence, freedoms and discretion during the past 10 years. During this time, there have been five PGs: Valeriu Catana (1998-1999), Mircea Iuga (1999-2001), Vasile Rusu (2001-2003), Valeriu Balaban (2003-2007), and Valeriu Gurbulea (2007-present). In the last 10 years, Rusu and Gurbulea are the only PGs to have formerly been prosecutors. The others included a lawyer, a judge and a member of the intelligence service. Although they were appointed to five-year terms, none of the five PGs appointed in the last 10 years served for more than three years. This is so despite the fact that Parliament has never exercised its formal power to remove a PG from office. Instead, several former high-ranking PGO officials said that PGs are forced to "voluntarily" resign when they lose the backing of the president or the ruling political party. These officials noted that the PGO has tremendous power and that ruling party members expect the PG to belong to their party so that they may benefit from this power. One former high-level PGO official said PGs must obey the president or risk losing his support and the PG position. Former PG Valeriu Catana detailed his own politically motivated termination in statements to ECtHR delegates in the case of *Ilascu and Others v. Moldova and Russia*, ECtHR, 8 July 2004.

The witness [Catana] stated that he had been forced to resign for political reasons because persons from the Communist Party objected to his work, as he insisted on taking his decisions on the basis of the law and not according to the way the political wind was blowing. When a dismissal is judged to be desirable, one can always find a reason, and that is what happened to the witness. The post of Prosecutor General was a political position in a sense. The witness tried not to get involved in political activities and just to stick to the law. But unfortunately some cases touch on politics.

*Ilascu and Others v. Moldova and Russia* at para. 210.

There is a widely held belief that the PGO is now directly controlled by the country's president and to a lesser degree influenced by members of Parliament who request that investigations against certain people be initiated or stopped.<sup>21</sup> Their requests are often politically motivated and target political opponents. Respondents reported many instances of prosecutors being subjected to substantial political pressure to act in ways that do not conform to the law. For instance, prosecutors have initiated cases against innocent people and privately apologized to their defense attorneys while admitting that they were being influenced in their actions. Politically motivated cases are especially prevalent before elections. Although the facts of every reported case could not be verified, the most significant reported cases included:

- The PGO initiated a criminal investigation and prosecution against Formuzal Mihail, a politician who was eventually elected as the governor (bashkan) of Gagauzia. At one

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<sup>21</sup> Parliament members have a formal means of submitting questions and obtaining answers from the PGO. Art. 122 of the Rules of the Parliament provides that Parliament members can address questions to the Government of the heads of public authorities. When submitting the question, the Parliament member must indicate whether they want a written answer or an oral answer at a plenary session. A written answer must be submitted in 15 days. See also Art. 17 of the Law on the Status of Deputy in Parliament [details same rights to submit questions and get answers].

point, the PGO had opened 18 criminal cases against Mihail in the months leading up to the election.

- The PGO initiated a criminal prosecution against Bodrug Tudor-Nicolae, a well-known anticommunist judge. His trial is being conducted in secret pursuant to CPC Art. 18(3) purportedly because the issues involve national security.
- The PGO is continuing a years-long prosecution of former Moldovan Defense Minister Valeriu Pasat for allegedly defrauding the state by selling 21 jet fighters in 1997 to the United States for less than market value. Pasat was arrested just before parliamentary elections in March 2005 after he criticized the Party of Communists of the Republic of Moldova. During Pasat's secret six-month trial, his defense team was not allowed to take depositions of key Americans who helped purchase the jets. In January 2006, Pasat was sentenced to 10 years in prison. In October 2006, the Chisinau Court of Appeals reversed Pasat's conviction for selling the jet fighters and granted him amnesty on a second charge for which he had been sentenced to five years in prison, a period he had completed. The PGO then initiated new charges allegedly arising from Pasat's acceptance of a revolver as a gift when he was defense minister. Pasat remains in prison.

Respondents not currently within the prosecution service detailed a system of control in which prosecutors are given orders orally via the telephone. These "telephone orders" come from the Office of the President, members of Parliament, high-ranking Communist Party members or powerful individual and corporate entities with economic interests. These orders are passed on to specific prosecutors who are told to initiate criminal investigations or prosecutions against political opponents or economic competitors or to drop or delay cases against protected targets. Moldovan President Vladimir Voronin and Moldova's media have both acknowledged the system of telephone orders. See *Case of Guja v. Moldova*, ECtHR, 13 February 2008, para. 15 [reproducing a media account of telephone orders including statements by the president asking law enforcement agencies to ignore such calls]. Prosecutors fear discrimination, demotion and dismissal if they refuse telephone orders. If true, these orders violate LPPS Arts. 16 and 51 and CPC Art. 52, all of which mandate that orders be in writing. Moreover, since such orders interfere with criminal investigations, they adversely impact the human rights of suspects or defendants, and therefore, may subject the prosecutor to personal liability under Moldova's regression laws. On the other hand, they also fear being held personally liable, under Moldova's regression laws, if their illegal conduct results in an ECtHR or national court judgment for damages. Some respondents reported cases where a prosecutors' insistence that an illegal order be made in writing results in an instant performance evaluation that is negative. The prosecutor's Collegium apparently will not seriously consider an appeal of these instant evaluations because the collegium's members will not act against the PG's wishes. Prosecutors typically made decisions early in their careers on whether or not they were going to follow illegal orders. Some resign after one to three years with many of the remaining prosecutors resigning after completing 10 years in the Service.

With each telephone order, prosecutors are placed in the difficult position of choosing between violating human rights or facing employment reprisals – a dilemma made worse by the fact that many prosecutors want to become licensed lawyers after leaving the GPO. Art. 8(3) of the Law on the Legal Profession [hereinafter "LLP"] states that persons with at least 10 years professional experience as a judge or prosecutor are exempted from the otherwise required professional internship and qualification exam if they apply for a license within six months of resigning. LLP Art. 8(4) details the reasons a license can be denied to an applicant, including when the applicant was fired from a law enforcement body for compromising reasons, or if they abused fundamental human rights and freedoms as established by a court's decision. Thus, these competing pressures result in many prosecutors obeying illegal orders until they complete 10 years of service at which time they resign and apply to be a licensed lawyer. A high rate of resignations

among prosecutors with 10 years of service has resulted in a reduction of the average experience level among prosecutors. Although practicing prosecutors vehemently deny the existence of telephone orders or successful efforts at being influenced, they readily admit a substantial turnover problem at the PGO.

Prosecutor's low pay contributes to corruption and influence because they are enticed into accepting bribes to supplement their incomes. Several respondents, including defense attorneys, former prosecutors and investigative journalists, said that certain prosecutors were known for taking bribes and that others were obviously taking bribes based on their excessive lifestyle. A prosecutor's salary ranges from 3,700 lei to 8,300 lei (€280 to €627) per month depending on experience. A typical prosecutor may earn 3,700 lei (€280) per month with 1 year of experience, 4,800 lei (€363) with 5 years of experience and 6,000 lei (€454) with 10 years of experience. The 2008 average monthly income in the country is 2,529 lei (€191)<sup>22</sup>. The average monthly rent for an apartment in Chisinau is 2,000 lei (€151).

Various assessments corroborate the conclusion that the PGO is subject to improper influences and that prosecutors are sometimes corrupt. These assessments included:

- In the case of *Guja v. Moldova*, ECtHR, 13 February 2008, police officers being prosecuted by the PGO for human rights abuses sent a letter to a Member of Parliament (MP) asking that he intervene on their behalf. The MP sent a letter to the PGO and asked whether the PGO was "fighting crime or the police?" After reviewing the letter, the ECtHR said that "in view of the context and of the language employed, it cannot be excluded that the effect of the note was to put pressure on the Prosecutor General's Office, irrespective of the inclusion of the statement that the case was to be 'examined in strict compliance with the law.'"
- The U.S. State Department's 2006 Country Report on Human Rights Practices [hereinafter "2006 U.S. HR REPORT"] in Moldova said there continued to be credible reports that local prosecutors and judges asked for bribes in return for reducing charges or sentences.
- Transparency International's Corruption Perception Index [hereinafter "CPI"] measures a country's perceived corruption as measured by expert assessments and opinion surveys. Moldova has been consistently perceived as having a high level of corruption. On a 10-point scale with 1 being the most corruption and 10 being the least, Moldova scored as 3.2 in 2006, a 2.8 in 2007 and a 2.9 in 2008.
- Transparency International's Global Corruption Barometer reflects citizens' perception of corruption on a 5-point scale, with 5 indicating extreme corruption and 1 indicating very little corruption. In a 2007 review of Moldovan institutions, the legal system/judiciary scored a 3.7 indicating that people thought the legal system/judiciary was as corrupt or more corrupt than political parties (3.7), parliament/legislature (3.6), business/private sector (3.5), the educational system (3.3) and the taxation authorities (3.1). The only institutions that scored worse were the police (4.1) and medical services (3.8).

Respondents welcomed the draft LPPS's creation of the Prosecutors' Council. They said the Prosecutors' Council should facilitate prosecutorial independence and impartiality and act as a check on the power of the president and members of Parliament. Some respondents noted that the PG will still control the Prosecutors' Council because the PG will remain an ex officio member of the Council.

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<sup>22</sup> Moldova National Bureau of Statistics as reported in Moldova.org, February 2, 2009.



Outside influence has also negatively impacted the PGO's relationship with other agencies closely linked to the prosecution service. For example, Respondents cited the following concerns:

- The CCECC appears to be untouchable. The CCECC was created in 2002 to be Moldova's main body in preventing and combating corruption. The CCECC is highly centralized and secretive. The CCECC's director is selected by the government and reports directly to Moldova's president. Despite having substantial resources, the CCECC has not initiated a single high-level corruption investigation or prosecution against a member of the ruling party. Although the PG's ACPO is charged with overseeing the CCECC, the prosecutors in this office refuse to investigate the CCECC or its prosecutors and investigators. In 2007, approximately 18 prosecutors resigned rather than investigate the CCECC because of a widely held belief that the CCECC is even more closely tied to the President than is the PGO.
- Moldova and the United States entered into a letter of agreement in 2005 that created the CCTP. It is an inter-agency investigative unit that is functionally independent from other criminal investigative bodies. It is staffed with investigators from the MIA and prosecutors from the PGO. Its investigators and prosecutors were thoroughly vetted by way of background investigations and polygraph examinations. Nevertheless, all indictments must be sent to the PG for approval before prosecutions can be initiated. Respondents said this procedure undercut the intent of the organization to be an independent body that was not subject to the corrupting influence of other organizations.

Prosecutors interviewed for this report denied their office was influenced by powerful outside entities. Prosecutors said there were attempts at influence but they were ignored. They denied the existence of "telephone orders" and said all orders were in writing. Prosecutors said any undue influence would be countered by appeals through the national court system. They also asserted their belief that salaries were sufficient.

A review of the available information clearly establishes that the PGO and its prosecutors are subjected to influence from powerful political entities. Although the PGO may be able to deflect and ignore some of these attempts at influence, it is equally clear that some PGO actions are initiated solely to satisfy the political needs of outside actors. Equally troubling is the widespread perception that the PGO has been subjected to more rather than less outside influence in recent years. This suggests a regression instead of improvement in the battle to remain an independent and credible criminal justice entity.

In seeking comments for this factor, the investigators found a large gulf between the opinions of current prosecutors and the opinions of former prosecutors or people who have not held the position of prosecutor. The large difference in opinion was likewise found in Factors 10, 11 and 14. In reporting the varying opinions, it is important to note that the PRI seeks to report on objectively verifiable facts as well as perceived facts, since the latter is a large component of how an organization is viewed by the public it is meant to serve. In cases such as found here, where there is a substantial perception of corruption, an organization must undertake reforms to combat that perception or face a steady decline in its perceived legitimacy. The perception of corruption can be combated with internal regulations, greater transparency, greater public outreach and a strict adherence to anticorruption measures.

## Factor 8: Protection from Harassment and Intimidation

***Prosecutors are able to perform their professional functions in a secure environment and are entitled, together with their families, to be protected by the State.***

<b><u>Conclusion</u></b>	<b><u>Correlation: Neutral</u></b>
The State has a legal framework in place that protects prosecutors and their families from harassment and intimidation. Some statutes are specific to prosecutors and others are applicable to citizens in general. The physical protection of prosecutor offices is inconsistent. Prosecutors rarely appear to be subject to intimidation or harassment.	

### Analysis/Background:

LPPS Art. 42 obligates the MIA to subordinate a subdivision of police officers to the PGO. The officers, who are subject to the PG's orders, provide security and protection to prosecution offices and property. LPPS Art. 40(1) grants prosecutors the right to carry means for self-defense including firearms. LPPS Art. 35 states that prosecutors sustaining property damage, physical injury or death will be compensated by the State.

The CC has several provisions applicable to prosecutors. CC Art. 305 imposes a 16 to 25 year sentence on anyone convicted of attempting to kill a judge, a person carrying out criminal investigation or contributing to the administration of justice, or their close relatives, if the attempt is made in connection with a court matter, and if the attempt is intended to impede the intended victim's legitimate activity or if it is revenge for such activity. Art. 303 penalizes any form of interference with the activity of criminal investigatory bodies, including favors, requests, promises or threats and they can be conveyed orally, in writing or through third parties.

The draft LPPS provides more protections for prosecutors and their families than the current LPPS. The draft LPPS states in Art. 53(2)(g) that prosecutors are "to be provided special protection against threats, violence or any other actions exposing him, his/her family or his/her property to danger." Art. 68, entitled "The State Protection of the Prosecutor and of his/her Family Members," details the degree to which the state must provide protection. It mandates that the state must protect prosecutors, their families and their property and prosecute anyone who threatens or insults the prosecutor. Prosecutors are allowed to carry firearms and they are entitled to reimbursement for all expenses incurred while pursuing the PGO's interests.

Respondents expressed the general belief that prosecutors were not subject to harassment and intimidation from citizens. However, as noted in Factor 7, prosecutors are believed to be subject to harassment and intimidation from within their own ranks and from powerful government officials and entities.

The physical security at prosecution offices is very inconsistent. The PG's main office and the CCECC's office had reception desks, security guards and security turnstiles/gates at their main entrances. These offices appeared to be very secure. The three PG district offices visited by the assessors have no visible security features such as reception desks, security guards or physical barriers regulating ingress and egress. The PG facilities all lacked functioning metal detectors or x-ray machines and bag checks were not performed. The CCTP had a security officer at the front door but it also had a publicly accessible and unguarded back door that could be easily breached. Although security does not appear to be a major concern at this time, it may become a more serious matter should the PG begin prosecuting high-level officials or criminals, particularly those tied to international organized crime syndicates.



It appears that prosecutors are not subject to harassment and intimidation from people or entities outside the political structure in Moldova. However they are subject to harassment and intimidation from within their own ranks as a result of outside influences that seek to direct their efforts in particular cases of significance.

## **Factor 9: Professional Immunity**

***Prosecutors have immunity for actions taken in good faith in their official capacity.***

<b><u>Conclusion</u></b>	<b><u>Correlation: Neutral</u></b>
Prosecutors have immunity from most civil and criminal claims absent a showing that they acted intentionally or with gross negligence. Although the legislative structure allows prosecutors to be sued or otherwise held accountable, respondents indicated such actions were very rare. The PG is the only official that may authorize a criminal investigation and prosecution of a prosecutor.	

### Analysis/Background:

Prosecutors generally have official immunity for their acts unless they engage in criminal conduct, or intentional or grossly negligent conduct that results in the state having to pay damages. Few prosecutors are actually subject to criminal prosecution or sued by the state to recover personal damages caused by their actions.

Art. 17 of the Law on the Governmental Agent provides for regression actions against public officials, including prosecutors, in cases where the state has suffered damages because of a public official's intentional or grossly negligent conduct. In such cases, the governmental agent must inform the PGO, which shall investigate the case and, if appropriate, initiate a civil action against the offending public official.

LPPS Art. 25(3) provides that only the PG may initiate a criminal investigation against a prosecutor. However, the law contains no parameters for, and the PRI assessors are unaware of any internal guidelines on, the PG's exercise of this discretion whether to waive immunity for one of his or her subordinates. Such an unfettered discretion is susceptible to abuse or the perception of abuse. In the rare event of a prosecutor being criminally prosecuted for official acts that result in damages paid by the State, the State may seek to recover the damages by making a claim against the prosecutor pursuant to Art. 20 of the Law on Compensation.

Art. 58 of the draft LPPS details a prosecutor's civil, criminal and administrative liability with greater clarity than the current LPPS. However the draft LPPS does not clarify whether the PG retains the sole ability to lift a prosecutor's immunity from criminal prosecutor or whether the Prosecutors' Council plays some role in such a decision. Draft LPPS Art. 64 reiterates the personal accountability of prosecutors in regression lawsuits.

PRI assessors were not able to develop substantial data on this factor. Respondents reported prosecutors were rarely criminally prosecuted or held civilly accountable for damages paid by the state that resulted from their intentional or grossly negligent conduct. One high-level prosecutor said the PG had initiated only one regression action against a prosecutor as of December 2007. As noted in the History of the Prosecution section above, the PG may be reluctant to initiate regression actions because of hostility from judges who fear they might also become targets of such lawsuits. In addition, respondents said it is difficult to prevail in cases against prosecutors and judges because the burden of proof requires a showing that the defendant's conduct was

intentional or grossly negligent. As a result, prosecutors appeared to enjoy immunity for official actions taken in good faith and for acts taken with questionable or inappropriate motives.

### III. Prosecutorial Functions

#### Factor 10: Discretionary Functions

*Prosecutorial discretion, when permitted in a particular jurisdiction, is exercised ethically, independently, and free from political interference, and the criteria for such decisions are made available to the public. The prosecutor's power to waive or to discontinue proceedings for discretionary reasons is founded in law, and, if applied, sufficiently justified in writing and placed in the prosecutor's file.*

<b><u>Conclusion</u></b>	<b><u>Correlation: Negative</u></b>
Prosecutors are subjected to substantial political influence in the exercise of their discretion to initiate, continue or dismiss cases of significance. When proceedings are waived or discontinued for discretionary reasons, there is rarely a written document in the case file indicating the reasons for the prosecutor's action. The PGO's criteria for exercising discretion is not publicly available and does not appear to be in writing.	

#### Analysis/Background:

LPPS Art. 23(1)(a) provides that a prosecutor has the right to examine problems and to make decisions within the framework of his or her competencies. LPPS Art. 2(3) states that prosecutors must make decisions based on the principles of lawfulness, promptness, proportionality, impartiality and hierarchical control. CPC Art. 51(3) states: "Carrying out his duties in criminal proceedings, the prosecutor shall be independent and shall be subjected only to the law. He shall also follow the written instructions of the higher prosecutor." CPC Arts. 284-86 detail the circumstances under which a prosecutor may exercise his discretion to suspend or terminate a criminal investigation or prosecution. CPC Art. 284(3) requires a prosecutor to provide a reasoned order for discontinuing a criminal investigation. CPC Art. 286(1) requires a prosecutor to provide a reasoned order for dismissing a criminal case.

CPC Art. 504(1) governs the practice of plea bargaining and states that plea bargaining is a transaction involving "the prosecutor, the accused or, upon the case, the defendant who had consented to plead guilty for a reduced sentence." Art. 504(2) mandates that plea bargains be in writing. Art. 504(5) states that plea bargaining may be initiated by the prosecutor or by the accused, defendant or their lawyer. Art. 505(4) states that a plea agreement concluded by a prosecutor must be approved by a hierarchically superior prosecutor.

The rights of victims and injured parties also impact a prosecutor's discretion in a criminal case. The CPC grants broad rights to victims and injured parties to be consulted and to raise complaints against a prosecutor's actions. Although victims and injured parties cannot prevent the dismissal or alternate resolution of a case, they can influence the speed at which such resolutions are adopted. Victim's rights are more fully discussed in Factor 12 below.

As noted in Factor 7, there are substantial indications that prosecutors are influenced by powerful political figures. Despite some advances, respondents said the public prosecutor's service has become increasingly politicized in that it has become more of an enforcement tool for the government generally and the president in particular. The political decision-making within the

PGO is facilitated by a highly centralized and strictly hierarchical structure where the PG exercises and controls all authority and discretion. All significant cases are controlled by the PGO's central office and little real discretion is given to district or regional offices. Junior prosecutors reportedly have no discretionary authority at all. Respondents said prosecutors sometimes acted on political considerations, but these actions were not discretionary and are almost always based on orders from superiors. The ECtHR has expressly and implicitly criticized the PGO's conduct in politically sensitive cases. See *Oferta Plus S.R.L. v. Moldova*, 23 May 2007, para. 143 [finding PGO's criminal prosecution of applicant was intended to discourage applicant from pursuing ECtHR claim]; *Musuc v. Moldova*, 6 February 2008, para. 33 and 43-45 [finding complete absence of reasonable suspicion of an offense needed to justify defendant's detention and noting that this is recurring issue in Moldova]; *Becciev v. Moldova*, 4 January 2006, paras. 60-64 and 73-76 [finding PGO wrongly sought detention of defendant despite main investigating officer publicly stating the case against defendant had been manufactured for political reasons]; *Gorea v. Moldova*, 17 October 2007, para. 74 [no legal basis for defendant's detention].

Prosecutors acknowledged that decision-making is centralized and that discretion is exercised from the top down within the organization, but they denied they were influenced or that they failed to exercise proper discretion. Prosecutors said all cases of any significance – politically sensitive prosecutions of public officials and major crimes – are immediately reported to the PG. They claimed their discretionary actions were often reviewed with senior prosecutors, but that ultimately first-line prosecutor's exercised discretion to prosecute, plea bargain or dismiss a case based on the law. Prosecutors reported that disagreements over how to proceed were rare but that if they did arise, the disagreement would be taken to a hierarchically superior prosecutor for resolution. If they fundamentally disagreed with a superior's decision, they could request that a case be reassigned. But they acknowledged that only senior prosecutors make such requests for fear that they might be punished.

A COE expert who reviewed the draft LPPS found a hierarchical system to be satisfactory, but noted what appeared to be a substantial concentration of power with the PG.<sup>23</sup> He expressed concern that the draft LPPS did not clearly delineate the power and scope of authority within the hierarchy of prosecutors in the PGO.<sup>24</sup> "The important thing is to specify what exactly is the power of instruction of inferior prosecutors given to anybody in the system, to whom exactly this power is given, what precisely is the scope of authority of individual prosecutors when they make decisions on their own initiative, which decisions require to be approved by a more senior prosecutor, which decisions may be reviewed or set aside, and by whom and on what grounds."<sup>25</sup> Inasmuch as the current LPPS has even fewer provisions detailing the exact scope of decision-making authority among prosecutors, his comments provide a blueprint for the creation of internal PGO guidelines, if they do not already exist. Such guidelines, particularly if they were published, would ensure transparency and increase confidence that prosecution decisions were made according to the law.

Another factor impacting the exercise of discretion is that a prosecutor's performance is measured in part by a prosecutor's conviction rate. One prosecutor admitted that acquittals are bad for a prosecutor's reputation. Another respondent said prosecutors would ask defense

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<sup>23</sup> *Opinion on the New Draft Legislation on the Public Prosecutor's Service of Moldova*, James Hamilton, JOINT PROGRAMME BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN COMMISSION ON INCREASED INDEPENDENCE, TRANSPARENCY AND EFFICIENCY OF THE JUSTICE SYSTEM OF THE REPUBLIC OF MOLDOVA, para. 23.

<sup>24</sup> *Id.* at para. 24.

<sup>25</sup> *Id.* at para. 25.

attorneys not to seek reconciliation agreements<sup>26</sup> because they cannot be reported as a successful conviction. As a result, a prosecutor's preference for convictions could impact their exercise of discretion to dismiss or otherwise resolve a case. Some respondents said they have never witnessed a case being dismissed for lack of evidence. These respondents said some prosecutors increase their conviction rate by accelerating cases they are certain to win at trial while ignoring harder cases that might not result in a conviction. This results in some cases remaining open for years. Respondents said the PGO liked to keep weak cases open to maintain pressure on defendants. Prosecutors typically appeal all acquittals regardless of whether or not the court actually committed an error. One high-level member of the judiciary said prosecutors lose 70 percent of their appeals and appeal cases on issues that have already been repeatedly decided against them by the courts. If true, this could be an indication that prosecutors are abusing their discretion.

Some respondents said they have never witnessed a case being dismissed for lack of evidence. Although CPC Art. 284(3) mandates that the reasons for a dismissal be in writing, prosecutors rarely detailed their reasons for dismissing a case. There appeared to be no PGO policy or practice compelling prosecutors to comply with Art. 284(3). In the absence of reasoned and written decisions, it would be nearly impossible to conduct audits to determine whether a prosecutor lawfully exercised his discretion.

Respondents said prosecutors' discretion could be influenced with bribes (a) so that criminal investigations and prosecutions are delayed or initiated early or (b) to prevent or encourage appeals. Many respondents said bribery was widespread. Although most respondents denied participating in bribery, a few admitted to paying bribes to prosecutors. Respondents said some prosecutors were open to accepting bribes because of their low salaries. However, all active prosecutors denied that bribery takes place.

Prosecutors do exercise plea-bargaining discretion in less significant cases, which in recent years account for between 40-50 percent of all criminal case resolutions. For instance, the PGO announced in a press release published in the newspaper *Dreptul Meu* that 49% of criminal prosecutions were resolved through plea agreements in 2007. A special PGO division developed guidelines on how to apply the CPC's plea bargaining provisions. Some respondents complained that plea agreements invariably require defendants to plead guilty to all the charges against them in exchange for a mere one-third reduction in the maximum sentence available. These respondents would like prosecutors to exercise their discretion so defendants can plead to fewer or less serious charges.

Prosecutors were recently given discretion to employ alternate means of resolving cases through proscriptions, administrative sanctions, conditioned suspension of the trial for one year, amnesty, education measures for minors, and change of circumstances. Respondents said prosecutors were not prepared to exercise their new discretion because they feared sanctions by their superiors. Respondents said prosecutors in the regions were even more afraid to exercise discretion than their urban counterparts and they would proceed forward with all cases regardless of how poorly investigated or ill-founded the cases might be.

Prosecutors also face pressure if they elect not to initiate a prosecution. The CPC was amended so that individuals may appeal a prosecutor's decision not to initiate an investigation or prosecution. CPC Art. 58(3)(9) allows victims to appeal an order declining the initiation of criminal proceedings.

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<sup>26</sup> These are agreements where the parties agree to a resolution of the matter. See CPC Art. 275(5) [criminal investigation shall be discontinued upon reconciliation between injured party and suspect, accused, defendant. The reconciliation is personal and produces effects only if it is performed before the court judgment becomes final].



Respondents suggested several ways to increase the proper use of prosecution discretion, including giving prosecutors more discretion to dismiss or reclassify less serious offenses, to dismiss weak or legally insufficient cases, and to encourage resolutions between the parties. Respondents suggested these changes would save money, allow prosecutors to focus on more serious matters and be better prepared on those matters. One respondent noted the PGO and the Institute for Penal Reform are working together to increase the use of mediation to resolve cases before prosecutions are initiated. The *Dreptul Meu* article noted above also reported a PGO priority to resolve more cases through mediation in 2008. A Law on Mediation entered into force in July 2008 but Art. 32(6) states that the “mediation process shall not replace and shall not suspend criminal case trial.” As a result, it is not clear how mediations will resolve criminal proceedings. No data on the law’s implementation was available by the time this report was produced.

Prosecutors are able to exercise limited discretion in the dismissal or resolution of less significant criminal cases. However, in high-level or politically sensitive cases, or cases involving serious crimes, all such discretion appears to be centralized with the PG. More troubling are the reports, testimonials and ECtHR cases establishing that some cases have been initiated and prolonged for political purposes rather than to forward a principal of justice.

## Factor 11: Rights of the Accused

***Prosecutors shall be impartial in the performance of their functions and must promote equality before the law and respect for the rights of the accused. Prosecutors shall refuse to use evidence obtained in violation of the accused’s human rights.***

Conclusion	Correlation: Negative
Moldova has a significant legal framework that protects the human rights of criminal defendants but, in practice, their rights are routinely ignored and violated. The most glaring problems include the systematic use of detention without legal justification, and the widespread refusal by prosecutors to recognize and honor ECtHR decisions outlining their legal obligations to uphold a defendant’s fair trial rights. Defendants are also routinely questioned without the presence of defense counsel, and prosecutors often seek to introduce illegally obtained evidence.	

### Analysis/Background:

The ECHR, which Moldova has ratified, provides the greatest detailing of the rights afforded to criminal suspects and defendants in Europe. These rights are collectively called fair trial rights. In Moldova, the fair trial rights of the suspect, accused and defendant [hereinafter “defendant”] are guaranteed by the ECHR, Moldova’s Constitution, and the CPC. The most important of these is the ECHR, because Moldova’s Constitution makes the ECHR the final authority on a defendant’s fair trial rights. CRM Art. 4(2) and 8(1) [international conventions and treaties ratified by Moldova are given priority over conflicting national laws]. Thus, the ECHR fair trial provisions provide the benchmark for evaluating the adequacy of Moldova’s domestic laws as well as its implementation of those laws.

The ECHR fair trial rights guaranteed to Moldovan defendants include: the right not to be deprived of life (Art.2), right to be free from torture; or inhumane or degrading treatment or punishment (Art. 3); the right not to be arrested or detained except upon a showing to a judge in a reasonable time of reasonable suspicion that the person committed an offense (Art. 5); the right to be informed in writing of the reasons for arrest or detention (Art. 5); the right to a trial within a

reasonable period of time (Art. 6); the right to a fair and public hearing within a reasonable time frame by an independent and impartial tribunal established by law that will publicly pronounce the verdict (Art. 6); the right to be presumed innocent (Art. 6); the right to be informed of the accusation (Art. 6); the right to defend oneself with adequate time and resources and with the assistance of counsel, if so desired (Art. 6); the right to confront witnesses (Art. 6); and the right to be free from unlawful searches and seizures (Art. 8).

The fair trial provisions in Moldova's CRM and the CPC largely conform to the provisions in the ECHR. They include the right to be free from torture, and cruel, inhumane or degrading treatment (CPC Art. 10); the right to be free from unlawful searches and seizures (CPC Art. 11); the right to be represented by a lawyer, or to have a lawyer appointed by the state (CPC Arts. 17 and 26); the right against self-incrimination and the right not to testify against close relatives (CPC Art. 21); the right to be presumed innocent, to an effective defense and to a public trial (CRM Art. 21 and CPC Arts. 8 and 18); the right to an independent, impartial and lawful tribunal (CPC Art. 19); the right to proceedings of a reasonable length (CPC Art. 20); the right to be treated equally under the law (CPC Art. 9); the right against double jeopardy and ex post facto laws or punishment (CPC Art. 22); the right to challenge infringements in court (CRM Art. 20); and the right to recover damages for unlawful infringements of those rights (CPC Art. 10).

Moldova's laws also place additional obligations on the PGO including:

- CPC Art. 19: (3) The criminal prosecuting authority shall be bound to undertake all measures provided for in the law for a complete and objective investigation, under all aspects, of the circumstances of the case, to outline both the circumstances that prove the guilt of the suspect, accused, defendant and those that prove his innocence, the circumstances that mitigate or aggravate his responsibility.
- LPPS Art. 4(f): The Public Prosecutor's Service shall ... exercise control over the legality of detention and keeping persons with the institutions of preliminary detention and other penitentiary institutions.
- LPPS Art 12: (1) ... the prosecutor shall exercise control over the legitimacy of keeping persons in places of preliminary detention, penitentiary and other penal/restraint bodies and institutions, including hospitals in case of compulsory psychiatric treatment. (2) In case the prosecutor discovers any facts of illegal holding of a person in one of the institutions mentioned under Para. (1), the latter shall be immediately released on the basis of an ordinance issued by the prosecutor.
- Decision of Parliament No. 370-XVI (Dec. 28, 2005), Art. 5: The Ministry of Justice and the PGO, within the limits of their competence, will undertake the necessary measures to eliminate the disclosed violations [of human rights and freedoms due to delays in case examination of persons subject to detention on remand, particularly those in the Buiucani District].

Despite a legal framework that provides substantial rights, guarantees and protections to a defendant and that imposes special obligations on prosecutors to ensure that a defendant's rights are upheld, the ECtHR has issued a series of decisions illustrating the PGO's failure to uphold its obligations. These decisions have criticized the PGO for failing to adequately investigate claims of torture and mistreatment,<sup>27</sup> failing to ensure that a defendant was legally detained<sup>28</sup>, violating

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<sup>27</sup> In *Boicenco v. Moldova*, 11 July 2006, paras. 148-154, found an Art. 3 violation by the PGO where the severely injured petitioner, through his lawyer and wife, complained of police mistreatment and asked the PGO to initiate criminal charges against the police. The PGO initially ignored the requests and then the same prosecutor who lodged charges against the petitioner dismissed the complaints of ill treatment without initiating an investigation. In *Corsacov v.*

the doctrine of equality of arms<sup>29</sup>, failing to ensure the timely prosecution of defendants<sup>30</sup>, and for interfering in the right of applicants to seek justice by filing applications with the ECtHR.<sup>31</sup>

Despite these ECtHR decisions, a number of respondents including prosecutors and some judges and defense attorneys said the PGO has been more careful in recent years to ensure that a defendant's fair trial rights are honored. They cited two main reasons for this phenomenon: (1) Moldovan law now mandates that lawyers represent people during all stages of the criminal investigation and prosecution; and (2) prosecutors are afraid to be named in cases heard by the ECtHR, which has issued a string of decisions condemning the violation of trial rights in Moldova. Nevertheless there was a widely held belief among respondents, which is supported by ECtHR cases and third-party assessments that criminal investigators and prosecutors continue to violate defendants' trial rights. A 2004 survey of 300 Moldovan judges, prosecutors and lawyers conducted by the Institute of Penal Reform [hereinafter "IPR"], a nongovernmental organization in Moldova, found that 60.7% believed defendant's rights were often violated, 6.2% believed such

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*Moldova*, 4 July 2006, paras. 68-76, a defendant was tortured and severely injured by the police following his arrest. The defendant's mother asked the PGO to investigate and prosecute the police. After initially refusing, the PGO opened an investigation that was terminated and restarted 12 times without charges being filed against the police. The Court found the PGO's conduct violated Art. 3 violation because it failed to perform an adequate investigation and "ignored certain facts and omitted reference in their decisions to troubling facts." See also *Stepuleac v. Moldova*, 6 November 2007, para. 60-64 [Art. 3 was violated when PGO failed to properly investigate defendant's claim of being intimidated while detailed]; *Colibaba v. Moldova*, 23 October 2007, para. 52-55 [PGO's refusal to authorize an independent medical examination of defendant who complained of ill treatment while in detention violated Art. 3].

<sup>28</sup> In *Holomiov v. Moldova*, 7 November 2006, paras. 123-131, the Court found that the defendant's four years of detention was not based on sufficient legal grounds and violated Art. 5(3). The Court noted that the defendant repeatedly raised the issue of his illegal detention with the PGO which failed to correct it. In *Musuc v. Moldova*, 6 November 2007, para. 31-33, the Court found that Art. 5(1)'s requirement that detention be based on reasonable suspicion was violated where the prosecutor's accusation and request for remand contained no evidence to support the theory that an offense was committed or that the defendant may be guilty of it. The Court also noted that this same issue had been addressed and resolved by the Court in earlier cases involving Moldova. In *Stepuleac v. Moldova*, 6 November 2007, paras. 68-81, the Court found that the defendant's two arrests were without reasonable suspicion where the credibility of the witnesses against him was questionable, the victims' statements were not substantiated, and there was evidence that the arrests were pursued for private interests. See also *Stici v. Moldova*, 23 October 2007, para. 44 [finding an ECHR Art. 5(1) violation for detaining defendant absent legal cause and an Art. 5(3) violation where defendant held for two years with no change in stated reasons for detention].

<sup>29</sup> In *Turcan v. Moldova*, 23 October 2007, paras. 57-64, the defendant challenged the basis for his detention and requested the PGO to disclose a witness' deposition transcript because the defendant's alleged attempts to influence the witness provided the justification for his pretrial detention. The PGO refused to disclose the deposition and failed to explain the basis for its refusal. The Court found the PGO's actions violated the doctrine of equality of arms and Art. 5(4).

<sup>30</sup> In *Holomiov v. Moldova*, 7 November 2006, paras. 132-147, the Court found that the resolution of a prosecution in four years nine months violated the Art. 6 mandate for prosecutions of reasonable length, even though the defendant contributed to some of the delays.

<sup>31</sup> In *Oferta Plus v. Moldova*, paras. 134-44, the PGO violated Art. 34 by initiating a criminal investigation and prosecution against a private civil party engaged in extensive litigation with government bodies after the civil party filed an application to the ECtHR.

rights were never respected and 31% believed such rights are respected in Moldova.<sup>32</sup> The 2004 IPR Report indicated that the two most violated due process rights were the right to not be subject to torture, threats and other inhuman or degrading treatment and the right to an adequate defense. In addition, 78.6% of the people surveyed believed innocent people are convicted of crimes, primarily because of false and coerced confessions. Several respondents – including, judges and law professors – were critical of the fact that prosecutors rarely invoke ECtHR caselaw in court proceedings. It is unclear whether this failure results from not having a caselaw tradition in Moldova or from a lack of training. Nevertheless the resulting perception is that prosecutors disregard ECtHR decisions and the rights associated with them.

Respondents alleged a number of additional prosecutorial abuses beyond those detailed in the ECtHR cases. For instance, high-ranking representatives of the PGO and the judiciary acknowledged that the PGO has a policy of arresting a suspect first and then developing the evidence that will warrant an arrest and detention. Although prosecutors assert that people are assigned to visit detainees during their first 24 hours to ascertain the lawfulness of their arrest and detention, in practice such visits rare - in part because prosecutors are too busy to conduct the mandated visits. One respondent said he accompanied a prosecutor to a detention facility where the prosecutor was supposed to be supervising the legality of detainees being admitted to the facility. The prison warden did not recognize the prosecutor and instead mistook the respondent as the intake prosecutor. Respondents also said prosecutors seek detention in virtually every case. IPR statistics indicate that prosecutors in 2005 sought arrest warrants in 95-100 percent of all cases in many districts. In a few districts the rate was as low as 11-14 percent. Prosecutors also rarely provided justification for detention and typically appealed all lower court decisions denying detention.

Respondents also criticized the PGO's dealings with *ex officio* lawyers assigned to represent indigent defendants. *Ex officio* lawyers are independent lawyers who contract with the state to represent indigent defendants. Respondents claimed prosecutors frequently interrogate defendants in the absence of their *ex officio* lawyers and then use these statements at trial. Although the law requires defense attorneys to be present during such interrogations, respondents said *ex officio* defense attorneys often sign the defendant's interrogation statement signifying they were present when in fact they were not. This practice may be caused by a fear among *ex officio* lawyers that they will not be assigned additional cases by the government if they complain about government prosecutors. The 2004 IPR Report also surveyed 1,000 defendants being held in four Moldovan prisons and 80 percent reported getting inadequate representation from their *ex officio* advocates.

Respondents also complained that prosecutors will introduce evidence collected through illegal wiretaps, illegal searches or illegal interrogations. A Moldova Country Report on Human Rights Practices by the U.S. Department of State [hereinafter "2007 U.S. HR REPORT"] stated it was widely believed that investigating authorities, including the PGO, employed illegal searches and wiretaps, and successfully introduced this evidence in criminal trials.

The most common complaint against prosecutors involved the ECtHR-documented problem of defendants being arrested and detained with little to no evidence supporting the alleged offense. Although CPC Arts. 11(4) and 166 allow suspects to be detained for no more than 72 hours before appearing in front of a judge, the investigating and prosecuting authorities treated the 72 hours as a minimum period, often extending to 10 days. An October 2007 Amnesty International report [hereinafter "IA 2007 REPORT"] found that detained persons were routinely and repeatedly held for up to 10 days at temporary isolation facilities run by various investigating agencies. The detainees were held there until they met with investigators and prosecutors and were then

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<sup>32</sup> The IPR reported these survey results in its 2004 Criminal Justice & Human Rights Report [hereinafter "2004 IPR REPORT"].



transferred to a remand prison. Detainees were often subjected to cycles of 10 days at the isolation facility, followed by transfer to a detention facility, and then back to the isolation facility. Detained defendants are also deprived of their right to meet with lawyers, family members and doctors. See *Ostrovar v. Moldova*, 15 February 2006, paras. 105-108 [Art. 8 violated by authorities' denial of detainee's requests to meet with family]. According to the IA 2007 Report, Moldova's laws in these areas have improved but the changes favorable to detainees are often ignored or ineffectual because of other shortcomings, such as a lack of resources. Respondents noted that the PGO is legally responsible for overseeing the length and conditions of a suspect's detention and they alleged that the PGO has willingly neglected its responsibility in order to achieve more convictions.

Respondents were particularly critical of a practice in which suspects were administratively detained on less serious charges. Respondents, including judges, defense attorneys and representatives from national and international human rights organizations, believed this practice is used to circumvent the 72-hour holding period detailed in CPC Arts. 11(4) and 166. The IA 2007 Report noted that under the Code on Administrative Offences detainees may be held for no more than three hours before being brought before a judge, but if the detainee does not have identity documents he can be held for up to 10 days with the prosecutor's sanction and without a judge's order. In some cases this code is vague about how long a detainee can be held before seeing a judge. Article 249 part 2 states that those committing acts of hooliganism, public order disturbances, or violating regulations on the organization of meetings and gatherings can be held "until the case is considered by the relevant judicial body." Importantly, people detained for an administrative offence do not have an automatic right to a lawyer under Moldovan law, but they may be entitled to a lawyer and to all other trial rights under international law if the offense is deemed criminal for purposes of ECHR Art. 6. See *Ziliberberg v. Moldova*, 1 May 2005, paras. 27-36. Respondents said these loopholes in the detention laws mean that large numbers of people accused of minor offences are deprived of a lawyer and detained, so investigators can extract a confession, and charge them with a more serious offence. CPC Art. 11 makes the PGO responsible for the administrative detention system.

Prosecutors said they treat juveniles differently from adult suspects and defendants: always with rehabilitation in mind and with detention being sought only if the juvenile is a danger to society. Non-prosecution respondents could not independently verify the prosecution claims regarding juveniles being detained less frequently.

Despite many complaints, there are reasons for optimism. The 18 January 2008 edition of EKONOMICESKOIE OBOZRENIE (*Economic Review*) Magazine reported the comments of Nicolae Clima, President of the Superior Council of Magistracy, during a meeting with prosecutors. Clima said prosecutors' arrest warrant applications are more reasoned and include specific citations to the CPC.

As with Factor 7, there was a substantial gap between the opinions of current prosecutors and the opinions of former prosecutors or people who never held the position of prosecutor. In general, prosecutors vehemently denied that their office engaged in widespread violations of defendants' trial rights while ECHR decisions, third-party reports and non-prosecutor respondent statements suggest otherwise. Even if the violation of fair trial rights were undocumented (which they are not), the PGO would have to address the persistent perception that ECHR violations remain the norm. Whether this actual and perceived disregard of fair trial rights is a holdover from the Soviet era is less important than whether it is being corrected. While there is often a lag between the instigation of progressive changes in a legal system and the recognition of these changes, it appears that the trend in this factor is decidedly negative despite what outside observers would consider to be overwhelming pressure for change created by repetitive negative ECtHR decisions and human rights reports by international and local government and nongovernmental organizations. Future ECtHR decisions will confirm whether this is true.

Indeed prosecutors' steadfast refusal to cite and rely on ECtHR decisions suggests a continued disregard for human rights law in Moldova. It also signals a determined refusal by prosecutors to implement their legal responsibility to ensure that fair trial rights are honored.

## Factor 12: Victim Rights and Protection

*In the performance of their duties, prosecutors consider the views and concerns of victims, with due regard for the dignity, privacy, and security of the victims and their families. Prosecutors must ensure that victims are given information regarding the legal proceedings and their rights, and are informed of major developments in the proceedings.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
Moldova's laws provide many protections for victims, but victims are rarely informed of these rights and prosecutors frequently ignore or violate them. Victims, particularly of human trafficking, are frequently the target of demeaning comments and threats in and out of the courtroom that prosecutors ignore or facilitate. The security of victims is not taken seriously.	

### Analysis/Background:

Moldovan law details an extensive array of protections and rights for victims.

CPC Art. 23 provides that victims can request that criminal proceedings be initiated and they be allowed to participate in the proceedings as an injured party entitled to have moral, physical and material damages repaired. Victims are also entitled to have their rights detailed to them by the criminal investigating authorities with a written verification that this took place. CPC Art. 58 provides an extensive list of victim's rights. If the party was the victim of an extremely serious or exceptionally serious crime, the victim has the right to be accompanied by a reliable person or defender during all investigation actions including closed hearings; to be represented and advised by a defender during the entire criminal proceeding; to have a defender appointed to them by the state if they are indigent; and to get a court judgment in the amount of all pecuniary damages. In matters not involving extremely serious or exceptionally serious crimes, victims have the right to submit evidence in support of their claim, to seek updates regarding the status of the investigation, to be recognized as an injured and/or civil party for all proceedings, to withdraw their complaint, to appeal a decision not to prosecute, to be protected as detailed under the law and to be assisted by a defense attorney during procedural actions involving them.

CPC Art. 58(7) also imposes obligations on victims. The most significant include the obligation when summoned by a criminal investigating authority or court (except for trafficking victims) to appear, give explanations, produce requested evidence and submit to a medical examination. Victims must also comply with the legitimate instructions of criminal investigators, prosecutors and court presidents.

Moldovan law also allows a victim to be recognized as an injured party – defined as a person who has suffered nonpecuniary, physical or pecuniary damages - which provides a person so designated with additional procedural protections. The significant rights granted to injured parties, pursuant to CPC Art. 60(1), include the right to review the charges and the materials developed to support them; to file complaints against investigating bodies; to withdraw the complaint; to reconcile with the defendant; to make statements and participate in the proceedings; to be represented by a defense attorney, or have one appointed if indigent; to be informed of all decisions impacting his rights and interests; to participate in proceedings involving

damages; to request the withdrawal of any participating official, including the investigator, prosecutor, and judge; to make objections; to be awarded appropriate damages; to obtain copies of all decisions and judgments, and to appeal any judgment concerning reparation of damages.

CPC Art. 60(2) provides that an injured party<sup>33</sup> is subject to the same obligations as a victim, with the additional obligations of being subject to a corporal search if a very serious, extremely serious or exceptionally serious crime was committed against him, and to be subjected at the request of the criminal investigating authority to an expert psychological examination to ensure the ability to appropriately participate in the proceedings.

In cases where there are reasons to believe that the life, physical integrity or liberty of a witness, including victims, or of a close relative to him, are in danger because of the witness' statements in a serious, especially serious or exceptionally serious crime, then pursuant to CPC Art. 110, the witness may participate by video in the proceedings using a fictitious name, and with his appearance and voice distorted to prevent recognition.

Although Moldova provides some additional procedural protections for the victims of extremely serious or exceptionally serious crimes, it ranked among the worst countries in providing either special hearing modalities or special procedural protections for vulnerable victims or persons. See 2008 edition of EUROPEAN JUDICIAL SYSTEMS, a report produced by the EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ) [hereinafter "2008 CEPEJ REPORT"] at 62-65.

Victims are often the target of threats, coercion and physical violence by defendants and their families who want them to recant their allegations. LPPS Art. 10(2)(d) provides that prosecutors are entitled to "demand from criminal prosecution bodies to take respective measures for protecting life and ensuring safety to prejudiced parties, witnesses and members of their families or to ascertain that such measures have been already taken." The draft LPPS contains a similar provision. The Law on State Protection of the Victim, of Witnesses and other Persons Who Provide Assistance in the Criminal Proceedings [hereinafter "PROTECTION LAW"] details the protections available to victims and witnesses. Art. 2 of the Protection Law provides that victims, witnesses, and their families are among the group that is eligible for protection. Art. 3 mandates that prosecutors confer with superiors regarding the decision on protective measures. Art. 6 mandates that a criminal investigator, prosecutor or judge who receives a request for protection must immediately or within 3 days investigate and attempt to verify the alleged threats, and decide whether or not to grant protections. Art. 6 specifies that a decision to grant or deny protection must be reasoned and in writing and can be appealed. Art. 8 details the protection measures available, including providing security, placing in a safe location, changing identity, changing location and hearing the threatened person's testimony in a closed proceeding. Art. 18 details the numerous rights and obligations of a protected person and of the agency granting protection. However, while CPC Art. 215 requires investigating and trial judges to seek protections for threatened victims and witnesses, the CPC does not impose a similar obligation on prosecutors. Nevertheless, at least one Moldova agency, the CCTP, is taking advantage of these laws by reportedly employing state-of-the-art techniques for protecting victims and witnesses in trafficking cases.

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<sup>33</sup> The designation of a person as an "injured party" is a procedural device under Moldovan law that grants a person or entity greater procedural rights. CPC Art. 58 explains that a victim "is any natural person or legal entity that suffered a non-pecuniary, physical or pecuniary damage as a consequence of a crime." CPC 59 explains that an injured party "shall be considered any natural person, who suffered non-pecuniary, physical or pecuniary damage as consequence of a crime, and who is acknowledged as such under the law with the victim's consent."

In Moldova, one of the most controversial CPC provisions involves what are called “confrontation” interviews. See CPC Art. 113. Under this procedure, a criminal investigating authority has the power to bring all parties in a criminal case together and to confront them about contradictions in their statements, about the relationships between them and the facts and circumstances of the crime. Thereafter, “the confronted persons may address questions to each other and answer the questions addressed by the person conducting the procedural action.” This process has been highly criticized particularly in cases involving human trafficking or rape where victims are forced – sometimes repeatedly – to confront the person who allegedly victimized them.

The time and energy in the drafting of this legislation is not reflected in the actual protection of victims. Despite the many rights afforded to victims, respondents reported they are ineffectual because victims are not told about these rights, and because prosecutors will not otherwise advocate on their behalf. Although some victims have been successful in appealing a prosecutor’s decision to close a case, victims most often find themselves uninformed about when their cases are dismissed or reopened, a process that is reportedly rife with corruption. Even if informed about the status of their cases, victims find themselves attending hearing after hearing as each one gets postponed because one of the necessary parties fails to show up. Although Moldova indicated in the 2008 CEPEJ Report that it had an obligation to inform parties regarding the foreseeable timeframe of proceedings, there is evidence that victims sometimes give up on pursuing a case because of the inconvenience of repeatedly attending court proceedings that only result in further delays.

Respondents, including one senior prosecutor, said the laws governing victims are unnecessarily complex, subjecting victims to needless interrogations that cause more stress and trauma. The laws also fail to differentiate between types of victims. For instance, several respondents believed that victims of rape or human trafficking crimes should not be subjected to the same confrontational and repetitive interrogations imposed on other victims.

In addition, some of the respondents believe that prosecutors neglect to protect rape or trafficking victims who are frequently threatened by defendants and their families. OSCE trial monitors have reached a similar conclusion, finding that “judges and prosecutors failed to intervene when defendants approached victims and witnesses to try and intimidate them and influence their testimony.” OSCE 2007 TRIAL MONITORING PROGRAMME 6-MONTH REPORT at 42. In one particular instance, OSCE monitors reported a case in which witnesses complained in court that the defendant was threatening them with reprisals and pressuring them to change their testimony. The prosecutor, however, remained passive and did not seek any adequate preventative measures against the defendant. During the 789 hearings attended by the trial monitors, not one defendant was removed from the courtroom during the victim’s testimony. According to the monitors, the prosecutors appeared to put a higher value on developing evidence than on protecting victims or witnesses.

OSCE trial monitors also reported seeing prosecutors and judges make demeaning and inappropriate comments about or in the presence of the victim. In one case in which a defendant was accused of inflicting bodily injuries on the victim while drunk, the judge and prosecutor agreed they needed additional evidence and decided to postpone the trial until after the Wine Festival in order to see whether the defendant would engage in more violent behavior. OSCE 2007 TRIAL MONITORING PROGRAMME 6-MONTH REPORT at 45.

Respondents noted that more recently, victims are increasingly hiring lawyers to represent them and, as a result, they have a greater chance of learning about and exercising their rights.

Prosecutors respondents maintained that victims are always informed of their rights in writing and that the victim must acknowledge receipt of the document detailing their rights. Prosecutors said there is a special unit to deal with trafficking witnesses and victims to ensure their physical



protection and, if necessary, change of location. Prosecutors can arrange security measures when they are aware of a problem by issuing written orders to the MIA highlighting the risks faced by a victim. However, non-prosecution respondents suggested that these protections are available but rarely offered in practice. Prosecutors acknowledged that victims are subjected to multiple interviews.

In Moldova, victims share the dubious distinction of being treated similarly to defendants. Prosecutors do not respect the dignity, privacy or time of victims and do not sufficiently inform them of their rights. Prosecutors do not appear to confer with victims in making case decisions. Instead, prosecutors appear to value victims merely as a means to achieve convictions. Despite the protections and rights provided by law, victims in sensitive or dangerous cases are not afforded adequate protective measures to ensure their safety and psychological wellbeing.

### **Factor 13: Witness Rights and Protection**

*Prosecutors perform their functions with due regard for the dignity, privacy, and security of the witnesses and their families. Prosecutors ensure that witnesses are informed of their rights and conduct every encounter with witnesses fairly and objectively.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
Moldova's laws provide many protections for witnesses but, as with victims, these laws are frequently ignored or violated. Witnesses are subject to innumerable delays, demeaning comments and threats that prosecutors ignore or facilitate. The security of witnesses is not taken seriously.	

#### Analysis/Background:

CPC Art. 90(12) details the specific rights of witnesses, the most important of which include the right to be informed of the charges, to refuse to testify or provide evidence if such evidence will be used against the witness, to testify in their native language, and to be assisted by a lawyer during investigating actions. CPC Art. 91 provides additional rights to witnesses who are underage, including the right to be represented by a legal representative who has the same ability as a lawyer to participate during the interviews and to lodge objections.

CPC Art. 90(7) imposes obligations on a witness. The most significant include the obligation when summoned by a criminal investigating authority or court to appear, give explanations, produce requested evidence and submit to a medical examination. Witnesses also must comply with the legitimate instructions of criminal investigators, prosecutors and court presidents. Witnesses face criminal sanctions under Criminal Code Arts. 312 and 313 for failing or refusing to give statements or for providing false statements.

CPC Art. 90(2-5) exempts a number of people from being called as witnesses. They include defendants or the defendant's close relatives; judges, prosecutors, court clerks, and criminal investigating authority representatives unless required by the CPC; lawyers if called to testify about matters learned while representing a client; people with physical or mental disabilities that prevent them from making truthful statements; journalists who promised confidentiality to a source unless absolutely necessary; doctors regarding medical information on clients unless absolutely necessary; and religious officials about information learned because of their official duties.

CPC Art. 92 allows witnesses to be represented by a lawyer. CPC Art. 90 permits, in exceptional circumstances, lawyers to give sworn statements on behalf of their clients based on information learned in discussions with the client if such statements are helpful and if their client consents. However, after providing such statements, the lawyer must withdraw from the matter.

Witnesses, like victims, are subject to confrontation interviews discussed in Factor 12 above. They can also be given similar protections if they are being threatened because of their participation in a case. As noted above, the Protection Law and CPC obligate investigating and trial judges but not prosecutors to offer such protections.

It is apparent from comments by respondents that prosecutors treat witnesses and victims with the same level of disrespect and disregard. Prosecutors are sometimes rude to witnesses and do not take security concerns seriously. Lawyer respondents further claimed that defense witnesses were sometimes converted into prosecution witnesses because of improper influence and pressure. According to the 2006 U.S. HR Report, police often tell people they were witnesses and then interview them without the presence of counsel. After getting their testimony, the police arrest and detain the witnesses who then become suspects. Despite the clear violation of a witness's fair trial rights, prosecutors used their own statements against them in subsequent proceedings.

The cumulative effect of the failure to respect the rights, needs and sensitivities of witnesses may ultimately hurt a prosecutor's ability to achieve convictions as witnesses become increasingly reluctant to participate in the criminal justice system. As stated in the concluding remarks of OSCE trial monitors in their 2007 6-month report:

[T]he experience of victims, witnesses, defendants, and members of the public with the judicial system in Moldova is not always pleasant or comfortable and rarely instills them with a sense of trust in the administration of justice. Many lay people, who initially came to court with a sense of respect for the judiciary and feeling dignified and protected, left with diminished respect for the judiciary and a feeling of insecurity and, at times, intimidation. Victims and witnesses were often frustrated by frequent postponements. They were further disturbed by delays in the start of trial hearings that forced them to spend time in cramped court corridors in uncomfortably close proximity to defendants and their relatives. Victims and witnesses were also subjected to inappropriate attitudes and questioning from some judges, prosecutors, and defence attorneys. With so many cases, judges and prosecutors tended to hold abridged proceedings in which they did not tell victims and witnesses about their rights and obligations nor exhibit patience and understanding towards them. After repeated such incidents, monitors observed that victims and witnesses, particularly in serious cases such as human trafficking or domestic violence, felt insecure in court and were reluctant to return for subsequent proceedings. As a result, victims and witnesses often perceived their duty to appear in court as an unpleasant burden which they were tempted to disregard and avoid.

OSCE 2007 TRIAL MONITORING PROGRAMME 6-MONTH REPORT at 46.

## Factor 14: Public Integrity

***Prosecutors uphold public integrity by giving due attention to the prosecution of crimes committed by public officials, particularly those involving corruption, abuse of power, grave violations of human rights, and other crimes recognized by international law.***

Conclusion	Correlation: Negative
<p>There is little public confidence that the PGO is politically capable of investigating and prosecuting human rights abuses and crimes by public officials. The PGO has convicted a few police officers for torture but it has not initiated any corruption cases against high-level officials in the current 8-year-old administration. The PGO's high-profile corruption prosecutions appear to be politically motivated.</p>	

### Analysis/Background:

The investigation and prosecution of corruption is split between two government agencies in Moldova: the PGO and the CCECC. The CCECC investigates the majority of public corruption cases and then refers the cases to the PGO for prosecution. Many former Soviet republics have adopted similar systems where the authority and responsibility for the investigation and prosecution of corruption cases is divided between two or more agencies.

The PGO's authority to *investigate* public corruption and abuse of power is limited. CPC Art. 269(1) states that the CCECC has the exclusive authority to investigate a wide range of public corruption offenses such as counterfeiting, money laundering, fraud, the smuggling of goods, terrorist financing, passive and active corruption, and bribery (CC Arts. 236-261, 279, 324-326, and 330-336). The CCECC also has the exclusive authority to investigate certain corruption and abuse of power crimes by high-ranking government officials when the resulting injury was caused exclusively to the authorities and public institutions, state enterprises or public national budget. The crimes in this category include embezzlement, large-scale misappropriation, abuse of power, exceeding authority and official negligence (CC Arts. 191, 195 and 327-29).

Although the PGO shares investigative authority with the CCECC, it retains broad jurisdiction to prosecute or supervise the prosecution of crimes of corruption and abuse by government officials. CPC Art. 269(2) states that the PGO will supervise all CCECC prosecutions. In addition, CPC 270(1) provides that the PGO has exclusive authority to conduct criminal investigations in *all* cases of crimes allegedly committed by the president, members of parliament, members of the government, judges, prosecutors, military personnel and criminal investigation officers. Prosecutors also investigate and prosecute alleged crimes committed by the PG and members of the CCECC.

In one of Moldova's many efforts to address public corruption, Parliament passed legislation in 2002 creating the PGO's Anticorruption Prosecutor's Office ["ACPO"], a specialized prosecution office that focuses on preventing and combating corruption. The ACPO is located within the CCECC's offices and it conducts the CCECC's criminal investigations and prosecutions. It has specific jurisdiction to investigate and prosecute law enforcement officers and investigators from the CCECC, the MIA, Customs and the regular police forces. The ACPO also conducts the PGO's corruption investigations and prosecutions of civil servants, judges, prosecutors and other state personnel.

Moldova has been credited with significantly improving the legal framework needed to combat corruption. Freedom House's 2006 Nations in Transit country report on Moldova noted that the

country's 2005 adoption of a National Anticorruption Strategy and the corresponding Action Plan signaled a new seriousness in addressing corruption. The report noted substantial improvements in bringing national legislation into conformity with international norms and practices.

While acknowledging Moldova's legislative improvements, respondents said there has been little effort to actually prosecute serious corruption. They cite as an example the failure of the PGO to convict any significant members of the ruling Communist Party or the 8-year-old Communist-led government. Numerous respondents expressed their belief that the government controls the PGO, and that the PGO's high-level corruption prosecutions are politically motivated and generally directed at political opposition figures. Some respondents, acknowledging the significant political pressure on Moldova from the European Union and the United States to prosecute high-level corruption, said high-level prosecutions are not possible because the people who might be targeted can make legitimate claims of corruption against those people seeking their prosecution. The result is a stalemate of sorts.

The PGO's 2007 Annual Report of Activities [hereinafter "PGO 2007 REPORT"] reported 66 cases of active corruption, 203 cases of passive corruption and 220 cases of abuse of power for the year. In early 2008, the ACPO reported that it had filed 354 cases in 2007 including three against deputy ministers, fourteen against mayors, two against judges, one against a prosecutor and seven against chiefs of divisions from the ministries. The ACPO reported a total of 184 people convicted in 2007. When asked how many of these cases were against Communist Party members, the prosecutors said they did not track prosecutions by political affiliation because it would give the impression that political affiliation was a criterion in determining whom to prosecute.

Respondents were also highly critical of the PGO's failure to investigate and prosecute human rights violations committed by public officials. Moldova has a documented history of police and criminal investigators using torture and inhumane and degrading treatment as an essential element of developing criminal cases:

- In 2005, Amnesty International [hereinafter "AI"] documented the torture case of Serghei Gurgurov who was repeatedly beaten and subjected to electric shocks while in police custody. As a result, he suffered significant neurological and physiological damage. The PGO met with AI in November 2005 and opened an investigation against the police officers alleged to have participated in the torture. In August 2008 the PGO announced that Gurgurov had faked the incident,<sup>34</sup> there had been no torture and there would be no criminal investigation of the police.
- The 2006 U.S. HR Report reported that in the first 8 months of 2005, Moldovan authorities brought 135 criminal cases against MIA employees including 105 cases in which a public official was charged with abuse of office for using violence and torture. Another 1,190 MIA employees received disciplinary sanctions. The report noted that official impunity was an ongoing problem and, as an example, cited PGO complaints that the MIA often ignored or superficially examined reported human rights violations.
- The 2006 U.S. HR Report also cited the case of a detainee who died in a hospital on July 12, 2005, after being beaten by a group of police officers while in pretrial detention. The PGO launched a criminal investigation, but no criminal case resulted.
- The ECtHR in *Colibaba v. Moldova*, 23 January 2008, found an ECHR Art. 3 violation where the petitioner had been tortured by Moldovan police, the PGO had not made a serious attempt to investigate the claims of torture and the PGO attempted to pressure the petitioner's lawyer to drop its ECtHR claim. The 2007 U.S. STATE DEPARTMENT

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<sup>34</sup> AMNESTY INTERNATIONAL WRITE TO RIGHT report, November 2008, at 3.



COUNTRY REPORT ON HUMAN RIGHTS reported that the Moldovan government in July 2008 rejected the *Colibaba* decision as groundless.

- The ECtHR in *Pruneanu v. Moldova*, 23 May 2007, paras. 54-55 and 64, found an ECHR Art. 3 violation where the petitioner had been tortured by the police and the prosecutors had failed to conduct a sufficient investigation into petitioner's allegations.
- The ECtHR in *Istrati v. Moldova*, 27 June 2007, paras. 58-59, found that petitioner was subjected to inhuman and degrading treatment in violation of ECHR Art. 3. The petitioner was denied emergency medical attention, moved four hours after major surgery, and remained handcuffed to a radiator during his month-long recover.
- The ECtHR in *Ciorap v. Moldova*, 19 September 2007, paras. 70 and 89 found the petitioner's conditions of detention and repeated forced feeding constituted torture and inhuman treatment in violation of ECHR Art. 3.
- The *Corsacov* and *Boicenco* cases noted in Factor 11 above also reported violations of ECHR Art. 3.

In a meeting with AI, the PGO provided the following statistics: there were 3 torture charges filed in 2005 and 16 in 2006 resulting in one torture conviction in 2005 and one in 2006. There were 70 abuse of power charges filed in 2005 and 23 in 2006, resulting in 40 abuse of power convictions in 2005 and 27 in 2006. According to IA, these numbers indicate that only a small fraction of the torture and ill-treatment cases by police are actually investigated or result in convictions. During this meeting, PG Valeriu Balaban admitted that cases of torture "have been sometimes ignored, or superficially investigated and more often the punishment has been modest".

The PGO has nevertheless only modestly increased its prosecution rate for law enforcement officers accused of torture and ill treatment. The 2007 U.S. HR Report, quoting a Transparency International-Moldova report, states that the PGO had convicted five policemen from the Chisinau Central Police Station for torture and ill treatment, and that the police officers received two to five-year prison sentences. The PGO convicted two more police officers for torture and illegal detention and they received five-year prison sentences. The PGO also convicted three policemen who were already in jail for illegal detention and extortion. Respondents recognized the PGO's improved performance in torture investigations and prosecutions and said the PGO's procedures for investigating torture claims also have improved. Respondents also said that persistent lawyers are able to overcome the PGO's ongoing reluctance to investigate claims of torture and ill treatment.

Despite these advances, respondents believed that the PGO remained reticent to fully prosecute criminal investigators for engaging in torture or other illegal acts that elicit coerced confessions or false testimony. The 2007 IA report concluded that the PGO continues to resist initiating prosecutions of those accused of torture. When torture victims and family members appeal against the PGO's decision to not open a case, the PGO vigorously defends its actions on appeal. This is particularly true, as noted in Factor 7, in reference to the CCECC, which has its own powerful internal security unit that investigates claims of corruption and sends the files to the PG for prosecution. Respondents believe prosecutors fail to act because of political pressure and because they, in turn, could be accused of corrupt acts.

Respondents also note that the PGO has threatened lawyers who raise claims of torture with international organizations. In a 26 June 2006 letter to the Moldovan Bar Association, the PGO warned two lawyers who alerted AI to cases of torture that they could face prosecution and a possible five-year prison sentence pursuant to CC Art. 335 for "misuse of official position." However, to date, the PGO has taken no further action against the lawyers.

As with Factors 7 and 11, prosecutors vehemently deny that they ignore or condone torture or ill treatment. Instead, they maintain that all such claims must be investigated and must result in a medical examination of the complainant. A government respondent noted that there are doctors at all the detention facilities and that these doctors must examine the complainant and document their findings in the criminal file. Prosecutors said the current policy mandates that torture complaints be submitted to the PGO's central office for assignment and control. The assigned prosecutors must be different from the prosecutors prosecuting the underlying case and must not have direct contact with the police agency involved so they can act more independently.

Prosecutors commented that in the first 11 months of 2007, the PGO received 900 written complaints of torture or cruel or inhuman treatment by law enforcement. These complaints resulted in 165 criminal cases being initiated and 38 cases being submitted to court. The most common charge was abuse of power. Prosecutors said people convicted of torture have received prison sentences up to 6-10 years.

In addition to problems with torture claims, citizen complaints to the PGO about corruption are now largely ignored. Respondents said the PGO's office used to take such complaints seriously but today the complaints are either ignored or a fake investigation is initiated. Respondents said the only corruption complaints taken seriously are complaints the PGO fears might result in a claim to the ECtHR.

The PGO's refusal or failure to aggressively prosecute ongoing human rights violations and corruption cases has resulted, as indicated in Factor 7, in the public having a very poor opinion of the PGO. The public believes the PGO is exceptionally corrupt. The public's perception is reinforced by PGO human rights abuses documented in ECtHR decisions, by media reports of prosecutorial abuses including political persecutions, and by the PGO's refusal to publicly account for its activities. For instance, in 2007 the newspaper *Ziarul de Garda* wrote about a prosecutor who was trying to force citizens to give him their businesses. Although the prosecutor was dismissed, the PGO did not initiate a criminal prosecution against him.

The long and continuing string of ECtHR decisions and reports by international organizations clearly establish that serious human rights violations continue to be committed by the law enforcement bodies in Moldova. In addition, the PGO appears to be incapable of initiating a corruption case against any high official in the current administration. The increasing international pressure for the PGO to aggressively prosecute human rights abuses and high-level corruption appears to be trumped by the influence of the current government over the PGO. The result is the public's lack of confidence that the PGO can uphold public integrity and the belief that the PGO is part of the problem rather than part of the solution.

## IV. Accountability and Transparency

### Factor 15: Public Accountability

*In performing their professional duties and responsibilities, prosecutors periodically and publicly account for their activities as a whole.*

Conclusion	Correlation: Negative
The PGO submits annual reports of its activities to Parliament in sessions that are open to the public and media. The PGO also publishes an annual report of activities on its website, but the report is largely statistical in nature and it fails to detail its conviction rate for the listed crimes. The PGO does not otherwise publicly account for its successes, failures, or budgetary expenditures. Interactions with the media, civil society and the public are infrequent.	

#### Analysis/Background:

There are very few laws governing the PGO's public disclosure obligations. Moldova's Constitution has no relevant provisions. LPPS Art. 16(9) states that the PG "shall submit to the Parliament on an annual basis reports on the status of order and law in the country" and his efforts to improve order and law. The PG provides these reports to Parliament annually in plenary sessions that are open to the public and media. The PG then answers questions from members of Parliament. If the PG is unable to answer a question, he is obligated to submit an answers in writing. The draft LPPS Art. 2(2) states that the PGO "is transparent and is built upon the presumption of guaranteeing the access of the society and mass-media to the information related to this activity, with exceptions provided by law." The Law on the Access to Information [hereinafter "Information Law"] mandates that the PGO provide access to information of public interest but it does not obligate the PGO to produce any public reports. The Information law defines "public interest" as the protection of the public's health, security or the environment. See Information Law Art. 8(8).

The PGO maintains a website ([www.procuratura.md](http://www.procuratura.md)) that details its general and specialized competencies, leadership, annual reports to the public, international cooperation, news stories reporting successful prosecutions, laws relevant to the PGO, and information on how to contact the PGO. The website does not publish the PGO's conviction rates, organizational chart, code of ethics or protocols for the reporting of crimes and corruption. A website is not currently an efficient way to reach Moldova's inhabitants, because only 18.4% of population has internet access.<sup>35</sup> The PGO also publishes a monthly bulletin that reports successful prosecutions, PGO orders and decisions of the PGO's Collegium. Although popular among prosecutors, the bulletin is not publicly circulated.

The PGO's Collegium conducts an annual meeting at which its nine members discuss achievements from the prior year, and policy goals and anticipated reforms for the coming year. The PGO publishes some of the material discussed in press releases to the media, including statistical information regarding the number of cases handled, the type of cases and how they were resolved (see Factor 10 above for a discussion of the type of information released). Media respondents said that their inquiries on these statistics must be in writing and the PGO's responses, if any, may take weeks. In fact, the PGO exercises substantial control over the media. Media respondents noted that the prosecutors and PGO press spokespersons often will

<sup>35</sup> 2007 Statistics on Internet Penetration, UNITED NATION'S INTERNATIONAL TELECOMMUNICATIONS UNION (<http://www.itu.int/net/home/index.aspx>).

direct media members not to ask any questions or, occasionally not to publish their public statements. Such conduct suggests a highly dysfunctional relationship with the media that would not be tolerated in any modern democracy.

Respondents also reported a persistent view among prosecutors that prosecutors and judges are responsible for justice and that they do not need input from any other parties, including the public. This attitude indicates that at least some prosecutors do not understand that their ultimate employer is the people of Moldova to whom they owe an obligation to be open and transparent.

Nevertheless, there are some indications of progress. Acces-Info, a Moldovan nongovernmental organization advocating freedom of expression and access to information, issued a 2008 report stating that Moldovan institutions, including the PGO, had demonstrated some recent improvement in responding to information requests, though it also noted an overall decline from past years in the PGO's responsiveness to such requests. See *RIGHT TO INFORMATION: ON PAPER AND IN REALITY, REPORT, ACCES-INFO*, undated [hereinafter "ACCES-INFO REPORT"]. In November 2007, after AI published a report detailing widespread torture and ill treatment by the criminal investigative agencies and the police, the PGO met with IA, admitted that torture and ill treatment were problems, and invited AI to make recommendations. The PGO later held a Collegium meeting on the issue of torture and AI's recommendations that was publicized.

Although public prosecution services around the world tend to incorporate some level of secrecy into their operations, many learn that the public disclosure of their activities, successes and failures contributes to public confidence in their integrity. Perhaps because of its Soviet heritage, the PGO remains an exceptionally secret organization. Although its website publishes some relevant information, it does not publish the type of information that will alleviate the public's concerns about the organization. These concerns will only be addressed when the PGO addresses its culture of secrecy and adds greater transparency in its activities.

## **Factor 16: Internal Accountability**

***Prosecutors' offices have a mechanism to receive and investigate allegations of wrong doing or improprieties based on written procedures and guidelines. Internal procedures and mechanisms exist to assess or monitor compliance with departmental guidelines.***

<b><u>Conclusion</u></b>	<b><u>Correlation: Negative</u></b>
The PGO previously had a demonstrated history of accepting complaints from citizens or media representatives, including complaints against prosecutors, but this practice has been discontinued. It is unknown whether the PGO has written procedures or guidelines for such a mechanism. It is also unknown whether the PGO has internal procedures and mechanism to assess compliance with internal guidelines.	

### Analysis/Background:

LPPS Art. 16(10)(c) states that the PG may "revoke, suspend or cancel acts issued by public prosecutors if they are contradicting the law." LPPS Art. 23(2) provides that a prosecutor's obligations include "(a) fulfilling service duties in strict compliance with the Constitution and laws of the Republic of Moldova, (b) abstaining from actions that can compromise the honor and dignity of the prosecutor, and (c) submitting in accordance with the law a declaration on income and property." LPPS Art. 23(3) states: The "position of public prosecutor is incompatible with any other public or private position" except certain specified teaching or scientific activities.



Neither the LPPS nor any other law details a protocol for the reporting of internal corruption and criminal activity. This is particularly important for an organization that is subjected to powerful external political influences. Council of Europe Recommendation (2000)19 on the Role of the Public Prosecution in the Criminal Justice System, Article 5(f) specifically states that governments should ensure that prosecutors have “access to a satisfactory grievance procedure, including where appropriate, access to a tribunal, if their legal status is affected.” A written grievance procedure would help facilitate internal complaints against illegal or improper orders such as the “telephone orders” noted in Factor 7 and could encourage prosecutors to report government corruption or internal abuses of power. As the ECtHR recently found, the PGO does not have such a protocol. See *Guja v. Moldova*. Although there is a pending draft Law on Whistleblowers, the law – as noted in Factor 5 – fails to address the difficult circumstance of a prosecutor reporting serious misconduct by his colleagues or his superiors.

There is also very little information regarding the PGO’s internal monitoring and enforcement procedures. Although respondents indicated that PGs have historically issued a significant number of internal regulations, directives and orders, their content is largely unknown to anyone outside the PGO. With the exception of a regulation addressing conflicts of interest (see Factor 17 below), the PGO did not make these directives available for this assessment despite several requests. It is also unclear whether the PG’s directives – current or previous – are compiled in a handbook that prosecutors can rely upon as a guide to the PGO’s internal policies and procedures. The PGO’s website refers to an internal Division of Organization and Control responsible for analyzing and ensuring the execution of the PGO’s work plans, and enforcing the decisions of the PGO, PG and the Collegium. However, there is no mention of such a division in any law and the draft LPPS only mentions a Division of Internal Security without defining its purpose or authority.<sup>36</sup> It is not clear whether these two divisions are actually the same division and, more importantly, it remains unclear what rules, regulations and orders they enforce.

The existence of written guidelines helps prevent and contain prosecutorial power and helps deflect improper influence. For instance, written guidelines regarding how to handle telephone calls from the President or members of Parliament might assist prosecutors in repelling attempts at improper influence. In addition, written and published guidelines on how to handle and investigate allegations of human rights abuses would help bolster public confidence in the PGO, and provide a public measuring stick against which the PGO’s actions could be measured. It is not known whether prosecutors are guided by internal rules and regulations in their everyday decision-making on such topics as the exercise of prosecutorial discretion, when and how to report problems in relations with criminal investigators, and what priority to give particular types of cases. Publishing such rules and orders would increase its transparency and raise public confidence without compromising the PGO’s inner workings.

Although members of the media reported that the PGO previously accepted complaints from outside parties, or would investigate claims made in media reports, they said the PGO no longer engages in this activity. It is not clear whether there has ever been written policies or procedures for accepting such complaints. For instance, most law enforcement agencies will have forms upon which a citizen can detail a complaint complete with the date, details of the alleged offense, address of the complainant and so forth. There have been no reports of similar such forms at the PGO.

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<sup>36</sup> Draft LPPS Art. 107 refers to an “internal security section of the General Prosecutor’s Office” and provides that in disciplinary proceedings it is “empowered with corresponding duties” and “shall preliminarily verify the grounds for holding the prosecutor accountable and shall ask for written explanations from the prosecutor concerned.” The draft LPPS’s text is not clear whether this section is also the Division of Internal Security and its specific purpose and authority remains unclear.

The PGO retains the Soviet era practice in keeping its internal affairs secret. This was repeatedly demonstrated during the course of this assessment, with prosecutors exhibiting an extreme reluctance to discuss any aspect of the PGO's internal workings. This practice contributes to the public's suspicion of the PGO's activities without contributing to the PGO's operational efficiency. The PGO needs to develop an enforceable and public protocol for its reporting and handling of internal corruption and crime. This action would increase its internal transparency and increase the public's confidence that the PGO can be a trusted guardian of a democratic society.

## Factor 17: Conflicts of Interest

***Prosecutors are unaffected by individual interests, and avoid conflicts of interest or the appearance thereof.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Moldova has established a legal framework for addressing conflicts of interest. The little data that exists indicates that conflicts of interest remain common.	

### Analysis/Background:

The Republic of Moldova has a number of overlapping laws addressing conflicts of interest. Prosecutors are subject to conflict of interest provisions in the LPPS, CPC, Regulation On the Conflict of Interests with the Prosecution's Bodies and the Guidelines On Eliminating the Factors of Corruptible Conduct in the Activity of Civil Servants of the Prosecution's Bodies. In addition, there is a draft Law on Conflict of Interests pending before Parliament that is applicable to all government employees, including prosecutors.

LPPS Art. 23 states that the position of prosecutor is incompatible with any other public or private position except for certain teaching or scientific activities. It requires prosecutors to submit written declarations detailing their income and property holdings. These declarations are to be submitted annually according to the Regulation on the Conflicts of Interests with the Prosecutions' Bodies (see below). LPPS Art. 27 provides that prosecutors are subject to disciplinary action for taking part in public political activities or for violating the provision on the incompatibility of functions.

CPC Art. 51(3) mandates that the prosecutor carry out his duties in an independent fashion, free from all influences except the law and written instructions from superior prosecutors. CPC Arts. 54 and 33 detail conflicts mandating a prosecutor's withdrawal including cases where the prosecutor has a personal interest, the prosecutor has participated in the matter previously or the prosecutor has made public pronouncements regarding the defendant's guilt.

In July 2006, the PG issued the Regulation on the Conflict of Interests with the Prosecution's Bodies [hereinafter "CONFLICT REGULATION"]. It defines conflicts of interest similarly to CPC Arts. 33 and 54, and it mandates that prosecutors not conduct any legal or administrative acts, nor make any decisions that produce or could produce a profit if the prosecutors were subject to a conflict of interest. The Conflict Regulation also mandates that prosecutors avoid or divest themselves of any interest – public or private – that could cause an undue influence in their decision making as a prosecutor. If the source of the conflict is a position held in another organization, the prosecutors must resign the position and report their conduct to a superior. It further prohibits prosecutors from enriching themselves through illegal benefits resulting from their public positions, and from accepting gifts or services if they were offered in connection with the prosecutor's official responsibilities. New prosecutors must complete a declaration that



identifies personal interests within 15 days of their appointment and it must be updated annually. The PGO's Internal Security Section is obligated to verify the declarations and report the results to the PG. The Conflict Regulation does not indicate a procedure if the PG fails to submit a declaration. Pursuant to this regulation, the information gathered in the declarations shall be available to the public.

Prosecutors also must follow the Guidelines on Eliminating the Factors of Corruptible Conduct in the Activity of Civil Servants of the Prosecution's Bodies [hereinafter "*Guidelines*"]. The Guidelines provide for the disciplinary, administrative, material and criminal liability of civil servants who violate them. Article IV of the Guidelines details a civil servant's obligations to, among other things, manifest loyalty to the PGO, maintain state secrets, ensure public access to nonconfidential information as required by law, declare conflicts of interest, and report any request to take illegal action or the offer of any gift or favors that are not automatically allowed under existing protocol. Article V of the Guidelines details a lengthy list of prohibited conduct for civil servants of the prosecution bodies. For instance, civil servants are prohibited from holding two positions at the same time, conducting entrepreneurial activities, having undeclared bank accounts abroad, betraying the interests of their prosecutorial body, publicly disclosing prosecutorial strategies or actions, making unauthorized statements about internal investigations, disclosing information learned because of their position, assisting others in the preparation and filing of claims against the government, accepting gifts, or other valuable things offered because of their position, or doing anything that brings discredit to their agency.

Moldova has made progress in recognizing and legislatively addressing the problem of conflicts of interest. The existing laws provide notice to prosecutors of their expected conduct, though what constitutes a conflict of interest under these laws and regulations is in some respects too narrow. For instance, while the 2006 Conflict Regulation prohibits potential or actual conflicts of interest, it is silent regarding apparent conflicts of interest, that is, conflicts that while perhaps unlikely to ever manifest themselves would lead a reasonably informed person to perceive that a prosecutor's decision could be tainted by self-interest. Likewise, the laws fail to detail a comprehensive protocol for reporting conflicts up the chain of command and for ensuring that reported conflicts are ultimately resolved. Although the 2006 Conflict Regulation provides for conflicts to be reported to a prosecutor's immediate supervisor, it is important for the PGO's top administration to be informed of all such conflicts and their resolution, and to ensure they are addressed comprehensively and consistently. The absence of an organization-wide protocol would likely result in a multitude and variety of individual standards for resolving such conflicts.

Although the PGO's legal framework for addressing conflicts has improved, respondents said prosecutors do not avoid conflicts of interest and, instead, actively protect monetary interests that clearly conflict with their duties as prosecutors. One respondent, for instance, said senior prosecutors often have relations with an economic entity in Moldova and they will issue orders to subordinates working on cases involving those entities. The subordinate prosecutors are required to either carry out the illegal order or get the case transferred to someone else more amenable to carrying out such orders.

Prosecutor respondents denied there were substantial problems with conflicts of interest. They admitted, however, that the procedures for handling conflicts of interest are not uniform across all PGO offices and that some offices have created their own guidelines. In the event of a conflict, cases are transferred to another district. Violations of the conflict of interest guidelines are supposed to result in a report to the PGO's central office. Importantly, NIJ students are being instructed on conflicts of interest in their ethics class.

Moldova and the PGO have recently made significant strides to enact laws and regulations addressing conflicts of interest, – a problem that was barely understood a few years ago. The

PGO's commitment to implementing these relatively new laws and regulations is yet to be seen but it will determine whether this factor receives a negative or positive correlation in the next PRI.

## Factor 18: Codes of Ethics

***Prosecutors are bound by ethical standards of the profession, clearly aimed at delimiting what is and is not acceptable in their professional behavior.***

Conclusion	Correlation: Negative
The Code of Ethics is vague and subject to too much interpretation. Prosecutors were generally unfamiliar with whether a Code of Ethics existed, and there was little evidence to suggest that such a code was widely circulated and adopted.	

### Analysis/Background:

Prosecutors exercise an enormous amount of state power and play a critical role in the administration of justice. Although prosecutors represent the interests of the state and its citizens, they also have obligations to ensure that the rights of defendants, victims and witnesses are upheld. See generally, Factors 11-13 above. Determining the proper weight to give each interest they must protect is difficult. As a result, it is imperative that prosecutors exercise their powers and discretion pursuant to a code of ethics that provides clear and precise guidelines regarding their professional behavior. A code of ethics must address a prosecutor's specific relations with judges, defense attorneys, defendants, victims and witnesses. A code should be aspirational, in that it exhorts prosecutors to maintain the dignity and honor of the profession while seeking to act with the highest level of professionalism.

In October 2004, PG Valeriu Balaban signed an order adopting a new Code of Ethics [hereinafter "ETHICS CODE"] for the PGO and abrogating an older Code of Ethics adopted in 2000 by a PG's Order. Balaban's order further mandated all prosecutors become familiar with the Ethics Code and take all necessary steps to comply with its provisions, although this mandate has not been incorporated into the current LPPS. The heads of the GPO's subdivisions, and regional and specialized prosecutor's offices are responsible for enforcing the Ethics Code, and they must test every prosecutor on their knowledge of its provisions, with the test results becoming part of a prosecutor's personnel file. All GPO applicants must acknowledge their understanding of the Ethics Code and agree in writing to abide by its provisions.

The Ethics Code's introductory remarks establish an "impeccable behavior" for prosecutors, including ethical standards and moral principles for performing their responsibilities. These responsibilities are determined by society's general interests, the duty to defend fundamental human rights and freedoms, the supreme values of a democratic society, and the need to promote the PGO's image, honor and dignity in society. The Ethics Code provides definitions for "impeccable behavior," "corruptive conduct," "conflict of interest," and "personal interest." Ethics Code 1.2. It provides that the PGO's good reputation is based on "legality, humanity, equity, transparency, observance of fundamental rights and freedoms, observance of honor and dignity, honesty, impartiality and hierarchical control." *Id.* at 2.1.

The Ethics Code details a list of prohibited conduct for prosecutors very similar to the prohibited conduct detailed in the conflict of interest Guidelines under Factor 17. ETHICS CODE 3.1. It also prohibits prosecutors from using their position to obtain loans, credits, securities, immovable goods or other assets for their families or themselves; from using the PGO's assets for other than professional purposes; and from engaging in actions that undermine the honor and dignity of the



prosecutor. *Id.* The list of expected conduct also provides that a prosecutor must follow the law and the Ethics Code; be professional and intellectually informed; be honest, impartial, competent and understanding while completing their duties, and considering only the public interest and the facts of the case; be polite to citizens and colleagues without offending their honor or dignity; avoid real and apparent conflicts with colleagues and citizens; faithfully carry out a superior's orders; inform superiors of solicitations to commit illegal acts or violations of the Ethics Code; inform superiors of conflicts of interest; fulfill their legal duties in accordance with the law and in an understandable manner; dress accordingly; avoid indications of political affiliation; and respect employees of other legal or public authorities. ETHICS CODE 3.2.

The Ethics Code also details off-duty obligations, including having an impeccable behavior that preserves public confidence in the impartiality and prestige of the public authorities; showing courtesy to all citizens; observing citizens' rights and freedoms as stated in the Constitution, national laws and international law norms; not disseminating information that prejudices the honor, dignity and prestige of the PGO or public authorities; refraining from expressing opinions on issues related to the state's domestic or foreign policy or promoting undemocratic ideologies; refraining from gambling; showing intolerance for immoral behavior, vices, narcotics and violations of law; and not using their prosecutor's identification except when performing appropriate legal rights and duties. ETHICS CODE 4.1.

The Ethics Code also provides that prosecutors can be liable for inadequate work performance and "compromising actions" or for violations of the Ethics Code or LPPS Art. 27 (taking part in public political activities or violating the provision on the incompatibility of functions). ETHICS CODE 5.1. The PG can order that a prosecutor be sanctioned pursuant to LPPS 28 if their misbehaviors are serious. *Id.* at 5.2. A prosecutor can be suspended pending the resolution of serious violations. *Id.* at 5.3.

The Ethics Code creates a Commission for Ethics for Prosecutors that coordinates and monitors the application of the code to the PGO. *Id.* at 6.1. The PG selects the Commission's members who must be well-known prosecutors with irreproachable behavior. *Id.* at 6.2. The Commission is responsible for establishing more specific ethical principles, establishing the specific procedures for adjudicating misconduct and amending or supplementing the Code, monitoring compliance with the Code, and investigating violations and recommending sanctions for violations. *Id.* at 6.3.

The GPO's Ethics Code details a prosecutor's core values and principles and it details aspirational conduct and conduct that is prohibited. Although there is no one way in which to draft a code of ethics, a code that is as specific as possible provides better guidance for prosecutors and less room for politically motivated interpretations. In this respect, the Ethics Code is lacking. The code leaves important terms undefined, and where it provides definitions of terms, they are often vague. For instance, the term "corrupt conduct" is defined, in part, as a "deviation from the principles of morality." In addition to being vague, this raises the question of whether morality has a place in legal ethics since it is so intertwined with religious beliefs or evolving societal norms. The same section also fails to define the meaning of "compromising actions" and fails to specify what constitutes "serious" misbehaviors warranting the imposition of sanctions by the PG. Similarly, Section 3.1.(l) requires a prosecutor to "refrain from any other actions that might undermine the honor and dignity of the prosecutor." "Honor" and "dignity" are very subjective terms that could easily be used to justify disciplinary proceedings against any prosecutor. Likewise, Section 4.1(i) requires prosecutors to conduct their family and social life according to "widely recognized rules of conduct in order to be respected and not to denigrate the position of the prosecutor." But the failure to define the term "widely recognized rules of conduct" raises the question of whether a prosecutor's divorce, infidelity or homosexuality would warrant disciplinary action. Ironically, Section 3.2(j) requires a prosecutor to avoid "the use of ambiguous terms and legal tautologies." Section 4.1(d) also suffers from the use of vague words such as

“honor, dignity and prestige.” The failure to provide specific definitions grants dangerously broad discretion in the code’s enforcement.

In addition, the Ethics Code is – by its own terms - incomplete because it specifies that the Commission will establish “more specific ethics principles” and specify the procedures for adjudicating misconduct. As a result, it fails a central requirement typically set forth in effective codes in that it does not provide a complete picture of a prosecutor’s ethical obligations. There is also a question of whether the ethics commission has actually been created. No respondent ever mentioned the existence of the commission. If it has not been created, this would be a further denigration of the Ethics Code’s value, since the commission has key responsibilities for developing the code.

The Ethics Code is also subject to the same criticism leveled at the draft LPPS by a COE expert (see Factor 7), namely that the code concentrates too much power in the PG to make disciplinary decisions. Nor does it specify the due process afforded to prosecutors accused of violations. Another significant oversight in the Ethics Code is that the introduction speaks to the PGO’s good reputation being based, in part, on the observance of citizens’ rights recognized under international law. However, it imposes a duty to safeguard such rights while a prosecutor is off-duty but not when they are on duty. The Ethics Code also fails to address the often complex relations that prosecutors have with judges, defense attorneys, victims and witnesses. Respondents also highlighted the fact that the Ethics Code is generally unknown among prosecutors who debated among themselves whether such a code existed.

### **Factor 19: Disciplinary Proceedings**

***Prosecutors are subject to disciplinary action for violations of law, regulations, or ethical standards. Disciplinary proceedings are processed expeditiously and fairly, and the decision is subject to independent and impartial review.***

<b>Conclusion</b>	<b><u>Correlation: Negative</u></b>
Prosecutors are subject to disciplinary action for violations of law, regulations or ethical standards, but the disciplinary process appears to be arbitrary, inconsistent and unresponsive to complaints from people outside the prosecutor’s office. When faced with disciplinary action, prosecutors appear not to be afforded appropriate due process within the PGO, although they are afforded due process when appeals are taken to a court.	

#### Analysis/Background:

The LPPS and the Law on the Reward of Prosecutors and Investigators from the Prosecutor’s Office and on Their Disciplinary Responsibility (“LRP”) contain overlapping provisions that govern the discipline of prosecutors. LPPS Art. 27 and LRP Art. 6 provide that prosecutors can be disciplined for a number of reasons. Some reasons – such as deliberately violating the law while performing prosecutorial duties, failing to perform duties, and failing to adhere to a list of activities delineated as incompatible with being a prosecutor – are relatively clear. Others, such as engaging in “compromising actions,” are less clear. The range of disciplinary sanctions detailed in LPPS Art. 28 and LRP Art. 8 include greater supervision, warnings, reprimands, demotion and dismissal. A prosecutor may be disciplined with a suspension, pending possible dismissal, pursuant to LPPS Art. 29, if they are subject to a criminal prosecution; if they publicly participate in another person’s campaign for public office; or they commit a severe infringement or compromising actions that would independently warrant dismissal. If a criminal case against a



prosecutor is dismissed, they are entitled to be reinstated unless – presumably – their conduct independently warranted discipline. This latter point is not clear. Indeed, besides a criminal conviction, LPPS Art. 30 provides that a prosecutor may also be dismissed for systematic offenses, one grave disciplinary offense or the failure to adequately perform their duties. The LPSS and LRP do not require prosecutors to report the disciplinary violations of other prosecutors to their superiors.

LRP Arts. 9 and 10 provide that a prosecutor's superiors can initiate disciplinary proceedings, but only the PG has the authority to impose sanctions. The LRP and LPPS articles detail contradictory appeal provisions. LRP Art. 15 provides for an appeal to the Prosecutor's Collegium with the opportunity to engage in a new investigation. LPPS Arts. 28-30 allows a prosecutor subject to discipline, suspension or dismissal to appeal to a court.

The pending draft LPPS includes several changes affecting disciplinary proceedings, the most important of which is the creation of the Prosecutors' Council to ensure prosecutors' autonomy, objectivity and impartiality. Under the draft law, the Council or the chiefs of PGO subdivisions initiate disciplinary matters and submit them to a Disciplinary Board. The PG is no longer a part of the disciplinary process, except for dismissals. The Disciplinary Board has nine members all of whom are prosecutors and would initiate an investigation and hear from the subject prosecutor before reaching a decision. The Board could accept the disciplinary proposal and apply a sanction. This decision can be appealed to the Prosecutors' Council and, if necessary, to a court. The Disciplinary Board also can reject the proposal or submit the case to the Prosecutors' Council for the initiation of a procedure to suspend the prosecutor. The Council or the Board also could recommend the PG dismiss a prosecutor. Respondents said the draft LPPS's creation of the Prosecutors' Council and Disciplinary Board would likely result in prosecutors being treated more fairly in disciplinary matters.

The draft LPPS also adds some new grounds for discipline and, for the first time, it imposes the possibility of personal monetary liability on prosecutors. The most significant new grounds for discipline include: the intentional or severely negligent misinterpretation or misapplication of legislation if such conduct is not justified by an accepted change in how the legislation is to be interpreted; ungrounded refusals to perform duties; dishonorable attitudes towards colleagues, judges, attorneys, experts, witnesses or other participants in judicial proceedings; three consecutive violations of the prosecutor's code of ethics or an infringement that seriously affects the moral image of the prosecutor; and using one's position to obtain undue benefits and advantages. The draft law also imposes personal liability on prosecutors for damages paid by the state in cases where the prosecutor's bad faith or severe negligence violated a citizen's human rights or fundamental freedoms as guaranteed by Moldova's Constitution or international treaties ratified by Moldova. The draft law does not provide for a citizen's ability to initiate a disciplinary matter.

There were conflicting reports regarding the degree to which prosecutors are subjected to disciplinary measures. Some respondents said disciplinary complaints originate from their superiors as a means to control their subordinates.<sup>37</sup> These respondents said prosecutors are not subject to investigation or discipline when judges, defense attorneys or citizens complain. One investigative judge said his referrals of prosecutor's human rights violations to the PGO had not resulted in any sanctions known to him. Other respondents had a contrary view, claiming that

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<sup>37</sup> Several respondents noted the *Gheorghe Malic* case. Respondents said Malic was a criminal investigations specialist and an experienced prosecutor. Apparently during one meeting of the Prosecutor's Collegium Malic criticized the PG for failing to pay adequate attention to the issue of discipline and he argued that the PG should intervene in certain circumstances. The PG dismissed Malic the following day. Although Malic appealed to the courts and won, he elected not to return to the PGO.

prosecutors were very disciplined and did not commit disciplinary violations because they understood their office would not protect them from complaints.

In 2006, the PGO reported that 45 prosecutors were sanctioned, including 34 reprimands, five demotions, two dismissals and four unspecified actions. See 2008 CEPEJ REPORT at 207. The 45 disciplinary proceedings amounted to an average of 47 disciplinary actions per 1,000 prosecutors. This was among the highest ratios of disciplinary sanctions per 1,000 prosecutors reported in the 2008 CEPEJ Report. Only Spain (79), Georgia (300) and Ukraine (133) reported higher ratios of disciplinary proceedings against prosecutors. *Id.* at 208-09. One respondent reported that 30 prosecutors were subjected to disciplinary proceedings in 2007 and 10 were terminated. He said the most common disciplinary reasons were procedural problems, such as excessive delays in the investigation of a case and instances where citizen's rights were violated.

## V. Interaction with Criminal Justice Actors

### Factor 20: Interaction with Judges

*Public prosecutors safeguard the independence of the judicial and prosecutorial functions. Prosecutors treat judges with candor and respect for their office, and cooperate with them in the fair and timely administration of justice.*

Conclusion	Correlation: Negative
Prosecutors do not safeguard the independence of the judiciary and instead view judges as an obstacle to overcome in achieving convictions. Although relations have improved, prosecutors exert improper influence over judges instead of treating them as a partner in the pursuit of justice and the final arbiter of disputes. Prosecutors' feign ignorance of ECtHR decisions, which would otherwise have to be cited to judges, demonstrating a lack of respect and candor towards the judiciary.	

#### Analysis/Background:

Moldova's Constitution mandates that judges are "independent, impartial and irremovable under the law." See RMC Art. 116. CPC Art. 26 reiterates that judges are an independent entity who are subject only to the law and who must remain free from pressure. It further states that judges shall not be inclined to accept the conclusions of the criminal investigating authority and must proceed with an open mind regarding the defendant's guilt or innocence. Importantly, it prescribes that no "interference shall be allowed in criminal justice. The judge shall oppose any attempt of putting pressure on him."

Moldova's prosecutors are granted wide latitude to independently carry out their various functions with limited input from judges. During the investigation phase of cases, CPC Art. 41 grants investigative judges authority to grant or deny requests for detention, search and seizure warrants, and wiretaps and video surveillance. Prosecutors are then given broad discretion, pursuant to CPC 52(1)(1), to initiate, carry out and terminate a criminal prosecution. Although trial judges have exclusive authority to determine a defendant's guilt or innocence and to impose a sentence, a judge has no authority to overrule a prosecutor's decision to pursue or dismiss a case, even if the case has been pending for years, or reject a prosecution appeal for lack of legal justification.



Prosecutors are prohibited from simultaneously sitting as a judge (LPPS 23), but there does not appear to be a prohibition against a prosecutor applying to become a judge if they first resign their position as prosecutor and graduate from the NIJ. See JRI at 18. As noted in Factor 1, judges can become prosecutors by either graduating from the NIJ or meeting all the requirements for the alternative means of becoming a prosecutor.

The respective roles and responsibilities of the judge, investigative judge and prosecutor ensure repeated contact between them as cases proceed through the criminal justice system. Nevertheless, there are few laws governing a prosecutor's cooperation and professional relationship with judges. CPC Art. 334(3) states that a prosecutor who causes a courtroom disturbance or otherwise fails to comply with court instructions may be referred to the PG and fined by the court. CPC Art. 201 states that a prosecutor's unreasonable and unexcused absence before a judge shall result in a fine. But there does not appear to be any law that, for instance, forces prosecutors to share information with the material filed in courts.

The 2006 U.S. HR Report states that the Moldovan prosecutors continued to have substantial influence over Moldovan judges, and that judges often set aside or discounted a defendant's right to be presumed innocent based on prosecutorial assertions of guilt. There were also disturbing reports by respondents that judges admitted informally that they elected to convict defendants known to be innocent because of PGO pressure or directives. Moreover, the OSCE Trial Monitoring Report noted an instance in which a judge thanked the monitors for attending a hearing because it would make it easier for him to resist pressure from the prosecutor, who the judge said had offered him a bribe. However, one defense attorney said prosecutors were able to sway judges more frequently because they were better prepared for court appearances than defense attorneys.

Many respondents cited the continuing practice of judges and prosecutors holding ex parte meetings without the presence of defense counsel as a substantial ongoing problem. The OSCE's Trial Monitoring Report confirmed that this problem was widespread. Although respondents remarked that it was extremely difficult to attribute trial results to these ex parte meetings, they observed that prosecution requests for an appeal are always accepted after such meetings. Respondents maintained that the appearance of impropriety was a devastating blow to the perception of fairness among case participants and the public. In November 2007, the SCM issued a decision that forbids judges from having ex parte meetings with prosecutors or lawyers before issuing a decision.

Another common complaint about investigative judges was that because they qualify for their position by having at least five years of experience as a prosecutor or criminal investigator, they have a natural bias towards the prosecution. See Art. 7(2), LAW ON THE STATUS OF THE JUDGE. As evidence of this, respondents said investigative judges, who have substantial authority during the investigation of a case<sup>38</sup>, often granted prosecution requests for arrest warrants, detention, wiretaps and other investigative aids without regard to whether such requests were justified under the law. They also considered illegally obtained evidence. Although investigative judges are frequently identified in ECtHR cases as making decisions contrary to the rights of defendants, respondents believed that prosecutors shared the blame because their illegal requests precipitated the investigative judge's rulings. See generally Factor 11. One investigative judge noted, for instance, that the majority of pretrial detention motions brought before him were either not justified or insufficiently justified. However, if he denied the request, prosecutors would appeal the decision instead of simply resubmitting the motion with proper and sufficient justifications and often would win on appeal. As a result, investigative judges simply learn to grant detention requests without regard to the sufficiency of the justifications underlying the

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<sup>38</sup> CPC Art. 41 gives investigating judges broad authority to issue arrest warrants, detain suspects, grant requests for searches and seizures, and authorize wire taps.

request. The resulting sense of favoritism towards prosecutors erodes the belief that justice is achievable in the Moldovan criminal justice system.

In the OSCE Trial Monitoring Report, monitors identified several areas of concern relevant to this factor, including:

- Prosecutors were rarely prepared to argue cases before the Supreme Court of Justice and, instead, merely recited a few standard phrases in support of the government's position. The monitors also noted, however, that prosecutors were almost always prepared for trials in the lower level courts and were more disciplined and professional than defense lawyers.
- Prosecutors solicited and received preferential treatment from particular judges. The monitors reported that most judges treated both sides with equal respect but noted that there were some judges who showed a clear predisposition towards prosecutors and against defense attorneys. The prosecutor's solicitation of such treatment and the judge's granting of it appeared to violate the principles of judicial impartiality, equality of arms, and the adversarial nature of the proceedings.
- Prosecutors left the courtroom in the middle of proceedings and sometimes searches had to be initiated to find them. In other instances, prosecutors took phone calls during proceedings, thereby failing to respect the solemnity of the court.
- Prosecutors were often late for court, sometimes did not stand when addressing the court, often failed to identify themselves when replacing another prosecutor, and wore their uniforms during only 15% of the proceedings they attended. The monitors noted that prosecutors always wore their uniform in high profile cases involving political figures.

Respondents raised additional complaints about the relationship between prosecutors and judges. Respondents said prosecutors never cited ECtHR decisions to judges and when pressed would feign ignorance of ECtHR cases in order to avoid their professional obligation to disclose such cases to the judges. Judge respondents expressed frustration that their complaints to the PGO about prosecutorial misconduct were ignored or even treated with disdain. In one case, the PGO told an investigative judge to stop formally complaining so there would be no documentation of the complaint. Respondents also complained about prosecutors causing delays by being late or absent from court proceedings, an inconsistent level of professionalism among prosecutors, and prosecutors who were not prepared for their court appearances. Respondents recognized, however, that some of these deficiencies in performance are attributable to the dramatic rise in prosecutors' workloads in recent years as their responsibilities have increased without a commensurate increase in the number of prosecutors or support staff.

Judicial fines for prosecutors were rare or nonexistent. Respondent judges said the procedure to impose a fine for prosecutorial misconduct is cumbersome and they face PGO pressure not to impose them. Some judges also expressed concern that the PGO might target them with unwarranted regression lawsuits, but they admitted that all such lawsuits had to be reviewed by the Court of Appeals, which provided them with a sense that fairness might prevail. Judges also complained about the PG's ex officio membership on the SCM, thus raising questions about how a judge could be fair to all parties when the PG was participating in the proceedings on judicial discipline, policy and administration. They also considered the PG's authority as a member of the SCM to initiate disciplinary or criminal proceedings against a judge to be a conflict of interest.<sup>39</sup>

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<sup>39</sup> The PGO reported the initiation of five criminal prosecutions against judges in 2008 for allegedly issuing illegal court decisions. See ECONOMICESCOE OBOZRENIE newspaper, Jan. 30, 2009. The PG noted these cases while discussing his offices successes and failures in 2008. *Id.* The PG said three of the five cases had been sent to the court for prosecution. *Id.*

## Factor 21: Interaction with Police and Other Investigatory Agencies

*In order to ensure the fairness and effectiveness of prosecutions, prosecutors cooperate with the police and other investigatory agencies in conducting the criminal investigation and preparing cases for trial, and monitor the observance of human rights by investigators.*

Conclusion	Correlation: Negative
The PGO has irregular cooperation and poor relations with the most important criminal investigative authorities in Moldova. These factors – combined with little legal authority to control investigators and excessive caseloads – result in prosecutors having a limited ability to ensure the fairness of criminal investigations. These same problems result in a failure to intercede and end ongoing human rights abuses by investigators.	

### Analysis/Background:

In Moldova, prosecutors investigate and prosecute cases in cooperation with investigating officers from the MIA, CCECC, and Customs Service. CPC Art. 56. In 2007, prosecutors and criminal investigators from the MIA, CCECC and Customs Service conducted 46,445 investigations, including 14,218 cases in which the investigation was completed, 10,716 cases sent to court, 3,155 discontinued prosecutions, 11,432 suspended investigations and 282 cases where the investigation was conditionally suspended. See PGO 2007 REPORT at 19. The PGO also reported that 1,105 cases were returned to the criminal investigating authorities for further investigation and that 13,071 criminal cases were still pending with investigators at the end of 2007. *Id.*

Under the law, prosecutors have wide-ranging authority over the scope, investigation and processing of criminal investigations. CPC Art. 52. In general, prosecutors have sole authority to initiate and terminate criminal investigations. They have supervisory authority over criminal investigators and are responsible for ensuring the investigation is legal and complete. Prosecutors determine the reasonable length of an investigation and they can annul illegal or groundless orders from criminal investigators. Prosecutors are responsible for determining who will be prosecuted and ensuring that prosecutions are supported by sufficient evidence. They are also responsible for ensuring the lawfulness of a defendant's arrest and detention pending trial.

Leaders of the MIA, CCECC and Customs Service must inform prosecutors when criminal investigations are initiated and these agencies must ensure that the investigations are generally "comprehensive, objective and complete." They also must undertake "the use of audio and video recordings, filming, taking photographs, and other criminal investigation actions provided for in the present Code for the purpose of discovering the crime and the perpetrators, establishing facts, and drawing up procedural reports on these actions" that can be used as evidence in a criminal case. CPC Art. 55(1). In addition, they are responsible for ensuring that investigations develop evidence for each element of an offense.

The duties and obligations of criminal investigating officers include responsibility for the timely and legal completion of investigations, interviewing suspects, injured parties and witnesses, and complying with a prosecutor's lawful orders. CPC Art. 57. They are also responsible for identifying and securing crime scenes, identifying and collecting evidence and obtaining documents. Investigators may propose to the prosecutor that court orders be obtained for preventive measures, searches and seizures, electronic and physical surveillance activities, and the collection of physical samples. Of critical importance, investigators are responsible for

involving defense lawyers at the earliest possible stage of the investigation, guaranteeing that human rights are upheld, and proposing the termination of criminal proceedings or the non-initiation of a criminal investigation where there is insufficient evidence to pursue a case.

Prosecutors may request that criminal investigators be disciplined, but the ultimate authority for investigating and sanctioning a criminal investigator remains with investigative entity to which he is attached. LAW ON THE STATUS OF THE CRIMINAL INVESTIGATION OFFICER, Art. 25 [hereinafter “CIO LAW”]. Prosecutors have the authority to initiate and carry out criminal investigations against a criminal investigation officer. CIO LAW Art. 26. Criminal investigators may appeal a prosecutor’s order to the prosecutor’s hierarchical superior. CIO LAW Art. 8. Arts. 5 and 19 of the Law on the Operative Investigations gives prosecutors the authority to investigate complaints about an operative investigation and it mandates that prosecutors intervene and end any violations of defendant’s rights by criminal investigative authorities.

Respondent statements revealed substantial differences in the PGO’s relations with the various criminal investigation authorities. They reported that the PGO had relatively poor relations with the MIA and CCECC and relatively good relations with some of the specialized investigative bodies such as the APO and CCTP. Respondents did not address the relationship between the PGO and the Security and Information Service, which is Moldova’s principal intelligence agency and has significant and presumably unregulated authority to use wiretaps and other technical means to conduct investigations.

The worst relationship appeared to be between the PGO and the MIA. Two years ago, the MIA created a unit of investigators whose only duty was to investigate prosecutors. Purportedly, the MIA created the unit to counter PGO efforts to investigate MIA officials and investigators for corruption. Respondents reported one case where the MIA complained to Moldova’s president about a particular prosecutor. The complaint involved the almost frivolous assertion that the prosecutor had ordered a police officer in Balti to release a suspect, an action the CPC specifically allows prosecutors to do. Nevertheless, the prosecutor was forced to resign, but was re-instated pursuant to a court judgment. The PGO’s 2007 Report, which was excerpted in the *DREPTUL MEU* newspaper, provides further evidence of the PGO’s poor relations with the MIA. The PGO reported it was forced to remand 900 criminal cases to the MIA investigators for additional work, compared to five remands to the CCECC and 11 to the Customs Service. Although the MIA handles approximately 90 percent of all criminal investigations, the number of remands nevertheless suggests a substantial problem in the quality of work performed by MIA investigators, and a lack of cooperation and communication between the two government entities.

While the PGO had few open disputes with the CCECC, its relations also exhibited signs of dysfunction. Respondents said prosecutors avoided conflict with the CCECC and its investigators because of the widely held belief that Moldova’s president directly controlled the CCECC and did not tolerate interference in its activities. As noted in Factor 7, a significant number of prosecutors chose to resign in 2007 rather than investigate the CCECC and its members. Prosecutors expressed embarrassment at the fact that they had no real control over CCECC investigators. A high-ranking CCECC respondent commented that the problems resulted from overly ambitious prosecutors and a lack of collegiality. He said disagreements are now much less common than in years past. In fact, respondents reported that senior members of the two organizations periodically meet to review and prioritize cases. They reported that CCECC investigators were more professional and disciplined than their MIA counterparts. An ACPO respondent said there is good cooperation between CCECC investigators and prosecutors and that the problems between the two bodies resulted from strategic differences, namely that the PGO wants to pursue high-level corruption cases while the CCECC continues to focus on low-level corruption. However, it is not always clear whether the PGO and CCECC are cooperating in combating corruption or competing for jurisdiction over it. For instance, in its 2007 Report of Activities, the PGO noted that it was responsible for investigating and filing 209 out of 434 cases



of crimes involving official corruption, finance, banking, and smuggling, even though these crimes fell under the CCECC's jurisdiction.

CCTP respondents reported generally good relations with the PGO. CCTP prosecutors specialize in trafficking matters and are supervised by the PGO. They initiate brief investigations upon learning of a complaint. After reviewing CCTP's initial findings and certifying the matter as a trafficking case, the PG sends the case to the CCTP chief prosecutor who then oversees a complete investigation. When the investigation is completed, CCTP prosecutors will request PGO's permission to issue an indictment.

Generally, prosecutors reported ongoing difficulties in controlling criminal investigators. They complained that criminal investigators frequently failed to follow orders and failed to thoroughly and competently carry out investigations. In some cases, investigators failed to inform prosecutors that people had been detained for the CPC-mandated maximum of 72 hours. Respondents said investigators would sometimes use this period to engage in illegal actions to obtain evidence without the knowledge of the prosecutors. One respondent remarked that investigators can easily hide evidence from prosecutors. Prosecutors also complained that investigators occasionally came to them with indictments instead of the evidence needed to support an indictment, as required by CPC Art. 52. Respondents said the 2003 CPC amendments gave prosecutors more oversight obligations over investigations without giving them the means – such as sanctioning power – to ensure that investigators turned over all inculpatory and exculpatory evidence. One respondent said investigators can easily hide evidence from prosecutors. Instead, prosecutors can do nothing more than write letters requesting that an investigator be replaced or disciplined. One prosecutor, momentarily setting aside his earlier complaints of being overworked, suggested that they should be more involved in an investigator's training and professional development, and in their overall direction to ensure a higher level of quality and to guard against illegal acts.

Criminal investigator respondents maintained that they consulted with prosecutors on key decisions involving searches, seizures and detention, and that they are responsive to prosecutor's oral and written instructions. They said disagreements over instructions could be appealed to a prosecutor's superior. Investigators knew that prosecutors blamed them for human rights violations but they countered that they had insufficient resources to, among other things, meet European standards for detention. One high-ranking law enforcement officer suggested that too much attention is paid to human rights abuses, commenting that accused often fake human rights abuses while in police detention in order to draw attention to themselves and bring the police into disrepute.

Several respondents reported that there is ongoing and persistent abuse of suspects by police and that there is substantial political pressure for prosecutors not to investigate and prosecute such abuses. Some of the greatest pressure comes from Parliament members, some of whom were once employed by the MIA or the police. These Parliament members write letters to the PGO asking why prosecutors are wasting time investigating police instead of criminals. These letters have occasionally leaked to the media and published. See *Guja v. Moldova* in Factor 5. Moldovan citizens tolerate police abuse because of the belief that such conduct substantially reduces crime while politicians use the reported reduction in crime to justify continuing support for police authorities and their illegal methods.

The PGO's relationships with the largest and most important investigation authorities are broken. Although the PGO has direct and indirect supervisory authority over almost all investigations and investigators, it appears incapable of ending practices that result in confirmed cases of human rights violations. The occasional half-hearted investigations and even rarer convictions of human rights violations have done nothing to slow or stop the ECtHR's repetitive condemnations of Moldova's criminal justice system. While relations with some smaller investigative authorities

such as the CCTP appear normal, the PGO's relations with the MIA and CCECC have reached a point of stalemate where they are unable to stop each other from improper and illegal conduct. The PGO does not initiate criminal investigations against MIA and CCECC members, and the MIA and CCECC do not investigate or otherwise intimidate PGO prosecutors. The CCECC in particular appears to operate with complete impunity, perhaps knowing that no one but the president can impact its operations or hold it accountable.

## Factor 22: Interaction with Representatives of the Accused

*Public prosecutors respect the independence of the defense function. In order to ensure the fairness and effectiveness of prosecutions, prosecutors satisfy their legal and ethical obligations towards the representative of the defendant.*

Conclusion	Correlation: Negative
As with judges, prosecutors view defense lawyers as obstacles to overcome in seeking to convict a criminal defendant. The PGO has threatened lawyers who initiate ECtHR claims, and there have been persistent efforts to interfere with defendants' private contracts with their lawyers. Prosecutors rarely fully comply with their obligations to defense lawyers unless forced by court order.	

### Analysis/Background:

Since Moldova's independence, prosecutors have seen an erosion of their ability to unilaterally determine the outcome of criminal cases. Conversely, lawyers have seen their power and influence grow in direct correlation to the expanding trial rights guaranteed to criminal defendants. The ECHR and Moldovan law, as noted in Factor 11, provide criminal defendants with substantial rights regarding legal representation. Moldovan law generally provides the same or similar rights to defendants. For instance, the ECHR and CPC Art. 17 guarantee defendants the right to be represented by lawyers at all stages of the criminal proceedings, from the start of a criminal investigation to a final appeal. If a defendant cannot afford a lawyer, one must be appointed to him. These rights necessitate continuous contact between prosecutors and the lawyers, which has resulted in the relations between the two becoming tenser.

Relations have been further frayed with the ongoing reliance by lawyers on the ECtHR as the court of last resort in seeking remedies for the violation of defendants' fair trial rights, including the use of torture. In an apparent effort to stem ECtHR claims, on June 26, 2006, PG Valeriu Balaban sent a letter to the Moldovan Bar Association ("MBA"), which represents all criminal defense lawyers in Moldova. Balaban said the PGO would be investigating two lawyers who had alleged torture against their clients in ECtHR claims to determine if "they have committed the offence provided for in Article 335 § 2 of the Criminal Code, by making public on an international scale false information about alleged breaches of human rights which gravely prejudice the image of our country." Balaban demanded the MBA stop the lawyers' knowingly false and inflammatory claims. AI and the MBA believed that Balaban's purpose behind the letter was to stop lawyers from making ECtHR claims. The ECtHR agreed, finding in *Colibaba v. Moldova*, that Balaban's letter "could, in the Court's view, easily be construed as amounting to pressure on the applicant's lawyer and on all lawyers in general."

Another defense lawyer respondent said prosecutors and the police threatened him with trouble if he got involved in a high profile defense case. But most respondent defense lawyers said that



prosecution efforts to intimidate defense attorneys rarely succeed and usually provoke immediate and vigorous attempts by lawyers to protect their independence and rights.<sup>40</sup>

Respondents also reported on the troubling phenomena of *ex officio* lawyers<sup>41</sup> cooperating with prosecutors to the detriment of their clients. Prosecutors sometimes pressure *ex officio* lawyers to sign documents supporting the accusation, agreeing to detention, or agreeing to protocols allowing their client to be interrogated outside the presence of the lawyer. Some *ex officio* lawyers also sign documents falsely attesting to their participation at interrogations or procedures. One respondent estimated this occurred approximately 50 percent of the time. Other respondents disputed the frequency of this phenomenon. Most respondents agreed that prosecutors do not seek to remove a lawyer assigned to a case absent very good cause. Nevertheless, prosecutors are able to exert pressure on *ex officio* lawyers because they can control or influence which ones are selected to represent indigent defendants and to get paid €10 a day for that representation. Respondents also noted that criminal investigators and prosecutors rarely honored a defendant's request for a particular lawyer; instead, they would select a lawyer who was more willing to sacrifice a defendant's rights and ensure a conviction. Some of these problems are addressed by the Law on the State Guaranteed Legal Aid that entered into force in July 2008, and which creates a wall between prosecutors and investigators and the appointment of lawyers for defendants. The effectiveness of this legislation is yet to be seen.

The MBA has also accused the PGO and police agencies of interfering with defendants' private legal services contracts. In an October 26, 2007 Decision published in the November 2007 edition of *Avocatul Poporului* magazine, the MBA accused the PGO and police of violating a defendant's right to their choice of counsel (LLP Arts. 44(5) and (8)) and violating the prohibition against a public authority controlling or interfering in their contracts with defendants (CRM 26(3)). The MBA cited the case of a Centru district prosecutor who interrogated a citizen in October 2007 about a private contract for legal services. The citizen had contracted with a private defense attorney to defend her husband against a criminal charge. The prosecutor interrogated her about the contract's scope and payment arrangements and demanded that she cancel the contract. In another case, officers with the Police Commissariat of Floresti district contacted a defendant and demanded he rescind a private legal services contract and not pay the defense lawyer any money pursuant to the contract. The MBA said other lawyers reported that their private contracts for legal services had become the subject of interference by law enforcement authorities. The MBA sent its Decision to the PGO, but the PGO elected not to reply.

Defense lawyer complaints against prosecutors also included the following:

- Lawyers were denied access to their clients. See 2006 U.S. HR REPORT. Lawyers were particularly incensed by the common practice of criminal investigating authorities detaining a defendant on a Friday which, in reality, guaranteed the lawyer could not see his client until the following Monday. Lawyers said prosecutors were generally unavailable on weekends, and the current procedural system required them to first address complaints to the police or criminal investigating authority before being able to seek assistance from prosecutors.

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<sup>40</sup> In *Mancevschi v. Moldova*, 7 October 2008, the ECtHR examined the case of an attorney who became the focus of criminal investigation authorities after he began representing a murder suspect. The investigative authorities forced him to testify about his client and searched his home and office where he had client files. The ECtHR found that the warrants authorizing the searches failed to provide justification and failed to define the scope of the search, a serious deficiency given the client files that were present. The court found that the search was illegal and violated ECHR Art. 8.

<sup>41</sup> These are lawyers directly hired and paid by the government to represent indigent defendants.

- Prosecutors sometimes spoke with defendants without lawyers being present.
- Lawyers were denied access to documents used to justify a defendant's detention.
- Lawyers were denied access to criminal case file documents prior to an indictment. Although prosecutors can grant access to such documents, they rarely exercise this discretion. See ECtHR cases of *Turcan and Turcan v. Moldova*, 23 October 2007 and *Musuc v. Moldova*, 6 February 2008.
- Prosecutors generally refuse to cooperate with lawyers and almost always deny their requests to gather exculpatory evidence or interview witnesses favorable to the defendant. In Moldova, defendants or their lawyers have no right to conduct their own investigation or interview witnesses during the investigative phase of investigations. As a result, they are forced to rely solely on prosecutors. A prosecutor's refusal can mean the loss of exculpatory evidence or the inability to later find a witness favorable to the defense. One lawyer noted a case in which he had requested forensic evidence from the prosecutors, asked that his client be recognized as a victim and that certain witnesses identified by the victim be interviewed. The prosecutor denied these requests but did not inform the lawyer of the denial. Later, the lawyer reviewed the case file, learned of the prosecutor's denials and was able to get an investigative judge to order all the things denied by the prosecutor.
- Prosecutors sometimes convert defense witnesses into prosecution witnesses through the use of improper influence and pressure.
- Lawyers are denied sufficient time to review the criminal case file. One lawyer said he was given three days to review 100 volumes in a case file. When he complained, the investigative judge gave him one additional week, which was still insufficient. On appeal, he was granted four months to review the files.
- Prosecutors are typically unavailable to meet with lawyers until the case is before an investigative judge (arrest warrant phase) and thereafter they remain insufficiently available to discuss the case.
- Prosecutors will almost never agree to compromises unless the prosecutor has made egregious mistakes in the case.

Prosecutors' only grievance against lawyers was that they complained too much.

In the regions outside Chisinau, prosecutors and lawyers tend to have very frequent contact and their interactions are dependent on the personal relationships that exist between the two. One lawyer from the regions said he had very good relations with the local prosecutor's office. He said the prosecutor reacted well to complaints and often agreed to conferences wherein problems were often resolved. This lawyer noted that he held positions of power in his community that helped shield him from prosecutorial harassment. Another lawyer said his relations with prosecutors are normal because he could be very persistent in his demands. One lawyer observed wryly that prosecutors treat lawyers better than the police treat lawyers, and investigating judges treat lawyers better than prosecutors treat lawyers, but that ultimately all three treat lawyers poorly.

Prosecutors resist recognizing and treating lawyers as equals and equally important actors in the criminal justice system. As with the case of prosecutors failing to recite ECtHR cases to judges, prosecutors refuse to acknowledge that they have a legal obligation to help lawyers ensure that a defendant's fair trial rights are honored. The failure to acknowledge this responsibility results in confrontational relations on issues for which there should be mutual agreement and cooperation.

## Factor 23: Interaction with the Public/Media

***In their contacts with the media [and other elements of civil society], prosecutors provide appropriate and accurate information wherever possible, within their discretion.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
The PGO does not disclose information to the media or civil society except in exceptional circumstances, or when such a disclosure is favorable to the prosecution. The information that is released is often inaccurate, sanitized of any informational value, politically slanted or laden with numerous restrictions regarding its use. The PGO cooperates to some degree with nongovernmental organizations that train prosecutors.	

### Analysis/Background:

The LPPS does not impose an obligation on the PGO or its prosecutors to disclose information on its cases to the media. In contrast, the pending draft LPPS provides that the PGO is “transparent” and will guarantee access to information on its activities to the media and the public. DRAFT LPPS Art. 2(1). This right of access to information already exists in the Information Law, which allows any person to seek, obtain and spread official information of any kind. *Id.* Art. 4(1). The law restricts access to information in cases involving people’s rights or reputation or the protection of national security, public order, public health or public ethics. *Id.* Art. 7(1). It also provides an exception to disclosure for information on personal medical files and other private data, and information on investigations, the disclosure of which would compromise national security or the investigation, interfere with a lawsuit, compromise a person’s fair trial rights or endanger the life or health of a person. *Id.* Art. 7(2). The criminal code also sanctions the disclosure of “operative and investigation information,” which is classified as a state secret if the government intends for it to be secret. CC Arts. 121 and 344. Finally, CC Art. 315 criminalizes the disclosure of “criminal investigation-related data” if not approved by the person conducting the investigation, or if the disclosure by an investigator damaged a party to the criminal proceeding.

In reviewing the PGO’s activities under this factor, there were three separate components that required review: cooperation and relations with the media, access to information, and cooperation and relations with NGOs.

Members of the media had numerous complaints about their relations with the PGO. The most disturbing report was that the media members investigating serious claims of prosecution corruption were subjected to threats and harassment. In one case, a reporter investigating a prosecutor’s driver for making threats was first threatened and then solicited to accept a bribe to drop the investigation. The threats ended when an international media organization intervened. Media members, who are physically attacked, also complained that no one is investigated or prosecuted for these crimes.<sup>42</sup>

The most common complaint was that the PGO favors some media while disfavoring others. The favored media allegedly include media outlets that support the government, while those that are critical or independent are disfavored. Favored media outlets are given advance notice of upcoming events and important criminal judgments, while disfavored media do not receive any

<sup>42</sup> See ACCES-INFO REPORT at 66-124 [detailing reports of media abuse, harassment and attacks]; INTERNATIONAL RESEARCH AND EXCHANGE BOARD’S MEDIA SUSTAINABILITY INDEX (MSI) - Europe and Eurasia 2008 in section titled *Objective 1 – Freedom of Speech* [detailing physical assaults on journalists].

notice. The PGO deviates from this rule if it wants to announce an event, such as an anticorruption convention, that reflects favorably on the PGO. In such cases, all media are invited.

There were also complaints that the PGO tries to control members of the press in ways that violate their freedom to report on the PGO's activities. In one case, a PGO press officer held a press conference and made a prepared statement about the PGO's structure. Before and after the conference, the press officer demanded that no questions be posed to him and he refused to answer questions about the policies and procedures for conducting criminal investigations, or even about completed cases. When he concluded his remarks, the press officer advised the media not to print anything he said. Media members said that it is nearly impossible to speak with anyone not associated with the PGO press office. And the few communications issued by the PGO or its press office are often unreliable, frequently unhelpful and sometimes imbued with propaganda. See ECtHR Case of *Popovici v. Moldova*, 2 June 2008, paras. 10, 78-79 [PG pronounced defendant's guilt before trial in statements to the press and violated his right to be presumed innocent].

Media respondents also complained that the PGO no longer values the news media as a potential source of information on crimes, including those involving corruption. The PGO used to contact the media after seeing stories about crimes so it could request additional information prior to initiating an investigation that often led to an indictment. Today, media respondents claimed that the PGO ignores press accounts of criminal activity unless embarrassed by subsequent reports of the PGO's failure to act. In one case, the PGO claimed it could not prosecute a rape case reported in the media because of insufficient evidence. After a subsequent news story revealed how every person in the village openly admitted knowing the identity of the rapist and all the details of the rape, the PGO reluctantly pursued the case. However, respondents said that even these such cases are now the exception and that the PGO essentially ignores all investigative news reports.

Media members also complained that the PG no longer agrees to interviews, in contrast to past PGs who would occasionally do so. They also assert that prosecutors are rude and belittling to the media.

Prosecutors acknowledged that information provided to the public is now funneled through the press office. One prosecutor said his office produced monthly performance statistics but that these statistics are only available through the press office. He also said there is a media spokesman in his office who accepted written questions. A member of the media submitting a question would be called into the office and told what information is confidential and what information could be published. The prosecutor agreed that there are no written protocols for handling media inquiries.

Acces-Info (an NGO described in Factor 15) conducted a test of the Information Law to ascertain how well government officials responded to information requests. Trained volunteers submitted information requests to government authorities including the PGO and its various prosecution offices. The PGO and its prosecutors provided answers to information requests in less than half the requests. ACCES-INFO REPORT at 37.

There was very little information available regarding the PGO's relations with nongovernmental organizations [hereinafter "NGOs"]. In July 2007, Ziarul de Garda, one of Moldova's leading investigative newspapers, sponsored a conference on the media's role in combating corruption, and the problems faced by the media in getting information from the PGO and the CCECC. The media and NGO participants established that the PGO does not share even the most basic information about an investigation or case with the media. One report indicated that the PGO participated in efforts to harass NGOs by excessively scrutinizing registration applications to



forestall final approval. See U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT'S 2006 NGO SUSTAINABILITY REPORT, 157-58. However, two NGOs – IPR and EX-LEGE – reported that the PGO did cooperate with them for the purpose of training prosecutors.

Despite seemingly robust laws granting citizens access to information, Moldova continues the Soviet tradition of highly controlling and limiting the flow of government information and documents. This remains true with information from the PGO.

It is important to note that Moldova's media also retains remnants of its Soviet era relations with the government. In some cases, media outlets function as government spokespersons. In other cases, media outlets are owned by parties or party members and used to forward that party's political agenda. Moldova has very few media outlets that are truly free and independent. In those few instances where the media is truly independent, they are subject to harassment in the form of lawsuits, investigations, bribery, psychological attacks and even physical assaults.

## **Factor 24: International Cooperation**

***In accordance with the law and in a spirit of cooperation, prosecutors provide international assistance to the prosecutorial services of other jurisdictions.***

<b>Conclusion</b>	<b>Correlation: Positive</b>
The Prosecutor General provides assistance to other prosecutorial services investigating crimes.	

### Analysis/Background:

Moldova is a signatory to the European Convention on Mutual Assistance in Criminal Matters and the 1993 Commonwealth of Independent States Convention on Legal Assistance and Legal Relations in Civil, Criminal and Family Cases. It also has bilateral and trilateral agreements with Romania, Ukraine and Hungary that mandate mutual cooperation in the investigation of crimes.

The PGO has six people assigned to its International Cooperation Directorate [hereinafter "ICD"]. The LPPS, CPC, international law and internal regulations govern its work that largely involves international information requests, extraditions and the transfer of investigations. The ICD works most frequently with Russia, Belarus, and other CIS countries. It also works with Romania, Italy and Germany and has cooperated with the United States and some Baltic states. In addition to answering requests to the PGO, the ICD assists the MIA, CCECC, and CCTP in handling international requests for assistance.

The ICD produces an annual report with statistics and some information is available on the website for the PGO. During 2007, the ICD received 491 requests for legal assistance and 635 requests for letters rogatory regarding the execution of procedural matters. See PGO 2007 REPORT at 51. Foreign governments also asked the PGO to take over 51 criminal investigation files involving Moldovan citizens who committed crimes in other countries. *Id.* Moldova requested extradition of 193 alleged criminals and asked to transfer 21 criminal investigation cases to other countries. *Id.*

Requests for international legal assistance in criminal matters must be submitted to the MOJ, PGO, MIA or as provided for in other agreements. CPC Art. 532. The scope of the legal assistance may include holding hearings for the examination of witnesses or experts; conducting investigations, searches and seizures and transmitting the information or seized items abroad;

summoning persons from abroad to appear here voluntarily for criminal investigations, court hearings or confrontation; extraditing persons held in custody abroad; initiating criminal investigations based on allegations by a foreign state; searching for and extraditing persons who committed crimes or to complete prison sentences; transfer of convicted persons; and the recognition and execution of foreign sentences. CPC Art. 353.

The length of time needed to complete a request varies, depending on the type and scope of the request. There has been an increase in the number of requests for assistance from international sources and sources within Moldova. ICD respondents said international requests for assistance to some countries, such as Turkey, are not taken seriously because Moldova is a small country. But they believed the PGO cannot be faulted for the slow response of other nations.

In one notable case, American Anthony Mark Bianchi was arrested and convicted of having sex or attempting to have sex with several underage boys in Moldova. The case against Bianchi was built in large part because of Moldovan cooperation with American law enforcement agents who had been tracking Bianchi's international travels to have sex with underage boys.

## VI. Finances and Resources

### Factor 25: Budgetary Input

***States provide an adequate budget for the prosecutor's office, which is established with input from representatives of the prosecutor's office.***

<b><u>Conclusion</u></b>	<b><u>Correlation: Neutral</u></b>
Although the PGO's annual budget process is unclear, the PGO is sufficiently funded given the inherent limitations of operating in Europe's poorest country. Instead of being penalized for its activities, the PGO appears to be rewarded.	

#### Analysis/Background:

The exact process by which the PGO seeks and obtains funds for its operations remains unclear. The PGO did not respond to requests by the assessment team for information. It is known that the district prosecution offices, the specialized prosecution offices and municipal prosecution offices send their annual financial requests to the PGO, which produces an annual budget request and submits it to Parliament through the Ministry of Finance. But once the budget request is submitted, it is not clear what input if any the PGO has in the ultimate determination of its budget, which is ultimately approved by Parliament as part of the annual state budget. See LPPS 15(3) [Parliament approves PGO budget annually]. The degree to which the PGO seeks input from subordinates is also unclear.

Although the process is not entirely clear, it is evident that the PGO has received a 20 percent increase in its budget between 2006 and 2009. This growth is reflected by the amounts granted to the office in each of the last four laws on the state budget: 67,898,000 MDL (€ 5,039,337) (2006), 68,614,500 MDL (€ 5,092,516) (2007), 80,384,700 MDL (€ 5,966.091)(2008), and 81,783,200 MDL (€ 6,069,886) (2009).

In addition to identifying the PGO's budget and funding mechanism, this factor is intended to determine whether the political mechanism that funds the PGO sufficiently insulates the office from political pressure and results in sufficient funds for the office to operate as an effective



criminal justice unit. Although the concern is generally whether a prosecution body is being starved of funds as political punishment, it appears that Moldova's PGO enjoys the inverse situation. The fear expressed by respondents is that the PGO is rewarded for its loyalty to the current administration.

The PGO is widely believed to be a political tool for the president, parliament and the Communist Party as they seek to hold onto power. See Factor 7 above. The PGO is frequently criticized for what are perceived to be politically motivated prosecutions (see Factor 7) and for its failure to investigate and prosecute any high-level political figures in the current government. See Factor 14. In 2006, the PGO nevertheless received the second highest budgetary funding of any European country as a percentage (0.15%) of per capita Gross Domestic Product [hereinafter "GDP"] with only Bosnia and Herzegovina's prosecution service receiving a higher allocation (0.17%). See 2008 CEPEJ REPORT<sup>43</sup> at 32 (Figure 8). Although every other European nation allocated more money per capita to their prosecution service, almost no other European country matched how much Moldova gave the PGO as a percentage of per capita GDP. *Id.* at 31-32. The 2008 CEPEJ REPORT explains that rich countries are invariably able to allocate more money to their prosecution services in absolute terms because of their wealth, so it is important to analyze such allocations as a ratio based on per capita GDP. *Id.* at 22. These ratios determine what percentage of the economic output generated by a country's citizens is allocated to the prosecution service. For comparison, the percentage of per capita GDP expended by other countries included Norway (0.005%), Sweden (0.04%), Serbia (0.05%), Romania (0.08%), Russia (0.11%), and Hungary (0.13%).

Although Moldova's economic pie is smaller and often much smaller than its European neighbors, Moldova's expenditures on the PGO represent a substantial percentage of the economic value generated by its citizens. This allocation suggests that the government is not penalizing the PGO for its activities, and in fact, may be rewarding it.

## **Factor 26: Resources and Infrastructure**

***States provide adequate funding, conditions, and resources to guarantee the proper functioning of the prosecutor's office.***

<b><u>Conclusion</u></b>	<b><u>Correlation: Neutral</u></b>
The PGO has among the highest ratio of prosecutors to citizens in Europe. Although prosecutors frequently complain about workloads, this appears to be more a problem of priorities than funding. Prosecutors appear to be supported by sufficient non-prosecutor staff members and their access to electronic resources has been increasing.	

### **Analysis/Background:**

In 2006, Moldova had a total budget of €668,168,423 and it allocated €4,135,134 for the PGO and €3,002,838<sup>44</sup> for the judiciary.<sup>45</sup> See 2008 CEPEJ REPORT at 20 (Table 2). Although

<sup>43</sup> The 2008 CEPEJ REPORT used data from 2006.

<sup>44</sup> The amount allocated to the judiciary accounted only for first-instance courts. See 2008 CEPEJ REPORT at 21 (Figure 2). As of January 2007, Moldova had 46 first-instance courts, one economic court, one military court, five courts of appeal and one Supreme Court of Justice. See JUDICIAL REFORM INDEX FOR MOLDOVA [hereinafter "JRI"], AMERICAN BAR ASSOCIATION'S RULE OF LAW INITIATIVE, January 2007, at 9-11. Moldova's courts had 511 authorized judicial positions and

Moldova had one of the highest prosecution service allocations as a percentage of per capita GDP (see Factor 25), in absolute terms it only amounted to €1 per capita – the lowest in Europe – because of the country's substantial poverty. *Id.* at 31 (Figure 7). Moldova's per capita GDP of €745 amounted to only 30 percent of the €2,492 per capita GDP of Macedonia, the next poorest European country. *Id.* at 15-16 (Table 1). The greater relative wealth of other European countries meant they could allocate more money per capita to their prosecution services. Some examples included Bulgaria (€4 per capita), Czech (€7), France (€11), Italy (€23), and Netherlands (€30). *Id.* A further breakdown of the PGO's budget was not possible because the PGO did not respond to requests for information.

The PGO's low per capita funding does not result in a low per capita ratio of prosecutors. In 2006, Moldova had 772 prosecutors or 21.5 prosecutors per 100,000 citizens, which was substantially higher than many other European countries such as Austria (2.6), Italy (3.8), Germany (6.2) and Sweden (9.9). See CEPEJ REPORT at 164-65 (Table 77). Moldova's high per capita ratio of prosecutors can be explained to some degree by its history as a former Soviet republic, almost all of which had among the highest ratios of prosecutors in 2006. *Id.* at 166-67 (Figures 51-52). They included Lithuania (25.1), Latvia (23.9), Ukraine (21.0), Russian Federation (20.6), Bulgaria (20.3), and Hungary (17.3). In 2007, there were 753 prosecutors, only a slight decline from a year earlier. See PGO 2007 Report at 53. Perhaps in recognition of this fact, Moldova's president called for a 10% reduction in the number of prosecutors. Such a reduction would still leave the PGO with among the highest ratios of prosecutors in Europe.

The PGO also had a relatively high number of reported non-prosecution staff members per capita. See CEPEJ REPORT at 164-65 (Table 77). This resulted in a 1:1 ratio of staff members to prosecutors and it placed Moldova's PGO squarely in the middle when compared to the other countries surveyed in the CEPEJ report. *Id.*

Prosecutors disagreed as to whether the PGO's budget was sufficient. One PGO respondent said the PGO's budget was sufficient but acknowledged that it received significant financial assistance from international organizations. Another prosecutor respondent said the PGO does not get sufficient funding for it to effectively carry out all of its functions. He especially believed that more money was needed to improve the salary situation.

Prosecutors frequently complained about being too busy. OSCE trial monitors reported prosecutors complained that they did not have sufficient time for their cases because of their heavy workload. Prosecutors were responsible for between 50 and 150 cases at any one time, and they were forced to work late into the night and on weekends. Respondents thought this issue also might be resolved as the number of cases taken to trial drops because of the rising use of plea agreements and mediation. Respondents said 50 percent of cases are now taken to trial and 30 percent resolved by mediation. They also reported that up to 50 percent of less serious cases are resolved through plea bargaining. The statistics reflecting the use of plea bargaining and mediation are expected to increase in the coming years.

As a means to lessen their workloads, prosecutors most frequently suggested decriminalizing offenses, eliminating responsibility for juvenile cases and addressing turnover problems. See Factors 21 and 27 for general statistics on prosecutor's workloads. One senior prosecutor believed the CC should be amended so that it contained only offenses that caused significant

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its first-instance courts were authorized to have 353 judges or approximately two-thirds of the total. *Id.* Moldova's Constitutional Court is officially outside the judiciary and is not considered here. *Id.* at 11.

<sup>45</sup> Moldova was one of the few countries and the only European country to allocate more for prosecution services than the judiciary. See 2008 CEPEJ REPORT at 21. A large majority of countries allocated 2 to 10 times more for their judiciary than their prosecution service. *Id.*



harm to a victim with all lesser offense being converted into administrative offenses. He said police officers, instead of criminal investigation agencies, could investigate administrative offenses with a resulting reduction in a prosecutor's workload.

One respondent remarked district prosecution offices needed 30 percent more prosecutors, particularly experienced prosecutors. Another respondent believed that specialized prosecution offices such as the CCTP had too few prosecutors given the number of cases it investigated. However, in general prosecutors believed that efficiency, and not the overall number of prosecutors needed to be increased. In fact, there was some evidence that Moldovan prosecutors were inefficient in the handling of their cases. See Factor 27 for discussion. But Moldovan prosecutors have a diverse and unique set of responsibilities – starting with the initial investigation of a suspect and ending with defendant's detention conditions – that do not always result in the resolution of cases. Nevertheless, the number of resolved cases is the primary means used by PGO management to measure efficiency.

The relative share of funding received by particular prosecution offices was obvious by their appearance. The CCECC, CTIP and ACPO offices were modern, equipped with advanced electronic equipment, and visually appealing. Without a doubt, these offices benefited from substantial international funding and attention. PGO sector and district offices were less impressive, had fewer and older electronic resources and often appeared rundown. There also appeared to be a correlation between an office's appearance and its proximity to Chisinau - the farther away from the capital, the worse its condition and the more limited its resources.

Respondents reported an improvement in their electronic resources. One respondent said a district office with one computer a few years ago now has 12 computers, a copy machine, a fax machine and a car that prosecutors may use. Respondents said some computers can now access Europol and Interpol databases. The NIJ has started training prosecution students on how to use computer networks and databases. One respondent reported that he could access excellent databases of compiled personal information using a networked computer. Despite these improvements, sector and district chiefs said they needed more office equipment to increase their efficiency.

The NIJ also had concerns regarding its funding and resources. Although a separate entity from the PGO, the NIJ nevertheless will play a central role in preparing future prosecutors. One problem is that staff members sent to the NIJ from the PGO do not want to become permanent NIJ members because their time at the NIJ is not recognized by the current law regulating pensions and salaries. This means that they would not get credit for their NIJ time in calculating retirement dates and pension amounts. Although this problem has been fixed for judges, the problem remains for prosecutors. Another disincentive to prosecutors and judges becoming permanent NIJ staff members is that NIJ salaries are much lower than the salaries paid to judges and prosecutors. In addition, the current law only allows temporary transfers to the NIJ of up to two years, meaning that NIJ instructors must return to their home organizations after two years. While this system allows prosecutors with different experiences and teaching techniques to participate in the NIJ program, it also prevents prosecutors who are particularly effective instructions from remaining longer at the NIJ and acquiring seniority. Another potential issue is that the NIJ has a capacity for 50 students for both prosecution and judicial positions but there were 62 PGO vacancies as of May 2008, with the number expected to increase because of current working conditions. As a result, respondents questioned whether the NIJ would be able to satisfy the PGO's need for new prosecutors.

The PGO appears to get sufficient resources in light of Moldova's substantial poverty. Prosecutors report improvements in several areas but not in workloads, which they assert have increased. Although prosecutors have been burdened with greater responsibility over investigations conducted by criminal investigation authorities, this is a responsibility prosecutors

have been requesting for years. One relatively simple solution to workloads is to take more frequent advantage of the mediation and plea bargaining provisions now in effect. Instead of going to trial on almost all serious crimes and more than 50 percent of less serious offenses, prosecutors could substantially reduce their workload by reaching settlement agreements in more cases, when possible.

## Factor 27: Efficiency

***Prosecutors perform their functions expeditiously, in order to achieve the best possible use of available resources. Prosecutors' offices have a written organizational plan to facilitate such efficiency. The prosecutor's office has written guidelines, principles, and criteria for the implementation of criminal justice.***

Conclusion	Correlation: Negative
Prosecutors are inefficient in resolving cases because the PG has not provided coherent written instructions to prosecutors on prioritizing and processing their cases, there is no centralized case management and tracking system, and the PGO continues to rely on trials instead of plea bargaining to resolve cases. Individual offices are left to create their own methods for tracking and prioritizing cases and activities.	

### Analysis/Background:

In 2007, the PGO supervised 46,445 investigations conducted by the MIA, CCECC and Customs Service and initiated 6,918 investigations conducted by its own prosecutors. See PGO 2007 REPORT at 13-14 and 19. In 2006, the year started with 9,476 severe<sup>46</sup> criminal cases pending in first-instance courts. See 2008 CEPEJ REPORT at 151 (Figure 68). The PGO initiated an additional 7,856 new severe criminal case prosecutions in 2006 and resolved 15,712 of the cases before the end of year. *Id.* At the end of 2006, the PGO had 1,620 severe criminal cases and 13,001 criminal cases of all types pending before first-instance courts. *Id.* at 170-71 (Figure 80).

The PGO's efficiency in processing these caseloads appeared to be low. When the PGO's caseload was divided by the number of prosecutors in its office, its prosecutors were only able to bring an average of 17 cases per year to the court. See 2008 CEPEJ REPORT at 172-73 (Table 81). This number was roughly equal to that of many former Soviet republics, Azerbaijan (8), Bulgaria (19), Romania (10), and Georgia (27) but it compared poorly with the efficiency rates reported by Belgium (25), Denmark (744), Germany (234), and Slovenia (71). See 2008 CEPEJ REPORT at 172-73 (Figure 81). The 2008 CEPEJ Report noted some factors that might play a role in these figures, including the fact that prosecutors in some countries are prohibited from discontinuing cases, some countries fully investigate and discontinue cases before they reach prosecutors, and some prosecutors are able to settle cases before they have to be charged in court. The inefficiency of Moldova's prosecutors could be caused by the prosecutor's responsibility to supervise all investigations and by a large emphasis on getting convictions following a trial rather than through plea bargaining.

The measurement of prosecutor efficiency by the PGO is also skewed. All respondents generally agreed that a prosecutor's annual performance review is based primarily on the number of cases processed. While some high-ranking prosecutors mentioned that factors such as evaluating the

<sup>46</sup> The report, which had to distinguish levels of crimes in many countries, elected to use the term "severe" to denote all crimes that were not petty. See 2008 CEPEJ REPORT at 125.



quality and professionalism displayed in the processing of cases are also considered in evaluating the work of their subordinates, such factors were always suggested as after-thoughts and no explanation was given as to how they are measured. Moreover, there appeared to be a lack of consistency between offices in relation to how the performance of prosecutors was evaluated.

PGO prosecutors appeared to get little direction from the PG on prioritizing their cases and activities. Although one prosecutor reported that the PG issued 72 orders in one year, prosecutors noted that these orders were sent by mail and were not compiled into a concise handbook or guide for prosecutors to reference during the year. Instead, prosecutors reported that individual offices created their own systems for prioritizing and tracking cases. In one office, a prosecutor said they prioritize cases at the start of the year and analyze case outcomes and whether goals were met at the end of the year. Prosecutors are given awards or penalties based on this analysis. In another office, a prosecutor said they rely on weekly meetings where duties and deadlines are discussed, and on a paper-based database that tracks the case status and the identities of detained or arrested people. He said more senior deputies review incoming investigation files for sufficiency and determine whether a criminal file should be opened. If a file is opened, it is assigned a number, entered into the database and assigned to a prosecutor who is given an initial deadline for completing the case.

Prosecutors reported that the PGO has no centralized case tracking and management system. One prosecutor reported that as a case-tracking system his office uses 8-10 paper registries in which prosecutors enter handwritten notes regarding their activities. The system records relevant case information but does not track upcoming events. Some prosecutors maintain independent records on their stand-alone computers. One high-ranking prosecutor feared that an electronic case-tracking system would be too susceptible to data loss and hackers.

In certain instances, the PGO monitors the progress and prosecution of cases. For instance, the ACPO has an Analysis and Prognosis Section that reviews the activities of the district and specialized prosecution offices. It collects data on how cases are investigated and prosecuted and submits this data each month to the PGO. This data allows the PG to identify trends within the country, lobby for more resources, and identify cases requiring senior prosecutors because of its social impact.

The PGO has a substantial number of prosecutors per capita (see Factor 26), but these prosecutors appear inefficient in processing of their caseloads. Prosecutors face technological and procedural hurdles that hamper their ability to be efficient, including no centralized case management and tracking system, the absence of a handbook or protocol with instructions on how to prioritize and process cases, a lack of a consistent and comprehensive means of evaluating a prosecutor's efficiency and a continuing reliance on trials as the preferred method to resolve cases. With the exception of a centralized case-tracking system, additional funds are not needed to resolve these issues.

## Factor 28: Compensation and Benefits

*Prosecutors have reasonable compensation and benefits established by law, such as remuneration and pension, proportionate with their role in the administration of justice.*

<b><u>Conclusion</u></b>	<b><u>Correlation: Neutral</u></b>
Prosecutors receive compensation and benefits that are proportionate to their role in a country as poor as Moldova. Although proportionate, salaries appear to be insufficient to ward off turnover and corruption.	

### Analysis/Background:

The law specifies a basic formula for calculating a prosecutor's salary. LPPS Art. 33(5). It begins with the calculation of the PG's salary, and then all other prosecutors' salaries are calculated based on a percentage of that salary. *Id.* Prosecutors are entitled to free housing and medical assistance, 30-45 days of paid vacation, state-funded life, health and property insurance, a pension, and free uniforms. LPPS Arts. 34-38. However, respondents reported that the Moldovan government rarely provides prosecutors with housing. Prosecutors are also entitled to various premiums for completing important missions (up to 50% of the basic function salary including any additional allowances), knowledge of multiple languages (25% of basic function salary), and possessing a Doctor of Sciences or PhD degree (5-10% of basis function salary). LPPS Art. 33(1)-(3).

In 2007, the average annual income in Moldova was 30,248 MDL (€1,782) and the average annual rent for an apartment in Chisinau was 24,000 MDL (€1,413). In comparison the average annual salary for a prosecutor ranged from 44,400 MDL (€2,616) to 99,600 MDL (€5,868) depending on experience. A typical prosecutor in 2007 earned 44,400 MDL (€2,616) annually with 1 year of experience, 57,600 MDL (€3,393) with 5 years of experience and 70,000 MDL (€4,124) with 10 years of experience. A Moldovan prosecutor's average gross salary amounted to 1.8 times the average annual salary received by Moldovan citizens. See 2008 CEPEJ REPORT at 185. The CEPEJ report indicated that new Moldovan prosecutors were paid slightly less than new Moldovan judges. However, by the end of their careers, judges were receiving 1.8 times the salary of a prosecutor with equivalent experience. See 2008 CEPEJ REPORT at 189.

The gross salaries paid to prosecutors in nearby countries varied considerably. Romanian prosecutors received €7,936 or 2.2 times the Romanian average annual salary, Ukrainian prosecutors received €1,938 or 0.9 of the Ukrainian average annual salary, and Hungarian prosecutors received €30,430 or 3.7 times the Hungarian average annual salary. *Id.* Moldova paid prosecutors less than any other country surveyed in the CEPEJ Report with the exception of Ukraine. *Id.* at 188.

Prosecutors reported a continuing problem in attracting and retaining qualified prosecutors. They said the PGO's turnover is 13 percent annually and only 15% of its prosecutors have 15 or more years in the service. See Factor 3 [noting PGO's experience level] and Factor 28 [noting turnover rate] but also see Factor 7 [identifying other factors contributing to turnover]. The continuous turnover makes it difficult to ensure that qualified prosecutors handle complex cases and assist in the training and development of new prosecutors. Salaries are often identified as a significant factor in a prosecutor electing to leave the service. This remains true even though salaries have increased between 5-40% during the last two years starting in 2006 and now equal salaries for judges. Although prosecutors acknowledged this trend, they claimed current salaries remain too low for someone with a family to support. Indeed, the statistics noted above indicate that a new



prosecutor would be paying approximately half of his gross salary for an apartment in Chisinau. Prosecutors also said the low salaries bred corruption as prosecutors looked for other sources of income.

Prosecutors also reported getting other perks to supplement their incomes such as cash awards and reduced vacation rates at a PGO vacation home.

It is difficult to make generalizations regarding the sufficiency of a prosecutor's salary. A salary paid to a Chisinau-based prosecutor may be insufficient for basic needs whereas the same salary paid to a prosecutor in the regions might be more than sufficient. Nevertheless it is apparent that low salaries continue to cause turnover and foster corruption within the PGO.

## List of Acronyms

<b>ABA:</b>	American Bar Association
<b>AI:</b>	Amnesty International
<b>ACPO:</b>	Anticorruption Prosecutor's Office
<b>CC:</b>	Criminal Code
<b>CCECC:</b>	Center for Combating Economic Crimes and Corruption
<b>CCTP:</b>	Center for Combating Trafficking in Persons
<b>CEDAW:</b>	United Nations Convention on the Elimination of all Forms of Discrimination Against Women
<b>CEELI:</b>	Central European and Eurasian Law Initiative
<b>CEPEJ:</b>	European Commission for the Efficiency of Justice
<b>CERD:</b>	Convention on the Elimination of all Forms of Racial Discrimination
<b>CIO:</b>	Criminal Investigation Officer
<b>CLE:</b>	Continuing Legal Education
<b>COE:</b>	Council of Europe
<b>CPC:</b>	Criminal Procedure Code
<b>CPI:</b>	Corruption Perception Index
<b>CRM:</b>	Constitution of the Republic of Moldova
<b>ECHR:</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>ECtHR:</b>	European Court of Human Rights
<b>GDP:</b>	Gross Domestic Product
<b>ICCPR:</b>	United Nations International Covenant on Civil and Political Rights
<b>ICD:</b>	International Cooperation Directorate
<b>IPR:</b>	Institute of Penal Reform
<b>JRI:</b>	Judicial Reform Index
<b>KGB:</b>	Committee on State Security
<b>LLP:</b>	Law on the Legal Profession
<b>LPPS:</b>	Law on the Public Prosecutor's Service
<b>LPRI:</b>	Legal Profession Reform Index
<b>LRP:</b>	Law on the Reward of Prosecutors and Investigators from the Prosecutor's Office and on Their Disciplinary Responsibility
<b>MIA:</b>	Ministry of Internal Affairs
<b>M.O.:</b>	Monitorul Oficial
<b>MOJ:</b>	Ministry of Justice
<b>MSSR:</b>	Moldavian Soviet Socialist Republic
<b>NGO:</b>	Nongovernmental Organization
<b>NIJ:</b>	National Institute of Justice
<b>OSCE:</b>	Organization for Security and Cooperation in Europe
<b>PCM:</b>	Party of Moldovan Communists
<b>PG:</b>	Prosecutor General
<b>PGO:</b>	Prosecutor General's Office
<b>PRI:</b>	Prosecutorial Reform Index
<b>ROLI:</b>	Rule of Law Initiative
<b>SCJ:</b>	Supreme Court of Justice
<b>SCM:</b>	Superior Council of Magistracy
<b>USSR:</b>	Union of Soviet Socialist Republics