

Overall Score:

60 - Weak

Legal Framework Score:

80 - Moderate

Actual Implementation Score:

40 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁷ Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

NGOs are free to decide on their structure and management; the legal acts stipulations on the structure and competence of organisations are minimal. According to them, NGOs may carry out any activity that is not forbidden by law, i.e. those related to the anti-corruption or good governance activities. They may set their goals and decide in the most appropriate way on the activities they want to perform.

References:

Law No. 837-XIII of May 17, 1996, on Public Associations;
Law No.581-XIV of July 30, 1999, on Foundations;
Law No.521 XIII of June 7, 1995 ,n Philanthropy and Sponsorship.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | **NO**

References:

Law on Public Associations: The NGOs activity can be checked by fiscal authorities; other entities authorized to perform controls of the NGOs work are the prosecutors office and the local authority i that has registered the organization. According to article 42 of the Law on Public Associations, other interferences in the NGOs activity are forbidden.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | **NO**

References:

Anti-corruption / good governance CSOs may form coalitions striving for public-benefit goals. On the basis of their statutory commitments, they may undersign various kinds of ethical codes, which may involve specific provisions related to the disclosure or undisclosure of sources of funding in undertaking their obligations. Legislation does not explicitly stipulate a legal obligation to disclose CSOs' sources of funding. Prosecution may undertake a legality control over the activities performed by the CSOs and, in case they do not correspond to the founding charter of the respective associations, this can draw administrative, material, disciplinary, criminal responsibility (art.42-43), according to the Law on Public Associations.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.



References:

NGO Sustainability Index in Moldova (2005, 2006)

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.



References:

Lilia Carasciuc, director, Transparency – Moldova
Mihai Godea, director, Contact Centre

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | **NO**

Comments:

Although no organizations have been suspended for their anti-corruption activities, there were many journalists that have been warned, threatened or beaten in the last years for investigating various scandal-prone affairs, public acquisition flaws and other political corruption scandals, which brought no quick/effective actions from the prosecution. Those who intimidated mass media remained largely unknown or unpunished.

References:

Carasciuc Lilia, director, Transparency – Moldova

Mihai Godea, director, Contactg Centre

Alina Radu, Ziarul de Garda Newspaper

Freedom House Reports (2003, 2004, 2005, 2006) on Moldova in Nations in Transit

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | **NO**

Comments:

Due to the highly sensitive effects of the anti-corruption campaign, authorities have frequently applied preventive measures against mass media activists to speed down their reporting, and even 'retain' (not arrest!) some of the journalists for 'prophylactic measures'.

References:

Corruption in Moldova: Facts, Analysis, Proposals; Transparency International – Moldova

(www.transparency.md/Docs.cor_mol.ro.pdf)

www.realitatea.net – Arrest la PRO TV Chisinau – Sept. 10, 2006

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES

| NO

Comments:

Undesirable journalists have not been accredited by the public authorities concerned, which caused them to lose valuable information in exercising their jobs (Law on Press, 1994). This is often the case of the central administration, as well as of the Gagauz Regional Assembly (Edinaia Gagauzia, 2006). There were many appeals of the mass media associations against the prohibitive actions of the government, that attacked independent publications, such as Timpul, Jurnal de Chisinau, Moldavskie Vedomosti. In October 2006, Ziarul de Garda, one of the few investigative publications, stated that it is pressed by the authorities to stop investigations on several cases of corruption and judiciary control by the executive, and this was connected to other cases, where officials have proposed 'separate deals' with journalists to abandon their independent investigations. Two professional associations, API and CIJ, notified publicly the head of the Parliamentary Committee on Security and Public Order to research these cases of mass media intimidations, although no steps forward have been taken by the authorities. Several times, fiscal bodies exercise concerted actions that aim to intimidate and threaten the stability of mass media, which is conducting investigations on corruption and administrative abuses.

References:

2006 Annual Report of the Centre for Independent Journalism on the Freedom of Expression and Information in the Republic of Moldova (www.ijc.md);

www.investigatii.md/index – Declaration of the mass media organization on cases of intimidations of mass media activists by the employees of the Center for Combating Crime and Corruption (June 19, 2006);

Interview with Petru Macovei, Association of the Independent Press – July 20, 2007

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES

| NO

References:

Annual reports of the Centre for Independent Journalism (www.ijc.md);

The Association of Independent Press:
No Killed Journalists in Moldova- (www.api.md)

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

63

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Law on Trade Unions (NO.1129-XIV of 07.07.2000)
Constitution of the RM (art42) – 'right to establish and join trade unions'

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:

Igor Munteanu
'Trade Unions in Moldova: on the Cusp of Change or Collapse',
edited and published in SEER (South East Europe Review for Labor and Social Affairs),
Nomos Verlagsgesellschaft, Baden- Baden,
Volume 3, No.2, July, 2000

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | **NO**

Comments:

Despite good legal provisions, mass media are not quite independent in RM. First of all, because of the economic limitations of a country in transition, second because of the often direct intervention of the governmental bodies in the work of independent press (prosecution, department for preventing organized crime and corruption, police).

References:

Constitution of the Republic of Moldova (June, 15, 1994): Art.32(1) stipulates that freedom of speech is guaranteed to all citizens, as well as public speech, image and any other means of communicating free opinions. This right shall not, however, bring prejudice to the dignity, honor or rights of other individuals enjoying the same rights. The constitution prohibits only those activities that may contest or defame the state or the people, that may call to war or aggression, to national, racial or religious hatred, incite to discrimination, territorial separatism, public violence or other kinds of actions that jeopardize the existing constitutional regime. Law on Press (243-XIII of 26.10.1994). Freedom of the press is a fundamental right protected by law, which shall contribute to the dissemination of free ideas, opinions, and appropriate information about the events. Censorship is strictly prohibited by law.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | **NO**

References:

Law on Press (No.243-XIII of 26.10.1994). The law enshrines the basic rights to establish news agencies and any public or private publications in order to disseminate freely their opinions, to inform the population, and to guarantee access to information to all citizens. Censorship is prohibited (art.1, p.2), and the only limitations to free speech includes those that are required to protect territorial unity, public security, public order and health, human dignity and morality, state secrets, etc. The law guarantees a number of professional rights to the journalists in order to provide them institutional conditions to exercise their professional rights to inform and be informed in all aspects pertaining to their duties.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

75

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

The law provides for freedom of speech and of the press; however, the government sometimes restricted these rights and on occasion intimidated journalists into practicing self-censorship. The government did not restrict foreign publications, but most were not widely circulated due to high costs. The print media expressed a wide variety of political views and commentary. The government owned a news agency; national and city governments subsidized a number of newspapers. The number of media outlets not owned and operated by the government or a political party increased, but many of these independent media remained in the service of, and secured large subsidies from, the government and political movements. In June 2006, authorities sold the two government-owned newspapers, Moldova Suverana and Nezavisimaya Moldova. The sale fulfilled one of the conditions put forward by the parliamentary opposition in return for supporting President Voronin's re-election in April. The two newspapers continued as independent publications but retained their pro-government stance.

References:

Helsinki Committee Reports on Human Rights Situation – Human Rights at the Turn of the New Millennium in the Republic of Moldova,
www.humanrights.md;

Centre of Independent Journalism, Annual Report for 2005 on freedom of speech and information in Moldova,
www.ijc.md/publicatii/mlu/raport_anual_2006.pdf

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

Comments:

On the basis of a recommendation issued by the Broadcasting Coordination Council, as of Nov. 30, 2006, two municipal (one radio and one TV) stations have been privatized, and from Dec. 14, 2006, both stations were transmitted into the ownership of two influential political groups, with many irregularities committed in the privatization process. Although the employees of these stations have sued the Municipal Council Chisinau for this irresponsible decision of privatization, their situation remained unchanged. (2006 Monitoring report of the Centre for Independent Journalism – www.ijc.md/publicatii/mlu/raport_anual_2006.pdf).

References:

Broadcasting Code (No.260-XVI of 27.07.2006). The law stipulates the general conditions under which licenses are issued and operated by the existing private and public broadcasting Radio and TV companies in Moldova with the 'aim to protect the consumers to receive objective and correct information, to ensure editorial liberty and freedom of speech, on the basis of democratic norms and rules of conduct for the entire audiovisual/broadcasting space'. By this law, a National Broadcasting Council is entitled to monitor all wired TV and radio programs throughout the country, having the duty to adjust the functioning of the private and public stations, organize tenders for the receipt of media licenses, according to the law, and withdraw licenses, when this is decided by the National Coordinational Council. Every private or public broadcaster shall apply for two licences: a broadcasting license and a technical license. Art.38 of the Broadcasting Law stipulates a right that any decision of the NCC can be challenged in justice by those who feel offended by their decisions and, in accordance to the law.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | **75** | 50 | 25 | 0

References:

Art.23 of the Broadcasting Code stipulates exactly the necessary procedure to receive a license of broadcasting from the specialized body (Broadcasting Coordinational Body), which includes: financial sustainability, anti-monopoly conditions, type of ownership, organigram of the employed staff, type of programs, register of the equipment purchased for technical provision of the broadcasting activities, business-plan, etc. Broadcasters that propose to create and broadcast original production have an advantage. After receiving a broadcasting license, the applicants are free to apply for a technical license of broadcasting, within a six month-period.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Art.6 of the Law on Mass Media (No.243-XIII of 26.10.1994), stipulates that a print media license can be received from the Ministry of Justice, when one or more founders decide to establish a publication. When this activity is made in parallel with other economic activities, the publication shall be also registered as a private enterprise. Publications can be suspended if the prosecution (art.7) decides to control its activities and the judiciary finds a reasonable basis to support its claims. The law is not clear, however, about the specific reasons when a publication can be suspended or notified on 'inadmissible activities', therefore independent media groups have repeatedly contested the law for being too vague and unspecific, allowing authorities to use it sometimes for their political aims.

References:

Law on Mass Media (No.243-XIII of 26.10.1994);

Annual Report for 2006, issued by the Centre for Independent Journalism on the Freedom of Expression and Information in the Republic of Moldova – www.ijc.md/publicatii/mlu/raport_anual_2006.pdf

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

50

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Most of the politicians and civil society leaders described the end of 2006 and the beginning of 2007 as a time of decline in the mass media independence. Although a new Broadcasting Code was adopted on July 27, 2006, it faced open criticism from the professional media organizations, which accused the governing alliance of setting obstacles towards the exercise of the media role in society. The new Broadcasted Code adoption was followed by changes in the Civil Code, which softened some possibilities for authorities to prohibit the activities of mass media, although it did not clarify the situation of the maximum penalties for 'defamation' or 'moral prejudices' that have been widely employed by some political authorities in the last five years to cancel or prohibit the work of some independent mass media, in particular of those running investigations against corrupt officials.

References:

Politicians detect worsening of the mass media situation in 2006
www.social.moldova.org/stiri/rom

Oleg Serebrian, chairman of the Social Liberal Party
Eugen Musuc, chairman of the Social-Democrati Party,
Ion Mereuta, chairman of the Humannist Party of Moldova,
Nicolae Andronic, chairman of the Popular Republican Party.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES

|
NO

Comments:

If a license is denied by a decision of the Coordination Broadcasting Council, then art.23 of the Code disposes of the right to challenge decisions in a court of justice. There were no cases when contenders have successfully overrun a decision taken by the CBC.

References:

Broadcasting Code (No.260-XVI of 27.07.2006)

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Between 2001-2004, NBC rejected 55 applications for broadcasting licenses from the Euronova Media Group, which sued the BCC for this attitude eight times. The private broadcaster has demonstrated that most of the licenses issued by the BCC do not correspond to the criteria enshrined in the law, while the allocation of new frequencies were done usually in a 'friendly manner'. No favorable decision was taken for the Euronova Media Group so far. By 2006, the same group received 70 applications rejected by the BCC, and only with the change of the BCC in 2007 it got a license that only partially corresponded to its application.

References:

newspaper Timpul
Euronova Media Group in Razboi cu CCA
June, 10, 2005, No.234;

Center for Independent Journalism, 2006
Annual report on the situation of the freedom of media and information
www.ijc.md/publicatii/mlu/raport_anual_2006.pdf

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The costs of the licenses are reasonable; the unofficial costs to respond to the 'transactional' costs for getting licences are quite high.

References:

Broadcasting Code (No.260-XVI of 27.07.2006)

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

88

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

In 2006, the number of IT-users in Moldova doubled, according to the NARTI, and reached 459.900 users. Thus, the connexion to internet grew from 6,59 percent in 2005 to 13,55 percent in 2006. The GPRS/EDGE connection grew in 2005 by 26 percent, and reached 366.300 users. Investments in IT grew in 2005 by 16,8 percent and reached almost 80,5 million lei (US\$7 million), generally invested in new aquisitions of networking computers and new tecnologies. According to NARTI, on Jan. 1, 2007, in Moldova there were 760 of private companies authorized to deliver services of IT: 234 transportation via ground cable and VSAT, out of which 41 were operational providers of internet access.

References:

NARTI Report (National Agency for the Regulation of the Transportation and Information);

Annual 2006 Report on the freedom of press and information,
Center for Independent Journalism
www.ijc.md/publicatii/mlu.raport_anual_2006.pdf

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

Comments:

There were no cases of banning on-line content publications, although authorities used various tools to stop the publication of some outlets that were considered 'extremist' (see the case of Hyde Park Association in 2006 – Center for Independent Journalism Report). The same report illustrated the virtual attack on its site (www.ivesigatii.md), which included over 100 reporter investigations in all three languages spoken in Moldova, as well as documentary archives and pictures of investigative teams of independent journalists. As a result of this cyber attack, the whole data-base contained on the site has been totally destroyed. Freedom House Report on mass media freedom showed a sharp decline of the mass media freedom from 1997 till 2007.

References:

Nations in Transit – 2007,
Edited by the Freedom House
www.freedomhouse.org

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

58

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES

NO

Comments:

The Law on Press (1994), as well as the Broadcasting Code prohibits any kind of censorship, although there are many other forms of pressuring/forcing mass media to give up an investigation when the risks are too high.

References:

Law on Press (No.243-XIII of 26.10.1994)
Constitution (art.32) – Freedom of Expression Right

Constitution (34) – right to access information is counterbalanced with the obligation of mass media to provide correct information to citizens on public affairs and other issues of personal business, while avoiding to deliver any information that would hinder the national insurance/security or citizens' individual protection.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | **25** | 0

Comments:

Former state-company, currently public company Teleradio-Moldova, is still perceived as a proxy of the central government, having been shortly managed to run 'positive campaign on accomplishments of the government', while harshly criticizing the opposition parties.

References:

2006 Annual Report on the Freedom of Press and Information,
edited by Centre for Independent Journalism
(www.ijc.md)

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

There were attempts to shut down independent media (Timpul, Jurnal de Chisinau, Ziarul de Garda) in 2004/2005 for having investigating corruption affairs in the government (public aquisition scandals). More difficult is with the mass media controlled by proxies of the government, which undertake direct censorship on the wired programs and publications, which, in realityt, produce the effect or self-restraint or censorship, while only a few of journalists have protested against such a policy and left the company.

References:

2006 Annual Report on the Freedom of Press and Information
www.ijc.md;

Newspapers
December 2006, June 2007

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

50

10a. In law, print media companies are required to disclose their ownership.

YES

| NO

Comments:

By law, publications may be established by one or more founders and co-founders, which then register their entity at the Ministry of Justice. Legislation allows a participation of no more than 49 percent of a foreign investor in the shares of a mass media publication.

References:

Law on Press (No.243-XIII of 26.10.1994).
Broadcasting Code (No.260-XVI of 27.07.2006)

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | **NO**

Comments:

The Broadcasting Code requires that a foreign investor own no more than two private broadcasting companies in Moldova, therefore it is logical that the ownership is strictly monitored and can be disclosed. The Broadcasting Coordination Council does not publish regular reports informing the public about the ownership situation of mass media in Moldova, therefore, there is a general feeling of partial or lack of appropriate information and the reasons it takes decisions. While the law stipulates the necessary mechanisms for disclosure, the effectiveness of the law is severely constrained by poor implementation.

References:

Broadcasting Code (No.260-XVI of 27.07.2006)

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

The overall picture is very colorful. There are groups of journalists which have adopted a western-approach towards readership, investigative journalism, deontological ways of conduct, unbiased reporting, etc, and other groups that parasite on proxy connections with influential business groups or governmental structures, thus playing the role of 'guarding dogs' against those who try to inform the public about some sensitive issues. In the latest case (Moldova Suverana, Nezavisimaia Gazeta), the language and accusations have followed usually a very aggressive stance. Black, denigratory journalism is regularly applied in elections campaigns, as an instrument of blocking the competitors.

References:

Mass Media Newsletter (June 2005)
www.jjc.md
www.investigati.md

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

Comments:

Key problems identified by the report persisted in both two rounds of elections, particularly related to media bias and intimidation of candidates, and the relevant authorities failed to take remedial action prior to the second round of elections (Ambassador Dieter Boden, Head of the ODIHR Election Observation Mission in 2007 for Moldova). Most of the monitored TV stations, i.e. publicly funded Teleradio-Moldova, continued to provide extensive news coverage of the activities of state authorities outside the campaign context, thus repeating the pattern observed before the first round of elections, which benefited pro-government candidates and limited opposition candidates' opportunity to convey their message to the electorate on an equal basis. Negative campaigning reappeared in mass media, with paid spots aimed against contestants in local elections, while state-owned newspapers, Moldova Suverana and Nezavisimaya Moldova, which received substantial subsidies from the state budget at the end of 2006, clearly supported the ruling party candidate in June 2007 local elections, and published harsh articles against his competitors.

References:

Monitoring Report of the ODIHR Election Observation Mission
www.osce.org/documents/odihr/2007

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

Comments:

The formerly state-owned print outlets have been transferred in a non-transparent manner, without tenders, to some businesses associated with the ruling party, which allowed them to remain fairly loyal to the central government's core interests and ideology of the ruling party, the Communist Party of Moldova. Similarly, the transformation of the former state-owned Teleradio-Moldova has been faced with much resistance by the ruling party, which tempered and hindered the process of its restructuring. Although a Broadcasting Code established a new Observer's Council, its role is still weak due to the large number of proxies to the government infiltrated in this supervisory body, large dependence on subsidies authorised only by the government for its poorly managed activities, as well as of a lack of vision on mastering its public-responsiveness, as a key objective of reforming the public broadcasters in 2006.

References:

Mass Media Newspaper (2004, 2005, 2006, 2007),

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

Although no journalists have been arrested in the last year, several cases of intimidations, harassments, policy rallies have been registered and reported in Moldova.

References:

2006 Annual report on the freedom of press and information,
edited by Center for Independent Journalism
www.ijc.md

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

The Centre of Journalistic Research (CJR) is an active actor promoting its 'corruption folders' on-line, as well as via a highly sensitive media campaign in Moldova. In 2005, they issued a study 'The Corruption Folder', which is devoted to investigative journalists, as well as to policy actions. In 2005, Moldova was ranked 95 of 159 countries surveyed in corruption statistics. Mass media reports some cases of physical harassment of the journalists by 'unidentified' persons (Alina Anghel – Timpul), or by other forms of subtle censorship (Timpul Newspaper was sued in 2003 by Daac Hermes, a company selling cars) for investigative articles on the affairs of selling a large group of expensive cars to the Government without the appropriate tender procedure, and the accusation was 'denigration'. Timpul lost all its cases internally, and only recently, in 2007, it won its case in Strasbourg, at the European Human Rights Court. But, it shall be stated that in 2003, Timpul was suspended, and its property was sequestered, its journalists were harassed by police, and security agents.

References:

Reporters without Borders
Leading Sports Journalist Attacked, Left Unconscious
www.rsf.org/article/php;

Journalistic Investigations Center
Launching of media campaign 'Journalists against Corruption'
www.investigati.md

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

No journalists have been killed for their investigative work.

References:

Journalistic Investigations Center
[www.investigati.md;](http://www.investigati.md)

Center for Independent Journalism
www.jjc.md

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

70

I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | **NO**

Comments:

By law, a regulatory framework to access information of public use is provided.

References:

Law on Access to Information (No.982-XIV of 4.05.2000)

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

By law, any citizen may appeal to search, to apply, to receive and get informed on information of public use (art.4). This right can be limited only in specific cases, which are clearly stipulated by the law, in accordance with the international law and practices. Citizens may apply in conformity with the Law on Access to Information to receive in not more than 15 days a reply to their requested information, and if they are not satisfied with that, they may challenge the authorities' actions or inaction in justice, and expect that a judicial decision will redress their situation.

In accordance with the law on petitions, citizens may notify the public authorities in writing, with the aim to receive a written reply from the competent authorities in no more than 30 days after the receipt of the petition; afterwards, if the petitioner is not satisfied with the answer received from a competent authority, he/she may appeal to justice.

References:

Law on the Access to Information (No.982-XIV of 11.05.2000)

Law on Public Notifications/Petitions (No.190-XIII of 19.07.1994)

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES

|

NO

Comments:

Any document processed by governmental or public agencies can be requested, in accordance with the specified procedures, in which the applicants shall identify exactly the nature of the documents/acts, and the way in which the request is made. If applicants are not satisfied with how their requests have been addressed, they can challenge their actions or inactions in a court of justice.

References:

Law on Access to Information (No.982-XIV of 4.05.2000)

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

30

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As a specialized agency to monitor access to information rights, the Acces Info has presented a fully-fledged documented evidence on how the right to public information is met and addressed by the authorities, via an investigation that included almost all public organizations in Moldova. Only since Feb. 24, 2006, Parliament started to post on its institutional site records of the plenary sittings of the Parliament.

References:

Access Info Association:

'Access to information. Regulations, Commentaries, Cases'

www.acces-info.org.md

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the law (art.20), the fees to be paid are stipulated by the internal regulations of the state agencies where the information is requested. Therefore, there is no single-cut procedure, setting the maximum or minimum levels of taxes for this kind of services. The same article stipulates that the maximum level of these fees will not exceed the total quantum of expenditures for copying, mailing or translating the requested materials, in order to keep into reasonable ratio the fees required by the agencies. In fact, it is not the high-cost of fees that make the access to public information difficult, but particularly the often disregarded terms for the provision of requested information, lack of experienced staff to communicate with the public, as well as slow reaction of the judiciary in addressing the concerns raised by citizens.

References:

Vasile Spinei, director of the Acces Info Association (5.07.2007)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are important discussions concerning the adequate regulatory framework to define what is 'state secret' and 'commercial secret', as these terms are continuously used by the state officials to deny requests of receiving access to information from citizens. Harmonization of the Law on Access to Information is contradicted by several laws and regulations, such as: art.316 of the Criminal Procedural Code (no.122 of 14.03.2003) and the Law on the Organization of the Judiciary (art.14 – No.514-XIII of 06.07.95), etc.

References:

Vasile Spinei (Acces – Info Association), 17.07.2007

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

Citizens shall follow the procedures set up in each state/public institution separately. Usually, the procedures for requesting and receiving any information differ greatly among organizations, therefore citizens shall stay for days/hours in line to be received in audience, and only after clarifying 'how the things are going' there, one may get to the right idea about how to apply to the respective institution. Most of the state agencies and regulatory agencies have established their websites, although they have limited interactive interfaces, which would allow citizens to speed up their procedures and requests, while particularly the most wanted information is kept outside of the website content, serving the bureaucracy to keep its leverages of influence, and civil society activists at low profile.

References:

Law on Access to Information (No.982 – XIV of 11.05.2000)
Law on Petitions (No.180-XIII of 19.07.1994)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government officials may reject applications from citizens if they consider that the requests contradict the provisions of the Law on State Secret or the Law on State Security. There were not penalties imposed on public officials that have denied access to information to citizens requesting officially, therefore civil activists are quite skeptical at this point. It is believed that the progress is slowed down because the civil servants are unprepared and/or fear to lose their jobs in case they will provide 'unnecessary' information to the public, as well as because of the lack of civic education among citizens.

References:

Law on Access to Information (No.982-XIV of 11.05.2000)

Law on State Secret (No.106-XIII of 17.05.1994) – Monitorul Oficial No.2/5 of 25.08.1994

Law on State Security (No.618-XIII of 31.10.1995) – Monitorul Oficial No.10.11/117 of 13.02.1997

Law on the Structures of State Security (No.619-XIII of 31.10.1995) – Monitorul Oficial, no.10/11/115, of 13.02.1997

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁵⁷Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Constitution of RM (1994) – Art.38 The ‘will of the people is the basis of state power’. This will is expressed through free elections, which are conducted regularly via universal, equal, direct, secret and freely expressed elections.
Election Code (No.1381-XIII of 21.11.1997)

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

In case elections do not bring relevant results, the Central Election Commission may decide to hold new or repeated elections, according to the legislation, in order to ensure that the free will of the voters is fully taken in consideration. The results of elections are validated by a court’s decision, providing opportunities to the contestants to challenge this decision in an upper court.

References:

Election Code (No.1381-XIII of 21.11.1997) stipulates specific conditions under which parliamentary elections and local elections are held regularly, at every four years, intermittently, being supervised by a Central Election Commission.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Citizens that live and work abroad cannot participate in elections, because legislation does not allow mailing voting system, while the existing consular offices are not sufficiently present in those countries where there are large communities of Moldovans working legally or illegally.

References:

Constitution of RM (1994) – art.38 stipulates the right to vote and be elected to all citizens of the RM age of 18 years by the day of elections; the sole exception refers to imprisoned people.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Voting is expressed secretly (art.6 of the Code), thus avoiding influences of the electorate. Voting is made in specially-furnished spaces/rooms, where secret voting can be ensured, and where every voter may vote in separate cabins, orderly, under strict supervision of the precinct's election commission, in accordance to the procedures stipulated by law.

References:

Coalition 2005, 2007 Monitoring reports on elections
Election Code (1381-XIII of 21.11.1997)

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

Comments:

Elections are generally held according to a regular schedule. Parliamentary elections are called by the CEC with three months prior to the termination of the mandates of the incumbent legislative chamber (101 MPs), according to art.76 of the Code. The date of elections is set by the Parliament with at least 60 days prior to the date of elections. In case of the Parliament dissolution, a presidential decree deciding this will also include the date for upcoming elections (art.76). The date for local elections is set by the Parliament, with 60 days before the elections, and three months before the termination of the mandate of the local governmental officials.

References:

Election Code
Constitution of RM

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

80

16a. In law, all citizens have a right to form political parties.

YES

NO

Comments:

By law, citizens can freely join parties and social-political movements, which contribute to the crystallization of the political will of citizens in elections. Parties are equal before law, and the state shall provide fair and equal conditions of treatment to all political entities registered according to the law. The legislation prohibits explicitly those parties that aim to curb political pluralism, principles of the state of law, sovereignty and territorial integrity of the country. Secret associations are equally prohibited by law, and so are the parties formed by foreign citizens.

References:

Constitution of RM (1994)
Law on Political Parties (No.718-XII of 17.09.1991)

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Citizens of RM have the right to participate directly in the administration of public affairs, or by their representatives. Each citizen has a protected right to compete, in accordance to the law, to a public function, while specific legislation (Law on Civil Service, Law on Public Local Administration, Law on Government, etc) specifically define the general conditions for competition, as well as for running these functions.

References:

Constitution of the RM (art.39) – Right to Administration

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Although in general political parties may act and develop more or less freely in RM, there were certain hindrances posed by the Ministry of Justice for the registration of the European Action Movement in 2007, which retained the statute, program and lists of members for 'routine controls', and that was perceived as a purported action to block the Movement to participate in local elections of 2007. So, the Ministry of Justice delayed registration of the association from November 2006 till May 2007, and did not even accept its registration.

References:

Law on Political Parties (No.718-XII of 17.09.1991);

Azi news
European Action Movement considers its rights continue to be violated rudely
May 2, 2007
www.azi.md/news –

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

Comments:

Public service remains untransparent, over-bureaucratized and with little attraction to young specialists. Salaries are dismal, and the recruitment of new public officials is usually done in strong disagreement with general recommendations on public sector reform, under strict guidelines of the ruling party ideological predilections. Corruption and clientelle-based decisions have certainly kept at arms distance young and talented managers, who preferred to run for private jobs or for positions within multi-national companies or international representative offices, which are much better paid.

References:

National Report on Human Development (2006), done by UNDP in Moldova

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there are more than one political parties represented in the Parliament, in which 55 mandates belong to the members of the Communist faction (CPM), while the rest are divided among mainly right-centre and centre-sided political parties (AMN, PPCD, PD, PSL, PDS).

References:

Central Electoral Commission:
www.cec.md;

ADEPT independent election information web site:
www.alegeri2005.md;

Prodemo independent election information web site:
www.elections2005.prodemo.md;

Social Democratic Party web site:
www.psdm.md;

Christian Democratic Popular Party web site:
<http://www.ppcd.md>;

Democratic Moldova Bloc web site:
<http://www.bmd.md>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES

| NO

Comments:

A central election commission is the main specialized body in implementing legislation in Moldova. With 55 days before the election date, the CEC is responsible to organize and set up the election precincts and election districts that are directly in charge of the organization of elections throughout the country.

References:

Election Code (No.1381-XIII of 21.11.1997)

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

55

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES

NO

Comments:

According to the Code, the CEC has nine members. They are approved by Parliament, and they have been appointed in the following way: one from the presidency, one from the government, and seven members from the Parliament (i.e. five members to be delegated by opposition parties, proportional to the number of seats of MPs). Political influence is therefore present by definition within the structure of the Central Election Commission.

References:

Election Code (art.16)

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The appointed members of the CEC have, generally, divergent agendas. They are therefore appointed to deliver messages that represent the official positions of their delegative agencies, and have little room for independent/professional standards of behavior.

References:

Declarations of political parties concerning the work of the CEC during local elections of 2007:
www.e-democracy.md

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In addition to its full-fledged nine members, which are immovable according to the law, the CEC is further assisted by a small permanent staff, whose number and salaries are established by a simple decision of the CEC, on the basis of a budget approved by the Parliament.

References:

Election Code (1997)

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The CEC do present some reports to the public on the election results, on the behavior of election actors, or obstacles they've met in the most recent elections. They have no effective tools to monitor party finance in elections, nor to restrain the party in power from using and abusing administrative leverages and resources, therefore, despite some progress registered in the last 3 years, CEC is not still perceived as a strong player setting the rules of conduct in a fair way in or prior to elections.

References:

Mihai Godea, director CONTACT Center, secretary of the Coalition 2005, 2007;
Official Web Page of the CEC – www.cec.md

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

Penalties for violations of the Election Code (art.69-71) have been never enforced. Even the control over the financial means spent during a campaign are not verified accordingly by the election body.

References:

Coalition 2007 Election Monitoring Report:
www.alegeri.md/en/2007/coalition2007/
– Irregularities are reported throughout the day – June 17, 2007
– Observers are reporting irregularities in the voting process – June 17
– The voting process of June 17 is marked by incidents in Corjova – June 17
Local elections of June 3 largely did not comply with international standards for free and fair elections
– on the results of the monitoring of mass media during general and local election campaign in Moldova
Statement on the abuses of the police forces

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

67

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

A significant number of complaints on the first round and second round were filed with CED, DECs, and courts on a broad range of issues related to voting, counting, and the tabulation of results. Lacking clear regulation on recounting, different procedures were followed by the courts and DECs. Despite inaccuracies noted in the first round of elections, voter lists remained unavailable for public review at the majority of polling stations in the June local elections in Moldova. International observers noted that the lack of legal provisions and clear deadlines applicable to second round contests hindered the preparations for the run-offs and resulted in inconsistent practices.

References:

Coalition 2007 Monitoring Report:
www.alegeri.md/en/2007/coalition2007/;

ODIHR/OSCE Monitoring report on local elections in 2007:
www.osce.org/documents/odihr/2007/

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Arts.65-68 includes all cases where voters may contest the results of the elections by appealing to a judiciary court.

References:
Election Code (1997)

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The lack of legal provisions and clear deadlines applicable to second-round contests hindered the preparations for the run-offs and resulted in inconsistent practices, said the Declaration of the ODIHR monitoring local elections in 2007.

References:

OSCE/ODIHR and Congress of Local and Regional Authorities Monitoring Report on Local elections in Moldova:
www.osce.org/documents/odihr/2007

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Military interventions in the political cycles have not been reported, although frequent claims that special services serve to the ruling party in running campaigns have been repeatedly echoed by opposition press (Timpul, Jurnal de Chisinau). For instance, CEC has specifically invited (publicly) SIS – Intelligence Services – to ensure ‘good communication’ between CEC and its precincts in 2006.

References:

newspaper TIMPUL,
CEC a solicitat colaborarea cu SIS in ziua alegerilor locale
June 29, 2005

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES

|
NO

Comments:

Art.63 stipulates the right of the CEC to confirm the mandate of observers to citizens of the Republic of Moldova, as well as to foreign citizens, who are delegated officially by interntional organizations. CEC has the right to consider and deliberate on the organizations which are accepted to delegate their members as observers in elections, in accordance with their specific qualification, prior experience, commitment to democratic standards and values, etc.

References:

Election Code (1997)

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | **50** | 25 | 0

Comments:

Election monitoring is implemented in Moldova on a regular basis, in accordance with general practices and standards, largely by LADOM, as well as other human rights organizations, which have the experience and potential to get mobilized quickly and effectively on the day of elections. Monitoring is usually done on short-term, for the day of elections, although other kinds of montioring (mass media, administrative violations by the competitors) is also a form of active participation for the civil

organizations in Moldova. Sometimes, however, the cases of observer's rights infringement are not duly due to the misbehavior of the election bodies, but because of the poor understanding of the rights the observers have during elections.

References:

Coalition 2007 Monitoring reports
www.ladom.org.md

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

74

II-3. Political Financing

20. Are there regulations governing political financing?

14

20a. In law, there are regulations governing private contributions to political parties.

YES

NO

Comments:

There is a draft on financing political parties, which has not been yet adopted by the Parliament. There were no mechanisms to enforce financial oversight and enforceable control to safeguard the implementation of funding-related provisions in Moldova. The new legislation is supposed to bring sanctions proportional to the violations of financial management procedures.

References:

Comments on the draft Law on Political Parties of Moldova
Heinrich Vogel, Venice Commission of the Council of Europe
www.venice.coe.int/docs/2007/CDL-AD

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | **NO**

Comments:

Funds for running political parties are created from the membership fees paid by its members, profits from mass media companies or TV stations, selling of leaflets, branded products, private/physical donations (art.12). No foreign financing is allowed for the political parties in Moldova.

References:

Law on Political Parties (No.718-XII of 17.09.1991)

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | **NO**

Comments:

Art.10(12) prohibits explicitly financing from external sources for political parties. The same prohibitions are applied to financing from public organizations, joint ventures in which the state shares exceeds 20 percent, unregistered citizens groups, unidentified individuals, foreign individuals or organizations residing abroad. There is no mention of the limitations on corporate donations otherwise. External sources mean bylaw 'outside of the country sources'. A new draft of the law on party financing attempts to restrict the financing from corporative sources (inside of the country), providing only the state with the responsibility to finance parties, which shall also rely on membership fees, but it is quite unclear at this point whether this will be a fair option, accepted by the political class, and pertaining to the political realities/realms of the democratic process.

References:

Law on Political Parties (No.718-XII of 17.09.1991)
Code on elections

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

There are no limits to the total political party expenditures, overall, and perhaps with the adoption of the new Law on Political Financing (still a draft under consideration), this will be settled. Art.35 of the Election Code sets up the limits of the financing provided by law for certain election campaigns, and the total ratio is decided by the Parliament through the state budget prior to the upcoming election year. Election competitors may receive loans for their election campaigns from the state, which shall be returned in case they have not succeeded to collect sufficient votes (!) Election competitors who received less than 3 percent of the votes expressed in elections shall return the loans in no more than three months from the date of elections. Parties and individual candidates shall present regular (weekly) evaluations of the way they have spent/are spending their state-delivered resources in election campaigns, and CEC/Ministry of Justice are entitled to verify the actual spending.

References:

Law on Political Parties (No.718-XII of 17.09.1991)
Election Code (No.1381-XIII of 21.11.1997)

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

Art. 38 of the Election Code stipulates exact conditions through which individual or corporate donations can be transmitted to political candidates and parties.

References:

Law on Political Parties
Election Code

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

Art.38 of the Election Code stipulates that election candidates (parties or individuals) shall open up a special account in a bank with a title 'election fund', and all donations for campaign shall be accumulated there. The respective bank will inform accordingly the CEC on the money received by candidates and, on the basis of its full-fledged mandate as supervisor and implementor of the election legislation, CEC may request the Auditing Court and the Fiscal Inspectorate of the Ministry of Justice to undertake a financial control over the resources legally received by election candidates, correct evidence of the transfers, and their appropriate use.

References:

Election Code

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

There is no agency that is in charge with monitoring the political financing in Moldova. The tax inspectorate does have the competence to verify the accountant's reports of the parties as legal entities, but cannot be seen as a 'specialized agency', which exist in other countries, aiming to restrain election actors from corruption, abuse of resources, etc. The Central election commission, which IS a specialized body may only request presentation of the reports from parties, but it does not have the authority to oversee the fairness of their content, while fiscal bodies does not care about the specific purpose of parties (as non-commercial entities).

References:

Law on Political Parties

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

21

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

**Comments:**

Political financing is one of the less studied and tenebrous field of activities for political parties. Money in politics are in general collected unofficially, with great incentives from the black/hidden economy sources, and large potential for corruption or ambiguous impact on the political process or party-construction work.

References:

Coalition 2005, 2007 monitoring reports:
www.alegeri.md/en/2007/coalition-2007/;

Political Corruption, IDIS, Cartier Publishing House, 2000
Lilia Carasciuc, director, Transparency International – Moldova;
Interview, June 2007

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

**Comments:**

The main documents regulating today the financial activity of political parties are largely unsatisfactory to the party-building process in Moldova. The law does not prohibit the use and abuse of administrative resources, while weak judiciary has limited operational capability to intervene when blatant violations from the incumbent state officials appear in the electoral and extra-electoral process. Voters are bribed with generous contributions from the state budget, to the benefit of political parties; state officials use media groups controlled by the government, and limited space for the opposition forces hinder pluralistic foundations of the political regime.

References:

Law on Political Parties
Election Code

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | **25** | 0

Comments:

Most of the political parties use only a slight piece of official funding (received from the state) to run election activities, and they rely heavily on extra-funding cash-subsidies from unknown sources of unclear origins. No precedents of conducting effective auditing of the political funding was undertaken in the past, and it is a sensitive issue on the political agenda. Most of the viable/functional political parties expenditures exceeds by dozens of times the 'official allocations' (loans) provided by the state, and the obvious discrepancies jeopardize dramatically the credibility of political parties (amongst the lowest ranks in the public surveys in Moldova).

References:

Election Code

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

Comments:

With the sole pioneering experience of IDSI, there were no other precedents in Moldova when the issue of political financing has been addressed by other think-tanks, not to mention here state-agencies specialized in such monitoring. The intersection of election interests and monopolist-ideology of the ruling Communist party make the whole range of state institutions (CEC, Ministry of Justice, Prosecution) to fight hard to create unequal conditions to the contenders (opposition), rather than creating equality of chances, and transparent governance of the election / political spending.

References:

Political Corruption, 2000, edited by IDIS
www.viitorul.org

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

Comments:

There are no precedents of imposing penalties for exceeding the limits of financing.

References:

Election Code (No.1381-XIII of 21.11.1997)
 Law on Political Parties (No.718-XII of 17.09.1991)

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

A report on the spending declared by the political parties and individual candidates for the latest elections (2005, 2007) has been issued by CEC, but it is obviously far from the estimated costs of the campaign, which means that no auditing/control of the reported sources was in fact done by the respective agency.

References:

Election Code;
Central Election Commission:
www.cec.md

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

0

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No disclosure mechanisms have been established for political parties by the Law on Political Parties. Some disclosure rules are included in the Election Code (1997), although they are largely unsatisfactory to allow better accountability and transparent governance of the political formations registered by law.

References:

Coalition 2007, Mihai Godea, secretary, director of CONTACT Center:
www.contact.md

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regularly withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot access the files for financial/election records of the political parties. These records are never shown, they are never presented officially, and belong to the most unclean/unclear field of responsibilities of the current political leaders currently in Moldova.

References:

Political Corruption, IDIS, Cartier House, 2000:
www.viitorul.org;

Coalition 2007:
www.coalition2007.md

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

With costs or without costs, applications to review financial records of the political parties are never met or addressed by their

leaders. It is impossible to hope that one may compare the actual spending of these parties for their party work at the national/territorial level with the official estimates of the spending provided by the state in campaigns.

References:

Law on Political Parties (1991)
Election Code (1997)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁵⁰ Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES

| NO

Comments:

Art.5 of the Civil Code stipulates the free access of citizens to justice in case their rights, individual freedom or legitimate interests are infringed upon. Legal protection shall be provided to all citizens, and nobody could be deprived of legal protection against any kind of abuse. Only judiciary decisions may confirm the existence of a situation in which citizens are affected or not, and therefore citizens can sue public authorities/state agencies if they think their civil rights have been affected/jeopardized/threatened by these authorities.

References:

Civil Code (No.225-XV of 30.05.03);

Constitution (1994)

Art. 25 – Individual freedom and individual security are inviolable.

Art. 26 – The right to appropriate defense is protected by the Constitution.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

44

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Between 2001 and 2004, the prime minister did not present any kind of reports in Parliament. As the evidence proved, control of the legislative over executive policy was merely a formal and ineffective instrument. Civil society participation has been propelled only by international organizations working in Moldova, and aimed to encourage a participatory framework of actions/interactions between civil society and governmental agencies on key-country priorities, such as: EGPRSP (2004) and NDP (since 2007). There are two executive chiefs of the executive: the prime minister and the president. The president has the majority party control, and therefore is the major player, using the government as its field of influence. Very often, decision taken by the president for the whole government (cut-offs of the civil service by 70 percent in 2005, capital and fiscal amnesty law in 2007, etc) had received no impact analysis or feedbacks from the citizens, and are largely populistic.

References:

Democratic Audit (IDIS) – 2003, Sofia, 2005
www.iris-bg.org

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | **NO**

Comments:

By law, every citizen that feels that some of his/her rights were damaged by any public authorities, by administrative decisions or by inaction in the provided by law terms, may address this case in a court of justice in order to get the act cancellation, recognition of the right that has been affected and the compensation for the damage caused by this action. The Administrative Code (adopted in 2000) aims to reduce the area of abuses produced by public authorities against citizens of Moldova and provides a quite sophisticated/complex instrument regulating the actions of citizens against administrative decisions. Nevertheless, in 2001, the Administrative Code was amended, and thus there are major exceptions by which governmental, parliamentary and presidential acts, individual acts of the same authorities, appointment of officials, diplomatic acts, other decisions of the government and normative acts, cannot be reviewed by judiciary courts (art.4).

References:

Law on Administrative Code (Contenciosul administrativ) – No.793-XIV of 10.02.2000
Civil Code – No.225-XV of 30.05.2003

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | **25** | 0

Comments:

In 2001, the Administrative Code was amended, and thus there are major exceptions by which governmental, parliamentary and presidential acts, individual acts of the same authorities, appointment of officials, diplomatic acts, other decisions of the government and normative acts, cannot be reviewed by judiciary courts (art.4).

References:

Administrative Code (2000)

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The highest obstacles in business development are general bureaucracy, the burden created by the proliferation of the new regulations established by the ministries, corruption and instability of the economic policies (micro and macro-policies). Unstable policy framework of the state has many times negatively impacted over the positive incentives reached by fiscal encouragements. Many legal decisions and acts, instructions adopted at the level of executive agencies (ministries, fiscal inspectorate, other departments) conflict with the norms of the main/basic legislation that run business activities (Constitution, Fiscal and Civil Codes). In 2004, over 300 acts were assessed as 'normative acts adopted at the departmental level' which represent an extra-legal field, overpassing the laws adopted in business development. Unfortunately, the 'guillotine law' passed by the parliament in 2002 has failed to simplify to a desired level the functional framework for business.

References:

System of Unofficial Taxation, edited by IDSI in 2007:
www.viitorul.org/;

Legal Framework and the Investment Climate in Moldova
elaborated by the Coalition for Rural Economic Development:
www.infotag.md/f2004_5.ro

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

Political instability brought a high rate of mobility of governments in the first decade after the Independence of Moldova (1991), while after 2001, with the Communist Party winning in general elections, the government became a very stable though rigid body, with ministers being expelled from by decrees of the head of state, even without the consent of the Parliament.

References:

Constitution of RM (1994)

President of RM can be impeached when it is found that he broke the provisions of the Constitution by two thirds of the MPs. Proposal of impeachment can be launched by one third of MPs and be submitted to the president, while the president can provide explanations to the Parliament and to the Constitutional Court on all facts that have motivated the initiative.

The prime minister can be dismissed by a no-confidence vote brought in Parliament by the majority of MPs (dismissal can be called by at least one fourth of the MPs out of 101 existing).

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES

NO

Comments:

Art.30 of the Civil Service Law provides the reasons for which civil servants and ministerial-level officials can be prosecuted, in terms of disciplinary, material, administrative or penal responsibility. In case civil servants prove their rights in a court of justice or dismiss the accusations brought to them at their dismissal, they are paid off for the damages received from these actions. The legislation against corruption provides a variety of forms of prosecuting ministerial-level officials from crimes that they have committed (art.11).

References:

Civil Service Law (No.443 – XIII of 04.05.95)

Law on Fighting Corruption and Protectionism (No.900 of 27.06.1996)

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

50

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES

NO

Comments:

There is a Central Commission that oversees incomes declared by officials of the government of Moldova. On Aug. 25, 2006, it presented a short report on the declarations submitted by the governmental officials, although mass media contested the results. The law on disclosure of properties and incomes of the top officials stipulates the obligativity and the formal procedures through which civil servants and politicians disclose their earnings, properties, although frequently in the past, the government simply delayed or postponed for unspecified periods of time the presentation of declarations, or, when they have been presented to the Commission created by the government, it showed up only partial and inconclusive information on the real earnings. The custom is that large family properties are transferred to the members of the family or close relatives for the duration of the mandate, or are simply ignored, and there is no systematic and objective oversight of these issues.

References:

Civil Service Law (No.443-XIII of 04.05.1995)

Law on the Disclosure of Incomes by Physical Persons (Nr.662-XIII din 23.11.95)

Association Adept – <http://www.e-democracy.md/comments/legislative/200608312/>

Law on the Control of Incomes of the Top-officials (No.1264-XV of July 19, 2002)

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES

|

NO

Comments:

Formal requirements abound, although they are rarely implemented. A new civil service law is under consideration in 2007, and it incorporates a large number of amendments derived from the anti-corruption commitments and legislation adopted recently by the Parliament.

References:

Law on the Declarations and Control of the Incomes and Properties Belonging to the Top-level (ministerial) Officials (No.1264-XV of 19.07.2002)

Civil Service Law (No.443-XIII of 04.05.1995)

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES

|

NO

References:

Civil Service Law

Law on Government (No.64-XII of 31.05.1990)

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:

Art.11 of the law establishes a Central Control Commission within the government, which is entitled to oversee the declarations on incomes received from the public officials. The CCC is constituted on a parity format: three from the presidency, three from the Parliament, and three from the government.

References:

Law on the Declaration and Control of the Personal Incomes and Properties of the Public Officials (No.1264-XV of 19.07.2002)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

Art.11 prohibits the public officials to undertake entrepreneurial activities, or to simultaneously have managerial capacity in private or public business companies. There are no explicit cases of prohibiting entrepreneurial activity to be performed by former state officials, which of cause generate a propensity to 'prepare' their leave long in advance, or visibly give an advantage those companies that would help them later to set their business.

References:

Civil Service Law (No.443 – XIII of 04.05.1995)

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

No such provisions exist in the current legislation, or in the drafts currently prepared.

References:

S.Tatarov, head of the coordinational unit for the implementation of the RAC (Central Administration Reform Strategy) – June 2007

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Art. 13 of the Law on Civil Service specifically states that 'public officials are prohibited to receive gifts or services for the fulfilment of the obligations they are in charge', excepting symbolical ones, that are generally recognized as forms of politeness and hospitality. The law does not define what is the value of the hospitality gifts, and leaves it to interpretation. The law equally prohibits civil servants to open up accounts in foreign banks, although there is little confidence in the declaration of revenues/incomes that have been presented by the governmental officials in the last decade. There are important privileges that are delivered to the top-ministerial officials (Administrative Board Memberships, 'green-zone' corridors for export/import operations, land plots offered free of charge, apartments) without any possibility for the public to oversee these kind of gifts.

References:

Lilia Carasciuc, Transparency International:
www.transparency.md

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Law on the Incomes of Physical Persons (23.11.1995) – obligativity to declare everything above minimum salary
Law on civil Service (Nr.443 of 04.05.1995) – stipulating that hiring in the civil service is preceded by the obligation of the civil servant to provide, according to the law, a declaration on the incomes, properties and finances, in RM as well as abroad.
Presentation of inconclusive data would bring immediate suspension of the position in the administration.
Law on Curbing Corruption and Protectionism (Nr.900/27.06.96), art.10 stipulates that employment is preceded by regular (annual) presentation of a declaration on incomes/revenues, estate properties, banking accounts and value obligations, i.e. abroad.
Fiscal Code sets on its own turn the obligation of annual declaration of revenues by all physical persons,
Election Code (No.796-XV din 25.01.2002) stipulates that CEC, as well as the precinct election commissions) request declaration of revenues from the candidates running for public positions for the previous two years before the election year, as well as their origin-, i.e. incomes from investment funds, bank loans or renting of estate properties.
Law on the Declaration and Control of Revenues and Properties (No1264-XV) was adopted in 2002, at strong pressures from the international organizations, although the willingness to increase the level of transparency and accountability of the top-level officials is quite low and is rather politicized.

References:

Transparency International Reports:
www.transparency.md

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

42

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

Art.13 stipulates that all declarations presented by the president, members of the government, MPs, chairmen of the National Bank, Auditing Court, Intelligent Service, etc. be presented to the mass media.

References:

Law on Declaration and Control of the Revenue of Top-level Officials (No.1264-XV of 19.07.2002)

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports presented by the public officials include irrelevant data, while Central Commission for Control of Declarations (CCC) is but a decorative body, aimed to show up some signs of openness. The critics are generally related to the value of the estate indicated by the civil servant, which are far below market prices, the lack of monitoring and regulatory instruments to ensure full confidentiality/transparency of the estimations, the independence of the monitoring body, the timing of presentations (when state bodies may decide on their own to suspend or ignore the deadlines set for the presentation of the declarations), the lack of coordination among these declarations with the fiscal declarations, the ambiguities related to the transfers of properties to the family members, etc.

References:

Transparency International:
www.transparency.md;

Monitorizarea accesului la informacie în Republica Moldova".

Jurnal de Chi_inu (Nr.447 din 20.01.2006; Nr.380 din 20.05.2005; nr. 405 din 16.08.2005); Ziarul de gard (Nr.51 of September 8, 2005);

Timpul (nr.473 of August 30, 2006);

Centre for Investigative Journalism – www.investigatii.md

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Except press releases issued by the governmental body in charge with the declarations of incomes of the public central officials, there are no other possibilities to get acquainted with the situation of their incomes. Declarations are kept secret. Some investigative mass media series have been issued, bringing the controversy to the public discussion, but officials have ignored or rejected accusations providing no additional information. Official websites do not have any information of this kind.

References:

www.transparency.md
www.investigatii.md

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

25

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

Comments:

Formally, civil servants shall be no members of political parties. In practice, they cannot be employed if they have not displayed favorable positions towards the ruling party, while the civil service legislation is badly implemented and managed. The on-going reform of the central public administration is making only the first steps towards professionalization of the service, having not yet achieved the 'depoliticization' of the service.

References:

Adept Association:

<http://www.e-democracy.md/comments/legislative/200608312/>:

IDIS Economic Statewatch, 2004, 2005, 2006, 2007:
www.viitorul.org

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

92

29a. In law, the judiciary can review laws passed by the legislature.

YES

NO

Comments:

Parliament is the highest representative authority of the people of Moldova and the only legislative authority of the state. By the supreme law (art.134), only the Constitutional Court can undertake a control of constitutionality on the laws and decisions of the Parliament, as well as the decrees of the president of Moldova, the decisions and indications of the Government, and the international treaties that were ratified by Moldova.

References:

Constitution of RM (1994)

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Court intervenes regularly, when it is solicited to intervene by the subjects strictly defined by the constitution (MPs, government, president) to interpret the constitutional provisions, to advise on the initiatives to review/amend the constitution, to confirm the election of the Parliament and of the president of Moldova, to confirm the conditions which justify the dissolution of the Parliament, the dismissal/impeachment of the president of Moldova, or its provisional vacancy of the incapacity of the president to fulfill his/her attributions over 60 days, to resolve other exceptional cases when the judges of the Constitutional Court consider that the laws contradict the constitution.

References:

Elena Arama, USM, History and Theory of the Law Department:
www.iatp.md;

Constitutional Court:

www.constcourt.md/decisions

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES

| **NO**

Comments:

Art.9 of the law stipulates the conditions in which MPs enjoy a parliamentary immunity, which ensures that MPs cannot be prosecuted by judiciary for their speeches, political opinions or their votes in the Parliament. If the prosecution address the Parliament to suspend the immunity of an MP, then the Legal, Nominations and Immunity Commission of the Parliament may decide over 15 days if an MP can lose his/her immunity to appear before a court of justice to defend his/her rights. The Immunity can be suspended with the votes of 50 percent + 1 from the legislative.

References:

Law on the Statute of the Members of Parliament (No.39-XIII of 07.04.1994)

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

18

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES

|

NO

References:

Law on the Declaration and Control of Revenues and Properties (No.1264-XV of 19.07.2002) includes MPs among the categories of those who are obliged to provide full references of their incomes/estates before the Central Control Commission, which must validate/oversee these declarations.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES

|

NO

Comments:

There are no restrictions for national legislators after leaving the government.

References:

Law on the Statute of Deputies/Members of the Parliament (No.39-XIII of 07.04.1994)

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES

NO

Comments:

There are no specific regulations governing gifts and hospitality offered to members of the national legislature in RM.

References:

Parliamentary Procedural Regulation (No.797 of 02.04.1996)

Law on the Statute of the Deputies (MPs) – No.39-XIII of 07.04.1994

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES

NO

Comments:

Art.7 states that MPs shall present their revenue declarations and estate situation at the beginning of the mandate. Declarations are received by the Legal, Nominations and Immunity Committee of the Parliament, which shall organize in cooperation with fiscal bodies a control over the conformity of these declarations and the taxes paid according to the Fiscal Code. The commission will present a report on the situation of deputies two days after which this report is voted by a simple majority in Parliament. There are no requirements for independent auditing, although independent press have often independently reassessed these declarations, with almost no reaction afterwards from the Legal, Nominations and Immunity Committee of the Parliament.

References:

Law on the Statute of the MPs (No.39-XIII of 07.04.1994)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

No such restrictions exist currently in the legislation governing the statute of the MPs, and this is conducive to open lobbying of economic interests of the companies and firms led by outstanding politicians of the Parliament. No lobbying legislation exists, therefore economic interests are generally facilitated through agenda-setting mechanisms and via leadership of the parliamentary fractions.

References:

Alexandru Tanase, lawyer, Center for Legal and Penal Studies
Mihai Godea, Contact Centre

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Regulations are not effective, as they are virtually non-existent.

References:

Center for Independent Journalism :
www.ijc.md;

Center for Investigative Journalism:
www.investigatii.md

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | **25** | 0

Comments:

Formally, according to the Statute of the MPs (No.39-XIII of 07.04.1994) declarations of revenues and estate of the MPs shall be made public and voted with a simple majority of votes in the Parliament. In practice, no effective deliberations on this subject are made, and mass media receive the report the latest. No independent auditing of the results is made to bring revenue asset situation in conformity with the existing realities.

References:

Mihai Godea, Contract Center
Galina Bostan, lawyer for Human Rights Association

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

No information on the revenue / income declarations is accessible on the website of the Parliament. Excepting a formal information provided by the Press Service, no other data has been accessible to the mass media in 2005 and since.

References:

<http://www.parlament.md/>

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No access to income declarations is made on the institutional site of the Parliament, while data provided by the Legal, Nominations and Immunity Committee is irrelevant, outdated and unverified.

References:

Aliona Radu – editor in chief of the Ziarul de Garda
Corina Cepoi – director of the Center for Independent Journalism

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

Comments:

Citizens cannot access with costs or without costs a number of sources of information: income declarations, parliamentary budget, distribution of houses and apartments, employment of the parliamentary staff, use of the budgetary resources for the needs of the Parliament, etc.

References:

Galina Bostan, Lawyers for Human Rights
Corina Cepoi, Center for Independent Journalism

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

67

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Art.45 of the Regulation stipulates that the business agenda of the Parliament is to be placed on the institutional website prior to deliberations at the beginning of the weekly session. Art 48 stipulates that in no more than five working days from the setting of the legislative agenda, drafts of the law, decisions, as well as other documents which are debated by the Palirmaent shall be placed on the website. The same is done in the case of deliberations.

References:

Procedural Regulation of the Parliament of RM (No.797 of 02.04.1996);
www.parliament.md

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access a part of the records (stenograms) of the deliberations in the Parliament which are placed on the institutional website. This information is not systematic and is decided by the parliamentary staff when it is to be placed or not on the website. Since February 2007, Parliament decided to suspend direct broadcasting of the parliamentary sessions on the public TV station, which was in fact a step back in regard with the access to information law adopted in 2000, and despite criticism from the civil society, leadership of the Parliament has kept the decision on the premise that 'some politicians will use this kind of broadcasting for making personal political capital' (!?)

References:

Vasile Spinei – ACCES INFO Association:

www.acces-info.org.md – Monitoring report on the application of the Law on Access to Information in Moldova;
Your right: access to information. Field Legislation of the Republic of Moldova on the Freedom of Information, International Acts and Practices.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Parliamentary staff is in charge to produce regular records of the parliamentary sessions and post them on the website (www.parlament.md). There, everyone can consult and access them, in order to get documented on the parliamentary business. Usually, citizens are not paying for accessing the website of the Parliament, while other kind of paid-information is not delivered by the Parliament. Citizens have to pay only for the Monitorul Oficial (monthly circulation) which include all laws, decisions adopted by the Parliament, as well as decisions and decrees taken by the rest of the public authorities in Moldova (presidency, government, Constitutional Court, Auditing Court, etc). The costs for an annual subscription to Monitorul Oficial is about US\$40. Nevertheless, parliamentary staff have a very selective approach, and many critical sessions are not recorded at all, particularly when they are very sensitive. In May 2007, Parliament decided to stop transmission of the parliamentary sessions at the largest national-broadcasting TV and radio Company TVM1 for unexplained reasons. Despite protests from the mass media and the opposition, the decision remained intact.

References:

www.acces-info.org.md
www.parlament.md

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44

III-3. Judicial Accountability

33. Are judges appointed fairly?

92

33a. In law, there is a transparent procedure for selecting national-level judges.

YES

NO

Comments:

Art 9 of the Law on the Statute of Judges stipulates that all positions of judges are filled in through a public and transparent procedure of competition. Competition is held after publication in mass media of an announcement / call of participation by the Magistrates Upper Council. The date, place and way of selecting candidates is communicated publicly in mass media by the Upper Council of Magistrates with no less than 90 days before the selection day. The graduates of the National Institute of Justice participate to the competition on the basis of their individual merits and scores. As a part of the legal reform initiated in Moldova, a specialized institute in preparing the necessary human resources for the judiciary was organized in 2006.

References:

Law on the Judiciary Organization (No.514-XIII of 06.07.1995)
Law on the Statute of Judges (NO.544-XIII of 20.07.1995)
Law on the Creation of the National Institute of Justice (No.152-XVI of 08.06.2006)

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are

nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Art.6 of the Law on the statute of judges stipulates the following criteria: permanent residence in Moldova, full exercise capacity, law degree, at least five years of law practise, knowledge of the official language, no legal antecedents and medical fitness.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995)

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

For national-level judges there are specific requirements. For instance, art.6 of the law indicates that candidate to the Appeal Court need at least six years of work experience, while candidates to the Supreme Justice Court seven years. All judges are appointed / confirmed in their position by the president of Moldova (art.11) at the recommendation of the Upper Council of Magistrates. Judges for the Appeal Court and Supreme Justice Court are confirmed by the Parliament, at the recommendation of the Upper Council of Magistrates. The president or Parliament may reject a candidate proposed by the Upper Council of Magistrates only once.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995)

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

67

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

Art.269 of the Law on Administrative Offenses stipulates the elements that must include the final decision of the judiciary on the legal facts considered and deliberated.

Art. 99 of the Law on Penal Procedures stipulates the probation elements, which provide necessary elements for the reasons to make a judicial decision.

References:

Law on Administrative Offenses (No.3 of 29.03.1985)

Law on the Penal Procedures (No.122-XV of 14.03.2003)

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | **25** | 0

Comments:

Although judges are entitled to give reasons for their decisions, with the newly amended Law on Judicial Procedures, they have largely neglected this obligation, mainly due to overwhelming pressure (no. of files/cases). Thus judges often do not provide publicly reasons for their decisions, or simply use a part of the defender or prosecution pledge to argue their decision; therefore, in many cases, the arguments/reasons for making one or another decisions is greatly and strikingly different from the arguments exposed on paper.

References:

Alexandru Tanase, lawyer, Center for Penal and Legal Studies

Viorel Furdui, lawyer, ULIM Legal Department

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | **NO**

Comments:

Art.21 of the Law on the Statute of Judges stipulates the provisions concerning the disciplinary measures against judges, when they have committed flaws in their legal obligations, they have manifested untoward behavior to the public opinion, which damages the judiciary reputation. Art.23 says that the state is responsible in property terms for the judicial errors committed by the judges (this is exactly a painful reality since RM has been sentenced for dozens and hundreds of times by the European Court on Human Rights when citizens have directly applied in Strasbourg to protect themselves against abusive or politically influenced or incorrect decisions made by the Moldovan judiciary). Art.22 of the Law stipulates a long list of cases in which disciplinary measures shall be taken against judiciary.

References:

Constitution of RM (1994)

Law on the Statute of Judges (No.544-XIII of 20.07.1995)

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | **NO**

Comments:

Judges can be dismissed from their position as a disciplinary measure by the Upper Council of Magistrates, as a self-governing body of the judiciary. Judges can be dismissed by the authorities that have appointed them. Individual judges can resign under specific conditions stipulated by law.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995)

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The proposals for the dismissal of judges are initiated by law by the Upper Council of Magistrates and are submitted for consideration to the president or to the Parliament, according to the authority that have appointed the respective judges. This initiative is to be based on certain legal reasons (art.25), which are related generally to: the resignation, professional incapacity, committed disciplinary violations proved by the Council, confirmation of the lack of exercise of capacity, losing citizenship of the Republic of Moldova, etc.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995)
Vitalie Nagacevschi, Lawyers for the Human Rights

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Art.21 of the Law on the Statute of Judges stipulates that, 'after covering the damage produced by previous decisions, which were considered incorrect and illegal by a judicial decision, the state can initiate a pledge against the judges that have caused the damage, because of lack of bona-fides behavior or negligence. If the illegal decision has been made by more than one judge, the legal offense can be initiated against all participating judges.'

References:

Vitalie Nagacevschi, Lawyer, Juristii pentru drepturile omului
Viorel Furdui, Lawyer, ULIM Legal Department

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

18

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | **NO**

Comments:

ARt.15 stipulates that judges have the obligation to present a declaration on incomes and estate properties they own by the time they take office. Declarations are submitted to the Upper Council of Magistrates that serves as a disciplinary body of the judiciary as well.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995)

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

Comments:

Art. 22 of the Law on statute stipulates that judges shall refrain from exploiting their positions in order to get illegal sources of incomes.

There are other provisions, such as the top-officials from the executive, legislative and judiciary have to disclose their revenues. Sometimes the process is postponed or delayed for several years, and when it goes on according to the schedule, the information presented by the respective officials is largely incomplete or partially relevant.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995)

Law on the Declaration and Control of the Incomes and Estate Properties Owned by Top-level Officials (No.1264-XV of 19.07.2002)

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES

NO

Comments:

Art. 22 of the Law on statute stipulates that judges shall refrain from exploiting their positions in order to get illegal sources of incomes.

There are other provisions, such as the top-officials from the executive, legislative and judiciary have to disclose their revenues. Sometimes the process is postponed or delayed for several years, and when it goes on according to the schedule, the information presented by the respective officials is largely incomplete or partially relevant.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995)

Law on the Declaration and Control of the Incomes and Estate Properties Owned by Top-level Officials (No.1264-XV of 19.07.2002)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES

NO

Comments:

There are no restrictions as to the way former national-level judges may want to continue their activity after leaving their positions.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995)
Law on the Organization of the Judiciary (1995)
Constitution of RM (1994)

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

Art.6 aims to restrict some rights and liberties of the public officials in order to prevent and curb corruption, to protect the constitutional regime, the rights and liberties of citizens, which could be affected by unloyal behavior of corrupt officials. Provisions concerning the employment in the private sector of the former state officials are nonexistent in the whole bulk of the anti-corruption legislation in Moldova.

References:

Law on Curbing Corruption and Protectionism (No.900 of 27.06.1996)

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

Comments:

The Law explicitly prohibits them to conduct business, to provide verbal or written consultations on the pledges considered in a court, etc. Art.22 (Infringements) stipulates that judges should not exploit their positions with the aim to receive unworthy benefits. Although they are part of the judiciary system, the behavior of the technical staff of the judiciary is regulated by the provisions of the Civil Service Law, which stipulates (art.11) that civil servants are prohibited to receive gifts and other hospitality signs, except symbolical presents, whose value/size is not specifically provisioned by the law.

References:

Law on the Statute of Judges (No.544-XIII of 20.07.1995);

Lilia Carasciuc, Transparency International – Moldova:
www.transparency.md

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

Comments:

Declarations that are presented by the public officials are never audited. Investigative mass media have often made the case for estimations that are taken as granted from the respective public officials or judiciary, but are never reassessed on the basis of the market prices.

References:

Alina Radu – Chief Editor, Ziarul de gardă
www.investigatii.md
www.transparency.md

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES

NO

Comments:

By law, citizens may apply to receive any kind of official information (except in the cases in which some data belong to the field of state secrecy), but often this field is artificially enlarged up to the limits where noone can access the data. For instance, income declarations of civil servants, judges, deputies are considered to be a field of 'personal interest' (art.7c), and on the basis of that, independent mass media have been sued in the last years for distributing personal information, despite the fact that they claimed only to follow the public interest during investigative journalism. Authorities may decline, by law, to provide some sorts of information, but they shall inform in writing about their reasons to the applicants.

References:

Law on Access to Information (NO.982-XIV of 11.05.2000)

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As in the case with income declarations, citizens cannot access freely these records.

References:

Alina Radu, editor in chief of newspaper Ziarul de Garda
Lilia Carasciuc, Transparency International – Moldova

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no procedure by which the information that cannot be received from open sources or upon request (notification) can be purchased officially.

References:

Lilia Caarasciuc, Transparency International – Moldova
Alina Radu, editor in chief Ziarul de gardă

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

58

37a. In law, the legislature can amend the budget.

YES | **NO**

Comments:

Parliament adopts the Budgetary Law annually, as an organic law (voted with the majority of the MPs); then, it may amend it till the end of the spring-summer session, or whenever Parliament decides to change the budgetary expenditures.

References:

Procedural Regulation of the Parliament (No.797 of 02.04.1996)
Law on Legal Acts (No.780-XV of 27.12.2001)

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | **50** | 25 | 0

Comments:

In most of the cases, amendments of the Budgetary Law require supplementary voting and consideration initiated by the respective legislative committees. Nevertheless, often important transfers are issued by the executive without the approval of the Parliament, thus generating political tensions, legal and financial confusions and a wide space for manipulations.

References:

Veaceslav Ionita, lecturer, economist;
www.viitorul.org – Fiscal Decentralisation Policy Brief

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

**Comments:**

Parliament is the sole authority to decide over the general national spending, and by constitution executive bodies shall conform their activities to the legislative agenda. In fact, major policies are adopted by the government and often laws adopted by the Parliament are not properly implemented, and the legislative has no capacity to oversee, assess and intervene in the adjustment of the law-enforcing implementation of the legislation. The budgetary and economic committee is the specialized body of the Parliament in budgetary issues. It works in close hands with the Ministry of Finance.

References:

Mihai Godea, Contract Centre
Veaceslav Ionita, IDSI Viitorul

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

25

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

**Comments:**

There are some procedures which are fulfilled, and there are others which deserve a greater effort. Most of the MPs are unprepared for such an effort, while the technical support is usually unevenly distributed in the Parliament, and the largest part of the MPs have no skillful assistance to provide them with additional advice by the moment of adopting the budgetary law.

References:

Law on the Budgetary System (No.381-XII of 29.11.1990)

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Public hearings on budgetary issues are rarely used in Moldova as concerns the national budget. The Ministry of Justice is usually keen to present its draft to the Parliament without holding any kind of hearings beforehand, while the existing practices of hearings concern mostly local governments.

References:

Vasile Spinei, ACCES INFO Association:
www.acces-info.org.md

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

This can happen only ad-posteriori, after the law on annual budget or decisions on the redistribution of budgetary funds were adopted by the Parliament.

References:

Vasile Spinei – Acces – Info :
www.acces-info.org.md

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

A standing committee on budgetary, economic affairs does exist in the Parliament of RM. It shall in principle provide oversight on public funds, although it has only internal sessions, which are not informative to the public.

References:

Law on the Legislative Acts (No.780-XV of 27.12.2001)
Law on the Statute of the MPs

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

19

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Committee may call the Ministry of Justice, Ministry of Finance or any other ministers and heads of departments to present competent information on certain areas pertaining to their field of responsibility. This is how the Committee is informed about the overall economic policy of the state.

References:

Vasile Spinei – Acces Info Association

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | **25** | 0

Comments:

Positions as heads of standing/special committees are distributed according to the number of seats/mandates in the last elections, therefore opposition members are usually not very much considered for leading positions. Between 2001-2005, the relationship between the ruling (Communist) party and the rest of the opposition parties was extremely tenuous. As a result, two consecutive resolutions on the situation of the political reforms in Moldova were issued and presented by the rapporteurs of the Parliamentary Assembly of the Council of Europe, and Moldova is STILL monitored by the Assembly on issues pertaining to the quality of democratic governance of the country.

References:

Democracy audit:

www.visitourl.org,
www.iris-bd.org

Democratic audit performed in 2003 by the IDIS on parliamentary affairs

Mihai Godea, Contact Centre:

www.contact.md

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Standing committees are not politically-protected, they are political bodies, and operate as platforms for crafting political consensus on the issues seen as legislative priorities on the agenda of the Parliament.

References:

Alin Radu- editor in chief of Ziarul de Gardă;

Democracy Audit in Bulgaria, Georgia and Moldova, printed in 2004 by IRIS, IDS and CIPDD, with financing from NED:
www.viitorul.org

Alexandru Tanase, lawyer, Center for Legal and Penal Studies

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

Standing committees, as well as MPs, may call for an investigation on the use of public funds, and the specialized body that can undertake such tasks is specifically related to the Auditing Court, or to the Center for Curbing Corruption and Organized Crime. Parliament committees on their own have very limited human and material resources to investigate any of the cases that bring political inquiry into large-scale political debates.

References:

Law on the Budgetary System – No.381 – XII of 29.11.1990
Procedural Regulation of the Parliament of RM

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁵²Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES

NO

Comments:

The law establishes the foundations and principles for a professional, objective and fairly managed corp of civil servants (art.4). With the recent reform of the central administration (December 2005), the government decided to change the existing law, and since January 2007 it prepared a draft of the new law on civil service function.

References:

Civil Service Law (No.443-XIII of 04.05.1995);

Web-page of the coordination unit of the central administration reform:
www.rapc.gov.md

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | **NO**

Comments:

Art.11 of the Law stipulates a long list of restrictions and limitations that apply to civil servants in order to prevent nepotism, cronyism and clientelle-bound networks. In particular, the article provisions prohibits explicitly to the civil servants to be a member of political party, to run entrepreneurial activities (while in the civil service), to get salaries from private companies or joint ventures, to travel on the expenses paid by private individuals, etc.

References:

Civil Service Law (No.443-XIII of 04.05.1995)

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | **NO**

Comments:

Art.30 of the law stipulates the mechanism of redress when civil servants are illegally dismissed: they may apply in court, and when their innocence is proved they shall be re-established in their previous position, being paid for the whole period of time of dismissal.

References:

Civil Service Law (No.443-XIII of 04.05.1995)

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

Comments:

Art 11 of the law prohibits recruitment of individuals who had been sentenced by a judiciary decision.

References:

Civil Service Law (No.443-XIII of 04.05.1995)

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

33

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil servants are very dependent on the changes/reshuffles of the government. After 2001, with the victory of the Communist Party, the Cabinet of Ministers went through major reshuffles, which meant in practice a political cleansing and exams on loyalty to the party in power. Without a strong emphasize on the civil service impartiality and neutrality, people employed by the government have a difficult time to accomodate with the new political cycles; political influence of the presidency is extremely high, where the president is concomitently the head of the ruling party (first secretary), and the leading ministers belonging only to one majoritarian party. The same is usually replicated at the local governmental level.

References:

IDIS Monitoring Reports 2002, 2003, 2004, 2005:
www.viitorul.org;

Strategy of reform of the central public administration of the RM (No.1402 of 30.12.2005);

Center for Investigative Journalism:
www.investigatii.md;

Ion Osorianu – Consolidarea capacității administrative pentru implementarea Planului de acțiuni UE – RM, 2006, DFID

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

The organization of the civil service is in practice extremely confusing and non-structured. No relevant statistics exist at the national level as per civil servants, concerning their age, gender balance, wage compensations system, number of positions held, performances accomplished, languages, professional upgrade, etc. There is no one single central administrative body in charge with civil service reform and human resource management in the government. This Agency is promised by the on-going strategy of reforms in the central administration, which shall establish performance indicators in conducting a public job, professional standards, and job manuals, although currently there is a huge gap between the reform and the responsibilities assigned to the civil servants.

References:

Ion Osoianu, Casa Europei Association, June 2007
Sergiu Tatarov, Advisor to the Prime-Minister of RM, May 2007

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | **25** | 0

References:

Ion Osoianu :
www.expert-grup.org/pub/expert/osoiyanu.pdf;

Marianne Mikko. Member of the EU Parliament, chairwoman of the Committee on Interparliamentary Cooperation RM – EU, March 27, 2006, in Chisinau, Jurnal de Chisinau, No.468, April 4, 2006;

Law on Combatting Corruption and Protectionism (NO.900 of 27.06.1996);

Transparency International – Moldova;

Center for the Analysis and Prevention of Corruption:
www.capc.md

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants have currently no detailed job description. Their work is generally conducted and planned on the basis of 'flying priorities' of the mid-level servants, which are fully subordinated to the political appointees, approved by the ruling party. Central administration reform aims to build up efficient governance to the standards of the EU member-states. The reform calls for the re-organization of central administration, optimization of the decision-making process and improvement of human resources management. The strategy is based on redefining competencies and functions of central executive institutions and reconfiguring the structure of the central executive institutions.

References:

Ion Osoianu,
Letter of intent, Moldova – IMF:
www.imf.org/external/np/loi/2006

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | **25** | 0

Comments:

According to the art.4, wages include the payroll (tariffar salary of the function), supplementary salary (bonuses, additional payments) and other incentives to the salary, and this structure of the wage is generally applied to the civil servants' remuneration.

References:

Law on Salaries (No.847-XV of 14.02.2002)

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | **25** | 0

Comments:

There are no public announcements for the governmental positions. Selection of prospective candidates is usually made upon a short list of well-connected people, or of graduates of the governmental-controlled Academy of Public Administration. Often, the competitions serve only to the reconfirmation of the existing plethora of nepotist connections, despite the formal elements of the political regime, and in controversy with the EU-oriented reforms.

References:

UNDP country program for the Republic of Moldova (2007 – 2011):
www.undp.md/publications/doc

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | **25** | 0

Comments:

The system of redress mechanism is almost nonexistent, as there is no a specialized body that would manage the corp of professional civil servants. As a result, political influences and links are consistently penetrating the specific instruments through which civil servants are usually recruited or dismissed.

References:

Transparency International – Moldova:
www.transparency.md –
National Integrity System in Moldova

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Wages/salaries are paid in time with no major delays. The same can be said about local government officials, althoug they are separated from the civil service system of official positions. To be stated, however, that wages and salaries in the public sector are very low, despite the fact that the government attempted to increase the level of salaries, but not on the basis of performances or accomplished. The salary- increase followed the logic of the age-experience, which is very often an incentive against the young and talented people with briliant education, who remain outside of the system of recruitment/or promotion.

References:

Official site of the coordination group for the implementation of the central government reform:
www.rapc.gov.md;

Official site of the coordination group for the implementation of the strategy on poverty reduction and economic growth:
www.scers.md;

Transparency International – Moldova:
www.transparency.md

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | **50** | 25 | 0

Comments:

Formally, this provision shall be the rule for all civil servants appointed or selected for public positions. In practice, political actors dispose to replace or move to other positions civil servants that are suspected of corruption, or have been sued for various cases of corruption.

References:

Civil Service Law (No.443-XIII of 04.05.1995)

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | **NO**

Comments:

The law refers to the avoidance of conflicts of interests, where civil servants should step back or declare about a situation in order to avoid corruption or favoritism. Nevertheless, the legislation does not provide specific regulatory mechanisms that would completely cure the system of the public sector from nepotism and blatant corruption cases, therefore the existing legislation on civil service is completely inadequate for this purpose. No specific provisions in the acting law allows civil servants to recuse themselves from policy decisions where their personal interests may be affected.

References:

Civil Service Law (1995)

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

No such provisions apply to the civil servants in Moldova.

References:

Civil Service Law (No.443-XIII of 04.05.1995)

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | **NO**

Comments:

The legislation stipulates that civil servants shall not receive gifts or other polite signs for their services provided in office (art.11 – restrictions). The law does not regulate what is the range of gifts and polite signs that could be accepted and when. Other specific rules, concerning the way of behavior of the civil servant when he may receive gifts, favors or benefits of other kind, as well as the evidence, presentation and utilization of these gifts within the framework of protocolar/intentional covenants, are almost nonexistent. Therefore no governmental body would keep special registrars of gifts, and no kind of control over the acceptance or utilization of gifts is currently in place in Moldova.

References:

Civil Service Law

Transparency International – Moldova:

www.transparency.md

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no effective or formal rules restricting civil servants to be hired after leaving the government in the field that they have earlier managed or overseen.

References:

Civil Service Law (No.443-XIII of 04.05.1995)

Transparency International – Moldova

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

**Comments:**

Gifts and other hospitality signs received by the public officials are not registered or codified by a special registrar. Many other extra-payroll benefits are received free of charge by the top-level officials of Moldova and by mid-level officials, on the presumption of their full isolation from public oversight and control.

References:

Lilia Carasciuc – Transparency International Moldova:
www.transparency.md

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

**Comments:**

Art.13 provides a number of cases where conflicts of interests can take place, and which shall be avoided by the enrolled civil servants. In practice, there are public suspicions about the quality of public acquisitions.

References:

Civil Service Law (1995)

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

33

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

Income declarations shall be posted on a webpage of the ministries or state agencies, in a transparent and systematic order. Disclosure of the assessments and incomes is equally regulated by the law.

References:

Law on Declarations and Control of Incomes and Estate Properties (no.1264-XV of 19.07.2002)
Law on Access to Information (no.982-XIV of 11.05.2000)

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, disclosure acts are rarely used, and mass media have to fight hard in order to depict declarations, and usually politicians or civil servants sue journalists when they publish their reports for using 'personal information'. Due to the fact that these reports can be seen by a non-independent judiciary in Moldova as 'information of personal use', mass media often pay painful fines, and are generally cautious to lose in court cases against top-level officials, which are politically and judiciary advantaged.

References:

Transparency International Moldova:
www.transparency.md;

Center for Investigative Journalism:
www.investigatii.md

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no such practice that information which is banned by civil servants can be acquired or purchased at a high price. Only confidential information can be accessed by mass media and used in investigative reporting.

References:

Center for Investigative Journalism
www.investigati.md;

International Transparency – Moldova:
www.transparency.md

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The law does not provide specific guarantees against recrimination to those who report cases of corruption, graft, abuses of power. The law provides a list of responsibilities to the civil servants to counteract corruption, graft, abuse of power situations.

References:

Law on Corruption and Protectionism (No.900- of 27.06.1996)

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there are no effective ways to protect civil servants against recrimination.

References:

Lilia Carasciuc, Transparency International – Moldova:
www.transparency.md;

Center for Investigative Journalism:
www.investigatii.md

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

No specific provisions concerning guarantees of protections are provided to those who may report cases of corruption. The government re-established a channel of 'anonymous' reporting on various violations, which is quite an ambivalent mechanism of collecting public feedbacks. But this way may be equally a destabilizing tool for the whole system of civil service, as it can be used as a reason of arrests of public officials without the sanctions of the prosecutor, corporal control, etc.

References:

Law on Corruption and Protectionism (900 of 27.06.1996)
Decree on the Coordinational Council on the affairs of curbing corruption and Protectionism (NO.238-III of 29.01.2001)
Civil Service Law (No.443-XIII of 04.05.1995)
Law on the Declaration and Control of Incomes and Estate Properties of the State Officials (No.1264-XV of 19.07.2002)

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Reporting cannot be done without losing your job in the private sector. There are no legal provisions that would keep people in place after informing the specialized body of the state on corruption or other incriminatory cases in the private or public sector. On the other hand, the issue of anonymous notifications to the centre or the Confidential Phone-line can provide an apparent confidential possibility for reporting corruption cases.

References:

Center for Investigative Journalism:
www.investigatii.md;

Transparency International – Moldova:
www.transparency.md

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES

| NO

Comments:

The strategy stipulates a number of measures to ensure conditions for notifying the specialized bodies on the cases which fall under the incidence of the Law on Curbing Corruption, etc, such as: confidential secured phone lines, notification boxes. The governmental decision stipulates also e-mail addressed where anonymous messages can be sent to notify/report on corruption cases.

References:

Decision on the approval of the strategy on curbing corruption, money laundering, and terrorist financing and its action plan (NO. 632 of 05.06.07);
Decision of the government on some measures to prevent corruption and protectionism (NO.615 of 28.06./2005)

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

19

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

Comments:

The largest part of the ministries and agencies of state in Moldova do not have internal audits, and often they perceive audits in terms of financial controls rather than a modern and effective managerial assistance tool, thereof the idea that some of the internal work shall be done professionally by people holding accountability for the ordered, timing reporting mechanisms seem to be at odds with the institutional realities in many of the state/public organizations in Moldova. The only law that stipulates the existence of an internal audit was, in 2006, the Law on Decentralization, but the implementation of this provision is still blocked by ambiguities related to the over-centralized-minded central government.

References:

Transparency international – Moldova:
www.transparency.md'

Center for Investigative Journalism:
www.investigatii.md

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Internal audits do not exist in Moldova, as they are functioning in the western countries. Only in 2006, a decision of the government provided a concept on internal audit and internal controls, and according to the concept of the internal auditing system, most of the public authorities/organizations shall be assisted to create their internal monitoring systems, a process which is far from being launched so far in Moldova.

References:

Civil Service Law
Law on the Government of Moldova
Law on Local Public Administration, etc
Decision of the Government on the overall functioning of the internal audits and internal controls in the public organizations (No.1143 of 04.10.2006)

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Internal audits are not yet in place.

References:

Decision of the Government on the Concept of the internal audits and internal controls

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

The principal 'fighter' against corruption in Moldova is the Center. It is suspected to act on political commandments, and therefore, it is suspected to challenge only those individuals who are associated with the opposition parties. The lack of transparency and visible unaccountable to legislative statute of the Center create additional obstacles in its functioning. Lacking other internal mechanisms of assessing the rationality or conformity of decisions taken by some of the governmental bodies the discrepancies between the objectives pronounced by the Strategy on fighting corruption and the effective results achieved so far is striking!

References:

Law on Fighting Corruption and Protectionism

Law on the Center Fighting Corruption and Organized Crime

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

IV-3. Procurement⁴²

48. Is the public procurement process effective?

63

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES

NO

Comments:

The law aims to ensure the efficiency and economy in preparing necessary acquisitions for the state needs, involving a larger number of providers, and the well-governance of established rules and procedures that would guarantee fair and honest participation of the interested parts. A special agency on the material resources, public acquisitions and humanitarian assistance is established (art.5). There are regulations addressing conflicts of interest.

References:

Law on the Acquisition of Goods, Works and Services for the Needs of the State (No.1166 of 30.04.1997)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES

NO

Comments:

Since 2005, with the amendments of the Law on procurement of goods, works and services to the needs of state, the Agency of Material Reserves, Public Procurement and Material Aids has delegated a part of its functions to the beneficiaries, in order to decentralize the existing system. So, rayon administrations (districts) and Chisinau Municipality set up new positions in Public Procurement (Aquisitions), in charge to run contracts under 100.000 lei (US\$8,689). Only in 2005, they considered and agreed upon with state beneficiaries over 11,684 of contracts, estimated at 524 million lei (US\$45.5 million).

References:

Civil Service Law

Law on the Material Resources, Works and Services for the State Needs

source: www.moldova-suverana.md/index.php?start_from

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | **25** | 0

Comments:

Public procurement in Moldova is suspected of corruption. Legislation on public procurement is not satisfactory, while the amendments made by the legislative to the existing laws have not deterred corruption and abuses. Experts claim that even the concept of 'public procurement' is badly defined in conceptual terms. Some of its provisions (art.3) provide a list of economic sectors in which the law shall not be applied, which is in divergence with the main principle for a market economy, thus providing free monopolies, while leaving important fields (like, medicine, transportation means, construction and infrastructure) outside of the real transparent scrutiny. Art.7 omits to define one of the most important functions for public procurement, exactly the organization of public procurement tenders, sending invitations to the enterprises which want to bid, elaboration of documents, etc. Similarly, although a state national agency on public procurement is stipulated, the law does not define what is its legal statute, structure, organization and functioning, recruitment mechanisms, internal control and responsibilities. The law provides a wrong incentive towards corruption as it suggests (art.29) that this can be initiated only by the private agents, which, in reality, is totally the opposite. Equally unclear is how decisions are made on the successful bidders (art.20) by a jury, because there is no any provision that would regulate its formation and functioning. The Strategy on Fighting Corruption (2004) stipulates some measures of organizing public training on conflict of interests, notification of corruption cases, investigative journalism, ethical code and access to information.

References:

Efim Obreja, TI-Moldova, in Businessul Moldovei,
Aug. 30, 2006,

www.transparency.md/docs/2006/bus_mold30aug2006ro;

Millenium Challenge Account, Preliminary Country Plan of the RM,
presented by Zinaida Grecianni on Sept. 12, 2006

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

Comments:

From this law it is totally unclear who are the public servants that deal with the enforcement of the regulatory framework for public procurement.

References:

Law on the Acquisition of Goods, Works and Services for the Needs of the State (No.1166 of 30.04.1997)

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | **NO**

Comments:

The law stipulates several forms of public procurement (art.18), which emphasize the competition as a basis for public procurement. Nevertheless, it includes also procurement from one source, among other forms of procurement such as: two-state tenders, limited participation tenders, tenders with price commercial offers, procurement via the National Bursery of Goods, etc.

References:

Law on Procurement of Goods, Works and Services (No.1166 of 30.04.1997)

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | **NO**

Comments:

Announcements on public procurements are posted by law in the Public Procurement Bulletin, edited by the Agency for Material Reserves, Public Procurement and Humanitarian Aids (www.tender.md). On its website, the Agency stores the data base of the implemented (past) tenders, as well as on-going tenders. A governmental decision dated in 1999 stipulates that the 'mechanism of coordination and approval of the documents for tenders, is to be set by an inter-ministerial agreement (!), which is in blatant contradiction with the legislation (adopted in 1997), providing non-transparent incentives to the implementation of tenders.

References:

Law on Procurement of Goods, Works and Services (No.1166 of 30.04.1997)

Decision of the Government of RM on the management and control regime of the public procurement (No.67 of 01.07.1999)

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | **NO**

Comments:

By law, participants submitting their commercial offers (bids) have a legal right to contest/challenge the final decision taken by the Agency (art.46). As a first step, the unsuccessful bidders may contest/challenge this decision to the Agency, requesting explanations, although there is a list of cases when no challenges are admitted (46-2). However, if the response from the Agency fails to be satisfactory, the contestor may sue the Agency, according to the Administrative Code (Contenciosul Administrativ).

References:

Law on Procurement of Goods, Works and Services (No.1166 of 30.04.1997)

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | **NO**

Comments:

Unsuccessful bidders can challenge procurement decisions in a court of law on administrative code (art. 50 of the Law on Public Procurement). By law (art.48), the Agency shall inform all providers about the initiated challenge, as soon as it receives it from the

unsuccessful bidder, and thereof, all providers whose interests might be affected by this challenge of the decision have the right to participate in the public consideration of this request. After deliberations, the Agency issues a final decision on the case that has been considered, under conditions that this decision is not of public use if it may jeopardize public interests, contractual obligations and legislation (art.48-3).

References:

Law on Procurement of Goods, Works and Services (No.1166 of 30.04.1997)

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES

|

NO

Comments:

Art.48 of the law stipulates only that commercial offers are not accepted if there were confirmed cases of corruption on behalf of the participant. It says nothing about the past records of the participants, whether these records may prove that they could have been displayed a law-nihilistic attitudes in the past, or their managers, representatives, have been even convicted for their fraudulent activities.

References:

Law on Procurement of Goods, Works and Services (No.1166 of 30.04.1997)

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100

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0

Comments:

No track records of the companies which have been depicted by the Auditing Court as participants in corruption deals are prohibited from tenders, in a black-list of firms or another form.

References:

Center for Investigative Journalism:
www.investigati.md;

Transparency – Moldova:
www.transparency.md
Efim Obreja, Senior Lawyer;

Alina Radu, Ziarul de Garda,
July 20, 2007

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

58

49a. In law, citizens can access public procurement regulations.

YES

| NO

Comments:

The website has been just launched in 2007, and it is still 'under construction'. The website does not include the archive of the Bulletin of public procurement (aquisitions), which is the main informational tool of the Agency, nor it has interactive channels where citizens would be able to access or comment some of the functional aspects of the tendering procedures.

References:

Website of the Agency for Material Reserves, Public Procurement and Humanitarian Aid:
www.tender.md

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES

| NO

Comments:

The main responsible for the organization of public procurement bids is the Agency for Material Resources and Public Procurement (art.5). It publishes a monthly Bulletin where all announcements and conditions of the public procurement bids are presented to the interested agencies. In 2006, the Agency announced 2,353 tenders for the procurement of food, oil and energy resources, equipment, medicines, services, as compared with 1691 tenders in 2005. It seems that the Agency faces resistance from the state bureaucracy in organizing public tenders/bids (see: Report of activities of the Agency for 2006 – www.tender.md/rom/news/28/). Sometimes this results in long and unjustified delays of these tenders, thus artificially creating tensions and accumulation of large quantities of demands to be met by the bidders, while many beneficiaries do not apply sanctions against unreliable providers that do not apply exactly the conditions of the tenders, etc.

References:

Website of the Agency for Material Reserves, Public Procurement and Humanitarian Aid:
www.tender.md

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Cases of public funds used to avoid the formal rules governing the organization of competitive bids are frequently reported by independent mass media.

References:

Ziarul de Garda :
[www.garda.com.md/130/investigatii;](http://www.garda.com.md/130/investigatii;#)

TACIS Study on the implementation of the Partnership and Cooperation Agreement. Comparative Study on public procurement,
D. Cernei
www.pca.md/files/publiciations311.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

Comments:

Citizens have to purchase the Newsletter edited by the Agency for Material Reserves, Public Procurement and Humanitarian Aids. They can also access the website of the Agency(www.tender.md), where they can find out the announced bids and the on-going tenders.

References:

Alina Radu – Ziarul de Gardă;

Center for Investigative Journalism:
www.investigatii.md

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

Comments:

Public procurement needs to be reformed and modernized. It is regarded as a major subject for improvement in the Action Plan EU/RM, which implies consistent efforts on behalf of the Moldovan authorities.

References:

Law on Material Resources, Public Procurement, Humanitarian Aids;

Transparency International – Moldova,
Prevenirea si combaterea coruptiei in RM: aspecte teoretice si practice: www.transparency.md/docs/2004/2004_conferinta.pdf;

Action Plan on Curbing Corruption and Rule of Law, Decision of the Government of RM of 18.11.2003

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Usually, successful winners of the tenders organized by the Agency are published on the website (recently, since the website has been officially opened in 2007), and equally, in the monthly Bulletin on Public Procurement. There are important rumors that some of the tenders are not exactly following the formal procedures, and public money is spent in avoidance of the law. Independent mass media have vociferously contested in the past years how official limousines are purchased by the State Chancellery, or how humanitarian aid is distributed, and how public officials have used their positions to facilitate/connect their business to the major bids, with no or almost no reactions from the judiciary. Often journalists have been sued for defamation, instead of fair and equitable investigation of the reported cases by responsible agencies.

References:

www.investigatii.md;

Ziarul de Garda, Alina Radu;

Efim Obreja, Viorelia Gasca, Teodor Potirniche
Public Procurement and Public Ethics, A Focus on Fighting Corruption,
www.transparency.md

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | **NO**

Comments:

By law, participants to the privatization (art.4) can be: legal or physical persons (with the exception of local authorities, state enterprises and municipal agencies, organizations receiving funding from the state budget or from the local budgets), legal and physical persons residing abroad, apatrids. Participants to privatization can participate directly, or they can delegate their own representatives as mandatory persons.

References:

Law on Privatization (No.627-XII of 04.07.1991)

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

Comments:

No specific provisions or regulations on addressing conflicts of interest can be found in the law on privatization. The provisions are very dubious and general. No special investigation is cast (was cast in the past decade) whether the officials in charge with privatisation responsibilities had relatives involved in transfers of properties. No due reports on the assets and values owned by officials at the beginning of their taking the office, and when they have left the office, no restrictions on carrying out commercial activities for former civil servants.

References:

Law on Privatization (No.627-XII of 04.07.1991)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

Comments:

The privatization department performs some routine oversight of the participants in the privatization process, but this is seen as not usually satisfactory.

References:

Public Economic Management Assessment, Report, No.25423/MD, March 24, 2003

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

75

51a. In law, citizens can access privatization regulations.

YES

| **NO**

Comments:

The law stipulates that privatization shall be based on equal access and equality of rights for all participants, on public access to information and transparency of the whole process, and on legality (art.2). The State Department for Privatization shall inform the public on the potential investors on the main objectives and results of the privatization.

References:

Law on Privatization (No.627-XII of 04.07.1991) amended by the Law (No.100-XV of 07.03.2003)

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

References:

Cine a compromis ideea privatizarii (I si II) – www.investigatii.md/index.php?art=236
Ziarul de Gardă, No.12 – 14 , October 2004 – Interview with V.Balan, head of the Council of the Director for the Centre fighting Organized Crime and Corruption
www.gov.md

The inception of the Privatisation Program went very well in Moldova, receiving a large public support and recognition of its overall positive outcome. It got support from US Government, and advertised mass privatization, with a huge plethora of resources and arguments. In the last 6 years, privatisation simply disappeared from political agenda of the ruling party, Communist party, and only recently a new privatisation campaign was announced by the Ministry of Economy and Trade, but without a special agency supervising and advertising about the conditions of it. Therefore, no, privatization is not well advertised and properly informed.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | **NO**

Comments:

The law stipulates specific responsibilities to the Department of Privatization, which shall strictly respect the regulations on the field of mass-scale or targeted privatization operations.

References:

Law on Privatization (No.627-XII of 04.07.1991)

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Results of the privatization are published in a Newsletter of the Department of Privatization. On a monthly basis, citizens can access their results.

References:

Transparenc International – Moldova;

www.allmoldova.com/index.php?action=newsblock&i;

Opportunities for Accelerated Economic Growth: Moldova, Economic Memorandum
Sept. 9, 2005

www.worldbank.org

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Costs of the newsletters publishing normative acts in Moldova are relatively low.

References:

Monitorul Oficial, regular publication of the legislation and normative acts issued by the public authorities of the Republic of Moldova :
www.lex.md/moldlex;

Moldpress:

www.moldpres.md

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁶⁹National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

The law establish the office of parliamentary attorneys – three in number – which substitutes the office of the ombudsman, operating on the basis of a Center for Human Rights, located in the capital of Moldova.

References:

Law on Parliamentary Attorneys (No.1349-XIII of 17.10.1997)

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

50

53a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

By art.8, the parliamentary attorneys shall be appointed by the Parliament. They cannot belong to political parties or undertake political activities. In exercising their mandates, parliamentary attorneys shall follow only the principles and spirit of the constitution, abide the legislation, and they shall be fully independent from the Parliament, government or president, although there is a specific mechanism that allows the Parliament to recall them (with 20 mandates/votes, which is quite an easy way to block initiatives that would endanger some political interests).

References:

Law on Parliamentary Attorneys (No.1349-XIII of 17.10.1997)

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, attorneys are very vulnerable to political influences. Once they can be recalled with a limited number of votes, they are sensitive to that, and, usually, make no important decisions or interventions that would be perceived as threatening to the ruling party leaders.

References:

www.investigatii.md

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information..

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Art.9 says that Parliament can call back the attorneys with 20 votes of the MPs of by the president. The same article stipulates a list of cases when attorneys can lose their mandates: pension, health, personal reasons, etc.

References:

Law on Parliamentary Attorneys (No.1349-XIII of 17.10.1997)
Victor Popa, PhD in Law, Professor of ULIM – June 10, 2007

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

By art.11, parliamentary attorneys are assisted in their work by technical staff. They are entitled to consider claims from the citizens of RM which are presented in written form. The structure and regulation that runs the Center for Human Rights has been approved by the Parliament.

References:

Law on Parliamentary Attorneys (No.1349-XIII of 17.10.1997)

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

The Center provides regular annual reports to the Parliament of RM on the overall situation of human rights (see – www.parlament.md/download/standingcommittees/humanrights/ro/Report)

On the basis of the report, parliamentarians may inquire further the state agencies on the notifications filled in by the parliamentary attorneys, and a decision of the Parliament is made (www.parlament.d/lawprocess/laws/169-XVI-13.07.1997/). The activities of the Center are, however, criticized by the human rights organizations, as well as by the authorities. The president of Moldova was repeatedly called for more active measures by the Center to enhance the legal education of the population, while civil society claims that the Center is inert and usually takes no responsibility when major violations occur in connection to some social categories.

References:

Center for the Human Rights in Moldova

www.ombudsman.md

www.transparency.md/news/ro.20061211.htm

www.humanrights.md

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

The Center is a legal entity, having its own budget, which is a part of the state consolidated budget. The state provides an office to the Center. Only a short sentence in the end of the Regulation stipulates (part IX) that the government will provide to the Centre all necessary technical-material and transportation means, according to the Annex No.1 (total of 22 persons). In addition to the basic staffing payroll, the Center has three branches in Balti, Cahul and Gagauz Yeri cities (in total – 15 persons).

References:

www.ombudsman.md –

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

They have posted their reports, as well as relevant international documents and acts that aim to educate the public.

References:

www.ombudsman.md/publicatii

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

On the website of the Center, one may find a list of most recent investigations initiated on the basis of petitions. Some were on the cases delayed by the judges, some were from convicts detained in the penitentiary institution (dated July 27,2007), some were on parental rights. This information is provided in three languages: Romanian, Russian and English.

References:

www.ombudsman.md/ses_avize/

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

By law, the ombudsman can only notify, verify, present public information, investigate, request information, present annual reports to the Parliament, initiate administrative litigations, request constitutional control interventions from the Constitutional Court, but it cannot impose any penalties.

References:

Law on Parliamentary Attorneys (No.1349-XIII of 17.10.1997)
Ion Manole, chairman of the Promo-Lex Association
Stefan Uritu, chairman of the Helsinki Committee Association

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

Comments:

The Center for Human Rights issues regular press releases through which it tries to inform the public about the accomplishments and results, about their initiated investigations or lobbying activities to the benefit of a specific case. It is not clear enough, however, if the initiated actions of the Center brought satisfactory results to the applicants, or if their claims have been met by the authorities. The largely shared opinion is that the annual reports presented by the Centre in the Parliament bring more key-information on these results. It goes without doubt, however, that reactions from the Parliament were not always positive, and this served as a basis for calling back one of the former attorneys, Lazar, before the mandate ended, while the reports were considered too 'black' and negative by the ruling party (in 2002).

References:

www.ombudsman.md
www.credo.md

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

Comments:

Established in 1988 as an independent public authority, the Center for Human Rights in Moldova is actively promoting its mission and role as a promoter of human rights and bona fides advocate. Attorneys contribute to the oversight of the general situation and intervene frequently at the request of dozens and hundreds of cases of people whose rights have been infringed by state authorities, and if an administrative decision may affect constitutional rights of persons, they employ a wide range of means to ensure that the individuals get compensations, or their liberties are protected. On Dec. 31, 2006, the Center employed 37 full-staff, including 15 local representatives.

References:

www.ombudsman.md

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

100

54a. In law, citizens can access reports of the ombudsman(s).

YES

NO

Comments:

By law, citizens can have daily access to the work of the Human Rights Center and get appointments to the parliamentary attorneys, who are obliged by law to have at least three days in a month to meet with citizens (public audiences). Each of the notifications received from citizens (art.19) represents a reason to initiate a registered file on this subject. Decisions of the attorneys are notified to the petitioners according to the Law on Parliamentary Attorneys, and only written petitions are considered. Anonymous letters are not considered.

References:

Law on Parliamentary Attorneys (No.1349-XIII of 17.10.1997)

Regulation of the Functioning for the Center of Human Rights (No.1484 of 05.02.1998)

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100

75

50

25

0

Comments:

Everyone having access to the internet may easily access the ombudsman's reports, which are regularly published on the web page indicated above. Access is free. Parliamentary attorneys take appointments only three days per month, which means that in the rest of the days citizens may receive legal advice and consultation from the lawyers of the Center on Human Rights.

References:

www.ombudsman.md

Stefan Uritu, Helsinki Committee – Moldova

Sergiu Ostaff, Credo Centre

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports of the Center for Human Rights in Moldova can be accessed free of charge, and no additional fees are requested for legal advice or consultation provided by the staff at the center.

References:

www.ombudsman.md

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES

NO

References:

Law on the Auditing Court (No.312-XIII of 08.12.1994)

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

63

56a. In law, the supreme audit institution is protected from political interference.

YES

NO

Comments:

Art.14 of the Law stipulates the principles of independence and immovability of the members of the Auditing Court, after they have been confirmed and appointed by the Parliament (at the proposal of the chairman of the Auditing Court). Members of the Court can be revoked with a simple majority of votes by the Parliament. The law does not stipulate any specific poitical-neutrality statute requested from the candidates voted for Court.

References:

Law on Auditing Court (No.312-XIII of 08.12.1994)

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

Comments:

Art.18 of the law stipulates that the chairman or members of the Court can be revoked by the Parliament with a simple majority of votes, if they undertake insufficiently their competencies, they have violated the legislation or have committed serious breaches of the law. This provision is not detailed any further, which creates the impression that it may be used at anytime, in case the legislative majority or the parliamentary fractions decided to stop the Court's intervention in controlling some illegalities of the public sector, or private cases of corruption. Most of the Auditing Chamber's Members have been appointed after April 2005, when the ruling party and some of its allies voted for the President Voronin (who desperately needed their votes). From 2005, the political framework of cooperation has changed, and the older allies changed in antagonistic groups, therefore, the Members that have been appointed by the political groups in the Chamber feel unsecure.

References:

Law on Auditing Court

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

Comments:

According to the parliamentary decision, the Auditing Court has 150 employees, of which 36 are administrative staff. The decision regulates the salary increases and social benefits provided to the staff and the Court members. There are five executive directions (administrative, internal security, human resources, documentation, international cooperation) and five departments (on controlling the formation and utilization of the public finances, on budgetary means, on natural resources use and public property, on territorial public finances and on methodological and legal support). In addition to that, the Court has two branches – North and South.

References:

Law on the Auditing Court of RM

Decision of the Parliament of RM on the structure, staffing policy of the Auditing Court and salary conditions for the members and their staff (No.1-XV of 17.02.2005)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

It is widely believed that the Auditing Court has insistently promoted balanced reports on their controls exercised on public organizations and authorities.

References:

Auditing Court has launched its Strategic Plan for Development (2006 – 2010):
www.economie.moldova.org/stiri/rom/ ;

Corruption in the high eductation of RM, on the basis of the report of the Auditing Court of RM:
www.transparency.md;

Mafia va devanseaza
No.92., July 13, 2006
www.garda.com.md;

www.deca-press.net;

www.opinia.md

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Auditing Court receives annual funding from the state budget. As a sign of transparency, one may find out on the official website of the Auditing Court (www.ccrm.md/ro.despre/table.pdf) specific information on the expenditures incurred in 2006.

References:

Law on the Auditing Court (No.312-XIII of 08.12.1994)
Constitution of RM, adopted on 29.07.1994 (art.133)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The auditing agency makes regular public reports. Reports are presented directly to the interested audience from mass media, as well as to the Parliament of RM. For instance, we have learned from the above mentioned Report that in 2006 the Auditing Court implemented 60 controls on 503 entities, and 59 of decisions were made. The last report presented to the Parliament was from July 15, 2006, underlining the results of the auditing controls between 2005 – 2006. On the basis of these conclusions, the Parliament adopted decision No.228 of July 14, 2006.

References:

Report of A.Popescu, chairmen of the Auditing Court to the General Assembly, published on www.ccrm.md/ro/rapoarte.2006.php;

Ministrul culturii spala banii public
No.525, Nov. 16, 2006
www.timpul.md;

Delapidari MAE de Moldova si raport Curtea de conturi
www.riscom.net;

Moldova vanduta pe bucatele concernului rus, Gazprom
www.investigatii.md

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The reports of the Auditing Court are not always considered seriously. To the surprise of the mass media, prosecution had displayed a very selective methodology to intervene when the Auditing Court has found important violations of the legislation.

References:

Coruptia din procuratura
www.investigati.md;

Center for the Analysis and Prevention of Corruption
www.capc.md/avize.php;

www.transparency.md

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Art.5 of the Law stipulates that the Auditing Court of RM decides autonomously about its own program of activity, although decisions of the Parliament which request some controls performed by the Court are obligatory. Nevertheless, supplementary controls can be initiated without the specific request of the Parliament, when parliamentary fractions demand that, no more than every three months. No other institution can dictate controls or investigations to be performed the Auditing Court.

References:

Law on the Auditing Court
Decision of the Parliament of RM – No.1-XV of 17.02.2005

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES

|
NO

Comments:

By law (art.3), the Auditing Court shall present until July 15 of every year reports to the Parliament on the overall management of public financial resources related to the budgetary exercise, including violations identified and measures that were undertaken. This report is submitted and personally presented by the chairman of the Auditing Court to the Parliament, and in 15 days from the date of the presentation is it published in the Official Gazzette (Monitorul Oficial). Automatically, the reports are published on the institutional website of the Court.

References:

Law on the Auditing Court (1994)

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens may easily access auditing reports according to the legal provisions on the website of the Auditing Court.

References:

www.ccrm.md/ro/

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens may easily access the Auditing Court's reports according to the legal provisions, in no more than 15 days after the presentation of the reports in Parliament.

References:

www.ccrm.md

Alina Radu, Ziarul de Garda

A.Tanase, Timpul

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

88

V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES

NO

Comments:

According to the Fiscal Code, the administration of taxes is performed in Moldova by the State Fiscal Inspectorate, subordinated to the Ministry of Finance.

References:

Law on the Budgetary System (No.381-XII of 29.11.1990)
Law on the Basis of the Fiscal System (No.1198-XII of 17.11.1992)
Law on the State Fiscal Service (No.876-XII of 22.01.1992)

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

88

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

By law, the tax administration in Moldova is operated through the Principal Tax Inspectorate subordinated to the Ministry of Finance, the Tax Inspectorate of the Gagauz Yeri autonomy, and the Territorial Tax inspectorates of the Rayon administrations and municipalities of the country. Funding of the Tax Inspectorate's system is provided by the budgetary law.

References:

Law on the State Fiscal Service (NO.876-XII of 22.01.1992)
More information on the operational side of tax administration can be found on www.fisc.md

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the agency is one of the most successful amongst other state agencies, first of all because of the fact that year after year the collection of taxes in Moldova is growing, second because it is highly influential, and third because it is perceived as a fairly professional, technical and well-managed agency. Some other sources tell that the Customs Office and the Tax Inspectorate are the most affected by corruption agnecies (www.timpul.md – Dec. 19, 2003, No.107 – Vama si inspectoratul fiscal sunt cele mai afectate de coruptie institutii).

References:

www.fisc.md;

Lilia Carasciuc – TI Report, December 2003, April 2004
www.transparency.md

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

25

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In practice, the work of the Tax Inspectorate is often subject to deep suspicions. The tax burden is considered to be to high for the private community of business (TI-Moldova, this is why the rate of tax evasion is so important!), while many others say that the Tax Inspectorate often implements political indications instead of approaching the tax payers in a fairly neutral and objective manner (Ziarul de Garda).

References:

www.garda.org.md
www.investigati.md
www.transparency.md

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES

NO

Comments:

By law, a State Department for Customs is established to oversee, enforce and rule all the activities related to the custom affairs in Moldova. Art.7 of the Customs Code stipulates the functional obligations of the customs bodies, their statute, standards, limitations, as well as the legal regime of the border crossing for goods and services.

References:

Customs Code (No.1320-XII of 09.03.1993)

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

**Comments:**

In practice, the State Department for Customs is one of the largest state agencies in Moldova, with most probably the largest institutional budget – over 190 million of lei (US\$16.5 million) annually, which is by far the most rich state body. Nevertheless, it is to be emphasized that 70 percent of all the income of the state budget in Moldova are collected at the border – with customs offices having an important role there. The Customs Department has managed to create a professional, full-time and modern customs office, and since 2005 it has received targeted technical assistance from the EU to modernize its standards of conduct and procedures. It has, however, been often subject to harsh criticism from mass media and Transparency International for suspicions on corruption, with many cases being reported orally, as well as with full evidence that prove that corruption is still an important institutional disease for the customs officers.

References:

Customs Code (1993);

TI-Moldova

Study on corruption in the custom bodies (November 2003)

www.transparency.md;

Web site of the Customs Department of Moldova

www.customs.md

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

**Comments:**

Customs offices are financed regularly and generously from the state budget.

References:

Customs Code (1993)

Annual Budget of RM (2006)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | **25** | 0

Comments:

Modernization of the customs offices takes time and is quite a controversial process. Although the Customs Department made many steps to enhance its professional standards, cases of corruption, political influence and smuggling remain frequent. In addition to that, Customs regulations were enforced on Transnistria only recently (since March 2006), with the establishment of the EU Border Monitoring Mission located on the border between Moldova and Ukraine (www.bumad.md).

References:

Study on Corruption and Fiscal Discipline in Moldova, 2003:
www.transparency.md;

Study on Corruption in the Customs Offices in Moldova, 2003:
www.transparency.md;

Corruption in the Customs Office Remains an Obstacle to Economic Growth:
www.justice.md;

V.Prohnitchi, Economic and Institutional Context of Corruption, RA/1, IDSI Viitorul: www.viitorul.org/public/433/ro.PE/1.pdf

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | **NO**

Comments:

The system of overseeing state-owned companies in Moldova is still extremely inefficient and non-transparent. As in the former USSR, the government of RM allows ministries to establish or to oversee the work of state-owned enterprises (like, state Railways – Moldova, Fintehinform, Posta Moldova – Moldova Post Office, Moldenergo, Moldtelecom). Many of them have been withdrawn from the mass privatization process for obvious reasons, while others have been re-nationalized (Farmaco) under political considerations. The government also controls important estate and land properties without providing a conclusive reporting over the destination and tax-generation mechanisms.

References:

Constitution of RM (1994)
Law on the Government of RM

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

10

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

According to the art.2 of the Law on Entrepreneurship, the state is a special entrepreneur, and state enterprises are ruled on the basis of a special contract agreed with the executive manager of the company". Art.20 defines what state enterprise is: "it is endowed with goods and properties by the state or by the state agency that has founded it; saying that the peculiar management of the state enterprises is regulated by a special law". According to the Law on State Enterprises, the Administrative Board of the state enterprises shall include representatives of the Ministry of Economy and Ministry of Finance, that will form the majority of the shareholders, and representatives of the working collective. Net profits of the state enterprises are distributed according to the decision of the Administrative Board, at the recommendation of the administrator.

References:

Law on the State Registration of Enterprises and Organizations (No.1265-XIV of 05.10.2000)

Law on Entrepreneurship and Enterprises (No.845-XII of 03.01.1992)

Law on the State Enterprise – No.146-XIII of 16.06.1994

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | **25** | 0

Comments:

Law on State Enterprises (1994) does not stipulate the functioning of a special agency to manage state enterprises, as a result the formal delegation of the ministries in the Administrative Board proves to lack efficiency and effectiveness, leaving a large space for corruption and unintended consequences. As a result, state enterprises are less profitable, while the profitable ones usually enjoy a monopol statute on key-fields for the economy.

References:

www.viitorul.org –

www.transparency.md –

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | **25** | 0

Comments:

The lack/absence of a specific agency on state enterprises had deterred the state bodies to fight against corruption. It therefore receives no funding, while important state officials have secured for themselves important 'grey money' for their nominal participation in the boards of enterprises, which have gone or are going bankrupt, because of lack of clear incentives towards competition and full reliance on governmental subsidies (i.e. cancellation of debts, cancellation of penalties). Some managers that have bankrupted or transferred assets without the approval of the administrative board are replaced and never prosecuted.

References:

V.Ionita
On State Enterprises Managed by Ministries
www.viitorul.org;

Business Moldovei, Aug. 30, 2006
www.transparency.md;

Center for the Analysis and Prevention of Corruption – Report
www.capc.md –

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There have been no investigations. When cases of corruption are investigated, the initiative belongs to the Auditing Court or to the Center fighting Corruption and Organized Crime.

References:

www.capc.md;

Auditing Court of Moldova
www.ccrm.md;

Center fighting Organized Crime and Corruption
www.cccec.gov.md

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The

agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Penalties are imposed usually by the Tax Inspectorate. Serious economic crimes are investigated by the General Prosecution Office and the Center fighting Organized Crime and Corruption in Moldova.

References:

www.transparency.md

Law on State Enterprises (No.146-XIII of 16.06.1994)

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

5

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

Citizens cannot access the financial records of state-owned companies.

References:

Law on State Enterprises (1994)

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

By legislation, executive managers of the state enterprises are obliged to present regular reports on the financial situation of the enterprise only to the founders (art.7), meaning state representatives, therefore no public records are provided to those who are not shareholders.

References:

Law on State Enterprises (1994)

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Only the Auditing Court may provide reports on the actual situation of the state enterprises and budgetary organizations, and their regular reports tell the public about considerable and systematic violations of the financial standards at these enterprises. The government provides facilitated legal regime to these enterprises, and sometimes they use the public funds inappropriately to compensate their losses (www.timpul.md – July 12, 2006, No.449 – Interprinderi agricole de stat, creditate din contul pensionarilor).

References:

Center fighting Economic Crimes and Corruption

National Report regarding the progresses and obstacles registered in the process of the national strategy for fighting and preventing corruption (prepared within the MOLICO Project against Corruption, Money Laundering and Terrorism Financing in Moldova)

www.scers.md

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

State enterprises are not listed among the entities primarily responsible for the implementation of the Law on Access to Information (2000). Accordingly, citizens may access only the information which is reported by mass media, when they can get it through private investigations.

References:

Law on the Access to Information (No.982-XIV of 11.05.2000)
Law on State Enterprises (1994)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The answer is no, and there is no such practice that state-owned enterprises would provide regular reports to the public. For instance, although all public entities and state enterprises have been insistently pressed to become more open, transparent and

accountable to the public, they have not yet decided to post the financial records on the website of the railway company (Calea Ferata din Moldova). The same can be stated about the Air-Moldova and other large state companies.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

38

V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

75

67a. In law, anyone may apply for a business license.

YES

NO

Comments:

Art.6 of the law stipulates that the right to request a license can be attributed to any legal or physical person, including foreign ones, residing in RM, as subjects of entrepreneurship activities; other physical persons need a license according to the particular traits of their activities. Licenses are provided according to the law by specialized governmental bodies, such as regulatory agencies or ministries.

References:

Decision of the Government of RM regarding the regulatory reform on the entrepreneurial activities (No.141 of 17.02.2004)
Law on Licensing for some kinds of economic activities (No.332-XV of 26.03.1999)

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | **NO**

Comments:

If an application for a license has been rejected by the specialized body (agencies or ministries), then this decision can be contested in a court of justice (art.13.-4).

References:

Law on Licenses (1999)

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The regulatory framework was seen and it is still perceived as a burden/obstacle towards economic growth. With the aim to simplify the regulatory framework and ease up institutional development of business, a 'guillotine law' has been adopted since 2002, and important steps took place, although they are unsufficient. The regulatory reform presupposes optimization of the authorisations and licensing, implementation of the one-shop-stop system to the economic entities in order to simplify the financial reporting, etc.

References:

Decision of the Government on the reform of the regulatory policy (No.141 of 17.02.2004)
Enterprise Policy Performance Assessment – Moldova
www.oecd.org/dataoecd/ –

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

Comments:

Moldova is assessed as a low-cost country on business regulation (Doing Business 2007), registering some progresses in the last years according to the World Bank Assessments. The simplification and regulatory reform contributed a lot to this progress.

References:

Law on the Revision and Optimization of the Regulatory Framework for Entrepreneurship (No.424-XV of 16.12.2004)
 Decision of the Government of RM regarding the registrar of authorisations, allowances and certificates, issued by the central administrative authorities and their subordinated organs on all physical and legal entities practising entrepreneurship (No.920 of 30.08.2005)
www.bizpro.md

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES

NO

Comments:

Art.18 of the Law stipulates that all medical institutions and bodies of the national system of health are required to contribute to the public education of the population on health standards. Art.19 stipulates the right to be compensated for health prejudices because of the sanitary-epidemiologic conditions, hygienic conditions, etc., and every citizen can appeal to justice to receive compensations for the damages and prejudiced that he/she suffered. The law stipulates further (art.20) what kind of medical services they can receive from the state, and what is to be considered a minimum guaranteed package of medical services to the citizens, guaranteed medical vacations in case of disease or trauma, right to get informations about the health situation (art.25), as well as medical care for persons that have lost their full or partial working capabilities or are unemployed (art.37).

References:

Constitution of RM (art.36) – The right to the protection of health is guaranteed. Minimum of health insurance is guaranteed by the state.
 Law on Protection of Health (No.411-XIII of 28.03.1995)

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | **NO**

Comments:

The provisions of the law are clear and transparent, the practical implementation of the legislation meets serious obstacles generated by widespread corruption, lack of effective investments in the hospitals, primary medical care, high costs of medicines, and inconclusive medical education of the population.

References:

Law on Protection of Health (No.411-XIII of 28.03.1995)

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | **NO**

Comments:

The law defines its scope as to ensure a system of measures, norms and means, technical, curative and prophylactic in order to guarantee safety conditions for the workers, health protection and maintenance of the working capabilities of the population. The law makes compulsory the implementation of the working standards, norms, regulations, protection instructions within all state enterprises, organizations and private entities on what concerns the organization of the working process, security and hygienic conditions, safety of the working places. Specific obligations are assigned to the administrations that run business activities, to ensure safety standards and hygienic and technical conditions.

References:

Law on Public Safety and Work Protection (No.625-XII of 02.07.1991)

Constitution of RM (art.43) – Right to employment and safety in work. Employees have the right to be protected in terms of security and hygiene, gender non-discriminatory treatment, minimum level of the salary in economy, weekends, paid vacations, special working regime, as well as other specific situations. According to the constitution, the maximum duration of the working week is 40 hours. The employees have the right to negotiate their wages, while collective agreements on the wages paid by the business is guaranteed.

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

33

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

A Labor Inspection was created in 2001 according to a specific law. The Inspectorate is the main instrument of the central public administration entitled to exercise control functions on behalf of the state over the implementation of the legislative and normative acts in the field of enterprises, institutions and organizations, irrespective of the type of ownership or legal form of organization, local and subnational authorities. Usually, the Labor Inspectorate oversee the issues connected to the existence of the individual or collective contracts, labor passports, work duration and resting time, payments and payroll, labor discipline, work provided to the juniors and women, other aspects related to the labor process. It may issue labor permits and impose penalties on those enterprises that have been conducting illegal activities.

References:

Labor Code (No.154-XV of 28.03.2003)

Law on the Labour Inspectorate (No.140-XV of 10.05.2001)

Decision of the Government of RM (No.1481 of 27.12.2001 regarding the reorganization of the State Inspectorate for Labor Protection belonging to the Ministry of Labor and Social Protection);

Inspectia muncii nu este un monstru, ci un bun prieten
No.1172 of 21.10.2006
www.moldova-suverana.md;

Cele mai multe accidente au loc in agricultura
No. 144, Sept. 10, 2004,
www.timpul.md;

Regulament privind modul de cercetare a accidentelor de munca – Monitorul Oficial
No.74 anul 2002
www.cnas.md

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Only in the first quarter of 2007, the Labor Inspectorate has conducted 1,446 controls on enterprises, institutions, organizations employing over 58,187 staff. They have registered 14,227 of violations of the existing legal acts. See www.social.moldova.org/stiri/rom.40789/

References:

Regular business inspections are carried out by the Labor Inspectorate. Often these inspections are suspected of aiming to corrupt or get corrupted.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Only in the first quarter of 2007, the Labor Inspectorate has registered 28 working accidents, including 21 grave and seven deaths. Over 1,446 of controls have been implemented by the Labor Inspectorate, in which they found 14,227 of violations – see www.interlic.md/news/234-romhtml. In 2007, the Labor Inspectorate has been reduced dramatically by the Government. It received six times less than the budget that they had in 2006, and staffing will be reduced from 35 to 10 inspectors – see www.economie.moldova.org

References:

Enterprise Public Policy Assessment – Moldova
www.oecd.org

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁷Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES

NO

Comments:

By law, attempted corruption is illegal. The law defines its mission to defend loyal citizens against perpetrated abuses and human rights violations by fighting, preventing and deterring corruption.

References:

Law on Corruption and Protectionism (No.900 of 27.06.1996)

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | **NO**

Comments:

Art.188/1 regulates the penalties for cases of trafficking of influence. It is therefore defining extortion as illegal, providing clear indications on what shall be considered extortion and what proves that a crime has been committed.

References:

Penal Code (November 24, 1961)

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | **NO**

Comments:

Bribe is considered illegal.

References:

Law on Corruption and Protectionism (No.900)

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | **NO**

Comments:

Giving and receiving a bribe is illegal.

References:

Law on Corruption and Protectionism (No.900)

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES

|
NO

Comments:

By law, corruption is defined as an illegal activity among two parties (including public officials), if this is proved.

References:

Law on Corruption and Protectionism (No.900)

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES

|
NO

Comments:

Unless otherwise stipulated by legislation, governmental officials are restricted (art.7) to use for private gain telecommunication and transportation means, electronic equipment, money and goods owned by the state and provided to them only for official use.

References:

Law on Corruption and Protectionism (No.900), art. 8

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES

|
NO

Comments:

Art.7 prohibits civil servants and top-officials to use official information in accordance with the provisions and security proceedings for public gain, if this information is not for divulgence. Art.7 of the Law on Access to Information provides a list of data with restricted circulation, which includes state secret information (regulated by organic law and protected accordingly), and business confidential information, (regulated by the legislation on business confidential information), etc.

References:

Law on Corruption and Protectionism (no.900)
Law on Civil Service (No.443-XIII of 04.05.1995)
Law on the Government (No.64-XII of 31.05.1990)
Law on the Access to Information (No.982-XIV of 11.05.2000)

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES

|
NO

Comments:

The Center for Combating Economic Crimes and Corruption signed the IBA Anti- Money Laundering Convention. By the law adopted in 2001, all real estate agencies, exchange offices, investment funds, insurance companies, casinos and other listed businesses are requested to provide information about suspicious deals larger than 500.000 lei (US\$43,448) to the Center for Combating Economic Crimes and Corruption.

References:

Law on Prevention and Combating Money Laundering and Terrorism Financing (No.633-XV of November 15, 2001)

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES

|
NO

Comments:

Conspiracy to commit a crime is illegal and shall be prosecuted by penal bodies after investigation.

References:

Law on Corruption and Protectionism (No.900)

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES

|
NO

Comments:

By law, the Center (CCECC) is established as a specialized body in the field of combating economic crimes and corruption and defending the legitimate interests of citizens and public order.

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

61

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The center shall operate on the basis of principles of legality, rule of law, opportunity, combination of publicity and secret forms of activities, combination of unipersonal and collegial forms of leadership, cooperation with public associations and civil society organizations. The law does not explicitly stipulate non-political foundation of its work, therefore often the CCECC was suspected for having a political bias.

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)
www.investigati.md
www.transparency.md
www.social.moldova.org/stiri/rom/57988/

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Political influence over the Center for Combating Economic Crimes and Corruption (CCECC), established as a specialized body against organized crime and corruption by law No.1104-xv of 06.06.2002, is huge and unbalanced.

References:

www.parties.e-democracy.md/docs.ppcd
www.garda.com.md

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

By law, the Center is managed by a director appointed by the government (art.8) for a four-year mandate. Employees are specifically protected (in social terms, as well as where their labor conditions are more difficult). The law does not stipulate under which conditions the director of the Center is dismissed, with or without reasonable argumentation. The general prosecution provides oversight on the activities performed by the Centre.

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The law stipulates the requirements and professional indicators for individuals applying to work for the Center, although the mass media have reported a high fluctuation of the employees within the CCECC.

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Art.12 stipulates specific conditions for selection and functioning in CCECC. The Center is very well financed by the state, and it provides regular reports on the detected violations, penalties imposed and the networks of criminal activists that have been abolished.

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Center is regularly funded, and it is believed to have high political protectors in order to ensure that its institutional management is correct. No transparent show of the financial records is provided to the public, and overall, the activities of the Center are irregularly presented to the public.

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Currently, the website of the Center is not available. A speaker on behalf of the Center reports regularly to the electronic mass media about the cased depicted or investigated by the Center, although important cases were lost because of clear indications from political factors (Pasa Case, Colin Case), i.e. top-officials of the Center that have been arrested and detained on fake accusations.

References:

www.cccec.gov.md

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Center is an extremely powerful structure with hundreds and thousands of employees. It receives huge budgetary subsidies, and it is usually seen as an important instrument of curbing corruption, associated to the modernization of the central and local administration project in Moldova. Nevertheless, it has other important missions, i.e. political ones, which provide unequal chances to the business, on a selective and often, dangerous way. Therefore the small and medium businesses have quite a negative image of the CCECC (see – Unofficial Taxation in Moldova – www.viitorul.org), or EPPA – Moldova (OECD).

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement

authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

By law and practice, the Center can initiate investigations if notified.

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

75

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

National Strategies on preventing and curbing corruption and an Action Plan for the implementation of the National Strategy – No.421-XV of December 16, 2004. By art.6 of the Law on CCECC (No.1104-xv OF 06.06.2002).

References:

www.transparency.md/docs.2005/Strategie_ro.pdf

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Citizens may address the CCECC easily, without having fears of being recriminated for their actions. Usually they make appointments in advance.

References:

Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an appeals mechanism for challenging criminal judgments?

50

74a. In law, there is a general right of appeal.

YES

| NO

Comments:

The justice is carried out in Moldova through a three-layered judiciary system: ordinary courts, appeal court and Supreme Court of Justice. Legislation and constitution guarantee to every citizen conditions for a free, fair and independent judiciary review, whereas a right of appeal is provided by law. For some categories of cases, there are specialized courts (military, economic) – art.15.

References:

Law on the Judicial Organization (No.514-XIII of 06.07.1995)

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Appeal Court of the RM
www.rol.md/apel/ ;

Cazul Pasat ca lecti si ca examen,
Timpul, Dec. 21, 2006, No.550
www.timpul.md;

Moldova: Curtea Supream de justitie a recunoscut dispozitia primariei Chisinau drept ilegală – No.122.06 of Nov.16, 2006
www.amnesty.md

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

In practice, citizens who have to appeal in the Appeals Court bear considerable costs.

References:

Law on the Judiciary Organization (No.1260-XV of 19.07.2002)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

50

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

Comments:

It is quite difficult to judge on that because judiciary decisions appear without corresponding justifications and arguments. Often the explanation is related to the overcrowded work of the courts, but also to the poor work of the judiciary. When a decision is made, one has very few reasons to see whether the reasons behind a decision followed the written law (Penal Code, Civil Code, Administrative Code).

References:

www.cspl.md;

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

25

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | **25** | 0

Comments:

Judiciary decisions are implemented selectively. The confidence in law and judiciary is quite low, and political authorities still have a large influence on some parts of the judiciary. International conventions are not properly known and implemented.

References:

In 2005-2006, RM paid more than 4,8 mln lei for moral and material
www.transparency.md;

Compensations on the basis of the European Court on Human Rights) – Dec. 6, 2006;

Helsinki Report on Human Rights in Moldova
www.peacebuilding.md;

Petitie, March 23, 2006, on behalf of the BC Victoriabank SA
www.garda.com.md –

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

56

77a. In law, the independence of the judiciary is guaranteed.

YES | **NO**

References:

Constitution of the RM (1994) – Art.114, Justice is made on behalf of the law only by the judiciary bodies. Constitution guarantees (art.20) free access to justice to every person, who shall expect to receive full and effective satisfaction of their rights from the competent judiciary authorities against acts that have violated their rights, freedoms and legitimate interests. No other law cannot bar the free access to justice.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

Judges are appointed by the president, at the suggestion of the Upper Council of Magistrates, and when the president has never broken his links with the ruling party (whose prime secretary he is today), all appointments are made on strictly non-professional basis. Of course, the Council may insist to nominate again a candidate that has been officially rejected by the president, but often it has been accepted as a censorship, while the list of judges have been coordinated long in advance.

References:

<http://www.justice.gov.md/>

Jurnal de Chisinau
Coruptie si Injustitie: Plenul Curtii Supreme de Justitie face de ras RM in fata CEDO,
July 27, 2007
[www.jurnal.md](http://www.jurnal.md;);

In Moldova journalists are jailed
<http://crji.org/content.php?id=40&l=1>;

V.Ionita
Cate femei de serviciu trebuie sa aiba curtile de justitie

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

Art.27 stipulates the list of responsibilities of the judges, some of them performing also managerial competences (ordering credits or overseeing budgets from the state), but also distributing cases. Distribution of cases to national-level judges is not at all transparent and is usually suspected to be politically-motivated and prone to corruption.

References:

Law on the Judiciary Organization (No.514-XIII of 06.07.1995)

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

The law prohibits any kind of censorship or control over judiciary decisions or judges, except in cases where the Ministry of Justice oversees the material and resources necessary to ensure the well-functioning of the justice in courts. Judges are appointed or dismissed by the president of RM, at the proposal of the Upper Council of Magistrates (art.116 of the Constitution). The judges' promotion and transfers can be done only with their consent. Only disciplinary penalties can be imposed on judges by a disciplinary body of the Upper Council of Magistrates. Nevertheless, between 2001 and 2002, over 54 of judges were dismissed in Moldova or 'not-appointed' by the president, on reasons that seemed to be rather political and illegal.

References:

Law on Judiciary Organization (no.514 – XIII of 06.07.1995)

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES

NO

References:

No cases of physical harrasment against judges were reported by mass media in 2006.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES

NO

References:

No cases were reported in 2006 or 2007.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work

on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

54

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Being a relatively homogeneous state, there are no visible racial contradictions and factions that would influence the judiciary. I do not agree. There is nothing that would be called a xenophobic or racial campaign, like in other countries (for instance in Russia, or in other places). Russians are fully integrated politically, economically and socially in the life of Moldova, while of course, the inability to communicate in the state language of Moldova make some of the political groups to state themselves as champions of these non-integrated groups, receiving election dividends. There are policies of language integration for national minorities, and all citizens are equal by law and in practice in Moldova.

References:

Racial or ethnic hatred is not at all a factor that would affect judiciary decisions of the functioning of a fair and independent justice. In Moldova, there were no cases when judiciary would be seen as being ethnically or racially biased.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

In May, Moldova signed a Council of Europe declaration agreed by member states at a summit meeting in Warsaw that included a commitment to fight domestic and other forms of violence against women and children. Also in May, Moldova signed the Council of Europe Convention on Action against Trafficking in Human Beings. On Oct. 20, the Moldovan Parliament adopted a law on trafficking. Although Moldova reportedly increased the number of convictions for trafficking in human beings, protection for the victims of trafficking remained inadequate and the government did not implement a 1998 witness protection law. The main destinations were Cyprus, Russia, Turkey and the United Arab Emirates, according to a local human rights organization, La Strada. In most cases, women were trafficked for sexual exploitation, but also sometimes for forced labor. Trafficked women were

mainly seeking work abroad because of unemployment and domestic violence. Increasing numbers of children and men were trafficked.

References:

http://www.abanet.org/rol/europe_and_eurasia/moldova.html
www.amnesty.md

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES

NO

Comments:

Art.8 stipulates free access to justice, irrespective of the gender, sex, language, ethnicity, etc. Legal assistance is provided for defendants in criminal cases when they cannot afford it. The state guarantees professional legal assistance to all persons according to the law (art.5 of the Law on Advocates – 2002). Considering the material statute of the applicants, advocates can provide legal assistance free of charge.

References:

Constitution, art.20 – free access to justice
Law on the Organization of Justice (No.514 of 06.07.1995)
Law on Advocates (No.1260-XV of 19.07.2002)

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

Comments:

The right to decent legal defense is protected and guaranteed by the constitution and by the law, although this is difficult to enforce when it comes to the most impoverished strata of the population (who usually try to avoid any judiciary court at all). State budget stipulates that the legal consultancy provided to poor people is compensated to the advocates, but it usually remains unfulfilled because of the money shortage.

References:

Law on Advocates (no.1260-XV of 19.07.2002)

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

Comments:

By law, legal assistance is a right of the parts in justice. Art.17 of the Procedural Penal Code shows that along the process duration, both parts shall receive assistance, while it obliges the criminal investigation body and the judiciary court to provide to the suspect or defendant a right to get qualified legal assistance. Defendants cannot be judged if they have not requested or have not been effectively assisted by an advocate.

References:

www.ccbt.org/doc/moldova_seminar/speech_vizdoaga.pdf;

Center for Analysis and Prevention of Corruption
www.capc.md/procese.php

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

There are several complaints that justice is expensive, although it is quite underfunded. Access to justice is possible only when effective means of defense are provided to the defendants. Considering the economic situation of the population (over 60 percent under the official survival level), and that important procedural costs are requested if the cases are complex, then one may conclude that only a very limited segment of the population may effectively appeal to justice. Extra judiciary/litigation remedies are only emerging as a means to reduce the costs of judiciary procedures. Since 2003, one of the branches of the judiciary (tribunale) has been liquidated, on the assumption that this will speed up the duration of the legal examinations and rule of decisions, but it did not in fact solve the overburdened system of judiciary in Moldova.

References:

www.capc.md/procese

Lawyers for Human Rights
www.ihr.md

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Civil society activists and politicians of Moldova generally agree that in spite of the progress of the judiciary reform, a considerable part of the population of the country still remains unprotected and has not access to effective legal remedies against abuses.

References:

Global Corruption Report – 2007 shows an increase in the corruption level in Moldova, which follows the world trend
www.transparency.md;

Corruption and access to justice as seen by society and experts – 2002
www.transparency.md;

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

17

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

By law, prosecutors shall have a legal degree, be citizens of Moldova, shall display strong professional commitment, moral and professional qualities confirmed through medical certificates, etc. (art.41). In practice, the selection of the prosecutors is a subject of public debates. General Prosecution is entitled with the oversight and coordination of the personnel policy, while regularly prosecutors are professionally attested/verified by specialized groups of qualifications.

References:

Law on Prosecution (NO.902-XII of 29.01.1992)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | **25** | 0

Comments:

Most of the public organizations and authorities are underfunded. The website of the General Prosecution of RM includes no information about the budget of the institution, no other analytical reports of the past achievements or future objectives. It is suspected that the prosecution is still an old-fashioned instrument of reprisals in Moldova, lagging outside the general objective of the judiciary reform in Moldova.

References:

Law on Prosecution (1992)

Decision of the Parliament of RM regarding the creation of the Prosecution bodies, their residence and field activities, structure and staffing policy (NO.609-XIV of 01.10.1999)

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Prosecution is believed to follow political indications in campaigns as well as in other situations. An Independent Report of the 13 representatives of the civil society of RM on March 30, 2007 illustrates with evidence that the judiciary reform is still impeded by the preservation of many remnants of the older Soviet regime, first of all of an unreformed prosecution office. See www.europa.md/upload/File/boxedreapta/raport.independent.doc

References:

Adept Association – ‘Cei trei piloni avariati’,
Sept. 15, 2006
www.e-democracy.md/comments/poitica;

Procuratura îl anchetează pe membrii PPR
No.250, July 9,2005
www.timpul.md;

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

50

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES

NO

Comments:

By art.4, the legislation stipulates specifically which shall be the limits of the police actions. The law does not establish a specific independent mechanism for citizens to complain about police actions, and therefore it is not surprising at all that huge number of complaints about maltratation, torture and violations of the inviolability of homes have been reported in the last years, with dozens of cases lost in the European Court of Human Rights in Strasbourg against Moldova. Generally, the police is not trusted by the population, for being 'too corupt' and 'biased', and, accordingly, the cooperation with police is not seen as agreeable by many citizens. Real reforms of the police structures have been stagnated for a while, with no signs of real commitments at the leadership level.

References:

Law on Police (No.416-XII of 18.12.1990)
Constitution of RM (1994) – rights and liberties

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

References:

Study on custom officers and police show that they are the most corrupt according to the public surveys. 60 percent of the respondents show an attitude of toleration to corruption
www.transparency.md

Gh.Papuc, Minister of Internal Affairs says that in the last decade Moldova was contaminated massively by corruption, Dec. 18, 2006
www.allmoldova.com

Asa ceva nu era nici in anul '37',
 TIMPUL, January 2006, No.340
www.timpul.md

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES

| **NO**

Comments:

The only specialized agency on fighting corruption and investigate cases of economic crime is the Center on Economic Crimes and Corruption. However, specific investigation offices have been established in many force ministries with the stated mission to investigate specific penal cases, such as exercise and control of the investigations and assessment of violations according to the legislation.

References:

Law on Curbing Economic Crimes and Corruption (No.1104-XV of 06.06.2002)
 Law on the Statute of the Penal Investigation Office (No.333-XVI of 10.11.2006)

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

The Center on Economic Crimes and Corruption initiates on its own investigations against the alleged cases of corruption or misdeals involving public officials or private entrepreneurs;

US Ambassador Recommended Moldova to Intensify the Fight against Corruption
Dec. 14, 2005
www.news.bizpro.md/ro/news/pr.2005/HodgesCo;

Republica – paradox
Jurnal de Chisinau
July 28, 2007
[www.jurnal.md/article/2505/;](http://www.jurnal.md/article/2505/)

www.amnesty.md/library

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Law enforcement officials are not immune from criminal proceedings. Most of the legal acts stipulating the functioning or statute of the law-enforcement bodies stipulate also the obligations, limitations and restrictions, which cannot be overpassed by the personnel employed there.

References:

Law on the Statute of the Penal Investigation Office (No.333-XVI of 10.11.2006)

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

In practice, police officers are not immune from criminal proceedings. Nevertheless, the judiciary has resolved only the most serious cases where police officers were involved (killings, torture, etc). There were several cases lost in the European Court of Human Rights where the state has been sued by citizens beaten, tortured or arrested illegally by the police officers or other law-enforcement agencies, and in which cases the domestic judiciary simply refused to consider their pledges/cases. There is an accute sentiment across the people that police is protected irrespective to the violations they commit against citizens (house searches without warrants, arrests without approvals, etc). Only in 2005, the security services were forced to close down their preventive penitentiary, but it was made under huge pressure from the international and national actors.

References:

Law on the Prosecution (1992)
Law on the Police (1990)
Law on the Center on Economic Crimes and Corruption (2002)
Law on the Penal Code (March 24, 1961)
Law on Corruption (No.900 of 27.06.1996)
www.ihr.md

Ziarul de Garda,
No.61 of Nov. 17, 2005
www.garda.com.md;

www.capc.md/procese.php

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.