

Overall Score:

68 - Weak

Legal Framework Score:

88 - Strong

Actual Implementation Score:

48 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷²Civil Society Organizations

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

100

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

YES | NO

Comments:

In 2006, 30 NGOs created an Alliance against Corruption in Moldova. It started to elaborate and present regular (quarterly) monitoring reports on the public sector institutions. Monitoring reports are based on a framework of cooperation with the key-institutions of the national government and specialized agencies, such as the Center for Combating Economic Crimes and Corruption of the Republic of Moldova, government of Moldova.

References:

Law on the prevention and curbing corruption No.90-XII of April 25, 2008, art.9 – cooperation with civil society
Decision of the Parliament of Moldova on the National Strategy of preventing and curbing corruption and the approval of the Action Plan for the implementation of the national strategy No.421 – XV of Dec. 16, 2004

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

Comments:

Republic of Moldova is eligible to receive country grants from the Millennium Challenge Corporation. It was selected as a participant at the Threshold Program on Nov. 8, 2005, and signed a Threshold Program agreement on Dec. 15, 2006. On Nov. 8, 2006, Moldova became an eligible country for Compact assistance, and on April 17 2007, Moldova established its National Monitoring Committee and designated a national coordinator – Gov.Decision No.413 of April 17, 2007. The MCC offers large country grants to eligible countries in the framework of COMPACT programs. More than 25 countries were eligible for Compact assistance in 2007. The MCC allocates funds for investigative journalists who cover corruption, for monitoring the good governance and practices of the public bodies, for raising public awareness, and for research of the corruption index. More info at: <http://www.mcc.gov>, or <http://www.mca.gov.md>

References:

Decision of the Parliament on the anti-corruption expertise of the legislative and normative acts, No.977 of Aug. 23, 2006
Law on the prevention and curbing corruption No.90-XII of April 25, 2008
Obiectiv, No.6 (21) May 2008, <http://www.alianta.md/buletin/upld/d3.pdf> – publication edited by the Independent Press Association

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

Comments:

By law, public associations are supervised by the fiscal bodies, and they are held responsible according to the existing legislation for any sort of irregularities they may commit as legal entities functioning in Moldova. There are no specific legal provisions requiring anti-corruption/good governance CSOs to disclose their sources of funding. Nevertheless, NGOs which are associated with the Anti-Corruption Alliance have set the principles of legality and transparency (i.e. of financial means received from the sponsors) that regulate their activities. See <http://www.alianta.md/?go=statut>

References:

Preliminary Country Program of the Millennium Challenge Corporation (MCC), May 13, 2006
Decision of the government on the anti-corruption expertise of the legislative and normative acts, No.977 of Aug. 23, 2006, General dispositions
Law on the public associations, No.837 – XIII of May 17, 1996, amended in 1998, 1999, and 2006

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?

67

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

100 | 75 | 50 | 25 | 0

Comments:

Although the anti-corruption campaign is generally well assessed by state officials, several reports published by the representatives of the Anti-Corruption Alliance were met with irritation by public officials. For instance, there was the case of the first report on monitoring the implementation of the Preliminary Country Plan by the government of Moldova, which was assessed to be subjective and biased," when the former blamed the Center for being responsible for the lost cases in Strasbourg (European Human Rights Court).

I cannot say that the government will hinder the creation of 'anti-corruption' CSOs, but will be distant and will not cooperate with the 'newly established'. An Anti-Corruption Alliance was established in 2006, and since then many NGOs joined the Alliance on a case by case basis. This allows the Alliance to build up its reputation and consolidated position on various issues and subjects, particularly when they are sensitive and more difficult to be addressed by individual members.
<http://www.legalclinics.md/index.php?option>

References:

Newsletter Obiectiv, No.5 (20), April 2008 – <http://www.alianta.md/buleting-upld/d4.pdf> – Top-State Officials' Fortunes – Truncated by The Specialized Committees";

Interview with L. Carasciuc, director of Transparency International – "Moldovans Believe Government Does Not Fight Seriously against Corruption",
Newsletter Obiectiv, No.5 (20), April 2008 – <http://www.alianta.md/buleting-upld/d4.pdf>;

Interview with Cornel Virgiliu Calinescu, MOLDLICO, "Failure To Adopt New Laws Compromises The Effectiveness of All Anti-Corruption Efforts in Moldova"
Newsletter Obiectiv, No.2 (17), January 2008;

Newsletter Obiectiv, May 2008 "Center for Preventing and Curbing Corruption is angry on the Anti-Corruption Alliance";

Transparency International – Measuring Corruption: From Survey To Survey, Lilia Carasciuc, 2007;

Transparency International – Public Procurement Transparency in Chisinau, Maria Ciubotaru, Veronica Ursu, http://www.transparency.md/Docs/2007/Public_procurement.pdf

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.

100 | 75 | 50 | 25 | 0

Comments:

As a specific example of voluntary coalition of NGOs in Moldova is the establishment of the Alliance Anti-corruption, which comprises 30 members. On Jan. 13, 2006, the Alliance signed a collaboration agreement with the government of Moldova, which allows it to monitor and supervise the activities of the public sector bodies and interact with the government and the specialized agencies when specific cases of corruption are detected.

References:

Center for The Analysis And Prevention of Corruption – <http://www.capc.md/avize.php> – strives to reduce corruption, contribute to public awareness, study the effects of corruption over the effective functioning of state and public institutions, etc.
Transparency international Moldova as a member of the Transparency International – <http://www.transparency.md/about.htm> – has a mandate to organize periodic assessments on the impact of corruption on the social, economic and democratic development of the country; to prepare specific proposals for the government on fighting corruption; and to monitor their implementation, in cooperation with national and international institutions; to raise public awareness about the cause and impact of corruption in all sectors of development.
Ziarul de garda, No.194 (4 september 2009), Saracia intretine coruptia
Strengthening Monitoring Capacity of the Civil Society in Moldova Program, with support of the MCC and Anti-Corruption alliance of Moldova, Caleidoscop – <http://www.caleidoscop.org.ro>

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:

Anti-corruption initiatives are currently financed in Moldova by the USAID, MCC and the Academy of Educational Development. The process included the creation of a public policy forum, which promotes and encourages dialogue, constructive engagement and partnership building among civil society, media and the government, regarding corruption issues.

References:

State officials control the main broadcasting company TELERADIO-Moldova, and tacitly acknowledged the re-installation of a new form censorship over experts, civil leaders, CSOs that are most visible. Thus, they've made many attempts to close the door before the NGOs which demanded more transparent discussion over the critical issues of the decision-making process in Moldova. Despite the launching of the 'Strengthening civil society monitoring capacity in Moldova', many organizations claim their activities are banned. Political parties from the opposition are fully excluded from coverage by official mass media, while the media which were officially decoupled from the state ownership, got a specialization to work against the opposition groups- <http://www.ade.md/ongoing-opportunities-en>. No CSOs have been shut down by the government for their work on anti-corruption and good governance.

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. YES is a positive score.

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?

100

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

YES | NO

References:

No cases of imprisoned CSO activists working on corruption issues are known.

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

References:

There were no major cases of harassing civil society activists or mass media representatives working on corruption, although

some media reported growing pressures from the state bodies when their investigative reports went too far in accusing the SIS (Intelligence Services). See Declaration on harassment of SIS in the Ziarul de Garda Newsletter, Sept. 19, 2008 – <http://www.jjc.md>.

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:

No civil society activists working on corruption issues have been killed in the past year in Moldova.

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?

75

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

YES | NO

References:

Constitution of the Republic of Moldova (1994), art.42 – right of citizens to establish and be members of a trade union (1-2); Art.43 – right to labor and labor protection (1-4).
Law on trade unions – No.1129 – XIV of July 7, 2000

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

Comments:

Social partnerships between employer and employee organizations are in the process of redefining their roles and tasks in Moldova. Employers are so far poorly organized and their associations largely inactive. Trade unions have lost much of the importance they once had in the USSR era and are now divided and barely prepared for the tasks they currently face. With the emergence of a 'vertical of power' in Moldova after the election victory of the Communist Party in February 2001, trade unions have been split and then reunited. Several small trade unions were forced to join the largest pro-governmental 'Solidaritetea Union' or suspend their activity, under heavy pressures from the government. See – <http://www.parties.e-democracy.md/docs/200406081/>

References:

Prime Minister V.Tarlev states partnership between local administration and trades is conducive to the implementation of the development programs in Moldova," <http://www.scers.md/view.php?id=720>

Freedom House 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT-Moldova-final.pdf

Moldova.azi – Trade Unions Reiterate Intentions To Protest in Chisinau– <http://www.azi.md/news?ID=50496>

Moldova: Poverty Wages on The Door Step of Europe, Kt. Kingston, June 22, 2008 – <http://www.moldovaintheworld.com/opinions/moldova>

Web-site of the Confederation of trade unions of Moldova – <http://www.education-cee.org/displaydocument.asp?DocsType=Bakcground>

100: Trade unions are common and are an important part of 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?

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

YES | NO

Comments:

All the past years were considered as 'setbacks for media and press freedom' by the international and Moldovan analysts. The main targets of critical assessment were: failure to reform the main public broadcaster TELERADIO – Moldova, which remained under excessive governmental influence, and self-censorship spread amongst journalists, particularly those covering electoral campaign. Journalists investigating corruption, as well as their sources, were intimidated and harassed. While prison sentences can no longer be issued in libel cases, Parliament refuses to set a clear ceiling for libel fines.

References:

Constitution of the Republic of Moldova (1994), art. 32 Freedom of opinion and of expression is constitutionally guaranteed

Law on the audiovisual code of the Republic of Moldova, no.131 of Aug. 18, 2006

Law on the access to public information, No.982 – XIV of May 11, 2000

Freedom House 2008 / Moldova – <http://www.freedomhouse.org>

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:

Constitution of the Republic of Moldova (1994), art.32 – freedom of speech and opinions

Law on the access to information No.982 – XIV of May 11, 2000

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?

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

100 | 75 | 50 | 25 | 0

Comments:

The constitution guarantees freedom of opinion and expression; it condemns censorship and ensures editorial independence. The law on access to information and the law on press and broadcast code provide a set of additional rights to journalists. However, implementation remains a key issues in terms of legal guarantees. For instance, in 2007, two cases concerning freedom of expression appeared before the European Court of Human Rights in Strasbourg; they were won by Kommersant Moldovy and Flux. Editorial duties are still subject to government control and interference by owners. According to the IREX's Media Sustainability Index (2006-2007), since 2006 print media have enjoyed the diversity of 27 Romanian language newspapers, 24 Russian language newspapers, and about 40 regional newspapers, half of which are subsidized by local governments. But, advertising revenues directed to media that are loyal to the ruling party, discriminatory fees used by the state publishing house, and the Post of Moldova's monopoly over distribution are all factors that limit available revenues and reach for newspapers that are critical of the ruling party. Although the government ceased to act as the founder of Moldova Suverana and Nezavisimaya Moldova, articles favorable to the president, speaker of the parliament and prime minister appear prominently, while editorials praise official policies, together with extremely violent campaign against opposition or civil society leaders.

References:

Freedom House Report – 2008 – <http://www.freedomhouse.org>
 Corneliu Rusnac, "Seven Lost Cases in A Week for Moldova", BBC, Oct. 24, 2007, <http://www.bbc.md>
 Association for electronic press APEL monitoring reports on the Teleradio – Moldova Broadcasting company, <http://www.apel.md>
 A. Cantir, "President Voronin at War with Opposition", BBC, July 25, 2007, <http://www.bbc.co.uk>
 Premier Tarlev Accuses the Experts of Disinformation, BBC, Oct. 12, 2007, <http://www.bbc.md>
 Interview with Petru Macovei, executive director of the Association of Independent Press, Sept. 21, 2007

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:

In February 2007, three journalists who wrote an investigative article for the weekly Cuvintul about abuses during the privatization of public properties were acquitted by a local court after the local government of Rezina (a town with a Communist government) demanded an amount equivalent to US\$320.000 for 'moral damages'.

References:

Civil Code,

Law on the public associations (No.937-XIII of May 17, 1996),

Law on private entrepreneurship and enterprises (No.845-XII),

Law on joint stock companies (NO.1134-XIII),

Law on press, No.243-XIII of Oct. 26, 1994, art.5 The right to establish regular publications or news agencies is recognized by the law to every legal or physical entity and citizens of 18 years old who have a permanent residence in Moldova. Registration of printed media is done by the Ministry of Justice (art.6 of the law). Only the general prosecutor of Moldova may file a case in court against mass media outlets to cease their functioning. The usual procedure of appeal against the Ministry of Justice, when it delays the registration of an outlet, or against the prosecutor, who may decide to suspend the activity of a printed media, is generally by appeal in a court. As the practice shows, when political pressures are very high then the last and most efficient remedy for the independent press is in Strasbourg with the European Court of Human Rights.

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

Comments:

Registration procedure of the printed mass media and news agencies is identical with the registration of public associations. When any entity desires to register a printed media and undertake an entrepreneurial activity, it can do so at the State Chamber of Registration of the Department for Information Technologies as a legal entity, or at the Ministry of Justice. The latter is valid if the publication is generally not aimed at raising profits. If the print media start to raise incomes, then the publication shall be re-registered at the State Chamber of Registration of the Department for Information Technologies.

References:

Acces – Info – <http://www.acces-info.org.md/index.php?cid=169&lid=159>

Law on the registration by the state of enterprises and organizations (NO.1265-XIV of Oct. 5, 2000). By this law, there are two ways to register periodical mass media: via announcement or notification or via authorization. Registration by authorization requires the receipt of the Certificate of registration for the publication before it effectively starts its activities, while registration via notification implies the transmittal of the registration acts to the respective registration authority. When registration is not made in time (one or two months,) then the entity can attack the refusal of registration in a court of justice of Moldova.

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.

Comments:

For the registration of public associations, the Ministry of Justice applies a tax fee estimated at three average salaries per economy (varying in time – 540 lei (US\$52) in 1995 and 1,240 lei (US\$120) in 2007). According to its charter of functioning, the Ministry of Justice of Moldova oversees the registration of printed media through a special department. During 2007, it registered 11 publications.

References:

Law on the state registration of the enterprises and organizations (No.1265-XIV of Oct. 5, 2000)

Decision of the Government for the implementation of the law on public associations, No.559 of June 17,1997

Law on press, No.243-XIII of Oct. 26, 1994

Since 2004, a unique register of the printed media and news agencies has been created, in order to avoid cross-registration of mass media outlets (in 2004, out of the total of 442 periodical printed media only 130 were registered at the Ministry of Justice and 312 at the Chamber of State Registration).

Report on the activities of the Department of Political Parties and NGOs for 2007 – Ministry of Justice – <http://www.justice.gov.md>

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.

Comments:

Significant restrictions to information pluralism existed during 2007. Three TV channels have nationwide coverage in Moldova: Moldova 1, TVR1 and ORT. In a controversial act in late September, the Broadcasting Coordination Council (BCC) informed a Romanian Television Society (RTC) broadcasting TVR1 that it would be revoking its license to rebroadcast on the ground that it delayed a nominal payment for retransmission. As a result, TVR1 lost its frequency, and instead a pro-governmental NIT Program received it instead, while all cases brought to court in Moldova were lost by Romanian representatives. In addition, licenses and contracts for retransmissions seem to be different, and are authorized and signed by two different bodies: BCC awards licenses and the Ministry of Telecommunications signs retransmission contracts. The TVR1 case rose large debates in Moldova about the political standing of the BCC.

The Center for Independent Journalism Report for 2007 assessed that during 2007, scandals within the BCC significantly reduced the credibility of this institution and jeopardized the idea that it can carry out its activities in the public interest, and not into the playground of the ruling party.”

References:

Freedom House Report – Moldova 2008, 2007 – <http://www.freedomhouse.org>
Seven Mass Media and Human Rights NGOs Request The Parliament of Moldova To Reject the Law Amending Paragraph 8 of Article 16 of the Civil Code, submitted to the Parliament by the President of Moldova – <http://www.api.md/events/5612/index.html>
Annual Report of the Freedom of Expression and Information in Moldova, 2007 – http://www.ijc.md/publicatii/mlu/raport_07_en.pdf
100 pressing issues for Moldova in 2007 – <http://www.viitorul.org>

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:

Licenses for broadcasting program services are issued by the Council for Coordination on Audiovisual on a competitive basis (art. 23 of the Law on broadcasting). Decisions of licensing shall take into consideration the applicant's financial viability, and the extent to which the applicant's proposals meets with his/her real financial potential. The actions and decisions of the BCC showed, however, that it may not be successful in applying the law.

References:

Law on broadcasting, No.131 of Aug. 18, 2006. Although art. 27 of the Law stipulates that the license shall be withdrawn from broadcasters only if a recurrent and grievous violation of the provisions of the Code occurred and that (art.38) in the rehabilitation period specified in the notification the Council for Coordination on Audiovisual shall assist the broadcasters in every possible way to return into legality, the actions of the BCC remained rigid, brutal and biased. Art 38 (9) of the Code stipulates that any decision of the Council for Coordination on Audiovisual regarding the application of a sanction may be contested in court by a broadcaster or service provider that was penalized. The general public cannot, however, contest the inaction of the BCC when it does not react to obvious cases where human rights are infringed. Notifications from citizens were declined during 2007 by the BCC for no reason.

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:

During 2007, civil society authored several monitoring reports which claimed that BCC and TRM did not implement the Audiovisual Code in a way that could earn them the title of public institutions. Instead, BCC's biased decisions have been labeled by civil society and international institutions, with good reason, as attempts to limit the pluralism of opinions and the critical voices of Moldovan media.

References:

Monitoring Freedom in 2007, report of the IJC – <http://www.ijc.md/publicatii>
Law on licensing some types of activity, No.451 of July 30, 2001

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 state tax for a broadcast media license is of 2,500 lei (US\$241) (art.18 of the Law on licensing), but in addition to that broadcasting media owners have to pay fees for transmissions, issued by the Ministry of Telecommunications and Transportation, which are not easily accessible.

References:

Report on the Moldova Broadcasting Coordination Council, April – June 2008 – <http://www.cca.md>
Law on licensing of some activities, No.451 of July 30, 2001
Law on telecommunications No.520 of July 7, 1995
Code on administrative contraventions, of March 29, 1985

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?

38

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

100 | 75 | 50 | 25 | 0

Comments:

In 2008, police raided a number of bloggers, who posted their critical comments on the ruling party's activities, and have even sequestered blogger's personal computers, without an explicit mandate. In June 2008, tens of youths gathered to protests against the incident, and adopted a resolution which condemned the actions of the prosecution. Independent lawyers and opposition parties supported the protests and backed free access to freedom of expression, as enshrined in the constitution. In the spring of 2008, Prosecution and SIS (intelligence services) of Moldova ordered shut the IP addresses of several forum writers who voiced opinions against the Communist government, while on June 4 the Prosecution seized the computers of 12 adolescents, accusing them of calling to violently overthrow of the constitutional regime and liquidation of statehood and territorial integrity of Moldova."

See also: Condamnat pentru incitare impotriva mentilor, Jurnal de Chisinau, 732, July 11, 2008.

Accusations filled in against the bloggers in 2008 have been not yet settled, and the arrests of the personal computers for the alleged 'aggressive speech' against the ruling party served as a pretext to toughen the general measures against free press. In September – October, 2008, high-rank officials of Moldova warned Pro-TV that it will loose its broadcasting license because it serves to some politicians, and that its maintained website contains infamous statements against the ruling party.

References:

<http://www.azi.md/news?ID=49747>

<http://www.dumitruclorici.com>

<http://www.tudordarie.md>

<http://www.jurnal.md/article/76>

Aneta Grosu – Media Freedom Violations in Moldova, November 2008 – 222.aej-uk.org/media-08-Mol3.docx

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 on-line.

Comments:

MPs of the European Parliament called for action against the harassment that Moldovan authorities started against bloggers in June-July. The cases are not yet resolved.

References:

In 2008, governmental bodies staged raids on bloggers criticizing the president and the government, and forcefully shut down the IP addresses of the citizens who have shown active content on sensitive issues related to political change in Moldova.

<http://www.jurnal.md>

<http://www.blog.moscovici.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?

67

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

YES | NO

Comments:

Freedom of media is guaranteed by the Constitution and the specific legislation on media. Nevertheless, journalists are both punishable for views which could be interpreted as defamation, and then, controlled prosecution sue them into courts, or punish them accordingly, by suspending accreditation, or harrasing them when they do their jobs. Cases of violence against journalists contine at a disturbing high level in Moldova, while the ruling communist party fail to accept to role of the press in curing the power from abuses. Pressures on journalists have increased in 2007 and 2008, because of the election time, as well as because of the weak enforcement of the legislation at the national level. When Moldova – EU Action Plan expired in February 2008, the main deficiencies were related to the decline of media freedom, weak judiciary independence, weak implementation capacities of the laws.” When journalists are too critical, they are not accredited by the state bodies, while cases indicate that physical harassment is also an instrument of ‘pacifying’ mass media. The report of the European Commission states that “new legislation on state secrets shall be adopted to replace the current legislation, which is unduly restrictive and outdated, while the editorial independence of Teleradio-Moldova should be ensured in practice.”

References:

Law on press, No.243 – XIII of Oct. 26, 1994

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:

Investigative journalists remain particularly vulnerable to political actors, businessmen and other powerful interest groups that may readily accuse them of defamation and libel. Failure to reform the largest national broadcaster Teleradio Moldova into a genuinely independent public service outlet appears to be the most pressing issue on the media landscape. The OSCE Mission to Moldova expressed its concerns on a number of occasions about the place of reforms at Teleradio – Moldova, which has made almost no progress towards becoming a truly independent public service broadcaster since its formal transformation in August 2004. OSCE Mission to Moldova, Statement, dated Feb. 19, 2007

References:

Commission staff working document, accompanying the communication from the Commission to the Council and the European Parliament 'Implementation of the ENP in 2007', Progress Report
Moldova, http://www.ec.europa.eu/world/enp/pdf/progress/2008/sec08_399_en.pdf
Freedom House, Nations in Transit 2008, – <http://www.freedomhouse.org>

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 is no prior government restraint on publishing corruption-related stories, but often government officials vehemently deny the stories/articles published by the mass media, and sue them for the 'defamation and libel.'

References:

<http://www.cccec.md/colaborarelanivelnational>

Comunicatul Aliantei Anti-Coruptie, July 1, 2008 – Curbing Corruption in Moldova: Vision of The Civil Society, <http://www.aliana.md/?go=declaratii&in=3>

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?

15

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

YES | **NO**

Comments:

By law, there are no specific provisions forcing media companies to publish/disclose their ownership. Some stipulations of the law state that foreign legal or physical entities cannot own more than 49 percent of the shares in a shareholding media holding in Moldova" (art.5), while art.12 explicitly prohibits the financing of media outlets from foreign sources.

References:

Law on press, No243 – XIII of Oct. 26,1994

YES: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

YES | NO

Comments:

The law does not explicitly require that the broadcaster disclose its ownership.

References:

Broadcasting law, No.131 of Aug. 18, 2006

YES: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

100 | 75 | 50 | 25 | 0

Comments:

No outlet was a model of balanced coverage due to pressure and abuses during the pre-electoral campaign and excessive and prohibitive regulations, as remarked at the Conference 'Press in 2007 Local Elections: Lessons Learnt, Lessons To Learn', organized by API. Reports found that civil servants in Moldova are basically legally illiterate and that the public is apathetic, both of which are reminiscent of Soviet times. Access to information of public interest in Moldova is therefore still troublesome. As a rule, information of public concern is to be regularly provided at request, and the use of prohibitive law on state secrets and on commercial secrets is becoming a tool to refuse access to public information.

References:

Report on Media Freedom in 2007, CIJ – <http://www.ijc.md>
<http://www.acces-info.org.md>
<http://www.ijc.md> – declarations, appeals, reports, analytical pieces
<http://www.api.md> – regional and local press – API
<http://www.apel.md> – monitoring reports of Teleradio – Moldova

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.

100 | 75 | 50 | 25 | 0

Comments:

Negative campaigning surfaced in mass media prior to the first round of local elections in 2007, being assessed critically by the OSCE rapporteurs. The majority of monitored broadcasters, through their prime-time news, provided extensive coverage of state authorities, thus favoring pro-government candidates. In its prime-time news and current affairs programs, publicly funded Moldova 1 displayed a clear bias and provided substantial coverage of the activities of state authorities outside the campaign context. 74 percent of its political and election-related prime-time news coverages was devoted to the president, government and speaker of Parliament, and another 6 percent to the Communist party.

References:

OSCE/ODIHR Election Observation Mission Report, 3, June 17, 2007 local elections
Report No.5 (June 4-11) 2007, Mass Media Monitoring in The Election Campaign for Local General Elections in Moldova – CIJ, API under Coalition 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.

100 | 75 | 50 | 25 | 0

Comments:

In 2007 the BCC issued a warning to Moldova 1, Radio Moldova, Antena C and NIT for their failures to observe the principles of fairness, balance and impartiality in their news programs.

References:

Election Code of Moldova, No.1381 – XIII of 21.11.1997
OSCE/ODIHR Election Observation Mission Report on Moldova, Sept. 21, 2007 – <http://www.osce.org/documents/odihr/2007/http://www.adept.md>

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:

For the period in question, no journalists were imprisoned in 2008.

However:

On April 17, 2007 a Club of the Media Investigative Journalists was established.

In January 2007, the headquarters of TIMPUL was attacked by a group belonging to the Orthodox Mitropolie – Jan. 23, 2007

In 2004, Alina Anghel from Timpul was physically kicked down by aggressors while she was going to work, after she authored a series of investigative media reports.

In February 2008, Prosecutor General charged the director of TIMPUL Newspaper with the charge of inciting conflict or national, racial or religious divisions, and although the media experts declared the allegations groundless, prosecution attempted to arrest him. In April 2008, Prosecutor General launched a new series of arbitrary investigations to arrest and identify the bloggers which share their critical comments on the ruling party on the Unimedia website, involving the secret services of Moldova (SIS) as well, which demanded information on IP addresses of the participant's at the forum, and even arrested some of them, requisitioning their personal computers, for a while. During the year of 2007 and 2008, Prosecutor General ordered officials of the Interior Ministry to conduct a criminal investigations into several reporters and listeners of the Radio Station Vocea Basarabiei, on suspicion of attempting to change the constitutional order of the country. Exactly the same accusation was earlier presented to Antena C, in 2005, after which the Radio Station was privatized and fully controlled by the ruling party and its political allies.

References:

Media Investigators Search for Shadow Incomes of The State Officials, <http://www.investigatii.md/about.php>
<http://www.interlic.md/comunicate/314.html>

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:

There were several cases in 2007 when the state authorities harassed media reporters. On July 19, 2007, reporters were prohibited from a reunion of the president of Moldova with the mayor of Balti. On Aug. 17, 2007, in Glodeni, a Communist MP physically attacked a TV Operator. On Oct. 19, 2007, the police brutalized the PRO TV reporters and cameramen recording a protest action in front of the Ministry of Foreign Affairs. There are dozens of cases when body guards of the top-officials of Moldova harassed or even beat the cameramen of PRO-TV, Unimedia, or foreign press, TIMPUL. On Feb. 21, 2008, the prosecution filed a case against the chief-editor of the TIMPUL Newspaper for 'ethnic hatred', although media associations stated the accusations do not have any logical or factual evidence. Regularly, the president and prime minister avoid to allow opposition press to record their press conferences, particularly when rather sensitive issues are announced, such as Transnistria or domestic politics.

References:

Memorandum on the freedom of press in Moldova, May 3, 2008

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 were killed during the period in question.

References:

Media report for 2007, <http://www.ijc.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.

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

References:

Law on access to information, No. 982 – XIV of May 11, 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:

Despite the sophisticated legal framework governing the way to access information of public interest, this right is still not fully enforced. During the past years, specialized NGOs have tried to promote a draft law on transparency of the decision making process, but the draft remained with no response from the Parliament after two years of continuous consultations with the legislative body. The Access-Info Center reports that the national legislation in the field of access to information was hampered seriously with the adoption of the new law on public servants code of conduct (No. 243 – XVI of April 11, 2009), in which transparency was not even among the principles guiding civil servant's activity. In turn, a general clause stated that 'communication with media in the name of the public authorities is done exclusively by the civil servants empowered with this right,' saying no word about the people in charge of the communication, and how their information will get to the public.

References:

Constitution of Moldova, adopted on July 29, 1994

Law on Access to information, No. 982 of May 11, 2000

Law on adoption of the Parliament rules of procedures, No.797-XIV of April 2, 1996

Law on the statute of deputies, No.39 – XIII of April 7, 1994

Law on the government, no.64 – XII of May 31, 1990

Law on legislative acts, No.780 – XV of Dec. 27, 2001

Access-Info Report on the evaluation of access to official information in Moldova – May 2008 – <http://www.acces-info.org.md>

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

References:

Constitution of Moldova, art.v34 – access to information of public interest
Law on access to information, No.982 – XIV, art.11 of May 11, 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?

45

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

100 | 75 | 50 | 25 | 0

Comments:

The government was supposed to amend the law on petitions after the adoption of the law on access to information, but it never did that. Information requests are considered thus petitions, and they are delayed for months. Independent experts show that the acting legislation contains provisions related to the right to access to information in over 400 normative acts, from practically all domains: economy, culture, education, labor, health, environment, foreign relations, etc. Most of these provisions comply with the law on access to information, but there are still some which need to be abrogated, amended or reactivated.

References:

Law on access to information, art.11 states that civil servants have to provide accurate and timely information to citizens on issues of public and personal interest.” Information will be presented to the applicant as soon as it becomes available, but no later than 15 working days from the day on which the request to access information has been registered (art.16).

Access-Info: <http://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:

Art. 20 of the Law on access to information stipulates that fees can be levied for providing official information and documents, except for cases specified by law, in amounts and according to the procedures set by representative bodies; such fees will be disbursed to the state budget,” but the fees will not exceed the costs incurred during the search for and processing of the information or parts thereof, copying, sending it to the applicant and/or translating it from the state language, based on the request of the solicitor.

References:

Access-Info Monitoring Reports on the access to information. On Paper And in Reality – <http://www.access-info.org.md>
No fees will be levied for information requested by the information solicitor, if this information influences directly the rights and freedoms of the information solicitor, is presented verbally, is solicited for examination on the institution’s premises, contributes to the transparency of the public institution and is in the interest of the society (art.20).

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:

Most institutions have not yet established appropriate documentation facilities to allow access to information for the public, no public rooms for meetings, no web sites. A weak infrastructure for the documentation purposes is in place at the largest part of the state institutions in Moldova.

References:

Access-Info Monitoring Report, 2008. A recent investigation conducted by this center in 2008 showed that requests of the public are still treated in a negligent manner, and irresponsible attitude of the public authorities and institutions hinder their good functioning. Out of 4,839 information requests submitted to public authorities in 2008, only 934 (19.3 percent) received an answers, most of which were incomplete. Most state authorities treat public information as a confidential asset, although requests

to information have been drafted according to the data of the 'public procurement bulletin,' and this would allow for a rightful demand to get information in time.

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:

Costs of the information requests are not an issue, but the PR departments of most state institutions are badly organized. Most official web pages of the ministries indicate the hours and procedures for audience, but there are no sample forms, instructions on how to fill them in, or instructions on the procedure of submitting petitions or requests.

References:

Law on access to information, No.982-XIV of May 11, 2000. Most of the information providers do not charge their beneficiaries for the simple reason that neither district councils nor other representative bodies 'take the risk' to adopt decisions regarding payment for providing information. Usually, refusals to requests for information do not indicate the reason of the refusal, which thus contradicts the existing law on access to information.

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:

Information is requested under the form of petitions, which does not lead to redress in case the answers will be unsatisfactory to the applicant. International practices report a different tradition on defining request for information as a specific category of public services, and public institutions are obliged to write annual reports in their area.

References:

Law on access to information, No.982 – XIV of May 11, 2000
Code of conduct of the public servant, 2008
Law on Government, No.162-XVI of July 9, 2008

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. ⁶⁹Voting & 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 Moldova, art. 38 – right to vote and be elected
Election Code, No.1381-XIII, arts. 3-7 of Nov. 21, 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

References:

Constitution of Moldova (1994) stipulates that the Parliament is elected for a mandate of four years, which can be prolonged through an organic law, in case of war or emergency (art.6 3). Local governments are all elective and are changed regularly through local elections, held every four years. A universal Election Code stipulates the exact procedures for election of the local and national public authorities (No.1381 – XIII of Nov. 21, 1997).

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?

83

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

100 | 75 | 50 | 25 | 0

Comments:

In practice, the election turnout is relatively high (62-70 percent), depending on the type of elections. Two important drawbacks of the existing election system have to be considered: first, citizens of Moldova residing in Transnistria are not allowed to vote because of the separatist regime over the left bank of Dnister; second, the low level of confidence in the political parties makes voters look for outspoken personalities, visible at the national level.

References:

Art. 38 of the Constitution of Moldova enshrines the 'right to vote and be elected' to citizens of Moldova, aged 18 years by the day of elections, excepting those which fall under the category of limited in their rights. The right to be elected is a constitutional right guaranteed to all citizens of Moldova, according to the Election Code (No.1381-Xiii of Nov. 21, 1997).
Partide, alegeri, compromisuri, – Adept, <http://www.e-democracy.md/publications/>

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:

With extraordinary exceptions, most elections held in Moldova followed the general international standards of elections, and international observers found no blatant irregularities that would disfranchise elections. Professional election bodies are in charge in Moldova with the organization of elections, i.e. they ensure that the voting is universal, equal, secret and freely expressed. In the 2007 elections, only in Corjova, rebel militia in Transnistria prevented the opening and voting in the polling station, despite the fact that the village is administrated by Moldovan authorities. Elections are regularly assessed by the OSCE, Council of Europe and domestic NGO coalitions. Most irregularities concerned the intimidation and pressures on opposition candidates by the ruling party, and biased media coverage of during the election campaign.

References:

Art.48-49 of the Election Code stipulate the procedure ensuring the protection of ballots by the election bodies, with support from the police. Only chairs of the election councils of the respective districts, assisted by the election bureaus have access to ballots before the voting turnout. Election Code – No.1381- XIII of Nov. 21, 1997.

<http://www.alegeri.md/2007/coalition2007;>

<http://www.azi.md/news?ID=44612;>

<http://www.osce.org/item/24819.html?lc=MO>

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.

100 | 75 | 50 | 25 | 0

Comments:

Elections are held regularly in Moldova, with the exception of anticipated elections. This was the case of the 2001 anticipated parliamentary elections, when the CPM won elections democratically. Similarly, the Chisinau mayoral elections in 2006 were held

only in June 2007. In the Gagauz Autonomy in Comrat during 2002, the incumbent was dismissed after corruption allegations became resounding for the electorate.

References:

<http://www.alegeri.md>

<http://www.e-democracy.md>

<http://www.infotag.md/comentarii/557358>

<http://www.ladom.org.md/old2/index.php?id=7281>

<http://www.osce.org/item/746.html?lc=MO>

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?

75

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

YES

NO

References:

Law on political parties, No.718-XII of Sept. 17, 1991

Constitution, art.41, freedom of political parties and social-political movements

Election Code, No.1381-XIII of Nov. 21, 1997

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

References:

Constitution, art. 38 – right to vote and be elected to all citizens, aged 18 years, with exceptional restrictions/limitations related to the criminal offenses, or cumulated offices.

Law on Government, No.162 – XVI of July 9, 2008

Law on civil service, No.443 – XIII of May 4,1995

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

References:

Although the provisions of the law on political parties stipulate quite a fair environment for involving citizens, and allow them to create and run political parties, in practice the Ministry of Justice may certainly hinder or delay the registration of new parties. Such was the case of the European Action Movement (MAE), which has been requesting registration since the fall of 2006. Nevertheless, it got no registration until the fall of 2008, and most probably, it will be unable to participate in elections.

See <http://www.azi.md/news?ID=43739>

Political And Security State Watch, No.5, October 2007, <http://www.viitorul.org> – <http://www.allmoldova.com/index.php?action=newsblock&id=1161608299&lng=eng>
http://www.voceabasarabiei.net/?module=show_material@mat_id=395

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.

References:

Although the constitution stipulates clearly that discriminations are prohibited (art.38) for the citizens to run for political office, in 2007 the Parliament voted a new law on Civil Service, which bans the holders of double citizenship to run for political office.

<http://www.scers.md/view.php?id=2339>

<http://www.amn.md/stiri-7-28-.html>

Cetatenii moldoveni cu dubla cetatenie nu mai au dreptul de a detine functii publice', April 11, 2008, <http://www.mediafax.ro/externe>

V.Tarlev: 'Functionarii trebuie sa aiba doar cetatenia RM'; <http://www.bbc.co.uk>

http://www.moldova-suverana.md/index.php?start_from=&ucat=

Chisinau: Legea care interzice functionarilor sa aiba dubla cetatenie, adoptata. Dec. 8, 2007; <http://www.stirilocale.ro>

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. A system of party lists may discourage or prevent independent 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.

References:

Art. 2 of the constitution prohibits the monopolization of the state power by a political party, or by a social organization, or by any part of the nation in its own name, which is equal to power usurpation. The Parliament of Moldova has been always diverse and with crystallized political polls: left, center and right. Since 2005, the Parliament has three main players: PCRM – 45.9 percent and 56 seats, Popular Democratic Christian Party – 9.07 percent and Democratic Moldova Election Block – 28,53 percent. However, after April 2005 the DME split, and many other parties and legislative groups have fragmented the Parliament.

<http://www.alegeri2005.md>

Political and Security State Watch, <http://www.viitorul.org>

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

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:

Nevertheless, one could see that the political influences cannot be prevented, since members were delegated by parties and state authorities. Although they might claim full innocence, their behavior will be drawn out from their political preferences.

References:

Art. 16 of the Election Code stipulates that the Central Election Commission is established through a group of high-ranking civil servants (nine in total) with deliberative votes: one is delegated by the president of Moldova, one by the government and seven by the Parliament, i.e. five by the opposition parties, according to the number of mandates of the latest elections. Members of the CEC cannot be however members of political parties. The nominal constitution of the CEC is confirmed by a special vote of the Parliament, with the majority of votes. Members of the CEC are immovable. They follow the application of the Election Code, constitution, and other laws in force in Moldova.

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:

In practice, the agency appointments will be made to support the general principles of the conduct of elections, in what concerns the district/local chairs of the election bodies. At the national level, Members of the CEC will often quarrel and dispute the decisions they are making, although a certain balancing mechanism would follow in any case, as decisions that would hinder

citizens' interests can be appealed in courts, which may suspend certain decisions that contradict to the spirit and letter of the main laws they are implementing.

Disputes are usually reflected in how the main public broadcasting media cover elections. CEC is often accused of inaction, or exaggerated actions. CEC draws on the schedule of ensuring equal access to electoral actors, on the basis of the Law on the public broadcasting company, No.1320 of July 26, 2002 and Law No.982 of May 11, 2000 regarding the access to information.

References:

Election Code,
Constitution.

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

References:

<http://www.cec.md>

[http://www.adept.md\(1\)](http://www.adept.md(1))

Art. 23 of the Election Code stipulates that members of the Central Election Commission (9) are assisted in their work and mandate by a permanent staff. The CEC sets up the limits and size of the CEC apparatus.

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:

It publishes regular reports on the elections it upholds, and maintains a rather good web site. The CEC operates on the basis of a standing regulation, approved by a decision of the CEC No.137 of Feb. 14, 2006, amended by No.1627 of April 8, 2008. In addition to the main documents regulating the functioning of the CEC, it supplies regularly the local election bodies with training, instructions, guidelines in setting up the necessary elements for the election organization and ballots. It also has documents on ethnic conduct of the election actors and registers local and international observers who wish to oversee the standards of the elections.

References:

Central Election Commission of the Republic of Moldova, <http://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:

Although art. 69 of the Election Code stipulates the penalties to offenders violating election rules/proceedings in Moldova (i.e. those who would hinder the free exercise of the election rights of the citizens, persons who spread out intentionally false data about the election competitors, undertake any other actions which encroach upon other's honor and dignity, etc.), the Central Election Commission has not proved its competence to penalize any case so far, after being set up as the sole administrative authority for the coordination and implementation of all kind of elections in Moldova.

In 2007, Transnistrian militia blocked the elections in Corjova village, of the left bank in Moldova, and stole the ballots, without CEC being able to redress the situation. Several politicians were harassed by the prosecution in 2003-2005, and in 2007 at the local level. No equal chances for the opposition parties to participate in the programs of the Teleradio-Moldova could have been protected by the CEC.

References:

<http://www.cec.md>

<http://www.adept.md>

<http://www.osce.md>

<http://www.e-democracy.md/files/elections/local2007>

During 2007 local elections, Central Election Commission has received 30 of notifications on illegalities concerning the behavior / misbehavior of electoral actors. The CEC did sanctioned 5 physical persons/ individuals for posting election materials in other places that are stipulated by specific regulations of the electoral bodies. www.alegeri.md/2007/electoralcourier Nevertheless, because of the limited time allocated for the election campaign, CEC does not have enough resources to consider all cases reported to it, and often lack resources to respond to the illegalities known to the media. Financial reports from the political parties participating in elections are requested, but not overseen on the basis of their conformity with the facts on the ground.

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?

79

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

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

Comments:

Electoral actors have contested the work of the CEC in the 2007 elections, on the basis that election lists were drafted with several mistakes. They claimed the law was broken, because it provides 20 days before the day of elections for voter lists to be publicly presented for oversight (arts. 39-40). In many cases, the non-registered voters exceed the admitted number of errors (over 30 percent in one single precinct). Usually, the lists fall short under the responsibility of the local authorities, which have not updated the lists, and many voters find it difficult to vote when they are not appropriately registered by election bodies. Similar conclusions can be found in the preliminary and final reports of the OSCE/ODIHR/Council of Europe Monitoring reports (June 3, 2007), who observed the organization of the local elections.

References:

<http://www.alegeri.md/2007/docs.ppcd/200706071/>
http://www.osce.org/documents/odihr/2007/06/24819_mo.pdf

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

References:

Election Code, No.1381-XIII – Nov. 21, 1997, Chapter 12, arts. 65-68

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:

In a small village, Buteni, local voters protested against the conduct of elections, and repeated elections for more than five times in 2007. They accused the judiciary of imposing the central authorities' decision, and then repeated the elections until the mayor-elect actually collected most votes.

References:

Sesizare privind incalcarile legislatiei electorale sesizate in municipiul Chisinau de catre observatorii si reprezentantii PPCD in perioada alegerilor locale generale din RM, anul 2007, <http://www.alegeri.md/2007/docs/ppcd> – AMN sesizeaza incalcarile si abuzuri in lant, ce pornesc de la Comisia Electorala Centrala, <http://www.alegeri.md/2007/docs/amn/200704271/>
Sesizarea Partidului Democratiei Sociale fata de cazurile de falsificare a rezultatelor alegerilor chiar dupa votarea din 3 iunie 2007, <http://www.alegeri.md/2007/docs/pdsm/200706081/>

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:

Although the military has never been perceived as having the capability to interfere into the politics of the country, in Moldova special services are suspected to act as a political police, harassing political opponents of the ruling Communist party, intercepting phone conversations, etc.

References:

<http://www.osce.org/item/24819.html>

www.ladom.org.md/img/docs/1421_raport_ots.doc, Presence of the police is seen as a traditional illegal practice in Moldova by the national observers.

www.contact.md/upload

CEC a solicitat colaborarea cu SIS in ziua alegerilor locale, <http://www.timpul.md/rubric.asp?idissue=367&id> –

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 overly 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

References:

Art. 65 of the Election Code stipulates that the Central Election Commission may register oversight of domestic and international observers with clear and specific responsibilities and mandate to be followed during elections.

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:

In Moldova, there is a small number of specialized NGOs that work as watchdogs for election integrity: ADEPT Association, LADOM, etc. Since 2004, each election has been monitored by a coalition of NGOs advocating for free, democratic and equal elections.

References:

<http://www.adept.md>
<http://www.osce.org/item/746.html?lc=Mo>
<http://www.alegeri2006.md>
<http://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.

17. 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 established by the Code as a state body/public authority governing the organization of elections. It acts through a nation wide network of local/district-based election bodies, while Moldova is a single electoral precinct.

References:

Election Code, No.1381 – XIII of Nov. 21, 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 exists 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.

78 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

86

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

YES | NO

Comments:

Art.26 of the new law stipulates that private donations cannot exceed 0.1 percent of the resources provided as a state support to political parties. Donations made to one or several political party(ies) by a physical person cannot exceed 500 average salaries per year. Foreign financing of political parties is strictly prohibited.

Art. 30 stipulates that political parties shall present periodical reports to the Ministry of Justice, while the Auditing Court will supervise.

The financing of political parties is rather restrictive in Moldova, as it appeared in 2007. It bans contributions from joint ventures, where the state or foreign funders control more than 20 percent. If in the past, there were no stipulated mechanisms to enforce financial oversight and enforceable control to safeguard the implementation of funding -related provisions in Moldova. One shall see what the effects from the implementation of the new law on parties will be.

References:

Law on political parties, No.294-XVI, arts. 26, 30; Dec. 21, 2007

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

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 political parties.

YES | NO

References:

Art. 26 of the Law on political parties, adopted in 2007, No.294 – XVI

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

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

YES | NO

Comments:

It stipulates a list of prohibitions for corporate donations financing political parties. For instance, donations made by a legal entity to one or multiple political parties in one budgetary year cannot exceed 1,000 average monthly salaries per economy for the respective year. Direct or indirect financing of political parties is banned by foreign states or international organizations, or by companies which are financed by the state or operates with the state capitals, by non-commercial organizations, trade unions, philanthropic, religious organizations, by citizens of Moldova residing abroad, by physical persons who are not citizens of Moldova, by anonymous persons, or on behalf of third parties.

References:

Art. 26 of the Law on political parties

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

YES | NO

Comments:

Annual allocations to the state budget for financing political parties represent 0.2 percent of the revenues stipulated by the state budget for the respective year, i.e. 50 percent to political parties, in proportional scale to the number of mandates obtained in parliamentary elections and validated, 50 percent to the political parties, in proportional scale to the number of votes obtained in local general elections, with the condition that they have got not less than 50 mandates in the representative bodies of the second level administrative-territorial units.

References:

Art. 28 of the Law on political parties

YES: A YES score is earned if there are any limits in 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 the disclosure of donations to political parties.

YES | NO

Comments:

It stipulates that each political party is responsible for the maintenance of a special register of donations received, in which private and public donors will be listed. If control bodies will find that contributors have exceeded their permitted level of donations, they will be transferred automatically to the state budget.

References:

Art. 27 of the Law on political parties

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

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, 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 and expenditures of political parties.

YES | NO

Comments:

It specifically stipulates that parties shall submit their financial reports, annually, to the Ministry of Justice, Ministry of Finance and Auditing Court, providing that they might be checked by one of the ministries, such as the Ministry of Finance (fiscal inspectorate) or the Auditing Court.

References:

Art. 30 of the Law on political parties

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. 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' finances and expenditures or if such requirements exist but allow for parties to self-audit.

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

YES | NO

References:

The newly adopted law of 2007 does not stipulate the creation of a specialized agency entitled to monitor the financing of 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 the financing of political parties. 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 there regulations governing the financing of individual political candidates?

67

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

References:

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

Art.29 of the Law on political parties (2007) stipulates the procedure of wiring the private contributions, and how the public (state) contributions can be utilized by the recipients (political parties).

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

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

21b. In law, there are limits on individual donations to political candidates.

YES | NO

References:

Art.26 (3) stipulates that a physical person (individual contributor) can pay not more than the equivalent of 500 average monthly salaries per year to one or more political parties.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

Art.29 of the Law on political parties stipulates that corporate donations to individual political candidates (parties) shall not exceed the equivalent of 1,000 average monthly salaries for the respective year.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

Art.31 of the Law on political parties stipulates that information of the expenditures used by political parties shall be publicly available. Political parties will present regular reports to the CEC during the election campaign. In case the information is incomplete or fraudulent, CEC will apply to the Court of Supreme Justice with an appeal to suspend the party's participation in the campaign. Data collected by CEC will be placed on its website. CEC may request additional information to assess the level of legality of the funding received by political parties.

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

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

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

References:

The Law on political parties does not mention the need for independent auditing of the campaign finances of individual political candidates. It bases the control of the political expenditures only on the direct involvement of the tax inspectorates, at the order of the Ministry of Finance or of the Auditing Court, when it may consider this necessary.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. 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 an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

References:

There is no agency or entity that would monitor the financing of individual political candidate's campaigns, although citizens may notify the existing election specialized body, Central Election Commission, which may start investigations of the political candidates. Parties are verified, according to articles 27-30 of the 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 the financing of individual political candidates' campaigns. 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.

22. Are the regulations governing the political financing of parties effective?

29

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

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

Comments:

It is rather difficult to assess the effectiveness of the new law since it came into effect only in January 2008. As in the past political financing was one of the less studied fields of party campaign deals, we may suspect that some parts of their previous legacies will be multiplied after the new law will be applied. In addition to the specific financial flows from private and corporate donors, the law does not prohibit the use and abuse of administrative resources. The judiciary has limited operational capability to intervene when violations from the incumbent state officials will appear in election times. Voters are bribed with generous contributions from the state agencies and participation of state officials in directing benefits to clientèle groups. State officials use media groups controlled by the government; the limited space that the opposition benefits from may hinder pluralist foundations of the political regime.

References:

Coalition 2005, 2007

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

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

Comments:

The law will be enforced as of January 2009 for parliamentary national elections. The law has been already contested, as it does not stipulate the mechanism of financing elections in the Gagauz Autonomy.

References:

Law on political parties No.294 of Dec. 21, 2007

<http://www.bbc.co.uk/romanian/moldova/story>

Problema finantarii a fost pe jumtate solutionata; <http://www.alegeri.md/gagauzia2008/electoralcourier>

Modul de finantare a alegerilor in Adunarea Populara a Gagauziei este imperfect; <http://www.ladom.org.md>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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:

Transparency International-Moldova experts point out that campaigns and financing of political parties shall be kept separate. Experts say that the principles for the provision and receipt of donations, ensuring transparency of donations and contributions, avoiding artificial obstacles for political parties, are not fully enshrined by the new law of 2007 on political parties. Experts regret that the maximum level of contributions are indicated by law, hindering the freedom of parties. The existing system does not stipulate explicitly that parties shall report publicly their expenditures; it also does not stipulate the frequency of reporting or terms and places for the reporting.

References:

Luare de cuvint la proiectul legii cu privire la partidele politice- <http://www.filat2007.md/discursuri.php?s=2>
Starting with 2009, Political Parties Will Be Financed from The State Budget; BBC, Dec. 21, 200
<http://www.ong.md/index.php?mod=postbyid&id=1869>
<http://www.e-democracy.md/comments/legislative/20071204>
http://www.bbc.co.uk/romanian/moldova/story/2007/12/printable/071221_finantare_partide

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The law will come in force on Jan. 1, 2009, two months from before the new general elections. It is therefore premature to say how it will work then.

References:

Law of the political parties, No.718-XII of Sept. 17, 1991

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. 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, though 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.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are no precedents when penalties were imposed on political parties for fraudulent use of finances during elections. CEC has often requested publication and presentation of auditing reports, but with no practical consequence.

References:

<http://www.e-democracy.md/comments/legislative/20071204/>

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.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Critics voiced their dissent of the new law from 2007, because it failed to consider proposals and even reiterated some provisions (for instance, related to the ban on some political parties), which have been earlier qualified as 'unconstitutional' by the Constitutional Court – art.41. Nevertheless, the law was adopted without prior consent and internal discussions, while later legal comments received from the Venice Commission were disregarded by the legislative chamber of Moldova.

References:

Legislatia partidelor; Quo Vadis si in ce mod? Sergiu Grosu, <http://www.e-democracy.md/comments/legislative/2007>

100: Political party 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 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

15

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to assess since the new law has only been recently adopted will only be enforced in 2009.

References:

<http://www.azi.md/iv?iv=123&lang=Ro&page=2> –

<http://www.policy.hu/protsyk/book1/RomVersion/ComntentandPreface.pdf>

<http://www.timpul.md.net/Rubric.asp?idIssue=167&idRubric=2110>

CDPP Declaration at The End of the Spring Session of the Parliament <http://www.cubreacov.worldpress.com/2008>

Finantarea partidelor politice are drept criteriu de distribuire rezultatele obtinute in alegeri. <http://www.justice.gov.md/index.php?cid=173>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

In practice, individual candidates and parties use black/double accountability. They never report their financial spending to the appropriate institutions, while CEC does not have enough capacity to enforce its decisions. Considerable spending on party organization is usually a result of clientèle-based relations with businesses, or a result of abusive management of state properties, for those who get in power. Although, the new party set up a mechanism of transparent and accountable financing for political parties, the ruling elite made it come into force only in January 2009, right before elections, for tactical reasons: first, to finalize the construction of the CPRM new office, a five-floor building downtown in the capital; second, to allow no possibilities for the businesses to finance opposition parties, under the risk of being assailed by control fiscal bodies.

References:

The new law on political parties (2007) stipulates in art. 25 only the following ways to finance political parties: membership fees, donations, including those collected on various cultural, sport and other mass activities, subventions from the state budget and other legal incomes obtained from their properties, transportation, editorial houses, etc.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

There is no an independent entity monitoring elections. In practice, three agencies can monitor: Ministry of Finance, Ministry of Justice and Auditing Chamber. In addition the CEC may request financial reports, but in practice this has not yet been tested. Financing will be disbursed from the state only as of 2009.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. 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, though 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.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

It cannot be assessed since the financing of parties will only begin in 2009.

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.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

In 2008, political parties in the Moldovan Parliament accused each other of financing their operations from unclean sources of money. However, this cannot be seen as a proof of enforcing the legislation (the recent law adopted in 2007 on political parties), as this serves more as an instrument of struggle for power.

References:

Filat, acuzat ca foloseste bani murdari pentru a-si consolida partidul; <http://www.presa.md/content/php?goto=news&do=show>
Adept- <http://www.e-democracy.md/comments/legislative/20071204/>
De ce grupul Ascom isi retrage stafful de baza din Moldova? – <http://www.eco.md/article/5748>

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

17

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The law stipulates that parties must disclose their revenues, but the new law on political parties adopted in 2007 will only come into force in 2009. There is no tradition of oversight over finances and resources used by political parties for their functioning, as well as administrative resources used between elections.

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

75:

50: Political parties 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 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 regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Citizens cannot access the financial records of political parties. The largest part of their resources are assumed to be brought directly in cash benefits, without an open and legal system of accounting. The new law may change the situation, but it will be enforced only as of January 2009.

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

This information cannot be accessed with costs or without costs. Political parties are strongly dominated by the oligarchies who pay their expenditures, while small parties cannot launch campaigns because of the shortage of funding. Citizens are completely unaware about the political financing during elections.

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.

25. Can citizens access records related to the financing of individual candidates' campaigns?

42

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It stipulates campaign financing is set up by the Parliament, while the CEC regulates later the proportional distribution of resources to the candidates in national elections. Local elections are financed as well, but the largest share of state funding is directed to national elections. Electoral candidates may receive loans from the state, which will be returned later if they do not obtain the necessary seats, as set up by the CEC. Disclosure of the corporative funding or funding of the physical entities is not regulated by the Election Code.

References:

Election Code, art. 35

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

75:

50: Individual 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: Individual 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 regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It stipulates that candidates must disclose their incomes for the campaign at the end of the first month of the campaign, which means that citizens can theoretically request CEC to get access to it. In practice, parties have not provided reliable information, and CEC did not invest enough efforts in receiving the reports citizens might have inquired.

References:

Election Code, art. 38

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

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

Comments:

The only financial reports published in the last elections (2007) belonged to the election bodies in charge with organizing the elections. See

<http://www.alegeri2005.md>, <http://www.alegeri2007.md>

Most of the opposition party leaders stated the new law on financing political parties is discriminatory towards the rest of parties, except the Communist party and the Christian-Democratic Popular Party leaders.

http://www.bbc.co.uk/romanian/moldova/story/2007/12/071221_finantare_partide.shtml

References:

Election Code, No.1381 – XIII of Nov. 21, 1997, art. 35, stipulates the mechanism of financing election campaign, i.e. the means which the state will allocate to the election actors and loans that can be requested from the state for election purposes. However, there is no provision of transparent management. Candidates shall report to the state on the expenditures used and those which shall be returned (if not spent), but no disclosure procedures are stipulated.

Another law on political parties, No.294 – XIV of Dec. 21, 2007 provides a more detailed description of the disclosure procedures and accountability rules, but it will be enforced only as of January 2009.

<http://www.parties.e-democracy.md/localelections2003/chisinau>

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-1. ^{E7} Executive Accountability

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

56

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

A draft law on transparency of the governmental activities is being lobbied right now by some NGOs in Moldova, but it is unclear whether it will be approved for legislative discussions this year. The draft law aims to increase the accountability and transparency of the governmental decisions.

References:

The constitution defines the government as being accountable to Parliament (art.104), which confirms its structure through a confirmation vote (votul de investitura (art.98)). On the basis of a political program, the government is entitled with the simple majority of the elected MPs, but it also can be revoked (art.103) if Parliament will express its 'vote of mistrust'. This will automatically provoke the dismissal of the government and the presentation by the president of a new candidate for the position of prime minister.

Art.7 of the Law on Government stipulates when the vote of confidence is necessary to support the legitimacy of the government – Law on Government No.64 – XII of May 31, 1990

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.

27b. In law, the judiciary can review the actions of the executive.

References:

By constitution, citizens are equal before law, and therefore the executive can be sued in justice. If human rights are infringed upon, then every citizen may appeal in court. The Law on administrative contentious (NO.793-XIV of Feb.10, 2000) stipulates the aim of the 'administrative contentious' as a legal instrument which shall counteract the abuses or the excess of authority, protecting the rights of individuals in the name and spirit of the law, regulate the activities of the public authorities and ensure the respect to the public order and rule of law(art.1). Every person who feels their rights have been prejudiced by a public authority, by action or inaction, may address an appeal to the instance of administrative contentious, which is competent to claim the abolishment of the act which prejudiced the applicant, to recognize the claimed right and resolve the reparation of the prejudice.

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

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

Comments:

Nevertheless, the same Law excludes the political acts issued by the Parliament, president of Moldova, and the government, as well as administrative acts with individual character, adopted by the Parliament, president and government, within the framework of its constitutional and legislative norms, pertaining to the election, dismissal or appointment of high-rank officials, acts of foreign policy, etc. The law stipulates the right of every person to notify the authority which infringed upon someone's rights to revoke/change its acts, and when the response (in 30 days) is not satisfactory, the person (legal or physical) may appeal again in a court of administrative contentious. However, there are no separate ordinary courts for administrative contentious, therefore the examination of the cases on administrative contentious is really a difficult procedure.

References:

Contenciosul Administrativ in Republica Moldova, iunie 2006- <http://www.cnaa.acad.md/thesis.php/4918>

Forumul juristilor Moldovei- <http://www.justice.md/forum/index.php?shotopic=332> –

Lita pentru apararea drepturilor consumatorilor din Moldova- <http://www.consumer.info.md/index.php?itemid=3678>

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.

27d. 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 competencies employed by the government to regulate various fields of the economy and society were often a subject for the intervention of the Constitutional Court, which oversees the legality and constitutionality of the acts issued by the president, laws adopted by the Parliament, and orders of the government.

http://www.dejure.md/library_upld/d310

<http://www.constcourt.md>

References:

The Constitution (1994) stipulates the competence of the government (art.102) to adopt decisions, ordinances and orders. Orders are issued on the basis of art.106/2. Orders are usually used by the prime minister to organize the internal activity of the government.

Law on Government No. 64-XII of May 31, 1990, stipulates the main competencies of the government in the fields of education, economy, infrastructure, culture, foreign policy, etc. (Chapter II).

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.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

There have been attempts to suspend the mandates of the president, but all of them failed to collect the necessary support even after the adoption of the 1994 Constitution.

References:

The Constitution stipulates the procedure to dismiss the government (art.103) in case the legislative house expresses a vote of lack of confidence with one fourth of the MPs elected in Parliament. Until the replacement of the government with a new Cabinet, it may only issue a limited number of functions related to public management. Art. 89 of the Constitution stipulates the dismissal of the president, when he committed actions which violate the provisions of the constitution, if the accusation is voted by the two thirds of the MPs. A proposal to dismiss the president can be launched by at least one third of the MPs.

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

Although some political parties attempted to adopt a Law on ministerial responsibility during 2000-2002, this appeared to be almost impossible. The Executive did not agree to convene upon certain specific regulations on the prosecution of ministerial level officials for committed irregularities.

References:

By Constitution, members of the Cabinet of Ministers may suspend their positions in cases of resignation, revocation, incompatibility or death (art.100). Art. 29 of the Law on Government stipulates that ministers are responsible for the fields they are entitled to administrate. Civil servants can be prosecuted if they fail to accomplish their direct responsibilities, according to the Law on civil service (No.443 – XIII of May 4, 1995), or violate the restrictions stipulated by art.11 of the same law for civil servants. A new law on Civil Service has been prepared, but has not yet been adopted by the Parliament of Moldova.

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.

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

59

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

Yes, they are required to file asset disclosures. However, the effective declaration of incomes has been contested by the civil

society after being suspended several times, as officials never conformed with the legal provisions of the law, or they have provided inaccurate information on their incomes and revenues, properties,. etc.

See *Avere la Vedere!*

<http://www.economica.md/economie-si-business>

<http://www.api.md/events/4463/index.html>

References:

Law on the declaration and control of incomes and properties belonging to the state officials, judges, prosecutors, other public officials, as well as of persons with important leadership positions – 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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Law on declaration of revenues and properties – No.1264 – XV of July 19, 2002

Law on preventing and curbing corruption – No.90 – XVI of April 25, 2008

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Legislation is not respected in what regards the hospitality and gifts provided to high rank officials.

Ziarul de garda, No.192, Aug. 14, 2008

References:

Law on the conflict of interests, No.16-XVI of Feb.15, 2008

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.

29d. 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:

The law leaves unclear who is entitled to oversee the ministers and heads of state, particularly in Moldova, where they have expanded their power over the legislative and judicial branches.

References:

Art.14 of the Law on conflict of interests stipulates the procedure for disclosing any possible conflict of interests, allocating the function of controlling to the heads of the public organizations, and a general Ethics Commission. At the central level of administration, there is a special committee entitled with the oversight and control of conformity of the declarations of incomes and properties provided by civil servants and high-ranked officials of the government – art.9 of the Law No.1264 – XV of July 19, 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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

The Moldovan legislation does not explicitly prohibits heads of state and governmental officials to hold business positions after leaving the government. Most former prime ministers and ordinary ministers reported outstanding performances in business soon after leaving their official positions (Sangheli, Ciubuc, Braghis, Sturza).

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.

29f. 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:

There is no effective enforcement of the latest laws and regulations. The ruling party has a prohibitive policy towards civil society organizations, which are more active as they were in the previous years, but face the same resistance from state officials when they investigate declarations of incomes and properties, acquisition policies, etc.

References:

V.Vronin este cel mai bogat demnitar moldovean- http://www.transparency.md/presa_ro.htm

Oleg Voronin – vistiernicul clanului Voronin <http://www.anticoruptie.tripod.comcat/05>

Comentarii politice – <http://www.e-democracy.md/comments/politica.200403161>

Demnitarii cu afaceri ilicite, in loc sa fie trasi la raspundere, sunt avansati – <http://www.timpul.md.net/Rubric.asp?idIssue=15&idRubric=81>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Ziarul de Garda, No. 192 (14 august) 2008 – Cadourile corupte ale demnitarilor

Reflectarea fenomenului coruptiei in mass media- http://www.jjc.md/Publicatii/coruptie/raport_martie_rom.pdf

Transparency International Moldova: In 2007, Moldova was ranked 111 out of 179 countries in the corruption survey.

A Survey conducted by IMAS in 2007 revealed that seven out of ten individuals believe that corruption in Moldova is widely spread, placing corruption fourth in the rank after poverty, high prices and unemployment.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

When Access-Info Association and the Center for Media Investigations tried to apply the existing rules and regulations to reveal the income declarations of civil servants, they found that public authorities are not in fact open to provide such data. Both organizations have sent over requests of information to 1,300 of public authorities. They received answers from only one third of them; only 46 of reported diligently on the questions formulated.
<http://www.basarabeni.ro/stiri/eveniment/testarea-transparentei-institutiilor-publice>

References:

Ce ascund demnitarii moldoveni cind refuza sa-si faca publice averile?- <http://www.jurnal.md/article/7883>

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.

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

17

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

Art.10 of the Law stipulates that declarations presented by state officials are 'confidential' and that control over the reliability of the declared data is a competence of the Center for Combating and Preventing Economic Crimes. Art.12 of the same law states that officials who will be entitled to verify the conformity of data presented by the state officials have to treat this information as a 'state secret'. See for instance Ilegalitate la p trat – Jurnal de Chisinau – editia nr. 738, 25 Iulie 2008
<http://www.jurnal.md/article/7883/>

References:

Law on the declaration and control of incomes for the state officials, judges, prosecutors, civil servants and other persons with official positions, No.1264-XV of July 19, 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.

30b. 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:

A Coalition between the Alliance Against Corruption and the Association of Independent Press (API) was established in January 2008 to oversee the declaration of incomes by the officials, i.e. monitor the implementation of the new laws on anti-corruption in Moldova – Law.1264 – XV of July 19, 2002. A special monthly bulletin OBIECTIV was launched as a monitoring tool for this campaign.

References:

Campania 'Avere la vedere'- <http://www.api.md/news/4335/index.html>

By law, the Central Control Committee is entitled to publish only an excerpt of the declarations presented by officials, and usually this is taking place irregularly, with delays, and with incomplete information. In 2007, the CCC did not publish any kind of reports on the declaration of incomes. But, the law does not prohibit officials to publish their declarations on their own initiative, therefore the press tries to create a positive environment where some of them will think positively and declare publicly their incomes and properties. Moreover, the law obliges officials to publish their incomes only on the last year of activity, and not all properties and incomes they really own (!), therefore, various interpretations are still eroding the credibility of the adopted legislation.

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.

30c. 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:

The first official who declared his own incomes was the speaker of the Parliament, in 2008. The second official was former prime-minister, D. Braghis. As in 2007, state officials did not make public their incomes, while the CCC (the body delegated with the responsibility to provide the public with data on this process) did not collect the necessary information. Generally, the media and the public are not at all satisfied with the attitudes manifested by the state officials and specialized agencies to fight corruption.

References:

Campania 'Avere la vedere' – May 31, 2008 – list of officials who have declared their incomes and revenues for 2007- <http://www.api.md/news/4335/index.html>

Bufonada declaratiilor de avere – Jan. 31, 2008- <http://www.api.md>
<http://www.mama.md/index.php?showtopic=12041>

Ce ascund demnitarii moldoveni atunci cind refuza sa-si faca publice averile? <http://www.dejure.md/index.php?go=news&n=4675>

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.

26. Can citizens sue the government for infringement of their civil rights?

100

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

YES | NO

References:

Constitution 1994), art.16 – equality of all citizens before law and public authorities, irrespective to race, nationality, ethnic origins, language, faith, gender, opinions, political belonging, social statute.

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.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

25

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

100 | 75 | 50 | 25 | 0

Comments:

In 2008, the ruling Communist Party of Moldova held its VI Congress, which was expected to change some important aspects of its programmatic and ideological outlook, but it failed to do so. Despite the weaknesses, PCM remained strong in polls, at arm distance from the largest opposition parties during 2007-2008.

The ruling communist party is accused continuously in national and international press for its authoritarian style and attempts to rule the country as it was possible in the Soviet one-party system. Although it tolerated opposition, it succeeded to cut off its political rivals from sources of funding (by controlling the economy) and mass media (by monopolizing the main media groups, private and public). Since 2001, it launched a strong cleansing campaign in the civil service, by installing 'verified people' in the state administration, instead those who were 'filtering' with the opposition. At the local level, since the 2003 local elections, the ruling party attempted to install a 'vertical of power', rather influenced by the model of the 'administrated democracy' of Russia. Most reports (Freedom House, Bertelsman Transformation Index, Reporters sans frontiers,) have assessed negatively the situation of democracy in Moldova. In 2002, two successive resolutions were adopted by the Parliamentary Assembly of the Council of Europe on Moldova on the 'situation of democratic institutions', as a result of the mass protests of the opposition against the ruling party's policies.

References:

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

Situatia in Moldova inainte de alegeri – <http://www.infotag.md/comentarii>.

<http://www.basarabeni.ro>

<http://www.azi.md/investigation?ID=47571>

See also the 'Stockholm Syndrome of The Communist Leadership of Moldova' –

<http://www.politica/moldova/worldpress.com/2007>

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.

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

100

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Constitution (1994) Art.134 stipulates that only the Constitutional Court can review the laws adopted by the Parliament, and it is the only authority with constitutional jurisdiction in Moldova. It is an independent public authority, which is responsible only to the constitutional provisions.

Law on the Constitutional Court of RM – No.317-XIII of Dec.13, 1994

<http://www.constcourt.md>

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.moldova.md/news/1211/1/2849> – In 2007, changes were discussed to the statute of the CC to make available to the ordinary citizens the right to appeal directly when there are cases of constitutional irregularities. Until now, the list of applicants is shorter, and it is usually referred to executive authorities, MPs, president, Parliamentary attorneys etc. The CC has a large number of notifications/appeals on which it regularly produces constitutional assessments, which become final and irrevocable, and cannot be interpreted.

References:

In practice, the Constitutional Court is quite an active and efficient body, supervising the constitutionality of the legislation adopted by the Parliament. It is trusted by the politicians, but fluctuated in visibility. Nevertheless, the CC is the only body of constitutional jurisdiction, autonomous and independent from the executive, legislative and judiciary. Its task is to secure the supremacy of the constitution (1994), to ensure the principle of separation of state powers into the legislative, executive and judicial branches, to guarantee the observance of state responsibilities towards its citizens. See Arts.134-140 of the Constitution

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Between 2001-2005, the Parliament attempted repeatedly to lift the immunity of some opposition deputies, but without much success.

References:

Art.70 of the Constitution provides to the members of the national legislature the immunity statute, i.e. they cannot be arrested, detained, or search warranted without the consent of the Parliament. By Constitution, MPs are in service of the nation, therefore their mandate is imperative – it cannot be called back (art.68). Art.71 states that MPs cannot be subject to criminal proceedings for their opinions or for their votes.

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

39

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Law No.1264-XV of Feb. 19, 2002 stipulates that MPs are to be considered state officials, therefore, they shall present regular reports over their properties, assets and incomes during the last year of activity.

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

References:

The instituted Control Central Committee on Income and Properties aims to verify and assess declaration of incomes only for the incumbent officials, and no other prohibitions are referred to the state officials leaving their positions. Law on preventing and combating corruption – No.90-XVI of April 25, 2008 equally finds no remedies against those who may enter the private sector after leaving government.

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Mass media have investigated several cases of gifts received by the highest ranked officials in Moldova, not publicly declared, including guns and expensive objects, which can be considered as proof of their inappropriate behavior.

<http://www.garda.com.md/investigatii/cadourile-corupte-ale-demnitarilor>

Conflictual de interese reprezinta o situatie in care persoana...<http://www.justice.gov.md/upload/proiect>

References:

Law No. 900 of June 27, 1996 on combating corruption and protectionism. The law stipulates (art.8) several restrictions imposed to the civil servants during their official positions: to receive any reward, in cash or services, from any legal or physical entity, non-state organization or NGOs, to receive gifts or souvenirs during some protocol meetings, except some hospitality signs which will not exceed the value of a minimum salary.

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

State officials are expected to declare their incomes and properties through a standard declaration to the Central Control Commission, formed by the government, on the basis of the Law adopted in 2002 for the declaration and control of incomes and properties of state officials, judges, prosecutors, civil servants and other officials with high-rank positions – No.1264-XV of July 19, 2002. No independent auditing is requested, although the legislation stipulates some cooperation with civil society.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Art.10 of the Law on combating corruption and protectionism – No.900 of June 27, 1996, stipulates that at the time of recruitment/staffing, candidates are requested to present a Declaration of revenues/properties. By comparison, there is no specific provision requesting the same declaration of revenues/properties when people decide to leave their official positions.

References:

Moldovan legislation does not restrict the involvement in business of former state officials or legislators, so it is not possible to assess whether this could be effectively implemented.

Care-i nivelul real al coruptiei in Moldova? <http://www.culiuc.com/archieves.2005/05>

V.Voronin este cel mai bogat demnitar moldovean <http://www.TI-Moldova> – April 2, 2008

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Mass media have investigated several cases of gifts received by the highest ranked officials in Moldova, not publicly declared, including guns and expensive objects, which can be considered as proof of their inappropriate behavior.

<http://www.garda.com.md/investigatii/cadourile-corupte-ale-demnitarilor>

Conflictul de interese reprezinta o situatie in care persoana...<http://www.justice.gov.md/upload/proiect>

References:

<http://www.garda.com.md/investigatii/cadourile-corupte-ale-demnitarilor>

29 de primari si functionari publici din RM figureaza in diverse dosare de coruptie- <http://www.unimedia.md/articles.php?id=7143>

<http://www.odn.info.md/divers-091008>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The latest Report of the Auditing Court, No.41 of June 13, 2008, presented to the Parliament did not include the oversight of the budgetary spending for the legislative chamber. Art.27 (5) OF THE IAW NO.312-xiii OF Feb. 8, 1994. The Auditing Court stipulates that the AC shall make its reports public, and they can be found on this website: <http://www.ccrm.md/file/raport/anexa2007.pdf>,

www.ccrm.md/file/raport/anexa2007.pdf,

Some of the public authorities, such as the presidency or the parliament, are not included in the official reports presented therein. The data is not available to the public, therefore journalist investigations are often discordant with the official reports.

References:

Law on Auditing Court No.312-XIII of Feb. 8, 1994 stipulates that the Court must oversee the budgetary and financial situation of all public authorities financed from the state budget, i.e. Parliament. In its recent Report presented to the Parliament, the Auditing Court found that most state organizations and authorities have committed financial irregularities with public financing sources.

See: http://www.bbc.co.uk/romanian/moldova/story/2008/07/08703_report_conturi.shtml

<http://www.economica.md/economie-si-business/rapoarte>

The chair of the Auditing Court claims the Court faced serious problems due to budgetary shortages, lack of skilled personnel, and execution of its decisions. The prime minister decided to increase executive attention upon the execution of the AC decisions – Sept. 18, 2008

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.

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

8

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

The existing laws on asset disclosure only partially allow citizens to get necessary information from the authorities in charge with the income declarations of officials, and only if the officials accept their declarations to be made public, which at the end of the day, leaves no chance for exposing high rank officials to public scrutiny.

References:

Law no.1264-XV of July 19, 2002 stipulates the obligation of the MPs to present their declarations to the Central Control Commission of the government, which may oversee and verify the data, but the information is considered confidential. The public may see only the statements of MPs who decide on their own to declare their assets.

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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

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

Comments:

Press releases have been issued by the governmental body in charge with the collection of the income declarations of civil servants, but there is no realistic chance to access the declarations, which continue to remain secret, and are made up on the basis of last year's calculations. Repeatedly, the officials have ignored public investigations on the properties owned by state officials, and official sites of the public authorities do not post such information in most cases.

References:

Demnitarii isi tainuesc averea, July 25, 2008, <http://www.investigatii.md>
Prevederile ce tin de comunicarea cu mass media a functionarilor publici limiteaza dreptul la libera exprimare si accesul la informatie – April 3, 2008, <http://www.transparency.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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The existing legislation does not stipulate fees for requesting information on income declarations of state officials (Law No.900 of June 27, 1996, as well as Law No.16-XVI of Feb. 15, 2008).

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.

35. Can citizens access legislative processes and documents?

75

35a. In law, citizens can access records of legislative processes and documents.

Comments:

The work associated with the posting of legislative drafts has slightly improved since 2005. In 2007, the Parliament suspended the live broadcasting of legislative sessions, which served apparently to some political interests, thus limiting public access to the debates of the legislative.

References:

Law on the Regulation of functioning of the Parliament, No.797 of April 2, 1996.
 The Regulation set up the operational structure of the Parliament by procedures, executive bodies which assist the functions carried out by the legislative house. Art.13 of the Regulation stipulates that a Permanent Bureau is responsible for setting up the ways of public debates of the legislative drafts, collection and consideration of the opinions, ensuring the posting on the parliamentary web site – <http://www.parlament.md> – of the legislative drafts, legislative agenda, and records of the legislative discussions and documents.”

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.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Nevertheless, the website often has outdated information. The lack of qualified staff hinders the development of a fully-functioning web-site. A report entitled Technical Audit of the Informational System of the Parliament of RM and the analysis of processes and informational flows in the decision-making process revealed several drawbacks related to the counting of votes (p.6), maintenance of records, documents and information, management of documents, ambiguities deriving from the multiplicity of drafts entering the Secretariat of the Parliament from the political fractions. This creates chaos, and manipulative actions, eroding the credibility of the legislative. <http://www.parlament.me/download/studies/Auditul>

References:

In practice, the website of the Parliament became more functional and transparent during the past year. As a result of a new policy of legislative leadership, more contacts with civil society in 2007 had a positive impact on the general attitude of the executive bodies of the Parliament towards the reflection of the legislative work on their website, outlets, etc. A concept of cooperation between Parliament and civil society was approved by Parliament on Dec. 29, 2005 (No.373 – XVI), followed by a draft of the National Strategy for the creation of necessary preconditions for the development of the civil society during 2008-2011.

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

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

Comments:

Results of the Access-Info monitoring of the application of the Law on Access to Information in 2008 shows that in most public institutions those soliciting information face difficulties in finding the person or official responsible for providing information in order to file an access to information request. Lately, on the plea of tight security and fight against cases of corruption, it became more complicated for people to physically access headquarters of central public institutions in order to submit access to information. As a rule, requests submitted by fax or email are delayed, while the simplest telephone calls turn into an interrogation (Why, what for, what is the goal?). So far the number of tacit refusals to provide information is high. Thus, according to preliminary results of national monitoring carried out by the Access-Info Center between December 2007 and March 2008, only 26,35 percent of central, district and local public institutions provided answers to their beneficiaries. This index varies from 19 percent of answers to requests of local non-governmental organizations to 36 percent of answers provided by non-governmental organizations for the protection of disfavored persons and private national mass media. Answers to requests for private local mass media account for 22 percent, answers to requests from national organizations which requested income declarations, 23 percent; answers to requests of curious citizens, 24 percent; answers to requests made by local mass media financed from public resources, 28 percent; and answers to requests submitted by national non-governmental organizations, 29 percent.
<http://www.acces-info.md>

References:

By law, Regulation of the Parliament, information and records of legislative processes and documents can be accessed from the official web-site of the Parliament – <http://www.parliament.md>. There is no other official procedure to purchase data from the Parliament. As an executive subdivision of the Parliament, an Information-Analytic Center is established therein, with the task to undertake full parliamentary documentation tasks, research and expertise to the MPs, maintenance of the data basis, evaluate and assess the public opinion on the Parliamentary image and activities.
<http://www.parliament.md/download/studies/analiza> functionala

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.

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

Law on the collegium for training and preparation of the judges of RM, No.949-XIII of July 19, 1996

Law on the statute of judges, No.544-XIII of July 20, 1995. Art.6 of the law stipulates the conditions to be met in order to be appointed as a judge by the Supreme Council of Magistrates. Art.9 stipulates the procedure of competition for the selection of national-level judges.

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.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary is not trusted by the population, as opinion polls regularly show. People associate the judiciary with bureaucracy and corruption (Opinion Barometer, IPP, 2007). Suspicions were caused by frequent cases when the judiciary sided with the government against individuals or private businesses, even without providing reasonable arguments for their final decisions. As a result, Moldova is now counted as the country which lost the largest majority of cases at the European Court of Human Rights. The transparent selection and appointment of judges was seen as a priority of the strategic development documents (EGPRSP, NDP), but still there were less results than expected.

References:

Interview with Valeria Sterbet: In 2005, new amendments were made to reorganize the appointment of judges, of chairmen and vice chairmen of courts, i.e. of the Supreme Court. This was seen as an important step towards further consolidation of the Council of Magistrates. <http://www.irp.md/News/Interviu/sterbet.html>

Judecatorii Valeriei Sterbet- <http://www.garda.com.md/47/politic/1.php> –
www.e-democracy.md/e-journal.20050706 –

Pe ce criterii sunt numiti judecatorii in Moldova? <http://www.garda.com.md/78/special> –

Aplicarea neuniforma a legislatiei RM si problema accesului la justitie <http://www.humanrights.md/rom/Aplicarea%20ne%20uniforma%20a%20legii.htm> –

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | **NO**

References:

Law of the statute of judges, No.544 – XIII of July 20, 1995 – Art.11 stipulates that judges are appointed for five-year terms by the president of Moldova. They are selected from the pool of candidates proposed by the Superior Council of Magistrates. Members of the Supreme Court of Justice are appointed by the Parliament, also following proposals of the Superior Council of Magistrates.

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).

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

63

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | **NO**

Comments:

The public image of the judiciary remains quite low, however, being ranked at 24,3 percent of public trust, after Parliament – 27,5 percent, police – 29,1 percent, church – 77,1 percent, Mayoralty – 44,3 percent, but before political parties – 14,3 percent (Opinion Barometer of IPP, April 2008) – <http://www.ipp.md>

References:

Anti-corruption laws equate the statute of members of the judiciary with other categories of high-ranked officials. They stipulate the compulsory character of declaring incomes and properties, on the basis of the same standard procedure.

Laws: No. 900 of June 27, 1996

Law on the declaration and control of incomes and properties of the state officials, judges, prosecutors, other civil servants and persons with official positions, No.1264-XV of July 19, 2002

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

In practice, several judges are protecting the central administration against individuals who may apply in court to defend their rights as a default, for reasons of fearing they will be not appointed by the president, or for various rumors that they are corrupt.

References:

<http://www.jurnal.md/article/3678> – Coruptie si Injustitie: Plenul Curtii Supreme de Justitie (CSJ face de rusine RM in fata Consiliului Europei) – Sept. 20, 2008;
Separate opinion of G.Bonello (Malta), Judge of the EHRC in the case no.31001 Flux vs Moldova, ended on July 3,2007 with condemnation of Republic of Moldova. He stated that some judges (Moldovan) have always made favorable decisions to the political authorities of the country, and not otherwise.
<http://www.garda.com.md/168/interviu> – Mentalitatea se schimba cel mai greu, Interviu cu Jean Paul Costa, Presedintele Curtii Europene pentru Drepturile Omului
<http://www.e-democracy.md/comments/political> – Restante si prioritati in domeniul justitie impiedica parteneriatul strategic al RM cu UE

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

Sometimes judges who served for political decisions in courts were promoted to the Supreme Court of Justice or as representatives of Moldova at the European Human Rights Court in Strasbourg. See – <http://www.europa.md/rom/sbmen/29>
http://www.filat.md/blog?page_id=21,
http://www.transparency.md/Laws/2006/Aviz_strategie_judiciara.pdf

References:

Art.19 of the Law on the statute of judges (No.544-XIII of July 20, 1995) stipulates that only one body may apply administrative sanctions against judges, with prior consent of the Superior Council of Magistrates, when judges suspected of committing

contraventions are liberated from their positions (art. modified in 2006). Professional experience and participation in training courses are the only accepted criteria for advancement of judges in their positions. – art.20

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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

The 1994 Constitution states that the Superior Council of Magistrates is entitled to ensure the nomination/appointment, transfer, detachment and promotion in function, as well as disciplinary sanctions of judges (art.123).

The Law on the Superior Council of Magistrates, No.947 of July 19, 1996. Art.25 of the Law stipulates that the SCM decisions are definitive and cannot be attacked. Art.1 of the Law provides that the SCM is exercising the self-administration of the judiciary in Moldova, under the provisions set up by the constitution, laws regulating the organization of judiciary power and the statute of judges, and other normative acts.

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

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Advocates have claimed that some judges are publicly stating in the trial period that some cases are personally overseen by the president of Moldova. See, for instance, Press Conference of Dec. 24, 2007, by V. Turcan, who claimed that the president gives orders to judges. Turcan and requested an impeachment of the head of state.

References:

http://www.humanrights.md/rom/main_rom_judiciar.files

http://www.irp.md/news.php?news_id=283 – The Supreme Court and Superior Council of Magistrates have not improve their activity significantly by initiating necessary investigations in the case of those whose decisions resulted in lost cases at the European Human Rights Court in Strasbourg, stated V.Turcan, chair of the Legal Commission of the Parliament of Moldova on March 21, 2008

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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

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

Comments:

On Aug. 7, 2008, PRO-TV showed when a judge provided legal assistance to one of the parts in a trial. The Council of Magistrates did not reacted at all by disciplinary sanctions. <http://www.protv.md/stiri/social/judecatorul-reactioneaza>

References:

<http://www.ipp.md/files/Publicatii/2002/decembrie/Osoian.doc> – Reforma judiciara si de drept in RM – conditie in vederea integrarii ei europene

http://www.gov.md/common/15_poleznie-ssilki/strategie-ro_combaterea coruptiei.pdf

In practice, the sanctions imposed on judges who have committed irregularities of various character are rare.

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.

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

21

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

A recent campaign staged by the Anti-Corruption Alliance 'Avere la Vedere' has shown a lot of evidences on the setbacks of the law on declaration and control of incomes and property of state officials, judges, prosecutors, and other decision-makers. Thus, the law allow for the republication of only extirpts from the declarations, while the Central Control Committee is presenting to the public general data with several delays, from the previous years, of declarations, which are extremely important for anti-corruption CBOs. The Law makes compulsory for the officials to declare their incomes only for the previous year, and not all incomes they do own at the moment when they are state-officials, and the same is for the properties, which is reported only from the last declaration to the new one, which makes the application of the law extremely ambiguous. These provisions are ambivalently understood by high top – ranked officials, and the Central Control Committee does not strongly disagree with their interpretations, which bar the access of the public to the true information.

References:

Law No.1264-XV of July 19, 2002 stipulates no asset disclosure requirements for judges.

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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Law on statute of judges, No.544-XIII of July 20, 1995 stipulates only that judges have the obligation to declare their incomes and properties (art.15).

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.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

It seems that the self-governance body of the judiciary (Superior Council of Magistrates) has not yet accumulated a serious and trustful track record of investigative-mechanisms to alleged misconduct in Moldova. Due to their special statute, judges were skipped somehow from the latest amendments to the anti-corruption legislation; and given the fact that some of these regulations are rather easy to overcome or ignore (obligation to declare revenues without appropriate public/transparent mechanism of verification), it cannot be traced when members of the judiciary receive additional sorts of interest from their decisions.

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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

There is no regulation banning the entrance of judges into the private sector after leaving their positions.

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

References:

While the recruitment of judges (selection on a competitive basis – Law on statute of judges, No.544-XIII), oversight of their work and conduct (Law on the Superior Council of Magistrates, No.947) have been more or less regulated, there is no kind of normative act prohibiting or restricting the employment of former judges in the business sector after they leave their positions.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

No specific laws governing hospitality issues at the judiciary have been adopted so far. There is one Professional Ethical Code of Judges, approved at the Conference held on Feb. 4, 2000, which enlists a number of rules that judges must follow, such as: respect the application of the law, avoid being influenced by the political power, public opinion or mass media, avoid being pressured by other judges, keep confidentiality of trial information, etc. Rule No. 28 states that judges cannot receive gifts or other hospitalities as rewards, get loans or other services, if this is made with the scope of influencing the cause in consideration. http://www.scjustice.md/cod_etik.htm

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

The Law on declaration and control of incomes and properties of the state officials, judges, etc. No.1264-XV of July 19, 2002, includes judges as a special professional group that is invited to declare incomes, but the fact that the Control Commission belongs to the government may restrict judges from fulfilling their obligation. By law, the Center for Combating Economic Crimes and Corruption may initiate (art.10) investigations to assess the conformity of the stated values and the real situation of the applicants. Only declarations of the Supreme Court of Justice, Auditing Court, Constitutional Court and General Prosecutor could be announced to the public (art.13)

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.

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

50

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Art.13 of the Law No.1264-XVI of July 19, 2002, stipulates that asset disclosures of the chairs of the highest bodies of judiciary, Constitutional Court, Supreme Court of Justice, General Prosecutor could be posted annually in the local and national media. The legislation states that the total value of the properties is not confidential and can be announced to the public, while other types of information can be posted publicly only with special permission of the officials concerned (transparency of declarations – art.13).

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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

As a rule, reports on the income and properties declaration of officials appear to the public after the finalization of the process of receiving individual income tax reports (spring). However, there is no designed special time frame for disclosure, therefore timing is not something that can be accelerated by citizens.

<http://www.apflux.md/ro/news/politic/declaratiile-de-avere-vor-fi-date-paginile-electronice>

http://www.alianta.md/buletin_upld/d3.pdf – Oamenii legii, corigenti la 'reforme anticoruptie', Obiectiv, No.6, mai 2008

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

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

Comments:

The Central Control Commission made public in 2008 its data on the incomes declared by officials. Nevertheless, a large group of think tanks and public leaders remarked that the Commission, following the implementation of the law No 1264-XV of July 19, 2002, (law on declaration and control of the incomes and properties of state officials, judges and prosecutions, civil servants and other leadership officials,) has performed its duties in a bureaucratic and inefficient way: the data provided to the public is not trustworthy, conflicting with the minimum decent estimates; transparency of the authorities is almost absent; efficiency of the state control is minor and negligible.

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

<http://www.api.md/articles/4315/index.html> – Bufonada declaratiilor de avere

References:

There are no costs incurred to be informed on the income declarations presented by the judiciary.

http://www.alianta.md/buletin_upld/d3.pdf – Declaratiile de avere vor fi in continuare cenzurate?, Centrul pentru combaterea crimelor economice si coruptiei 's-a separat' pe Alianta Anticoruptie

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

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

40a. In law, the legislature can amend the budget.

YES | NO

References:

The Constitution stipulates the competence of the Parliament to approve the state budget and exercise its plenary oversight/control over its implementation (art.66).

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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Annually, the Parliament adopts the Budget Law (September-November), which is the main financial instrument for budgetary spending. The Executive may use without the approval of the Parliament only the funds which are usually accumulated in its Reserve Fund (Regulation on the utilization of the funds from the Reserve Fund of the Government – No.1228 – XIII of June 27, 1997). All major amendments which are required by the Executive shall be discussed and approved by the Parliament no later than the end of the spring session (July).

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

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.

41b. In practice, citizens provide input at budget hearings.

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

Comments:

Due to the budget cuts for 2009, it could happen that Chisinau will not have resources for investment or for other kinds of spending, only for the strictly necessary expenses that make up 90 percent of the budget, the Mayor General of Chisinau Dorin Chirtoaca said, quoted by Info-Prim Neo. <http://www.info-prim.md/?x=23&y=17481>

References:

In practice, citizens may be invited to attend the hearings on budgetary process at the local level, but not at the national level. Due to the fact that the national TV and Radio have not devoted enough time to budgetary affairs, opposition claimed that the budget for 2008 was adopted almost in secret, and that the simple majority of votes needed to adopt the budget law proved to be satisfactory to the ruling party, which again avoided serious talks. Meanwhile, local authorities represented by the opposition leaders after the 2007 local elections were targeted by financial repressions from the government, which reduced their funding. For instance, for 2009, Chisinau Municipality will receive 40 million lei (US\$3,868) less than in the previous year, while for the other major city of Moldova, Balti, with a Communist mayor, the transfers have been increased – <http://www.info-prim.md/?x=23&y=17481>

<http://www.e-democracy.md/comments/legislative/20011219/index.shtml?print>

Joaca de-a bugetul c rii, Nadin Luchian, pentru TIMPUL, <http://www.timpul.md/Rubric.asp?idIssue=302&idRubric=1968> –

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.

41c. In practice, citizens can access itemized budget allocations.

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

Comments:

The Government Decision no. 668 of June 19, 2006 stipulates the format of the websites elaborated by the Ministry of Informational Development, defining the notion of official web page as a set of official information in electronic form with means of interactive dialogue which are provided for citizens within the Internet network. It is worth underlying: interactive dialogue,” because this is the essence of web-pages. The official web page of the Presidency of the Republic of Moldova includes a range of data regarding the leadership of the presidency, data about its meetings, official visits, etc. Shortcomings of this web site are its lack of data on the authority’s legislative creations and programs and project descriptions. The site does not include contact information for employees who could facilitate the dialogue between public authority and citizens. The web site of the Parliament is richer in official information, providing sufficient data about the legislative work and a series of analytical reports. The presentation of information related to parliamentary factions, commissions, deputies as well as setting up an on-line dialog with the citizens would be welcome. <http://www.accesinfo.md>

References:

In practice, citizens can access itemized budget post-factum, after the adoption of the local or central budgets. They can find this information by accessing the official bulletin (Monitorul Oficial,) or the official websites of the governmental ministries and other agencies; <http://www.gov.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.

43. Is the legislative committee overseeing the expenditure of public funds effective?

25

43a. In practice, department heads regularly submit reports to this committee.

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

References:

In practice, regular hearings are convened by the Parliamentary committees, but they are not always satisfactory and constructive. Due to the fact that the ruling majority of the Parliament has its own mono-party Cabinet of ministers, it had all reasons to block any substantive hearing on the spending or failures due to the incumbent government. A change of government was possible in March/April 2008, with a new prime minister voted in April, but with the same oversight from the largest majority in the Parliament. Every Thursday, Parliament holds hearings. <http://www.parlament.md>

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.

43b. 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:

Participation of the members of fractions in the parliamentary committees cannot be seen as equal and fair, as they are unequally assisted in their law-making work. See <http://www.parlament.md/.../Technical%20Audit%20of%20the%20Informational%20>. At present, the parliamentary staff consists of 194 people, who are hired on the basis of four-year contracts. Besides the parliamentary staff working in the directorates mentioned above, there is a number of counselors. The chairman of Parliament has three counselors and both vice-chairmen have two counselors. Each of the permanent committees also disposes of some assistants and consultants who are employed to assist them. It is the competence of the Permanent Bureau to determine the structure and the legal status of the parliamentary staff, to draw up its budget, and to submit its proposals on these matters to Parliament for approval. It is the competence of the chairman of Parliament to appoint and discharge the members of the staff.

References:

Chairs of parliamentary committees were distributed after the 2005 parliamentary elections on the basis of the proportional number of mandates of the parties. The parliamentary fractions nominated their members in the standing committees, organized through the Regulation of the Parliament. Some more special committees have been organized lately in order to adopt or speed up the adoption of some critical laws. Usually, chairs of the strategic committees have a key-role in preparing the drafts, setting up the data for deliberations, or deciding over the special documentation hearings.

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

It is the Committee for Economic Policy, Budget and Finance, which has 13 members. In general, the parliamentary control over the government and its ministers is considered to be a problem. This problem is caused by various more technical reasons, such as lack of capacity, knowledge and experience, but also by political reasons, such as unwillingness from the side of the government to take this parliamentary function seriously. The increase of the influence of the president on day to day politics probably leads to a decrease of the influence of Parliament thereon. It is difficult for the government and its ministers to serve two masters, both the Parliament and the president of the Republic. In this respect, the Moldovan Constitution is quite clear: it is the Parliament to which the government and its members are accountable. The ordinary members of Parliament do not have sufficient professional support. The counselors of the permanent committees, who often do not meet the required standards, only serve the chairmen and vice-chairmen of these committees. The same applies to the various directorates and services of the parliamentary staff. They also mainly serve the leadership of Parliament and not its ordinary members, although these are entitled to have the assistance needed according to a great number of legal provisions, which the expert team has mentioned before. Due to a lack of finances, the members of Parliament do not have personal assistants. The various parliamentary groups have two to four political assistants at their disposal. As a result of this shortage of assistance, members of Parliament cannot

function as effectively and efficiently as they should, neither in their role as legislators, nor in their controlling role over the government.

References:

http://dss.ucsd.edu/~mshugart/ied/pdfs/moldova/usaidd_moldova_assesment_2005.pdf

http://www.transparency.md/Docs/SPAI_GA_Moldova.pdf

Republic of Moldova Action Plan As Capacity Test for the Moldovan Government: Screening the Implementation of the Plan's Economic Provisions-

<http://www.expert-grup.org/docs/23/screening-PAUERM-eng.pdf>

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.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES

NO

References:

A Special/Standing Committee on Budgetary and Finance Affairs exists in the Moldovan Parliament, with the general competence to prepare a professional drafting of the laws which affect the adopted budgetary laws, estimate new expenditures and track the implementation of the adopted laws and other normative acts (Regulation Nr.797 of April 2, 1996). Oversight over the public funds is implemented by the Auditing Court, as a separate chamber/authority (No.312 – XIII of Dec. 8, 1994), which provides annual reports to the Parliament.

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).

IV-1. Civil Service Regulations

64

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

A new draft of the law is being prepared by the government, as a result of the central administration reform strategy launched in November 2005.

References:

Law on civil service, No.443-XIII of May 4, 1995. 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.

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

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 clientèle-bound networks. In particular, the article provisions explicitly prohibit civil servants to be members of a 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.

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.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

Civil Service is the target of various critics, who accuse it of being corrupt, inefficient, expensive. In 2002, the Parliament decided to assess the level of professional expertise and qualification of the staff hired at state positions, and the results were less than satisfactory. Since 2006, a special coordination unit has implemented a functional analysis of most of the executive agencies of the government in order to assess critical setbacks, and find out solutions to upgrade the effectiveness of the state bodies. Nevertheless, results are not yet strikingly evident from the implementation of the new strategy on reforming the central government administration. <http://www.transparency.md/Laws/hp1213-02.pdf>

References:

Art. 30 of the law (Civil Service Law No.443-XIII of May 4, 1995) 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 dismissal.

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

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

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Art 11 of the law – Civil Service Law (No.443-XIII of May 4, 1995) – prohibits recruitment of individuals who had been sentenced by a judiciary decision. A new code of ethics has been developed and a new agency for civil servants was established as a result of the central government reform strategy in 2007.

http://www.gov.moldova.md/aparat_guvern.html –
<http://www.rapc.gov.md/file/SPublic-Moldova.ppt> –
http://www.rapc.gov.md/file/CP_lege_serv_pub-ru.doc
<http://www.capc.md/files/239.doc>

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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Independent reports show that the political influence over the civil service through the installation of the ruling CPM in 2001 led to massive reprisals amongst civil servants and replacements of the good governance criteria with criteria of political loyalty and favoritism in the advancement of state officials. <http://www.civic.md/rapoarte/societatea-civila-pentru-o-moldova-europeana.html>

References:

Political interference over civil servants is one of the most oppressing factors hindering the stability of the civil service in Moldova. <http://www.viitorul.org/public/368/ro/Munteanu%20edited2.doc>
<http://www.e-democracy.md/comments/legislative/20020722>
<http://www.justice.gov.md/index.php?cid=173> – 265k

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Independent Report of the 13 NGOs, representatives of the civil society (following the report of the European Commission of Dec. 4, 2006, and completion of the two years after the signature of the Action Plan EU- RM.

References:

Along the implementation of the new strategy of reforming central administration in Moldova, some steps indicate that changes are happening. A new draft law of the civil service is under preparation. After the finalization of the functional analysis on all executive agencies, ministries have started to address some of the critical aspects. A new law enshrining the ethical code of the civil service was adopted in 2008 (No.25-XVI din Feb. 22, 2008). Nevertheless, 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 single central administrative body in charge with civil service reform and human resource

management in the government. This agency is promised as part of the on-going reform strategy in the central administration. It 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 civil servants.

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.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

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

Comments:

The public civil service in Moldova is changing slowly, but painfully from a system too dependent on the ruling party selective criteria of filling in the official positions with party staff. In other words, the civil service is not based on a normal rotating system which exists in industrialized countries. Rather, it heavily depends on who wins the election. Politicization is shadowed by an incredible lack of professional experience amongst civil servants, who used to follow political waves in order to get to the 'carrots', instead of cultivating their own capacities to perform. Every winning party appoints loyal servants, and the next coming party removes most of them to install its own people. Both then and now, a compromised politician who is close to the power may get a diplomatic job (which is very profitable), in spite of a poor or no diplomatic education.

References:

The poor performance of central public administration is to a large extent determined by lack of an efficient and competitive incentive system for civil servants. In particular, the low pay level does not allow for attracting and retaining well-trained specialists in public administration, and creates space for corruption in the system. Low salaries contribute to a high level of staff turnover that undermines the capacity building efforts made until now, in particular through foreign technical assistance projects. Also, the remuneration structure is not transparent enough: the system does not provide a clear-cut connection between performance and level of remuneration. To this effect, reforming the incentive system for civil servants is an important part of CPAR. The pay system reform was initiated by approval of the Law No. 355-XVI of Dec. 23, 2005 on Budget Sector Pay System for 2006-2010, which envisages a gradual increase of salaries for public sector staff, including civil servants. The real growth of civil servants' capacity will be ensured by the implementation of a comprehensive reform of the incentive system, which is not limited just to increased salaries. In the short term, the existing practices of classification and ranking of public officers will be put in line with a more efficient remuneration of public officers, by ensuring a connection between the level of remuneration, on the one hand, and the employees' efforts, skills, and performance, on the other hand.

http://www.scers.md/files/NDS_211207_en.pdf

http://www.unhcr.se/SE/Protect_refugees/pdf/Moldova_nov_04.pdf

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.

45d. In practice, civil servants have clear job descriptions.

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

Comments:

H O T R Î R E pentru aprobarea Planului de actiuni privind realizarea Strategiei de reform a administratiei publice centrale în anul 2008
nr. 59 din 25.01.2008, Monitorul Oficial nr.21-24/125 din 01.02.2008

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, who 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 the 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:

<http://www.azi.md/iv?iv=120&lang=Ro> – 30k – Sergiu Tatarov: Scopul reformei consta in instituirea unui sistem modern;
http://www.mai.md/img/docs/Strategia_APC.doc – H O T A R Î R E pentru aprobarea Planului de actuni privind realizarea Strategiei de reform a administraciti publice centrale în anul 2008 nr. 59 din 25.01.2008 Monitorul Oficial nr.21-24/125 din 01.02.2008;

Still, the government lacks a clear cut and effective human resource policy and has not studied the labor market – including public service – in order to streamline employment procedures. Public perception is that employment in the civil service is commonly used as a reward.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

Comments:

According to art.4 of the Law on Salaries (No.847-XV of Feb.14, 2002), wages include the payroll (tarrifar salary of the function) and supplementary salary (bonuses, additional payments) and other incentives to the salary. This structure of the wage is generally applied to the civil servants' remuneration.

References:

<http://www.rapc.gov.md/file/Noutatile%20reforme%20APC%20-%20nr.03%20-%20Martie%202008.doc> –

<http://www.azi.md/iv?iv=120&lang=Ro> – Sergiu Tatarov: Un serviciu public devine atractiv cind intruneste mai multe tipuri de motivatii.

[http://www.aap.gov.md/common/15_Poleznie_ssilki/Strategia_reforme APCentrale.doc](http://www.aap.gov.md/common/15_Poleznie_ssilki/Strategia_reforme%20APCentrale.doc) – În prezent, serviciul public din Republica Moldova nu dispune de un sistem al serviciului public corespunzator.

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.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

Comments:

<http://www.e-democracy.md/e-journal/20060301/> – 75k -Salariul mediu lunar în Republica Moldova este de 5,6 ori mai mic fac de cel ...

<http://www.info-prim.md/?x=102&y=17254>

<http://www.timpul.md/Rubric.asp?idIssue=28&idRubric=517>

References:

<http://www.moldpres.md/banner/2008/rom.html> –

As a consequence of the central government reform strategy, the government agreed to establish a special agency for the recruitment and management of civil servants. However, it continues to ignore the announcement of competitions for the free positions to be completed with new staff via open competition tenders. The topic of salary level is equally quite confusing. Due to the fact that civil servants receive many additional benefits, the payroll salary – although low – is generally several times higher than in other budgetary fields, and if the civil servants are not assessed and paid according to the results, discrepancies seem to be unparadonable. On the other hand, few people know how much a civil servant earns, because the information on pay is not made public. 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.

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

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

Comments:

<http://www.transparency.no/article.php?id=228&p=> Interference from Politicians or Civil Servants Can Also Buy Legal Cover ...

References:

[http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval2\(2006\)1_Moldova_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval2(2006)1_Moldova_EN.pdf) –

Projected measures include the sensible use of public finances; staff recruitment by competitive examination; separating the framing and promotion of policies from the supervision and provision of services; preventing conflicts of interest; the establishment of an appropriate system of remunerating public officials by introducing a so-called ‘anti-corruptive threshold’; and the establishment of a proper assessment system. Until now, however, we cannot yet evaluate the existing system of redress mechanism, because of the large political influence on the selection and advancement of officials on political lines, lack of career officials, and unclear assignments prescribed to the hired personnel of the civil service. As a result, political influences and links are consistently penetrating the specific instruments through which civil servants are usually recruited or dismissed.

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.

45h. In practice, in the past year, the government has paid civil servants on time.

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

Comments:

The official site of the coordination group for the implementation of the strategy on poverty reduction and economic growth:
<http://www.scers.md>

References:

Wages/salaries are paid in time, with no major delays. The same can be said about local government officials, although they are separated from the civil service system of official positions. It must 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 accomplishments. The salary-increase followed the logic of the age-experience balance, which is very often an incentive against the young and talented people with brilliant education, who remain outside of the system of recruitment/or promotion. Some authors estimate that the salaries will keep to increase threefold by the end of 2009. Incomes of the population grow much faster than the GDP and labor efficiency. http://www.pdc.ceu.hu/archive/00003739/01/moldova_2008_economy.pdf

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Formally, Civil Service Law (No.443-XIII of May 4, 1995)

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 the civil servants that are suspected of corruption, or have been sued for various cases of corruption.

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

44

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Law No.1264 – XV of July 19, 2008, The law stipulates the obligation of civil servants, together with other categories of state officials, judges, etc, to provide a declaration of the incomes and properties registered last year to a specialized body of the government – the Central Control Commission, which is entitled to oversee and collect the declarations.

YES: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law on the conflict of interests, No.16-XVI of Feb.15, 2008 is a new law regulating situations in which civil servants are obliged to recuse themselves from policy decisions if their personal interests are somehow in place.

http://www.transparency.md/Laws/conflictul_de_interese_16-XVI.pdf

<http://www.rapc.gov.md/file/Discipline%20of%20civil%20servants%20ROM.ppt>

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

Art. 11 of the Law on civil service imposes a list of restrictions for the occupation of civil service positions, such as: cases when applicants have limited legal capacity; have criminal records from previous irregularities committed; are not capable in medical terms to execute the functions. Other restrictions are related to the possible conflict of interests, due to the relatives working in the same department or institution. Civil servants are banned from maintaining two positions at the same time or cumulate other jobs in other public authorities, etc.

Law of the civil service – No.443 – XIII of May 4, 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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

<http://www.rapc.gov.md/file/Discipline%20of%20civil%20servants%20ROM.ppt>

Media have largely reported about cases when expensive gifts have been provided to the state officials without any possibility for the judiciary to intervene.

http://www.presa.md/content.php?goto=news&do=show_news&category_id=3&news_id=7260

Pre_edintele face cadouri electorale din bani publici ...

References:

According to art. 8 of the law on corruption and protectionism, No.900 of June 27, 1996, civil servants are discouraged to accept gifts or hospitality offered to them while they hold their official positions. The same law (art.10) stipulates the obligation to issue a declaration of income and properties when applying to a job in the civil service. 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.

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

http://www.alianta.md/download.php?pathu=buletin_upld/d3.pdf — Declaraciile de avere vor fi în continuare cenzurate?

References:

Independent auditing is not stipulated by the new legislation on civil service conduct and organization in Moldova. Specialized bodies, indicated by the Law on conflict of interests, Law on preventing and combating corruption, may request additional data, after civil servants had presented their declaration of incomes, but they will be not substituted by independent auditing.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.garda.com.md/investigatii/ministii-juvariile-preferate-ale-presedintelui>
<http://www.investigatii.md/index.php?art=24> – 30k

References:

There is no explicit and formal ban on civil servants willing to make business after their official tenure is over. No such provisions apply to politicians, judges, prosecutors or civil servants, even after the launch of the central governmental reform in 2005, and the adoption of a new Civil Service Law (No.443-XIII of May 4, 1995). Many former ministers have been replaced by others during the same Cabinet of Ministers, when they were delegated to take the lead in some larger companies, or enterprises. Since 2001 till 2007, over 26 ministers have been replaced in the same Cabinet of Ministers (16 ministers in total). Most ministers were re-located to business. No explanation for the reason to replace a minister has been every provided, and the replacements were made by the president, and not by the Parliament of Moldova, which had confirmed the government. – Ziarul de Garda, Nr. 191 (7 august 2008)

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

The legislation prohibiting hospitality gifts to officials is not properly implemented, and the blame fails on the specialized agencies. <http://www.garda.com.md/investigatii/cadourile-corupte-ale-demnitarilor>; fi introdus ilegal în Republica Moldova dou a pistoale primite cadou de la demnitari str ini,
... http://www.bbc.co.uk/romanian/moldova/story/2008/03/080326_pasat_ancheta.shtml
<http://www.timpul.md/Rubric.asp?idIssue=373&idRubric=667> -... Cicinov scrie c nici când n-am primit ca cadou arm de la pre_edintele c rii". ...

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

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

Comments:

<http://www.investigatii.md/index.php?art=127> -DEMNITARIII ÎN T ÎNUIESC AVEREA. [2008-07-25

<http://www.fes.md/Studiu%20100.pdf> – 100 cele mai presante probleme ale Republicii Moldova în 2007

References:

The regulations on conflict of interests have been adopted in 2008, therefore it is quite difficult to evaluate their effectiveness at this moment.

Law No.16-XVI of Feb. 15, 2008.

New regulations shall educate and spread out a new culture of civil service.

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.

46i. In practice, civil service asset disclosures are audited.

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

Comments:

<http://www.chisinaucentru.md/?pag=declaratii&type=sef> –

<http://www.economica.md/economie-si.../inca-trei-deputati-si-au-facut-publica-declaratia-de.html>

Avere la Vedere În perioada 22-28 februarie

<http://www.dejure.md/index.php?go=news&n=4675> Ce ascund demnitarii moldoveni atunci cand refuza sa-si faca publice declaratiile pe avere?

References:

Law on Declarations and Control of Incomes and Estate Properties (no.1264-XV of July 19, 2002)

Law on Access to Information (no.982-XIV of May 11, 2000)

Independent auditing of the governmental declarations is not a regular practice. By law, civil servants and state officials MAY if they want to present to the public the overall amount of their incomes or properties, but the legislation does not specifically requires that. Income declarations shall be posted on a web page of the ministries or state agencies, in a transparent and systematic order. Disclosure of the assess ts and incomes is equally regulated by the law.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

47. Can citizens access the asset disclosure records of senior civil servants?

50

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES

NO

Comments:

<http://www.ong.md/index.php?mod=home&hmod=postbyid&id=1802> – 2008-07-28. Ce ascund demnitarii moldoveni atunci când refuz s -_i fac publice declaraciile pe avere?

Disclosure acts are rarely used, and media have to fight hard in order to depict declarations. Politicians or civil servants usually 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', media often pay painful fines, and are generally cautious to go to court against top-level officials, who are politically and judiciary advantaged. Since January 2008, a large campaign 'Avere la vedere' has been staged by API and tAnti-Corruption Alliance of Moldova, aiming to publish and present the income declarations of the officials.

References:

Law on the declaration and control over the revenues and properties of the state officials, judges, prosecutors, civil servants and other persons with official positions, No.1264 – XV of July 19, 2002, Art.13

It stipulates the transparency of the declarations, which are to be made publicly available on the annual basis via mass media and websites of the concerned authorities. The law does not consider as confidential the following items of information: total value of the declared properties, list of all goods which are the object of declaration.

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

Comments:

<http://www.jurnal.md/article/5496/> Într-unul din numerele trecute ale JURNALULUI am făcut o comparație dintre sistemul declarațiilor de avere din R. Moldova și cel din România,

<http://www.untila.md/?m=200807> — Actualul sistem de prezentare și verificare a declarațiilor pe avere este unul imperfect.

<http://www.just.ro/.../tabid/.../Default.aspx?.../Moldova%20Noua/Judecatoria%20M>

<http://www.parties.e-democracy.md/docs/pamn/200605181/>

References:

Delays in releasing information are common feature. Normally, it takes more than a month for a journalist to obtain information on assets owned by civil servants. To begin with, regular people do not know about the Law on Access to Information. When they know about it, they are highly skeptical about the outcome, and choose to save time and nerves". Public trust in civil service is significantly low, as it is seen as a corrupt environment.

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.

47c. 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 media and used in investigative reporting.

References:

Center for Investigative Journalism – <http://www.investigatii.md>;

International Transparency – Moldova: <http://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

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. 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**

References:

Even the recently adopted regulations do not refer to the protection from recrimination cases or other negative consequences against those who would report cases of corruption, graft, abuse of power, etc. This is why perhaps nobody is reporting to the specialized services, such as the Central Control Commission and Center for Combating Economic Crimes and Corruption.

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.

48b. 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.

Comments:

This practice is not yet in place.

References:

There is no such practice, and perhaps the only civil servants or officials is responsible for supervising these cases are the senior officials. Communication is low and inappropriate, while selection criteria proves that political bias is the strongest factor for the selection of civil servants.

Important efforts have been recently made to increase the standards and set the tone for a new culture of the civil service. For instance, several training workshops and conferences, such as those organized by SIGMA and OECD (Improvement of Civil Service through an Efficient HR Management held in Chisinau on March 28-29, 2008) were centered on the need to improve the HR management in public administration for ensuring a democratic and efficient governance serving the interests of the citizens. <http://209.85.135.104/search?q=cache:i93PY7QZ4IJ:www.rapc.gov.md/file/eng.%2520Noutatile%2520reforme%2520APC%2520-%2520nr.03%2520-%2520Martie%25202008.doc+Moldova+selection+civil+servants&hl=ru&ct=clnk&cd=3&gl=ru>

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.

48c. 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**

References:

There are no such cases in the private sector. There are several red-line communication channels for reporting cases of corruption to the bodies empowered with such competencies (e.g. the Center for Preventing and Combating Economic Crimes and Corruption.) Media launched several investigations to research into perceptions of or real cases of corruption, thus creating a pressure on reforming the civil service.

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.

48d. 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:

<http://www.garda.com.md/12/interviu> – Nu sunt timpuri atat de grele incat sa nu poti fi cinstit – Interviu cu Vladimir Balan, locotenent colonel, seful Aparatului directorului Centrului pentru Combaterea Crimelor Economice si Coruptiei (CCCEC)
http://www.transparency.md/Docs/Coruptia_pp221-383 – CORUPPIA ÎN MOLDOVA: IMPACTUL MACROECONOMIC

References:

The legislation does not secure recrimination for those who report cases of corruption in the public sector, and therefore, some could report about their available information or evidence on the basis of anonymity. <http://www.garda.com.md/12/interviu/>

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The director of the Center has reported positive results in the preventing and curbing corruption cases during the past year. Pe m sursa implement rii Strategiei nationale de prevenire _i combatere a corupciei cara noastr a înregistrat, în ultimii ani, anumite progrese în domeniul prevenirii _i combaterii corupciei, a opinat vicedirectorul CCCEC, domnul Vitalie Verebceanu. Obcinerea acestor rezultate a fost posibil _i în condiciile asistentei acordate de organisme internationale, donatorii externi.

References:

Law on the Center for Combating Economic Crimes and Corruption, No.1104-XV of June 6, 2002 – <http://www.cccec.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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

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

Comments:

Implementation of the new regulations on financial internal auditing is one of the public sector reform priorities in Moldova. It goes without saying that capabilities to implement such instruments are resisted by low commitment to reform and lack of resources.

References:

The government initiated in 2007 procedures to improve internal control systems of the public organizations, and embraced the PIFC concept under the World Bank's Public Financial Management Project. The Ministry of Finance has started to draft a new comprehensive public internal financial control policy paper and to set up adequate institutional arrangements for the coordination and harmonization of public internal control and internal audit. http://www.ec.europa.eu/world/enp/pdf/progress2008/sec08_399_en.
Decision of the Auditing court No.82 of Nov. 29, 2007 on the approval of National Standards for the Internal Auditing in Moldova <http://www.mf.gov.md/ro/delurproject/ccecsdp/dpr/>

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

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

Comments:

<http://www.garda.com.md/20/dosar>

References:

Internal auditing is a new form of ensuring accountability and transparency for the public sector organizations. As a priority of the national program of the government, it was implemented in 2007, and now it becomes an usual feature of several local and central authorities, agencies. <http://www.moldpres.md/banner/2008/rom.html>
This goes hand in hand with the reformation of the main functions of the National Auditing Chamber, which converts its oversight and revision functions into public auditing, defines standards and sets up benchmarks of management for the public sector. <http://www.mfa.md/noutati/?page=560&desc=20&num=20>

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

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

References:

Implementation of the regular internal auditing activities is mentioned as an effective practice by the government in its Report of Implementation presented in 2007 to the European Commission within the framework of the EU-RM Action Plan.

See:

http://www.mf.gov.md/common/raportinfo/programs/action/Raport_trimestrul_I_2007.doc

Ministry of Finance has elaborated the Ethical Code for the Internal

Auditors: http://www.minfin.md/common/istitutie/financeservice/codul_etic_carta_de_audit.doc

<http://www.europa.md/rom/sbmen/38>

<http://www.info-prim.md/?x=22&y=17255> – 28k

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.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

49. 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:

http://www.viitorul.org/public/433/ro/PE_1.pdf Contextul economic _i institucional al corupciei
<http://www.garda.com.md/12/interviu/> – Nu sunt timpuri atat de grele incat sa nu poti fi cinstitInterviu cu Vladimir Balan, locotenent colonel, seful Aparatului directorului Centrului pentru Combaterea Crimelor Economice si Coruptiei (CCCEC)

References:

Law on the prevention and combating corruption, No.90-XVI of April 25, 2008, arts. 7 and 9

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.

50
IV-3. Procurement

51. Is the public procurement process effective?

80

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Law on the conflict of interests, No.16-XVI of Feb. 15, 2008

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.

51b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

Comments:

The National Procurement Agency encounters difficulties in ensuring compliance with the regulations by local officials, who need convincing of the need for procurement procedures, and support and training to carry them out. The web-site of the Agency for public acquisitions and material resources is not well maintained and designed, with lots of missing information and updates. Generally, the Agency does not convene upon training for public procurement officials.

References:

A new law on public acquisitions was adopted in 2007 (nr. 96-XVI of April 13, 2007). The National Procurement Agency was created in 1998 and every state budget institution has a Procurement Working Group to carry out its purchasing function. <http://tender.gov.md/> Consequently, the procurement activities are decentralized, while the monitoring and control over purchasing decisions is centralized under the National Procurement Agency. <http://www.oecd.org/dataoecd/49/11/37152716.pdf>

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

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

Comments:

TI-Moldova is implementing an evaluation of the public acquisition activities in Chisinau, saying that the private sector makes 34-58 percent of their profits from unofficial taxes and bribes. http://www.transparency.md/Docs/PR_14.02.08.pdf

References:

Media information on public acquisitions in Moldova is scarce and inconclusive. The existing Agency, which is subordinated to the government, regularly issues a bulletin with various tender announcements. The content is placed online as well. http://www.transparency.md/activities_ro.htm

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

Public procurement officials are not explicitly listed by the Law on preventing and curbing corruption, No.900 of June 27, 1996, although they can be inferred from the list of public officials of the local territorial offices of the government, head of departments and state services, etc. (art.3). However, with the aim to ensure efficiency, objectivity and transparency of the public acquisitions of goods, works and services, and oversight in the implementation of the legislation (Law nr.96-XVI of April 13, 2007 on public acquisitions – Monitorul Oficial al Republicii Moldova, 2007, nr. 107-111, art. 470), the government established a national Commission for the control of public acquisitions (nr. 648 of May 29, 2008).

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.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

By law (No.96 – XVI of April 13, 2007), public acquisitions procedures are applied for activities which exceed the value of 20.000 lei (US\$1,940), and works and services over 25.000 lei (US\$2,427), etc. Art. 3 refers to the calculation of the value of services, goods or works, and art. 4 stipulates the exceptions. In most cases, the Agency for Material Resources, Public Acquisitions and Humanitarian Aid is the central administrative authority, with the task to regulate on behalf of the state, oversee, control and coordinate acquisitions undertaken in the public sphere. The Agency is an autonomous entity, with specific competencies as defined in the art. 9.

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Art.53 of the Law defines the specific cases in which public acquisitions can be made from a single source, but generally competitive offers are required in order to ensure the credibility of the process and competitive prices. When the procedure is not fully in conformity with the existing legislation, the Agency may cancel the acquisition procedure (art. 59).

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Art.71 of the Law (Chapter IX) provides a right to every economic operator, which believes that some rights have been infringed on by the regulatory agency, to appeal in a court of justice to contest the decision or the applied procedure, according to the legislation. Within 10 days after the tender is contested, applicants may fill in the log to a court at the Agency, which is in charge with the examination and resolution of the claims received from the operators (art. 73).

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Art.71 of the Law on public acquisitions (2007) can be used by economic operators (companies) to contest a decision or the implementation of a process by another operator with the Agency. A specific procedure to log in the claim to the Agency is well defined by art. 72: must be submitted in writing, within 10 days, with full name of the operators. The Agency decides whether to admit or reject the claim, to require a reevaluation, or to take other measures.

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

The Agency for Public Acquisitions selects the candidates for its tenders from the list of qualified economic operators (art.17), which receive an official approval, allowing their access to the procedures. The list falls into the responsibility of the Agency. Another list, regularly updated by the Agency, contains certain interdictions for economic operators (art.18), which include economic agents who committed some irregularities, who are thus prohibited to attend public acquisition activities for three years.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

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

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

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

Comments:

The agency put more efforts in 2007 to train its hired staff, and educate new standards in public acquisitions, but it also noted that the interest of the private sector is still low, with many agencies trying to avoid the procedure for public tendering.
<http://www.tender.gov.md/ro/anunt/1/>

References:

The Agency claims that it has a list with the companies which were prohibited to participate in the tendering procedures in 2007- <http://www.tender.gov.md/ro/anunt/1/> – but, the web-site does not make it explicit which companies are currently banned from bidding.

The following is a list of the qualified companies: http://www.tender.gov.md/ro/w_list/.

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.

52. Can citizens access the public procurement process?

54

52a. In law, citizens can access public procurement regulations.

YES | **NO**

References:

Art. 64 of the Law on Public Acquisitions clearly states that the Agency consider the offers to tender confidentially, and that negotiations have a strict confidential nature. Neither part of the participating agents may divulge to a third party, without its consent, information on the questions raised during negotiations. But, public opinion may see the information by filling up a special request form to the Agency, may consult the we-bsite, or process the data of the regular bulletin on public acquisitions, which is edited by the Agency – <http://www.tender.gov.md/ro/about/prez/>

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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Art. 6 of the Law defines the principles on the basis of which public acquisitions are being made in Moldova, including: effective use of public finances and minimization of the risks to the contracting authorities, transparency of the public acquisitions, ensuring loyal competition, protection of environment and sustainable development through public acquisitions.

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

References:

In practice, public authorities do not report in time about their purchases, and sometimes even try to avoid the Agency (Raportul privind activitatea Agenciei Rezerve Materiale, Achizicii Publice _i Ajutoare Umanitare, desf _urat în primul semestru al anului 2007 în domeniul achizițiilor publice).

Tender results can be accessed from the Agency bulletin: http://www.tender.gov.md/common/procurement/bap/buletin_nr_71.pdf. Media reports – http://www.927979.md/main.php?page=i_15 show that corruption is still rooted in the management style of some officials.

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

References:

The Agency issues a weekly bulletin on public acquisitions at a reasonable cost, which can be ordered for subscription, or can be accessed free of charge from the official web-site: <http://www.tender.gov.md/ro/procurement/bap/>

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.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Media and watchdog organizations still report lots of cases in which public acquisition procedures are not appropriately conducted, serving as a screen wall to the same big deals of state officials:

<http://www.e-democracy.md/comments/socioeconomic/200311052>

<http://www.timpul.md/Rubric.asp?idIssue=145&idRubric=1980>

http://www.transparency.org.ro/publicatii/cercetari_si_sinteze/index.html

References:

In practice, the Agency tries to advertise the public acquisitions on several channels: internet, newsletters, as well as regular announcements in some economic and business journals, such as: Eco, Moldova Suverana, Logos Press, etc. It is unclear how the Agency decides upon the selection of economic magazines for advertisements, as the costs are quite high.

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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

TI-Moldova reports show that business entities spend 34-58 percent more on public acquisitions because of unofficial taxes and bribes. A specific report on measuring side effects of the existing system of public acquisitions in the Chisinau Municipality is provided on their website – http://www.transparency.md/documents_ro.htm.

References:

By law, the system of public acquisitions, its organization and management of public finances shall be transparent and equal to all its participants (art.8 o the law on preventing and curbing corruption – No.90 – XVI of April 25, 2008). Citizens can access public procurement results by purchasing the weekly bulletin of the Agency, or by accessing the web-site on which the same information is posted. One shall observe that several institutions have elaborated their own instruments to fight corruption and ensure transparent governance without expecting to brake the law. For instance, the Technical University of Moldova has announced an ambitious plan of actions to fight corruption through transparent acquisitions, and other universities followed the example.

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

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law on privatization (No.627 – XII of July 4, 1991) was one of the first laws adopted after the independence of Moldova from USSR. By law, all legal and physical persons, excepting public authorities, state and municipal enterprises, institutions financed from the state budget or local budgets, legal and physical entities residing abroad, with exceptions set up by the legislation may participate in the process of privatization, without discrimination.

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Art. 2 of the Law on privatization stipulates the principle of equality of rights to all participants. The Law on combating corruption and protectionism from June 27, 1996, specifies the notion of protectionism as a particular type of conflict-of-interest, through an action or inaction of the decision factor regarding protection in solving certain problems of interested persons, through favorable attitudes towards them, irrespective the reasons. Art. 190 of the Conflict of Interest of Civil Code states:(1) A non-commercial organization should avoid in its activity a conflict of interest. (2) It is considered that a conflict of interest exists in the case of

signing a legal act related to patrimony of a non-commercial organization between this organization and an interested person. Art. 85 of Law on joint stock companies (nr. 1134) states the notion of conflict-of-interest transaction: (1) A conflict-of-interest is a transaction or more interlinked transactions involving persons who have the right to participate in the decision-making of such transactions. Interested parties will present at least once per year written declarations, which will help trace conflict-of-interest transactions back in time. Finally, the Law on public service nr. 443-XIII, from May 4, 1995, (which will be replaced by a new Law soon) states that private interest consists of any personal advantage derived by the public functionary for him/herself or his/her family; relatives, friends or other physical or legal persons or organizations that s/he had business or other type of relations with, that can affect his/her impartiality and integrity within the exertion of the public function.

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.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

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

Comments:

There are several limitations in the Law on government, Law on the statute of MPs, Law on the statute of judges. For instance, in the Law on government from May 31, 1990, nr. 64-XII, Art. 29, a minister does not have the right to: 1) hold any other function in bodies of central public authorities; 2) become involved in commercial unities; 3) practice business activities personally or through third parties; 4) practice another remunerated position, except for scientific and pedagogic activities. The Law on Prosecutor's Office from March 14, 2003, no. 118-XV, Art. 23, states that The function of a prosecutor is incompatible with any public or private function, except positions related to scientific or didactic activities."

Nevertheless, media report that some public officials have personal companies and an astonishing number of relatives as business partners.

<http://mdn.md/subterranean.php> – DEMNITARII ISI TaINUIESC AVEREA COMUNICAT DE PRES ; <http://www.9am.ro/stiri-revista-presei/Politica/15392/Demnitari-cu-averi-nedeclare.html>

References:

A Law on conflict of interests was adopted in Moldova only in 2008 (No.16-XVI of Feb. 16, 2008). In addition to the law, civil servants are subject to various forms of limitations in their activity in order to avoid conflict of interests or unhealthy interests. The law on civil service (1995) lays out some ethic norms: not using the public function for personal interest; acting impartially; avoiding situations which might initiate a potential conflict of interest.

The Law on public service from May 4, 1995, nr. 443-XIII, Art. 11 states the following restrictions: (1) A public function cannot be held by a person who: a) is considered by a court decisions incapable or with limited capability; b) has previous convictions resulted from deliberate offenses, which were not canceled in ways established by law;c) is not medically able to exert a function (this must be certified by a medical certificate); (2) A public functionary can not hold a function in subordination or under the control of a function held in the same public authority by his/he direct relatives (parents, brothers, sisters, children) or relatives-in-law (husband, wife, parents, brothers and sisters-in-law). In case when these restrictions are broken, the public functionary is transferred to an institution which would exclude such subordination, but if the transfer is impossible s/he is fired on the decision of the hierarchically superior body.

Civil servants cannot hold two positions at the same time or cumulate other work, through a contract or other agreement, at foreign or mixed organizations, enterprises, institutions; organizations with any kind of juridical functions; civil associations, etc., the activity of which is controlled, subordinated or due to the competence of the authority where s/he is hired, with the exception of scientific, didactic, creative and representing the state in economic societies activities.

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.

54. Can citizens access the terms and conditions of privatization bids?

75

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

Economists claim that after 2001, with the Communists in power, foreign donors stepped back and the political will towards privatization withered. Even today, the largest fields for privatization stagnate, and there is no intention to privatize the largest energy-production domains or Moldtelecom.

<http://www.eco.md/article/3163/> – 20k

References:

By law, privatization shall be conducted in a transparent manner. A State Department has provided the basis for the legal process, and the institutional implementation of the privatization in Moldova since 1991. This included publication of some bulletins with privatization results, and the set-up of a web-site for the enterprises enrolled in the privatization process. According to the legislation in force, state agencies are regularly controlled by the Auditing Chamber. In 2008, the Agency for Public Property announced the privatization of five average enterprises, estimated at over 695 million lei (US\$67,475.)

<http://www.miepo.md/pageview.php?!=ro&idc=122>

<http://www.interlic.md/news/Economie/6365.html> –

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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Although earlier praised for its privatization results, Moldova now counts privatization as one of the lost battles of the last decade. The government banned the privatization of the energy and communication fields, thus prohibiting competitive investments.

<http://www.eco.md/article/3584/>

<http://www.capc.md/avize.php?mod=avize&id=320> – 22k

References:

The Agency for Public Property advertises its tenders for privatization via national and local media. Media closely monitor the announcements and large privatization activities in Moldova.

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

The State Department of Privatization, established in 1991, has acted on the basis of Regulation No.737-XII of Oct. 9, 1991. Art. 4 of the regulation stipulates that the department is responsible for large advertising of its activities. In 2007, an Agency of Public Property was established, as a subordinate entity to the Ministry of Economy and Trade. <http://www.app.gov.md/md/start/> The Agency has a quite dynamic web-site, where it publishes announcements for various types of local and national tenders for the privatization of state assets – <http://www.app.gov.md/md/newslist/1211/1/3281/>. It organizes the tenders according to the existing laws – <http://www.app.gov.md/md/obiectivep/>.

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, those who are interested in bidding for privatization tenders may access the lists of enterprises from various sources: Monitorul Oficial and the web-site of the Agency for Public Property. On some special occasions, the Agency extends invitations to participate in the tendering process on a case by case basis – <http://www.app.gov.md/md/newslist/1211/1/3270/>. – The government, in its position as majority shareholder, is seeking to bring to market Banca de Economii. To this end, the government's intention is to privatize its shares in the Banca de Economii to a strategic investor as a means of strengthening the management of the bank, bringing new capital to the market and increasing competition in the banking system of the Republic of Moldova.

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

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

Comments:

<http://www.europa.md/rom/sbmen/34>
<http://www.prm.md/press.php?p=1&s=4846&lang=rom>
<http://www.finconsult.md/article.php?id=139> –

References:

Agencies that regulate the privatization process practice some prohibitive costs for distributing information packages for special cases of privatization. Citizens can access the results or some information related to the organization of tenders from mass media or official web-sites. <http://www.app.gov.md/md/newsist/1211/1/3270/> or <http://www.app.gov.md/md/info/>

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. ⁷⁴National Ombudsman

56. Is the national ombudsman effective?

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

By law, the ombudsman (avocati parlamentari) is protected from political interference.

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

In practice, the ombudsman has independence in assessing cases of human rights infringements. However, he can be penalized by political forces in other ways, i.e. they may not prolong his mandate for the second term (one mandate is for five years, and the law bans more than two consecutive mandates). The ombudsman cannot hold other public or political elective positions, and for the duration of the mandate shall suspend all activities, except his didactic functions. Art.12 defines the ombudsman as being 'inviolable' in terms of housing, workplace, transportation means and communication tools. He cannot be arrested, detained or penalized, except in cases of grave infractions.

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

During 2002-2004, reports presented by the Center and the Ombudsmen prompted angry reactions from the Communist MPs, and accordingly, they voted against a second mandate for some of the members.

See: <http://www.jurnal.md/article/8780/> – editia nr. 761, 19 Septembrie 2008 Se t r g neaz numirea noilor avocaci parlamentari, also: <http://www.dejure.md/index.php?go=news&n=5133> – Este necesara transparenta in procesul de numire a avocatilor parlamentari;

References:

Art. 35 of the Law stipulates that the Center for Human Rights is represented by one of the Ombudsmen, at the proposal of the chairman of Parliament. Candidates for the Ombudsman position are suggested by the president. (art.5) At the end of each year, the Center will provide to the Parliament a report on the situation of human rights in the country.

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Hearings take place according to a schedule. Complainants can address daily, excepting on weekends and days of rest, from 9.00 to 17.00 (lunchtime from 12.00 to 13.00), at the Center's address: 16 Sfatul Tarii Str.

Ombudsmen receive complaints no less than three times per month. On other days, the complainants are received in audience by the lawyers of the Center, according to the established schedule. Examination of complaints takes place at the CHRM branch offices from Balti, Cahul and Comrat.

References:

The CHRM is an institution similar to the European and International Ombudsman Institutions, created in conformity with the Law on Parliamentary Advocates no. 1349-XIII from Oct. 17, 1997. It is an independent state institution composed of three ombudsmen appointed by the Parliament; and other staff members who provide organizational, informing, analytical, consultative assistance to the ombudsmen, in carrying out their mission. The structure and financing of the Center for Human Rights (ombudsmen) are defined by a special regulation, and is being approved by the Parliament – <http://www.ombudsman.md/Structura/>. The ombudsmen shall be guided by the constitution, the Law on Ombudsmen, other national laws, as well as by the international treaties to which the Republic of Moldova is a party. They are guided by the principles of the rule of law and transparency, social equity, democracy, humanism, accessibility in accordance with their conscience. Ombudsmen are independent of the deputies of the Parliament of the Republic of Moldova, the president of the Republic of Moldova, central and local public authorities and officials at all levels. Ombudsmen are assisted by a technical staff, which collects complaints from the citizens, or prepare necessary notes to address the complaints, at the national headquarter in Chisinau, as well as in three regional branch offices, throughout the country.

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

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

Comments:

On Aug. 12, 2008, one of the ombudsmen was found shot in his office. No one explained this situation. <http://www.unimedia.md/articles.php?id=7026> .

References:

<http://www.jurnal.md/article/8780/> – editia nr. 761, 19 Septembrie 2008

Setr g neaz numirea noilor avocaci parlamentari – is th In practice, media report that appointments of ombudsmen are not aiming to strengthen independence, but dependence on political authorities, which do not want to receive annual critical reports on human rights infringements.

http://www.irp.md/item.php?text_id=570 – http://www.ombudsman.md/Rapoarte/R_anuale/

http://www.lex.justice.md/document_rom.php?id=37498EE1:E85D5887

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

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

References:

Financing of the Center for Human Rights is provided regularly, without delays, through an amendment of Law No.1349-XII of

Oct. 17, 1997 (special regulations voted through Law No.56 – XVI of March 20, 2008). According to the law, an adviser to the ombudsman receives a salary of 1,650 lei (US\$160), a head of service 1,650 lei, a principal specialist 1,200 lei (US\$116). However, the wages are considered quite low and unattractive since the average salary per economy is higher than the reported wages for the personnel of the Centre.

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

Ombudsmen provide regular reports to the Parliament (once per year). They have the freedom to comment, provide assessments verbatim to the press. Reports are available on the net: http://www.ombudsman.md/Rapoarte/R_anuale. In addition to regular reports, ombudsmen notify public authorities in order to satisfy or respond to the complaints from citizens – http://www.ombudsman.md/Ses_avize/en.html.

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.europa.md/rom/infto/100/> – Avocatii parlamentari atesta incalcari ale drepturilor omului in Republica Moldova
<http://www.hr.un.md/news/51> – Situatiia privind respectarea drepturilor omului in R. Moldova nu a evoluat spre ... publica centrala

si locala fata de sesizarile avocailor parlamentari
<http://www.yam.ro/> – Numirea avocailor parlamentari se tergiverseaza intentionat [Moldova.org].

References:

Art.27 of the Law entitles the ombudsman to log appeals in the court of justice to defend the interests of citizens who complained about infringed rights, if he finds that the rights of the applicants were in fact affected. Ombudsmen may also intervene to the public authorities responsible for the committed irregularities, or initiate an administrative case against the officials who had committed contraventions (art.174/19 of the Code on Administrative Contraventions). the legislation allows Ombudsmen to initiate investigations, but not not enforce the law.

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.humanrights.md/eng/News/studiu%20privind%20p%5Bregat%20prof.%20si%20c...>

<http://www.infotag.md/noutati/559831/> – PLDM a depus la CEDO cerere împotriva guvernului Moldovei pe faptul discrimin rii ... _i incertitudinea privind candidaturile avocailor parlamentari. ...

<http://www.info-prim.md/?x=&y=17633> Societatea civil cere transparenc în selectarea _i numirea avocailor parlamentari ... este una din revelaciile Diviziei Nationale de fotbal a R. Moldova, ...

References:

By law, ombudsmen cannot impose penalties/fines to the agencies that committed irregularities. They may investigate the complaints and log appeals to the respective courts of justice, attack administrative authorities, appeal to the Constitutional Court and report to the Parliament the human rights situation.

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

http://www.transparency.md/Docs/cor_jurn_contra.pdf – when reports presented by ombudsmen were critical, blaming the government and the legislative for laws and normative acts adopted against the existing constitutional rights of the citizens, the ruling party leaders tried to subdue the center by blackmailing it with financing leverage, or by delaying the procedure of confirming the mandate for some ombudsmen.

Președintele Republicii Moldova, Parlamentul și Guvernul au luat avocacii parlamentari din cauza raportului prezentat recent Parlamentului, ...

References:

Ombudsmen regularly appeal for situation which reflect in his/her opinion infringements of some rights or liberties – See opinions of Mr Perevoznic http://www.ombudsman.md/Ses_avize/SA/563/

In 2007, the Center for Human Rights appealed to the Parliament with the request to create a consultative council with the civil society. It was established in January 2008.

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reaccia guvernării actuale nu s-a lăsat mult așteptată și avocacii parlamentari Lazari C. și Potînga V. au fost imediat destituiți, fiind înlocuiți cu ...

<http://www.humanrights.md/eng/News/studiu%20privind%20p%5Bregat%20prof.%20si%20c...>

References:

Although every answer depends on the complexity of the cases brought by citizens to the Center, generally the examination will not last more than two months, and, if well-defined, the official notification of the ombudsman are sent in appropriate terms. Ombudsmen have regular days for public meetings, up to three times per month (art.38).

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.

57. Can citizens access the reports of the ombudsman?

92

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

All reports are posted on the web-site of the Center for Human Rights – <http://www.ombudsman.md/Publicatii/>

References:

Law on the parliamentary attorneys (Ombudsmen), No.1349-XIII of Oct. 17, 1997, art. 33, stipulates that parliamentary attorneys undertake public education activities, and in this regard they make available their reports on the official web-site of the Center for Human Rights. <http://www.ombudsman.md>

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Yes, within a reasonable period of time, the reports are translated and edited in Romanian/Moldovan, Russian and English. http://www.ombudsman.md/Rapoarte/R_anuale/

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens do not have to pay for accessing the reports or other notes and opinions of the parliamentary attorneys in Moldova. By law, art.40, ombudsmen have the obligation to inform the media and population about the existing problems of human rights and liberties in Moldova, to keep records of the complaints and logged appeals. Law No.1349 -0 XIII of Oct. 17, 1997

References:

In practice, the Center for Human Rights regularly publishes the annual reports of the attorneys, acting as ombudsmen, and citizens may easily access them in different languages (Romanian and Russian). <http://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. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

Law on parliamentary attorneys No.1349-XIII of Oct. 17, 1997.

<http://www.ombudsman.md/Structura/3p/>

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.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

69

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

Art.12 of the Law stipulates that out of seven members of the Court of Accounts, three will be proposed by the parliamentarian majority, and four by the opposition.

Law on Accounts Court from Dec. 8, 1094, nr 312-XIII; Art. 32- members and employees of the Court have no right: a) to be a member of a political party or to carry out public acts with political character; b) to disclose state, confidential, commercial or individual information.

References:

Art.14 of the Law stipulates that the chair of the Court of Accounts is appointed by the Parliament, at the proposal of the president, for a five-year mandate. All members of the Court of Accounts are appointed by the Parliament, at the Proposals of the chair of the Court of Accounts. Members are independent and immovable for the entire period of five years.

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the chair of the Auditing Chamber is quite vulnerable to political intervention and can be removed by the Parliament.
<http://www.e-democracy.md/comments/political/200507291/>
<http://www.europa.md/upload/File/Control%20financiar.doc>

References:

Art.18 of the Law stipulates that the chair and other members of the Court can be removed from their positions by the Parliament, if they do not fulfill satisfactorily their main competencies, have violated the legislation or have committed other illegalities. The removals must be voted by the majority of MPs.

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

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

According to the regular staff, the Court of Accounts has 150 employees, including 124 employees in the central office and 26 employees in regional offices. Court of Accounts employees have the status of public servants, and specialist positions can be occupied by way of hiring and contest selection. The president, deputy president and the five members of the Court of Accounts are officials, and their positions are filled by appointment. Of the 150 employees, 133 are public servants, and 17 employees represent the technical staff. The Court of Accounts, as a supreme external financial control body, set out its mission to carry out independent, reliable, transparent and professional controls/audits over the management of public finances and assets with a view to promote high standards of financial management to the benefit of the citizens of the Republic of Moldova. All employees of the Court of Accounts have higher education, except the technical staff. They are specialized in various areas: law, accounting, economy, audit, finance and accounting, finance and banks.

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The Court of Accounts is transforming itself into a national auditing court – <http://www.interlic.md/Economie/6405.html>
<http://www.parlament.md/download/drafts/ro/1695.2008> – Curtea de Conturi dispune de independenc organizacional ,
Curtea de Conturi a Republicii Moldova este membru al INTOSAI _i EUROSAI din anul 1994 ...

References:

By definition, the Court of Accounts ensures a kind of dynamic balance of interests between various parties (it has three members of the ruling party and four members of the opposition). Therefore, political influence is not something new at the Court. The president of the Court of Accounts proposes to the Parliament candidates for member positions, based on the recommendations of the legally established parliamentary factions. The position of employee of the Court of Accounts is incompatible with any other remunerated position, public or private.

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The Court of Accounts receives regular funding from the state budget – Art.37 of the law on Court of Accounts indicates that the Parliament oversees the implementation of the expenditures and budgets.
<http://www.resursejuridice.ro/content/view/109/4/> Locul si rolul Curtii de Conturi in cadrul sistemului organelor de stat
<http://www.interlic.md/index.php?news=6405>

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Court has set up a dynamic cooperation with various auditing bodies from Europe, and is considered to be quite professional.

<http://www.ccrm.md/file/Acorduri.PDF/2.pdf>

References:

Art. 21 defines the function of the Court of Accounts: to exercise control over the ways of formation and administration of financial public resources, as well as the way of public ownership. The Court makes regular reports to the Parliament, which summarize the analytical information about the controls and audits undertaken on various public agencies and authorities. Some of them are posted on the web-site: <http://www.ccrm.md/en/rapoarte/>. All decisions of the court, as well as its annual reports are published in the Monitorul Oficial al RM. The Court also edits a bulletin – <http://www.ccrm.md/file/buletin/Eng/Buletin%20EN3.pdf>. The bulletin includes various points of view that contribute to the formation of an adequate picture of what is going on in the process of transformation of the Court of Accounts and information about its interaction with other institutions and organizations. The Informative Bulletin also includes comments on the Strategic Development Plan, which was developed with the support of foreign donors. The Informative Bulletin is a place for theoretical and practical debates on the most important problems in the activity of the Court of Accounts, financial controls and practices in public financial management. It is conceived in a way to address an issue of great interest for us, namely audit, in general, and public finances in particular.

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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

<http://ukinmoldova.fco.gov.uk/resources/ro/word/doc1/proiecte-curenta-DFID>

http://www.ccrm.md/file/proiecte/PDS-web_rus.pdf
<http://www.interlic.md/Economie/6405.html>
<http://www.parlament.md/download/drafts/ro/1695.2008.doc>

References:

Despite the precise character of the reports produced by the Court of Accounts, few measures have been taken by the governmental executive bodies so far, and the largest majority of violations did not result in charges. In some cases, the same corrupted people are again and again appointed to the top-rank positions of public authorities.

http://www.bbc.co.uk/romanian/moldova/story/2008/07/080703_raport_conturi.shtml.

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.

59h. In practice, the audit agency is able to initiate its own investigations.

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

Comments:

To increase the effectiveness of its findings, the Court of Accounts started to cooperate intensively in 2007 with the Center for Combating Economic Crimes and Corruption –
<http://www.cccec.md/Colaborarelanivelnational>

References:

In practice, the Court of Accounts planned serious investigations in the largest majority of organizations. It had to avoid some of them, stating the reason that it does not have enough resources to cover all public entities. In most cases irregularities are found almost everywhere, as the budgetary and financial discipline is practically very low. In some cases, the Court of Accounts launched investigations at the special notifications of the MPs, or even media appeals –

<http://www.garda.com.md/142/investigatii/>. Regular reports show to the public the results of its investigations –

http://www.ccrm.md/file/hotariri/2005/H39_brs.pdf

<http://www.ms.gov.md/.../1549-Rezultatele%2520controalelor%2520efectuate%2520d...>

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.

60. Can citizens access reports of the supreme audit institution?

67

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Citizens may assess the reports by consulting the Monitorul Oficial, or the web-site <http://www.ccrm.md/>

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.transparency.md/Laws/cc64-02.pdf>

References:

As a rule, the investigations initiated by the Court of Accounts last longer than media expect, due to the limited staff of the Court. <http://www.ms.gov.md/.../1549-Rezultatele%2520controalelor%2520efectuate%2520d...> –

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are not requested to pay in order to consult the reports produced by the Court of Accounts. <http://www.ccrm.md>

References:

Art. 6 of the Law on Auditing Chamber stipulates that all decisions of the Chamber, adopted on the basis of punctual controls of audit, are published in the Monitorul Oficial within 10 days from their official endorsement. In appeal cases, they are published after the final decision of the judiciary.

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.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Law No.312-XIII of Dec. 8, 1994 on the Court of Accounts/Auditing Court

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.

62. Is the tax collection agency effective?

63

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Politica bugetar-fiscal în Moldova se află permanent în centrul atenției ... Datoria internă publică a crescut și ea, administrarea ei fiind în prezent ...
<http://www.e-democracy.md/publications/tranzitia/1politica/> –

References:

The fiscal administration has certainly improved during the last years in Moldova. As a result of continuous support, the Fiscal Inspectorate has installed a large network of territorial inspectorate-branches, uniform system of monitoring tax-payers, and important instruments of contacts with tax-contributors from the private sphere and physical entities. http://www.mf.gov.md/common/raportinfo/programs/action/Raport_trimestrul_I_2007.doc
There are too many fiscal controls and too many controlling bodies for private business entities (around 54 in total,) which means that the largest portion of the budget covers only their functioning and maintenance (it is almost three times larger than the Ministry of Defense.) Nevertheless, the fiscal administration is going to further upgrade and change. Experts demand flat tax introduction of 9-12 percent, which will reduce the system, and other steps to rationalize the existing structures. <http://www.europa.md/rom/sbmen/35>

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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Ce ascund demnitarii moldoveni atunci când refuz să și fac publice comisariate de politie, judecătoria, inspectorate fiscale etc. ...
<http://www.ong.md/index.php?mod=home&hmod=postbyid&id=1802>

References:

Tax Inspectorates receive good financing, and the salaries for the employees in the field are comparable with the wages in the banking sector. However, this does not resolve corruption suspicions.

(În anul 2007, în R. Moldova s-a dat foarte mult mit . . . peste 35 de milioane au ajuns la inspectoratele fiscale, iar medicilor ...).

<http://chisinau.ch/news/2008-04-22-1922>

SMEs Claim They Are Still Victimized by Aggressive Fiscal Inspectors

<http://www.economica.md/articole/problemele-micului-business-in-republica-moldova-3.html>

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.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

The Customs Service has the mission to promote customs policies in view of ensuring the economic security of the state through trade facilitation, security of the international circulation of goods and means of transportation, customs regulations observance, import and export duties collection, fight against customs fraud, development of a professional and transparent administration, which implements international standards for the customs simplification and protects the society by enforcing the customs legislation uniformly and impartially. The professional training of the Customs Service staff includes systematic professional development activities, in conformity with international standards, organized in the framework of the Training Center for Customs Officers. This activity is strategically important as it enhances the professional competences, expands and updates the knowledge of the customs staff, ensures professional integrity and develops the necessary skills for the efficient fulfillment of the job responsibilities and functions of the customs bodies as established through the current legislation.

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Custom officers are paid regularly. The taxes collected and the border excises by the Custom Service make up almost 70 percent of the state revenues. This shows up that the economy of Moldova is largely dependent on imports and remittances, and therefore the Customs salaries are quite high to keep it functional.

References:

Governmental Decision approving several normative acts regarding the implementation of the Law on customs service nr.383, May 29, 2001.

Governmental Decision approving the Disciplinary Statute of the customs officers in the Republic of Moldova nr. 746, Aug. 7, 1997

Governmental Decision on flag, banner signs of the customs authorities nr.554, June 16, 1997

Governmental Decision on approving the Trade Nomenclature of the Republic Moldova, nr.54, Jan. 26, 2004

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.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

By provisions of the Fiscal Code (No.1163 – XIII of April 24, 1997), the main fiscal body subordinated to the Ministry of Finance is the Principal Fiscal Inspectorate (art.133), which oversees the activities of territorial fiscal inspectorates, ensures the creation and functioning of the unique informational system that concerns tax-payers and their fiscal obligations.

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.

63. Are tax laws enforced uniformly and without discrimination?

25

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Tax regulations are enforced selectively, as the practice shows in Moldova. The Ministry of Finance claims that in 2008 it launched the elaboration of a national strategy on fiscal administration, by reforming the subsystems of taxes and control. In the field of accountability, the fiscal bodies have elaborated national standards of accountability, national standards of audits, detailed regulations and handbooks for the new types of functions introduced per se in the system of fiscal administration, in line with recommendations of the European Union. <http://www.fisc.md/ro/about/history>.

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.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

Law on custom service (No.1150-XIV of July 20, 2000)

Customs Code of the Republic of Moldova, nr. 1149-XIV, July 20, 2000

Tax code of the Republic of Moldova 1163-XIII, April 24, 1997 section III VAT and IV Excise

Law on state regulation of the foreign trade activity, nr. 1031-XIV, June 8, 2000
Law on customs service nr. 1150- XIV, July 20, 2000
Law of the RM on customs tariff, nr. 1380-XIII, Nov. 20, 1997
Law of the RM on anti-dumping, countervailing and safeguard measures, nr. 820-XIV, Feb. 17, 2000
Law of the RM on state regulation of external trade activity nr. 1031- XVI, June 8, 2000
Law of the RM on free economic zones nr.440-XV, July 27, 2001
Law of the RM on licensing of some types of activities nr. 451-XV, July 30, 2001
Law of the RM on the import and export of goods to the territory of the Republic of Moldova by the physical persons nr.1569-XV, Dec. 20, 2002

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.

66. Are customs and excise laws enforced uniformly and without discrimination?

75

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Nicolae B trãncea, director general adjunct al Serviciului Vamal, nu neag existenta corupciei în serviciul vamal, îns a afirmat c se duce o lupt intens ...

<http://www.businessexpert.md/index.php?r=7&s=321>

References:

The Customs service has improved its activity in the last years. It is more organized, professionalized and well-managed. Partially, this is due to the European Union assistance, and to the EUBAM installed between Moldova and Ukraine in March 2006. Media still have some corruption, due to the fact that the personnel is still not diverse and lacks experience. However, even TI-Moldova, which sharply criticized the Customs last years, admit that some improvements are visible.

<http://www.customs.md/index.php?id=1361>

http://www.transparency.md/activities_ro.htm

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.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

55

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

By law, the Ministry of Economy and Trade implements the state policy in the field of administration and de-statization of the public property, and uses the Agency for Public Property as a specialized body, with functional autonomy, to undertake this task on a regular and professional manner. The following laws are applied by the Agency in pursuing its aims: Legea privind administrarea si deetatizarea proprietatii publice – nr. 121-XVI din 4 mai 2007 (Monitorul Oficial al Republicii Moldova nr. 90-93/401 din 29 iunie 2007); Legea Republicii Moldova Codul fiscal nr.1163-XIII din 24.04.97 (Monitorul Oficial al Republicii Moldova nr.62/522 din 18.09.1997) and Legea privind pretul normativ si modul de vanzare-cumparare a pamantului – nr.1308-XIII din 25.07.97 (Monitorul Oficial al Republicii Moldova nr.57-58/515 din 04.09.1997).

The law defining the process of de-statization and privatization is rather technical, and has no special provisions on political influences. Art. 69 of the law stipulates that transparency is a key-principle, which shall be followed and respected by central and local authorities.

YES: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

In practice, the Public Property Agency has a full-time staff, with a staff threshold set at 51 units and an annual labor remuneration budget in compliance with current legislation. See Governmental Decision nr. 1008 dated Sept. 10, 2007. The Public Property Agency under the Ministry of Economy and Trade will have a general deputy director. The Ministry of Economy and Trade will submit to the Ministry of Finance proposals on allocations required for the activity of the Public Property Agency under the Ministry of Economy and Trade related to structural changes. The Public Property Agency is the lawful successor of the Privatization Agency under the Ministry of Economy and Trade.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

As a component of the Ministry of Trade and Economy, the Public Property Agency receives regular funding from the state budget. <http://www.app.gov.md/en/regulamentul%20/>

100: The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

As it seems, the Public Property Agency undertakes the role of the registrar of property and organizer of privatization of public/state assets to the applicant-buyers, and has no practical tools to initiate investigations, when notified. It does not have the necessary competence to initiate this function.

<http://www.app.gov.md/md/newsst/2794/1/3272/>

<http://www.moldse.md/licitatie/.../Regulamentul%20privind%20vinzarea%20actiunilor%...>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

The Agency is not entitled to impose penalties or fines, according to its limited mandate and statute, it only oversees the privatization process and de-statisation. –
Resolution on approving the structure, staff threshold and regulations of the Public Property Agency under the Ministry of Economy and Trade nr. 1008 dated Sept. 10, 2007 — Official Bulletin nr.146-148/1049 from Sept. 14, 2007.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

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

69. Can citizens access the financial records of state-owned companies?

35

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

By law, art.69 of the law on de-statization and privatization, stipulates that the Government shall present an annual report to the Parliament on the totals of administration and de-statization of public property for the previous year. Information on the results of privatization will be made public via the Official Monitor.

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.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

In practice, financial records of state-owned companies are not updated nor known to the public. Only the list of enterprises which are prepared for privatization are published regularly by the Agency –

<http://www.app.gov.md/file/hotariri/List%20of%20publicly%20owned%20assets%20subject%20to%20privatization%20.pdf>,

This could support the suspicion that the best parts of state properties are never included in the mass privatization program.

There is a law on the maintenance of evidence of public property of RM – Nr.379 din 03.07.96 Monitorul Oficial al R.Moldova nr.46-47/391 din 11.07.1996, but it has never been properly implemented.

100: State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Legea privind terenurile proprietate publica _i delimitarea lor. ... Convencia între Guvernul Republicii Moldova _i Guvernul României privind cooperarea în ...

<http://www.e-democracy.md/e-journal/20070415> —

References:

In practice, most state enterprises have been bankrupted or failed to perform. Therefore state officials regularly decide to 'save' them by freezing debts, or by suspending bankruptcy procedures, or by canceling debts (as was the case in April 2007, when the president of Moldova announced liberalization initiatives!). Usually, the Court of Accounts avoids to audit/control these enterprises, claiming it has too much of work with the public organizations and authorities.

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There are no such records unless the directors of these entities decide otherwise.

<http://www.moldova.md/md/business/> –

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no fees associated with this information. Simply it does not exist, or it shall be hunted assiduously by investigative

journalists.

References:

Information about state enterprises is not generally available in Moldova. Although they are managed by the government through the Agency of Public Properties and public Acquisitions, the web-site does not include relevant information about the business and management situation of the enterprises, nor the most recent auditing reports. As a result, many people insist in saying that un-privatized enterprises are usually used by the bureaucracy to earn post-privatization dividends. <http://www.azi.md/investigation?ID=51307>

Sources report that the state bureaucracy established the rule through which top-ranked state officials are included in various management councils, from where they receive generous nominal salaries regardless of the situation of these entities. In 2007, the government canceled more than 4 billion lei (US\$386,850) in debts accumulated by state enterprises, showing it as a 'liberalization' initiative.

<http://www.e-democracy.md/comments/political/20070417>

http://www.bbc.co.uk/romanian/news/story/2007/04/070426_moldova_afaceri_forum.shtml

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.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES

NO

References:

Aiming at implementing the provisions of Law no.121-XVI dated May 4, 2007 on the management and de-nationalization of public property (Official Bulletin of Republic of Moldova, 2007, no. 90-93, art.401), the government decided to establish a Public Property Agency.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

63
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

69

70a. In law, anyone may apply for a business license.

YES | NO

References:

Law on the provision of licenses for various types of activity – No.332 – XIV of March 26, 1999, amended by the Law No.1118 – XIV of July 7, 2000

Art. 6 stipulates that anyone (legal and physical entities, i.e. foreign residents) may apply to receive a license.

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

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Art.13 of the Law on licensing set up the right to appeal in a court of justice a decision to reject the application for a license by the state body entitled to issue licenses.

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.

70c. 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:

<http://www.europa.md/upload/File/SocietateaInf.doc>

MOLDOVA ÎN TRANZIȚIE, Privire economică, N3, Centrul de ...

http://www.transparency.md/Docs/n3_rom.pdf –

References:

<http://www.moldova.md/md/business> –

Licensing has improved slightly. Today, the Licensing Chamber is licensing 39 types of activity, which require over 239 of documents, depending on the kind of activity, out of which 135 will be provided through the one-stop-shop office. Despite recent structural reform efforts, more needs to be done. EBRD transition and World Bank Doing Business” indicators, as well as the World Economic Forum point to a weak business environment. Key reform areas include streamlining of regulatory procedures, judicial reform, strengthening bankruptcy procedures, improving business legislation, simplifying licensing requirements, and modernizing the tax administration. <http://imf.org/external/np/ms/2007/123107.htm>

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.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.transparency.md/Docs/2007/Jurnalistii.pdf>

References:

The World Bank Survey “Cost of Doing Business 2008” ranked Moldova at 92 out of 178 states of the world (it was at 103 in 2006), and the scores were due to the reduction of the fiscal burden. <http://www.e-democracy.md/files/euromonitor08.pdf>
In practice, licensing is not easy even after serious work initiated by the state to simplify the existing system.

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

Yes, they are transparent, but not available.

References:

Law on compulsory medical insurance and assistance, No.1585 – XIII of Feb. 27, 1998. Art. 11 of the Law stipulates the rights of the insured persons to choose the type of primary medical care services, as well as the family doctor, to receive medical assistance throughout the territory of Moldova, to get benefits of the medical services to the size and quality provided by the national unique program, regardless of the paid insurance quotes, etc. Art.12 stipulates the obligations of the National Company of Medical Insurance, and its relationship with the medical service providers (hospitals, polyclinics).

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Law on the ecological expertise and evaluation of impact over the environment, No.851-XIII of May 29, 1996

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

Attempting to assimilate the main norms of the international law, Moldova has ratified a number of international conventions on labor issues, such as Convention No. 81 on labor inspection in industry and trade, ratified by the Parliament on Sept. 26, 1995, and Convention no.129 on the labor inspection in agriculture, ratified in September 1997. In 1992, Moldova established a special agency for labor inspection as a Department for Labor Protection affiliated to the Social Protection and Family, while in 1998, it set up a State Inspectorate for Labor Protection. On May 10, 2001, the Parliament of Moldova adopted a new law on labor inspection.

References:

Labor Code, No.154, XV of March 28, 2003 defines basic public safety standards. The legislation is quite comprehensive, but difficult to follow by business entities.

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. 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

References:

In practice, labor safety requirements are carried out. http://www.inspectiamuncii.md/?lang=ro&menu_id=5. From the web-site of the specialized agency on labor protection, we may find out that during the first seven months of 2008, the Agency implemented 4,623 controls at various economic agents, in the fields of labor relations and safety regulations. As a result of these controls, the Agency notified 43,464 violations of the labor code, out of which 21,939 in the field of labor relations and 21,525 in the field of labor safety regulations. The Agency claims that in the same reported period of time it suspended the functioning of 12 sections and sectors, and banned the use of 239 technical equipments, which presented risks for labor accidents. A number of 218 officially unemployed workers were found working in the business field.

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.

72b. 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

References:

The Agency may carry out ad hoc controls of the economic agents, companies and organizations, and on the basis of their controls they may log in appeals to the prosecution, policy sections and bodies specialized in anti-corruption activities. In 2008, the Agency reported 44 notifications in this regard. Moreover, the Agency may impose fines. In 2007 it provided consultancy assistance to 640 citizens. http://www.inspectiamuncii.md/?lang=ro&menu_id=5

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.

72c. 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:

Some authors claim that the latest amendments to the legislation on labor safety ignored a systemic approach, and mechanically multiplied some normative acts which cannot be implemented. <http://209.85.129.104/search?q=cache:5XDAjPuV3l8J:www.expert-grup.org/docs/cl/analiza-legea-securitatea-muncii.pdf+inspectia+muncii+control+Moldova+2007&hl=ru&ct=clnk&cd=4&gl=md>
<http://www.acces-info.org.md/index.php?cid=218&lid=782> – 74k

References:

In practice, labor inspections are not carried out in a uniform, equal and transparent manner. In 2006, the agency suffered a radical staff cut-off, which further deteriorated the implementation of its business plans for 2007.

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. ⁷¹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

By law, corruption is illegal.

Law on preventing and combating corruption – No.90 – XVI of April 25, 2008, art.2 – corruption is the illicit use by a person with public statute of his/her function in order to receive material benefits or undue advantage for him/herself or for any other person against the legitimate interests of the society and state, or illicit provision of some material benefits or undue advantages to another person.”

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

Andrei Pînzari, a extorcat _i a primit mit în sum de 1 750 lei de la o ... Vitalia Pavlicenco, 11.09.2008. Moldova a lasat joi o impresie ...
<http://www.unimedia.md/articles.php?id=7266>

References:

The law does not place extortion as an illegal activity under art.16, which enlists the kinds of activity prosecuted by the legislation on corruption. Nevertheless, it defines corruption as undue advantage, services, favors, facilities in delivering some obligations or other benefits, which improve undeservedly someone's situation compared with another situation before the incidence of the corruption act or other kinds of corruption behavior." Nevertheless, the specialized anti-corruption bodies (Center for Preventing and Combating Economic Crimes and Corruption) qualifies extortion as a penal crime –
<http://www.cceec.md/news/?nid=c6a1f58c1b1d37aa174adca39470ae49>

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Liliana a scris (4 Septembrie 2008). nu ma mira deloc ca coruptia in tara asta ... cu o persoana in troleibuz despre faptul ca i s-a cerut mita la angajare. ...
<http://www.garda.com.md/investigatii/coruptia-in-37-scrisori-oficiale>

References:

Art.16 of the Law on preventing corruption qualifies bribes as a severe penal crime, and prescribes penalties for that.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Art.16 of the Law defines two kinds of penal violations: active and passive bribing.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Art.16 defines the bribe in relationship with public officials, civil servants, physical persons and legal entities, which could be penalized in accordance with the Penal Code – No.985 – XV of April 18, 2002

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Art.15 of the Law on preventing corruption qualifies as severe crime the illicit use, in private interest or in the interests of other persons, of public goods, of which a public official is personally responsible in his position” (p.f), and “fraudulent management of material and financial public resources, in private interest or in the interests of other persons.” (p.i)

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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Art.15 of the Law defines a corrupt” civil servant when he/she “uses information received in the exercise of their functions in personal interest or in the interest of other persons, when this information is confidential.”

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.

73h. In law, money laundering is illegal.

YES | NO

References:

In 2002 Moldova ratified the International Convention on Money Laundering – Law No.914-XV of March 15, 2002
In 2007 it ratified the Convention of the Council of Europe on Money-Laundering – No.165-XVI of July 13, 2007, which thus take force over the domestic legislation.

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

The legislation does not provide explicitly what would be conspiracy to commit a crime, but it qualifies corruption activities as personal responsibilities of the civil servants, with the aim to collect individual benefits or benefits to a third person. This could be interpreted as a conspiracy. Art.17 stipulates other forms of penalties for corruption activities.

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

75. Is the anti-corruption agency effective?

50

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Art.13 of the Law establishing the Center restricts its hired personnel from working for a certain political party or parties, NGOs, trade unions or churches.

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.e-democracy.md/comments/socioeconomic/200311052>

MARTI, 17 IULIE 2007, NR.671 Voronin a dat startul electoral al represiunilor politice

CINE E URM TORUL?Voronin a dat startul electoral al represiunilor politice – <http://www.timpul.mdl.net/Rubric.asp?idIssue=574&idRubric=888>

References:

The Law on the Center for Combating Economic Crimes and Corruption, adopted by the Parliament of the Republic of Moldova on June 6, 2002, as well as other normative acts, including international treaties to which the Republic of Moldova is a party. The Center exerts its main forms of activity on the basis of legality, respect of fundamental human rights and liberties, opportunity, combination of public methods and means with secret ones, personal and crew management, cooperation with other public authorities, NGOs and citizens. Some opposition leaders claimed in 2008 that the Center aims to prosecute only political opponents of the party in power. See: <http://www.filat.md/blog/?p=809>. www.pldm.md/index.php?option=com_content&view=category&id=2&Itemid=30

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In 2007, a former director of the Center, Mejinski, was replaced by the former head of the Tax Inspectorate, while he became the minister of Interior. No logical explanation for such change was provided to the public, and rumors were quite controversial in this regard. <http://www.allmoldova.com/index.php?action=search&lang=eng&srctext=presei&srctype>.

References:

Art. 8 of the Law on the Center for Combating and Preventing Economic Crimes and Corruption defines shortly that the Center is lead by one director, appointed by the government for a four-year period. However, it is unclear how he is selected, and for which reasons he could be dismissed. Art. 9 of the law defines the main competencies of the director and the rights, but there are no any specific provisions on removal or protection from removal.

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

În 2006, conform presei informate, zisul Centru de anticorupcie, cu 640 de angajaci, a intentat numai 200 de dosare penale, dintre care pe 50 au _i fost ...
<http://www.interlic.md/Comunicate/155.html> –

References:

In practice, personnel appointments and selection are based on the general regulations of the Law, art.12. A special control is required for the employment to the Center, but the law does not exactly define the conditions for such special test verification.
www.transparency.md/documents_ro.htm

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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

Comments:

Fenomenul corupciei în cadrul structurilor Serviciului Fiscal de Stat _i Serviciului Vamal este în descre_tere, a declarat joi în cadrul _edinței Clubului presei economice Lilia Cara_ciuc, director Transparency International Moldova (TIM).
<http://social.moldova.org/stiri/rom/114785/>
Oficerii Centrului pentru Combaterea Crimelor Economice _i Corupciei (CCCEC) l-au recinut zilele trecute pe un locuitor al capitalei, b nuit de estorcarea a 5000 de euro.
<http://social.moldova.org/stiri/rom/103648/>

References:

It is difficult to estimate the number of employed staff, professional qualifications and budget of the Center for Preventing Corruption – <http://en.ccecc.md/Studiipublicatii>. Even the Anti-Corruption Alliance does not have any snapshot information on the issues. It is known that the Center has signed up various agreements with state agencies and ministries, as well as with some NGOs and think tanks. The high complexity of the activity performed by the CCECC implies collaboration with other public institutions and law enforcement organs in the field. The results achieved in the prevention and combating corruption are to a significant degree owed to the efficient interaction between the CCECC, MIA, General Prosecutor's Office, Customs Service, Frontier Troops, Service for Information and Security, State Principal Fiscal Inspection and others.

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The total budget is 57 million lei (US\$5.5 million), according to the excerpts provided by the Center, as a part of the public budget for 2008 nr.254-XVI of Nov. 23, 2007 (Monitorul Oficial nr.192-193/745 din 13.12.2007). Funding is provided in time and is quite generous.

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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

http://www.transparency.md/Docs/2006/cccec1_2005.pdf

Sub pretextul luptei cu corupcia, Centrul Anticorupcie este utilizat în scopul intimidării CCA ...

http://www.presa.md/content.php?goto=news&do=show_news&category_id=3&news_id=6423 ...

References:

The Center makes regular reports, which can be found on its web-site- <http://en.cccec.md/ActivitateaSPCSB>. At the end of the year, the director of the Center provides an overview of the main results and accomplishments for the activities undertaken. The director also reports on the implementation of the main international conventions, of which Moldova is a part, number of violations, illegalities, covered money-laundering attempts, etc. The establishment and strengthening of mutual cooperation with similar foreign services, as well as with respective international organizations represents one of the priorities of the Office for Prevention and Control of Money Laundering. Thus, within the international cooperation framework, memoranda of understanding with similar units from other states were signed.

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

Comments:

Centrul de Resurse Juridice (CRJ) a lansat proiectul Dezvoltarea capacitatii ... masurilor anticoruptie si exercitarea dreptului de acces la justitie". ...

<http://www.presaonline.com/stire/monitorizarea-masurilor-anticoruptie,36192>

References:

It is difficult to assess due to the fact that the legal regulations related to the Center are quite generous, but the practical implementation leaves to be desired. Moreover, the vulnerable statute of the director of the Center, who can be replaced without specific procedure, makes the institution vulnerable to political influences, as the director can be appointed and dismissed by the government, even without appropriate consultation with the Parliament.

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

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

Comments:

Strategia nacional de prevenire si combatere a coruptiei

http://www.aap.gov.md/common/15_Poleznie_ssilki/Strategie-ro_combaterea_coruptiei.pdf

References:

By law, the Center may initiate investigations of the cases reported or identified (art.7), may fill in reports on illegalities or violations, may arrest, according to the law, persons suspected of committing infractions. For instance, the Control and Investigation Department of the Center has reported 5,789 inspections and controls, the documented damages amounting to over 1,082 billion lei (US\$104.6 million), while the calculated fiscal obligations, penalties and financial sanctions were valued at 1,044

billion lei (US\$101 million). The Department has the responsibility to detect and eradicate economic, financial and fiscal infringements and violations; perform economic-financial and fiscal inspections; apply sanctions as provided by the law; calculate fiscal obligations and recover them in the way of enforcement, as set out in the fiscal legislation.

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.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

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

Comments:

Someone claim that the Center's activities are not fully independent and are influenced by political factors – http://www.presa.md/system_components/print_news.php?news_id=6423 – 44k .

Presedintele Asociatiei Micului Business din R. Moldova, Eugen Roscovanu, ... sub pretextul luptei cu corupcia, Centrul Anticorupcie este utilizat în scopul

<http://www.rapc.gov.md/md/faq>

References:

The Center acts in a reasonable period of time. The Center is fully equipped and well-organized, which allows it to plan and undertake rapid operations. <http://www.cccec.md/DGA>

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

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

References:

The Center has installed a hot line for the citizens to report cases of corruption, ensuring the anonymity of the calls, and special protection measures – Law on preventing corruption (2007). Other entities have also launched hot lines for anti-corruption activities.

(Chisinau) Linia fierbinte anti-corupcie a CAPC. In conectiton with that, the Anti-corruption Coalition launched an appeal at the bening of the year: Apelul cet cenilor la linia fierbinte anti-corupcie:responsabilitate civic sau curaj?

<http://www.alianta.md/?go=istorii&n=2>

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 agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

A Center for Combating Economic Crimes and Corruption was established in 2002 (No.1104-XV of June 6, 2002). The Center is defined by law as enforcement body, specialized in counteracting economic and fiscal offenses, and corruption as well. The legal framework of the Center's activity includes the constitution, the Law regarding the Center for Combating Economic Crimes and Corruption, adopted by Parliament on June 6, 2002, other normative acts, including international treaties to which the Republic of Moldova is a party.

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.

67
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

Code of civil procedures, No.225-XV of May 30, 2003

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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.e-democracy.md/comments/legislative/20030423/index.shtml?print>

References:

In practice, the judiciary examines appeals very late, which is quite alarming. To address this, the government adopted decision No. 174, of July 19, 2007, concerning the adoption of the strategy of strengthening the judiciary system and the plan of actions to implement the strategy. A special chapter is dedicated to the reduction of the period of examination for judiciary trials. <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=325042>

This kind of setback caused numerous cases to be lost in the European Human Rights Court. The Parliament of Moldova has prepared a draft decision by which it qualifies the actions of the government and law institutions 'inadequate.' As regards the enforcement of the justice act, Moldova is sentenced by the European Court of Human Rights (ECHR), according to AP Flux. http://www.irp.md/news.php?news_id=283

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

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

Comments:

The governmental agent of the Republic of Moldova at ECHR, Vladimir Grosu, explained that the huge number of sentences by ECHR is determined by the fact that people are more and more aware of their rights and thus the number of cases increases. He also mentioned that 50 decisions out of 111 regard the flaws in the national legislation. http://www.irp.md/news.php?news_id=283

References:

Cauzele principale ale condamnării Republicii Moldova sînt urmarea a: neexecutării hotărîrilor judecătorești sau duratei excesive a procedurilor judiciare; ...

<http://www.e-democracy.md/e-journal/20080331/> –

Curtea reiterează caracterul rezonabil al duratei examinării cauzei trebuie ...

<http://www.justice.md/file/Mazepa%20c.%20Moldovei%20rom> –

Una dintre plangerile cetățenilor R. Moldova față de activitatea CEDO ține de durata procedurilor de examinare a cererilor. În 2007, decizia favorabilă a ...

<http://www.garda.com.md/168/interviu> –

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

The constitution affords a right to subject administrative acts to judicial review: Any person whose rights have been violated in any way by a public authority through an administrative ruling or through lack of timely legal response to an application is entitled to obtain acknowledgment of those rights, cancellation of the ruling, and payment of damages. CONST. art. 53(1). The judiciary has authority to review administrative acts; require public authorities to act as requested by the applicant; deliver documentation or expunge the record of administrative violations; to impose damages for delays in enforcing decisions and for the consequences of illegal administrative acts, including failure to respond to a preliminary petition in a timely manner. Moldovan law gives judges both contempt and subpoena powers. They have legal authority to control the behavior of persons in their courtrooms and to punish individuals for contempt. Anyone disturbing a court session is first entitled to a warning and then can be removed from the courtroom if he or she continues the disturbance. The court may postpone examination of a case or may simply remove parties or other persons who disturb the proceedings and fine those who show disrespect to the court. A prosecutor or an advocate who fails to comply with orders of the president of the session is entitled to a warning and, if he or she still fails to comply, the court may postpone the examination until the prosecutor or advocate can be replaced. http://www.abanet.org/rol/publications/moldova_judicial_reform_index_01_2007_en.pdf
<http://www.nationsencyclopedia.com/Europe/Moldova-JUDICIAL-SYSTEM.html>

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.

79. Are judicial decisions enforced by the state?

25

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Despite efforts by Moldovan Government in the early years of independence to reform its justice system, the rule of law suffers serious shortcomings.

http://www.icj.org/news_multi.php3?id_groupe=2&id_mot=420&lang=en – 71k

This is particularly true in the areas of judicial reform and the fight against corruption.

Europe Criminal Law Convention in August 2007. The Republic of Moldova ...

http://www.ec.europa.eu/world/enp/pdf/progress2008/sec08_399_en.pdf

References:

The large number of unexecuted civil judgments in Moldova is a serious problem, which onerespondent described as discrediting justice. At present there are about 55,000 such judgments, some dating back to 1990. In some cases, of course, the legal system is not to blame – for example when the defendant lacks sufficient funds or property to satisfy the judgment. It should be noted that courts themselves are not presently directly responsible for the enforcement of judgments. Ordinary citizens who fail to do so face an administrative fine, while officials who do not comply are subject to a substantially greater fine.

CODE ON ADMINISTRATIVE OFFENSES art. 200/11.

If a judgment debtor fails to comply with the judgment, the court will, at the plaintiff's request, issue an enforcement letter. This authorizes judicial executors in the appropriate territorial subdivision of the Department for Execution of Judicial Decisions to enforce the judgment.

CIVIL PROCEDURE CODE art. 347. http://www.abanet.org/rol/europe_and_eurasia/moldova.html

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.

80. Is the judiciary able to act independently?

63

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

The constitution states that in Moldova 'justice is exercised in the name of the law only by judiciary authorities', art.114. Rights and freedoms are fully protected by the judiciary, and the right to defense is a fundamental right of all citizens. (art.26)

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.

80b. In practice, national-level judges are protected from political interference.

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

Comments:

The independence, transparency and efficiency of the justice system in the Republic of Moldova

<http://www.jp.coe.int/CEAD/JP/default.asp?TransID=97>

Low public confidence has also affected the independence of Moldova's judiciary.

<http://www.freedomhouse.org/template.cfm?page=47&nit=349&year>

Moldova's judicial system is based on a network of local courts and higher-level appeals... The independence and the role of defense attorneys are limited.

<http://www.countrystudies.us/moldova/31.htm> –

References:

According to the Law on the statute of judges, No.544-XIII of July 20, 1995, judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges. The president or Parliament may then accept or reject the nominations. Following rejection of a candidate, the Supreme Court may nominate the same or a different candidate for the position. Id. art. 19(4)

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

Comments:

The constitution guarantees the right to appeal judicial decisions

<http://www.unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN017565.pdf>

Report Control on judiciary independence in the Republic of Moldova, OSJI/Freedom House Moldova, The random distribution of cases in law courts; ...

<http://www.e-democracy.md/files/realizarea-pauem-en.pdf> –

References:

Distribution of cases to national-level judges is considered problematic by many international and national reports. It is therefore a good priority for the Ministry of Justice and the public authorities in Moldova to report progress. Nevertheless, this was equally presented in the European Commission Report, as a key-case for the implementation of the Action Plan EU-RM.

See: Euromonitor, Adept Association, 2008 – <http://www.adept.md>

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.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Art.19 of the Law on the statute of judges stipulates the immovability of judges, except in cases provided by art.25. The Superior Council of Magistrates is the only organ which decides upon promotions and transfers of judges. (art.20.)

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

No such cases have been reported.

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

No such cases have been reported.

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.

82. Do citizens have equal access to the justice system?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

In the third European Commission Report against discrimination in Moldova, there are some explicit notes on this subject.

<http://209.85.129.104/search?q=cache:0YqQc5j96SMJ>

http://www.coe.int/t/e/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Moldova/Moldova%2520Third%2520report%2520-%2520Moldave.pdf+Moldova+ura+rasiala+judecatori+2007&hl=ru&ct=clnk&cd=5&gl=ru

‘Pân în prezent, Moldova nu a adoptat o legislaie civil și administrativ mai larg care s combat discriminarea rasial. Totuși, ECRI noteaz cu interes c o coali ie de ONG, sprijinit de Misiunea OSCE pentru Moldova, a stabilit o strategie pentru promovarea m surilor antidiscriminatorii în Moldova. Unul dintreobiectivele principale ale acestei strategii este promovarea adopt rii unei legislaiei cuprinz toare antidiscriminatorii în Moldova, care s acopere un mare num r de domenii, printre care rasa, culoarea, limba, religia și originea etnic .’

References:

No cases of racial hatred manifested by judges in courts or through their decisions have been reported to the press in the last years.

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

No gender discrimination is reported in Moldova.

<http://www.state.gov/g/drl/rls/hrrpt/2007/100573.htm>

<http://www.amnestyusa.org/annualreport.php?id=ar&yr=2007&c=MDA>

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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Art.26 of the constitution stipulates the right to defense as guaranteed by the state. All parties have the right to be assisted by an attorney, chosen or provided in officio.

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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

Comments:

<http://www.avocatii-publici.md/upload/File/lege.modific.doc>
<http://www.timpul.md/Rubric.asp?idIssue=302&idRubric=3696>
<http://www.e-democracy.md/files/rm-ue-news-may2007.pdf>

References:

by law, official attorneys have to serve as attorneys in officio in order to respond to the growing demands from poor people in Moldova. Although the legal framework for protection of civil rights appears adequate, protection of these rights in practice is hindered by citizens' lack of awareness, their inability to pay the costs of litigation, crowded court dockets, and delays in litigations.

See: <http://www.garda.com.md/151/interviu/> –

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

References:

Given the average monthly salary of 1,700 lei (US\$164), attorney and court fees are quite expensive to ordinary citizens. Most citizens try to settle outside the judiciary institutions, by mediation or by giving up.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

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. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.chisinau.ch/news/2008-03-28-1841>
<http://www.press.try.md/view.php?id=89737&iddb=Main>
<http://www.ww.interlic.md/Politic/293.html> –

References:

A small retail business may bring a case to court, but it depends against whom. Reports show that some judiciary will never sue the state or public authorities on claims of a simple citizen, and this is why most citizens who found their rights infringed have reported successful cases only in Strasbourg, in the European Court of Human Rights.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

<http://www.prm.md/press.php?p=1&s=2524&lang=rom> – 31
<http://www.justice.gov.md/>

References:

People from the countryside are definitely disadvantaged to appeal in a court of justice, because trials last a long time, and costs for transportation are extremely high. Social inequalities are disfranchising in fact the part of the population most vulnerable and affected by abuses. Even the provision of free-of-charge attorneys do not reduce the burden to the people in need.

Cu regret, sistemul judecatoresc functioneaza incet si implica costuri mari. Peste 70% din cetatenii nostri vor sa vada viitorul Moldovei in UE. ...

http://www.moldova-suverana.md/index.php?subaction=showcomments&id...&start_from

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

83. Is the law enforcement agency (i.e. the police) effective?

42

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

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

Comments:

In 2008, the president decided to cut off 50 percent of the road police staff. It is unclear what criteria will be employed in this process.

References:

Law on police, adopted on Dec. 18, 1990

By law, only people aged 17 and up, who attended specialization courses of the Ministry for Interior (art.19), can join the police. Selection is based on competition criteria. Often, executive top officials have used their prerogatives to call for radical cut-offs or for increases of the staff for police (i.e. road police), for demagogic reasons.

<http://www.mai.gov.md/stirile-min-ro/?page=10&desc=1&num=10>

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Public financing allocated to the Ministry of Interior is insufficient, therefore ordinary police commissars have old-fashioned cars and receive prohibitive salaries. Inclination to take bribes is high, and ideological selection is just a rule. The budget for 2009 is transparent, but not sufficient. <http://www.parlament.md/news/plenaryrecords/23.11.2007/> – 41k

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

http://www.deca.md/?cat=info_europa&pid=143

References:

Reforming the police has stagnated for the last decade, as the energy and resources are almost absent. Although there are several provisions providing facilities to the people entering the police (art.35, 36, 37: right to public housing, benefits for phone line installation, additional risk benefits), the legislation is usually not implemented. Police officers have the right to defend themselves in a court of justice, but this is not in fact a special right extended to them. <http://www.ipp.md/print.php?l=ro&id=34&pl=proj> – 25k

Important reforms are related to the strategy of central government reform, launched in 2005, (and still in the conceptualization stages) – <http://www.rapc.gov.md/file/Noutatile%20reforme%20APC%20-%20nr.11%20-%20Noiembrie%20TI-Moldova> shows that police and customs officers are still perceived as the most corrupted officials: http://www.transparency.md/presa_ro.htm – 92k

The public opinion is fearful that police is pursuing political interests – Dincolo de presiunile cunoscute ale Moscovei asupra politicii statelor foste Rezolvarea cazurilor de politie politica si eliminarea din noul serviciu ...

<http://www.azi.md/investigation?ID=35945>

<http://www.parlament.md/news/02.02.2006/> –

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.

84. Can law enforcement officials be held accountable for their actions?

71

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

Citizens can appeal to justice whenever they feel their rights have been violated by police officers. They can request compensation.

References:

Art. 4 of the Law on police (No416 – XII of Dec. 18, 1990) stipulates the right of citizens to receive explanations from police officers about any case of limitations of their rights and freedoms. Citizens may file a complain against police officers and sue them. Art. 27 of the Law stipulates the reparation of damages produced by the police, and other forms of administrative or penal responsibility, in concordance with the gravity of the situation they have committed.

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

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Cases of mistreatment and even torture of civilians by police officers are still present, despite the strategies adopted by the Ministry of Internal Affairs in Moldova. http://www.ziare.com/R_Moldova_in_ochii_SUA_Politisti_violenti_si_corrupti
<http://www.europa.md/rom/sbmes/107> – 64k
<http://www.amnesty.md/library/documents.php?id=172&ln=ro&typ=news>
<http://www.lhr.md/2/73.html>

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

Raportul Amnesty International Moldova. Tortura _i maltratarea din partea politiei: "Doar e normal" din 23 octombrie 2007 (cover page) ...
<http://www.lhr.md/2/73.html>

References:

Specialized training in the investigation and prosecution of corruption and other related offenses is not available on a regular basis in Moldova. Amnesty International reports serious cases when police officers provided ill-treatment, arrested without a warrant or manufactured cases. There are some specialized subdivisions for internal investigations.

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

Reports on the accomplished results/cases by the Centre are regularly published on its site: www.cceec.md. Regular monitoring reports of the Centre are provided to the public. Over 400 of economic and financial infractions have been discovered in 2008 by the Centre, according to the centre reports. Nevertheless, Moldova did not progressed essentially on the way to combat corruption, stated Council of Europe officials – www.azi.md/ro/story/494.

References:

Allegations about corruption cases are reported to the Center for Preventing and Curbing Economic Crimes and Corruption. Internal investigations are initiated at the order of the minister of Internal Affairs, when media exposes blatant cases. Local experts believe that governmental officials and the judiciary refuse to prosecute police officers who commit violations. The Center has opened its own hot-lines where citizens can report about cases known to them, and initiate investigations to curb the cases of corruption.

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Enforcement officials are not immune from criminal proceedings, but criminal trials are not easy to initiate. http://www.ec.europa.eu/world/enp/pdf/action_plans/moldova_enp_ap_final_en.pdf
<http://www.timpul.md.net/Rubric.asp?idIssue=550&idRubric=2336>

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

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

References:

Police is perceived as the most corrupt organization in Moldova. Low salaries and inhuman treatment of the detainees represent a common subject of many cases that affected citizens bring to external courts, such as the European Court of Human Rights in Strasbourg.

http://www.interlic.md/index.php?site_map

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.
