

ATTACKS ON JUSTICE – REPUBLIC OF MOLDOVA

Highlights

A return to the old practice of exerting insidious political influence over the judiciary, compounded by ill-considered legislation, threatens to undermine the gains of Moldova's legal and judicial reform process. The 2002 constitutional reforms have increased the possibility of executive interference in the judiciary. Between 2002 and 2003, the Moldovan Parliament passed legislative reforms including new civil and criminal codes, amendments to the laws on the status of judges and the Public Prosecutor's Office. The practice of so-called "telephone justice" – where government officials instruct judges on how to decide particular cases – is widespread. Moreover, judges enjoy little internal independence. Independent since 1991, the Republic of Moldova is currently discussing EU integration, while there are still tensions with regard to the self-proclaimed republic of Transnistria, unrecognized internationally.

BACKGROUND

Following the collapse of the USSR, the Republic of Moldova gained its independence in **August 1991**. It became a member of the United Nations in **1992** (<http://web.amnesty.org/report2004/activities-index-eng>), and joined the Council of Europe in **1995**, having ratified some 55 European treaties (<http://conventions.coe.int/Treaty/Commun/ListeStats.asp?PO=MOL&MA=999&CM=17&CL=ENG>), including the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Article 4 of the **1994 Constitution** (<http://xiv.parlament.md/en/legalfoundation/constitution/>) gives priority to international regulations over domestic legislation. The country is currently discussing European integration expected in **2007**: with 72 per cent of the population supporting the integration, Moldova signed a *Partnership and Co-operation Agreement with the EU* on **28 November 1994**, and on **22 February 2005** an **action plan** was approved, reinforcing EU-Moldovan relations.

Vladimir Voronin, the chairman of the Moldovan Communist Party, has been Moldova's president since 2001. The **March 2005** parliamentary elections generally complied with most international standards (http://www.osce.org/documents/odihr/2005/06/14919_en.pdf). Important policy decisions are taken by a political board of the ruling Communist Party, which reports directly to President Voronin. The **Cabinet of Ministers** is under presidential control.

Moldova still faces problems concerning police ill-treatment and poor conditions in pre-trial detention (<http://web.amnesty.org/library/Index/ENGEUR010052004?open&of=ENG-MDA>),

discrimination against minorities, especially Roma and trafficking in drugs and persons (<http://www.osce.org/moldova/13429.html>)

Transnistria

In **September 1990**, before the collapse of the USSR, the Moldovan territory on the left bank of the Nistru River proclaimed itself the **Republic of Transnistria** (capital Tiraspol). Not recognized internationally, the territory is organized as a presidential republic and has been ruled by **President Igor Smirnov** since **1991**. Transnistria has its own currency, constitution, parliament and legal system, and Moldovan law is no longer applied. Basic political rights and civil liberties, including the ability to change one's government in free and fair elections and the right to a fair public trial, are highly restricted. With a presence of Russian troops in the territory since **1992** (<http://www.icg.org/home/index.cfm?id=2811&l=1>), Transnistria continues to have tense relationships with Moldova: in **July 2004**, the Transnistrian authorities forcibly closed the last eight private Romanian-language Latin-script schools because they used the Latin alphabet to teach Moldovan. While the majority of the population in Transnistria is Russian-speaking (using Cyrillic script), around 40 per cent speak Moldovan (using Latin script) as their first language. These actions were internationally condemned, and ever since Moldova lost its *de facto* control over the territory. There have been continual attempts to settle the secessionist dispute under the supervision of **OSCE, Russia and Ukraine**. In **2003**, a **Joint Commission for the Revision of the Constitution of Moldova** (the "Kozak Memorandum") was established in order to outline a federation of the Republic of Moldova, in which Transnistria, as one federal element, would have substantial allocated competencies. The memorandum was due to be signed in Chisinau, Moldova's capital, on **25 November 2003** but was finally rejected. In **January 2004**, another plan for federalization was proposed by the mediators, but it was criticized by both parties.

The International Commission of Jurists' **Centre for the Independence of Judges and Lawyers (ICJ/CIJL)** undertook a mission to Moldova in **February 2004** to evaluate and establish an objective account of the independence of the judiciary, the functioning of the legal profession and the role of prosecutors (http://www.icj.org/news.php3?id_article=3598&lang=en), and issued a fact-finding mission report in **November 2004** under the title "Moldova: The Rule of Law in 2004" (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

JUDICIARY

In the spring of **2002**, the **Committee of Ministers of the Council of Europe (CoE)** decided to set up a **Targeted Cooperation Programme (TCP)** with Moldova, one of whose aims was to carry out a comprehensive examination of Moldovan legislation in the light of European norms through the **Venice Commission** (see "European Commission for Democracy through Law", http://www.venice.coe.int/site/main/presentation_E.asp?MenuL=E), analysing draft legislation and issuing recommendations to the government. According to the CoE's findings in **January 2004**, areas of concern continued to include judicial reform and the non-incorporation of CoE experts' appraisals on the new penal and civil codes and codes of civil and penal procedure that entered into force in **June 2003**.

Public trust that justice will be dispensed fairly and professionally is minimal in Moldova, and frequent accusations of corruption within the system have failed to create an environment that fosters the judiciary's independence and neutrality. As has been pointed out by members of the legal community, executive interference in judicial matters is of even greater significance. Following the **May 2003** amendments to the Law "*On the Status of Judges*" increasing the President's influence over judicial appointments and re-appointments, the power of the executive and the politically powerful to exert personalized influence over judges in controversial cases has grown (see below) (http://www.icj.org/news.php3?id_article=3263&lang=en).

Judicial system reforms

In its desire to become a truly democratic society, Moldova has recently experienced a series of legislative and judicial reforms. In **February 2004**, a number of draft laws to amend the **judicial system**, the **Supreme Court of Justice** and the **Superior Council of Magistracy** (SCM) were reportedly under way (http://www.icj.org/news.php3?id_article=3598&lang=en). But at the time of writing the exact nature of all proposed draft laws is unclear.

Law no. 1471-XV of **November 2002** amended Article 115 para.1 of the 1994 Constitution and entered into force in **November 2003**. It reduced court levels from four to three through the abolition of tribunals. The current judicial system accordingly comprises a **Supreme Court**, six **Courts of Appeal** and **ordinary courts**, **special courts** for certain categories of cases and a **Constitutional Court**. The **Supreme Court** is the highest court in the Moldovan judicial system, carrying out extraordinary reviews of lower courts' judicial decisions on appeal and having first-instance jurisdiction over criminal, civil or administrative cases. The country also has a **military justice system** and also two specialized economic courts, the **Economic Court of Chisinau Circuit** and the **Economic Court of Moldova**. It lacks a juvenile justice system, children accused of crimes being usually tried by criminal courts.

Law 191-XV of **8 May 2003** (the '*Law on the Judicial System*') was a follow-up to, and laid down the execution of, the above-mentioned *Law no. 1471-XV*, under which tribunals and courts of appeal would be reorganized within six months. *Law 191-XV* brought amendments to the previous law on the judicial system (*Law No. 524-XIII*, of **6 July 1995**) by reorganizing the tribunals of the towns of Chisinau, Balti, Bender, Cahul and Comrat into **courts of appeal**, the Economic Court of Moldova into the **Economic Court of Appeal**, and abolishing the former Court of Appeals. Accordingly, judges serving in the reorganized courts were to be re-appointed to their position through presidential decree, and on the proposal of the **Superior Council of Magistracy**. Judges of the abolished courts of appeal were to be proposed for transfer to other courts or for promotion to the **Supreme Court of Justice**. The law also covered issues concerning the re-organization of courts, the administrative handling of court files and human resources. It included provisions regulating judicial competence and the methodology of trying civil cases during the transition period. It has been reported that the re-appointment and transfer of judges could be an executive attempt to cleanse the current judiciary (www.e-democracy.md/en/comments/legislative/20030429/index.shtml?print).

The **Venice Commission**'s experts appointed by the CoE expressed their concern that this law did not conform to requirements for the independence of the judiciary. Moreover, it was adopted without taking into account some essential expert recommendations on enhancing judicial independence and on the President of the Republic's power to ignore any proposal by the Superior Council of Magistracy as regards the appointment or confirmation of judges.

The Constitutional Court

The **Constitutional Court** (<http://www.constcourt.md/>) has exclusive authority over cases regarding the constitutionality of draft and adopted legislation, decrees and other government acts. It is formally outside the judiciary and is independent of any other authority, being generally regarded as fair and objective. Prior to the **2002 Law No. 1137-XV** amending Article 28/1 of **1994 Law No. 317-XIII on the Constitutional Court**, there was no special mechanism for the enforcement of the Constitutional Court's decisions, the only sanction (according to **1995 Law No. 502-XIII**) being a small fine. Amended Article 28/1 now provides that within three months of publication of a decision of the Constitutional Court, the Government must present a draft law to the Parliament to implement the ruling and amend or repeal any normative act declared unconstitutional. Parliament is required to consider the draft law on a priority basis. In addition, both the President and the Government are obliged to amend or annul any normative acts declared unconstitutional within two months of the publication of the Constitutional Court's decision.

The proposed revision of the Constitution of Moldova towards a transformation of the country into a federal state, as drafted by the Joint Commission in **2003** (see above, under Background) generated the drafting of subsequent amendments to the law on the **Constitutional Court**. However, the envisaged constitutional changes were not passed by Parliament, and the follow-up reform of the Constitutional Court was not adopted by Parliament.

Legal reforms

In **June 2002** and **2003** respectively, the new *Civil and Criminal Codes* came into force (see under Access to Justice below). The new *Codes of Criminal and Civil Procedure* came into force in **June 2003**. The new *Code of Criminal Procedure* defines over 40 terms used in criminal procedure, all of which had previously been explained only at a theoretical level and in the specialized literature. It brings the competencies of judicial bodies into line with existing constitutional provisions, and provides for the institution of a special body, the **instruction judge**, whose task will be to exercise judicial control during criminal investigations. In the chapter on parties and other participants in the criminal process, a series of new provisions on the status of prosecutors and of the defence have been introduced. Another novelty is the institution of the "officer of criminal investigation", who will function within criminal investigation bodies as the individual responsible for criminal investigation on behalf of the state. In practice, the officer of criminal investigation will replace the offices of the criminal investigator and of the officer in charge of the preliminary investigation. Special attention is given to the institution of defence. A numerical comparison of the rights of the defence under the new and the old codes reveals a considerable enhancement of these rights.

According to the **Council of Europe** experts in **January 2004**, some key issues need

further attention. Although all the codes came into force in **June 2003**, the CoE experts have been unable to verify whether their appraisals had been taken into account. The Moldovan authorities indicated that further amendments to these codes incorporating CoE expert recommendations could be considered. The new *Penal Code* includes several articles which may lead to journalists being imprisoned: some lawyers and journalists have passed a joint resolution requesting that these provisions, on criminal responsibility for the defamation of officials in the press, be removed.

Independence

The Superior Council of Magistracy

According to Articles 122 and 123 of the **1994** Constitution (also amended in **November 2002** by *Law no. 1471-XV*), and to **1996** *Law No. 947 on the Supreme Council of Magistracy* (www.transparency.md/Laws/947-96.pdf), the **Superior Council of Magistracy** (SCM) administers itself as an independent body. Created for the organization and the functioning of the judicial system, under the terms of the law it should constitute a safeguard of the independence of judicial authority.

The **composition of the SCM**, however, does not truly represent the interests of judges: out of its 11 members, three are judges elected by the united sections of the Supreme Court of Justice by a secret vote, three are full-rank professors elected by Parliament, and the other five are *ex officio* members: the Minister of Justice, the presidents of the Supreme Court of Justice, the Appeals Court and the Economic Judiciary, and the Prosecutor-General. Only six members, therefore, are judges, of whom three are elected and three designated *ex officio*.

The judges are reported to have demanded that members of the SCM be selected by the **General Assembly of Judges**, and that it should be forbidden to combine the position of SCM chairman with the position of president of the Supreme Court of Justice. However, these initiatives have not yet been considered.

There have been further proposals for constitutional amendments to modify the composition and the powers of the SCM pursuant to Articles 122 and 123 of the Constitution, according to which Parliament could provide for any method of appointment of SCM members other than the *ex officio* members, and would be able to fix their numbers and empower the SCM to remove judges. This would be in contravention of the principle of security of tenure provided for by Article 116 of the Constitution. The **Minister of Justice**, the **President of the Supreme Court** and the **Prosecutor-General** would continue to be *ex officio* members. According to the CoE **Venice Commission** expert recommendations, this would be a decisive shift away from control by the judiciary over its own affairs towards control by Parliament, and thereby constitute a potential threat to judicial independence (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

According to ICJ/CIJL findings in **February 2004**, the current chairman of the SCM does not exercise her powers independently. At the congress of all judges in **February 2004**, which elected the current members of the SCM, the chairman allegedly presented a list of candidates who were “more comfortable for the government”. While all the judges first voted secretly for alternative candidates, when an open vote was settled on, candidates favoured by the chairman were in the end elected. Moreover, it was found that all new Supreme Court judges nominated in **2003**

had been invited to speak to the Communist Party, without whose approval they would not be appointed. The **CIJL** found that concerns over the reform of the SCM, compounded by the appointment of its present chairman and the manner in which she is employing her powers, indicate that the SCM is not independent and that it does not reflect the standards laid down in the *European Charter on the Statute of Judges* (http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Legal_professionals/Judges/Instruments_and_documents/Translations%20available%20of%20the%20European%20Charter%20on%20the%20Statute%20of%20Judges%20is%20Available.asp) (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

Security of tenure

According to Article 116 of the Constitution, also amended in **November 2002** by *Law no. 1471-XV*, the President appoints judges for an initial period of five years upon their nomination by the **Superior Council of Magistracy** (SCM). After the expiration of their five-year term of office, judges can be reappointed provided they have undertaken specialized judicial training and passed a test evaluated by the SCM. **Council of Europe** experts were concerned that Article 116 of the Constitution had been interpreted so as to permit the President to bypass the SCM in appointing judges, including court presidents and vice-presidents. They pointed out that this interpretation contradicted Article 123 of the Constitution, which gives the SCM powers to appoint and manage judges' careers (see under Superior Council of Magistracy above). In practice, political affiliation plays a large role in the reappointment process and the lack of transparency in the process is the principal concern (http://www.abanet.org/rol/publications/regional_publications.shtml#moldova).

According to new Article 11 of the **1995 Law on the Status of Judges No. 544-XIII** amended in **March 2003** through *Law No. 140-XV* (<http://www.parlament.md/lawarchive/lrm/march2003/>), the repeated refusal by the **President** of candidates proposed for appointment to the position of judges until retirement age can serve as the basis for the SCM to propose their removal from office. Although judges are irremovable according to Article 116 of the Constitution, the President can now, without the possibility of an effective appeal, dismiss candidates against the wishes of the SCM, and even if no disciplinary procedure has been taken against them for misconduct. This significantly reduces the role of the SCM in the appointment of judges while strengthening the hand of the executive over this process. Under this new mechanism, candidates who are believed by the SCM to be entirely suitable for appointment, following reconsideration, can nevertheless be dismissed if the President considers them unsuitable, without recourse to any remedy and possibly without knowing the reason for their dismissal. The **ICJ/CIJL** found in **February 2004** that this new procedure conflicts with **Council of Europe** standards and is extremely dangerous, as it gives the President virtually unlimited powers over the appointment of judges (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

Internal independence

According to **Article 27** of the **1995 Law on Judicial Organization No 514-XIII**, court presidents have the authority to assign cases to judges in their courts. Since the law does not specify any criteria or method for assignment of cases, presidents have total discretion and may apply improper subjective grounds (http://www.abanet.org/rol/publications/regional_publications.shtml#moldova). Many

court presidents are reported to abuse their position in order to give cases to judges from whom they can expect “politically desirable judgments” (http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860). Occasionally, judges have asked the president directly to assign them a particular case (http://www.abanet.org/rol/publications/regional_publications.shtml#moldova).

Corruption

A parliamentary working group was set up in **November 2003** “to elaborate proposals for the improvement of legislation regarding the efficiency and quality of justice” ([http://www.coe.int/t/e/sg/Secretary-General/Information/Documents/Numerical/2003/SGINF\(2003\)46E.asp#TopOfPage](http://www.coe.int/t/e/sg/Secretary-General/Information/Documents/Numerical/2003/SGINF(2003)46E.asp#TopOfPage)), and to strengthen the struggle against corruption in courts by ensuring their transparency. Its 11 members represent Parliament, the executive and the judiciary, judges being in a minority (<http://www.abanet.org/rol/publications/moldova-jri-2002-eng.pdf>). In **February 2004**, government officials and non-governmental representatives acknowledged to the ICJ/CIJL that financial corruption in the Moldovan judicial system is a matter of considerable concern and especially prevalent in cases involving substantial economic interests.

Corruption in the form of trafficking in influence – “telephone justice”, i.e. direct instructions via telephone on rulings for specific cases – is today one of the most serious and insidious problems facing the independence of the judiciary in Moldova. In **February 2004** the ICJ/CIJL found a return to a largely compliant judiciary and to the practice of “telephone justice” originating in the **Supreme Council of Magistracy**, which has become a conduit for the exercise of the President’s will (see above) (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf). Former judges reported to the ICJ/CIJL that there is now a tacit agreement between the government and the judiciary that government orders are to be followed, so judges will not rule against the state in cases where the state is a party: the Chairman of the Supreme Court gives instructions to chairmen of regional courts, and final drafts of judgments against the state are checked by the **Department for Fighting Economic Corruption**, whose report is then sent to the President (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf). It is also alleged that in various districts there are special sections of the Communist Party, where the party secretary can give direct instructions to the chairman of the court (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

Additionally, the enforcement of judgments seems to be related to their conformity with the government’s way of thinking: the enforcement of a judicial decision is neglected when it is not favourable to government interests but is expeditiously enforced in the reverse situation (see Constitutional and Legal Policy Institute and Freedom House Moldova, “Monitoring Judicial Independence in the Republic of Moldova”, Chisinau **2003**).

Judicial budgets

The judiciary is dependent financially on the executive. According to the ICJ/CIJL **2004** mission’s findings, the judiciary is not consulted when the judicial budget is determined. The **Ministry of Justice** does not appear to engage in appropriate budgetary planning, since some lower courts lack minimal working conditions such as a proper courtroom, adequate writing materials or access to computers and law libraries (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf), with a direct and

negative impact on the quality of justice dispensed (http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860).

Judicial salaries are low by European standards, but higher than most Moldovan salaries; together with additional benefits, judicial salaries put judges in a position where they can earn a respectable living (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf). According to Article 30 of the **1995 Law No. 544-XIII on the Status of Judges**, if a new judge does not have a residence, the local public administration authority must provide one within six months; after ten years of service, a judge is entitled to outright ownership of the residence without cost. In practice, however, most public authorities fail to comply with these requirements, because of a lack of available dwellings or of money to provide a residence or to pay compensation to the judge.

Training of judges

In accordance with the **CoE Targeted Cooperation Programme** (see above, at start of Judiciary section) training on human rights standards and their compatibility with Moldovan legislation and practice took place between **October 2002** and **September 2003** for judges, prosecutors, practising lawyers and law students. The independence of the judiciary and the role of prosecutors were still matters of concern. The creation of a **National School of Judges and Prosecutors** was on the **2004** CoE's agenda: a Moldovan group of national experts has met since **October 2003** to identify its needs.

In **June 2002** and **2003** respectively, the new *Civil and Criminal Codes* came into force. However, no training on the new codes has been organized for judges and prosecutors (http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860). New codes of *Criminal* and *Civil Procedure* also came into force in **June 2003**, but due to their late publication, judicial personnel did not have sufficient time to familiarize themselves with either of them.

Cases

Security of tenure

Before **March 2003** there had been no cases where a candidate proposed by the **SCM** was not appointed by the President; since then, however, the President has failed to reconfirm the position of some 50 per cent of judges at the expiry of their five-year terms (http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860). The **President** not only decides on the appointment of judges but also is directly involved in the selection process. Furthermore, contrary to previous practice, every candidate for the position of judge undergoes checking by the security services, while there is no legal provision authorizing such procedure (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

The **ICJ** received reports in **February 2004** that a number of judges had lost their jobs following the **November 2002** amendment to Article 115 of the Constitution reducing the number of court levels from four to three (see Judicial system reforms above). Allegedly this reduction has caused more than 30 per cent of the country's judges to be replaced in **2003 and 2004**. There are concerns regarding the fact that the dismissals especially affected those judges who were perceived as opposed to the policies of the government (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf), such

as Judge **Gheorghe Ulianovschi**, chairman of the Chisinau Tribunal, and Judge **Tudor Lazar**, a member of the former court of appeal, who lost his position in revenge for decisions that favoured the Basarabian Metropolitan Church (see below) and local oil importers over the government.

Corruption

In **2003** Moldovan Bar Union chairman **George Amihalachioae** stated in the newspaper “The Capital” that “an absolute majority of judges in Moldova takes bribes”. **The Moldovan Judges’ Association** reacted promptly to this allegation of corruption, perceiving his statement to be libellous and demanding an investigation by the Prosecutor-General to prove that it was unfounded and thus rehabilitate the image of judges in the society (http://www.abanet.org/rol/publications/regional_publications.shtml#moldova). No follow-up has been reported to this case.

Enforcement of decisions

The enforcement of a **Constitutional Court** decision requires the modification or repeal by Parliament of any law found to be unconstitutional. Although laws determined to be unconstitutional by the Constitutional Court are null and void upon the issuance of the court’s decision, there have been cases where its decisions have not been executed. During the first half of **2002**, the Constitutional Court issued 32 decisions and as of **5 August 2002**, 12 had still not been implemented (http://www.abanet.org/rol/publications/regional_publications.shtml#moldova).

In the **December 2001** case of the *Metropolitan Church of Basarabia v Moldova*, the **European Court of Human Rights** (ECHR) unanimously decided that the government was obliged to register the Basarabian Metropolitan Church, stating that the Republic of Moldova had violated the freedom of conscience and the right of citizens to appeal, since it had refused 11 times to register the church since **1992**. The **Prime Minister** declared that the decision was not favourable to the Republic of Moldova and therefore the government would not comply with it. Eventually, the decision was enforced, more under the pressure of external factors rather than internal ones.

LEGAL PROFESSION

Moldovan lawyers are organized into a unified **Bar** following the adoption in **July 2002** of *Law No. 1260-XV on the Legal Profession*, amended on **29 May 2003** by *Law No. 206-XV* (<http://www.parliament.md/download/laws/ro/1260-XV-19.07.2002.doc>) A *Code of Ethics* was adopted by the Bar at its inaugural congress in **December 2002**. The Bar has commissions on **discipline, qualifications, audit** and **budget**. The Bar’s **Commission for Ethics and Discipline** has little authority over advocates who violate professional conduct, with authority exercised by the Ministry of Justice’s **Commission for Licensing Advocates** (http://www.abanet.org/rol/publications/regional_publications.shtml#moldova).

The Bar comprises all 1,200 Moldovan advocates, a number said to be too few to make proper access to justice possible (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf). The Bar is self-governing, independent and generally democratic

(http://www.abanet.org/rol/publications/regional_publications.shtml#moldova).

Reportedly, lawyers lack training and find it increasingly difficult to keep up with the accelerating number of new pieces of legislation that are being adopted.

The **Ministry of Justice** plays a large role within the legal profession by licensing advocates and paying for their *ex officio* work for poor clients. In **2003** almost all advocates joined two strikes, between **17–20 May** and between **1–10 October**, calling on Parliament, the Government and the President to reduce advocates' state social insurance payments and pay arrears owed to them for representing legal aid clients. Other demands concerned the conditions under which advocates met with clients in detention, and the rents for advocates' offices. In the end, most of the Bar's demands were met, including the payment of lawyers' fees for *ex officio* work and the reduction of state social insurance payments (http://www.abanet.org/rol/publications/regional_publications.shtml#moldova).

Cases

Clashes with the **Moldovan Association of Judges** were reported in **2003**, when the Moldovan Bar Union chairman, **George Amihalachioae**, made allegations of corruption of the judiciary (see under Judiciary: Cases).

In **2004** the **ECHR** held that the **Constitutional Court** had violated Article 10 of the *European Convention on Human Rights* when in **2000** it fined Mr Amihalachioae for lack of respect towards the court. He had stated publicly that a court decision on the unconstitutionality of parts of the 1999 law on the legal profession would result in "complete anarchy in the profession of advocate" while doubting whether the Constitutional Court itself was constitutional (Case of *Amihalachioae v Moldova*, Decision of **20 April 2004**).

PROSECUTORS

The Prosecutor-General's Office is responsible for criminal prosecution, the presentation of formal charges before a court and the overall protection of the rule of law. Once subordinated to the executive branch as a division of the Ministry of Justice (during the previous Soviet period), the **Office of the Prosecutor** is now an autonomous office within the judiciary, according to the **March 2003** *Law on the Public Prosecutor's Office* No. 118-XV (<http://www.transparency.md/documents.htm#Laws>). Article 291 of the **2003** *Moldovan Criminal Procedure Code* gives prosecutors the power to open and close investigations without bringing the matter before the court, which gives them considerable influence over the judicial process. In practice, the prosecutor's recommendations still carry considerable weight and limit the defendant's actual presumption of innocence (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

ACCESS TO JUSTICE

In Moldova, defendants have the right to legal representation; if they cannot afford the fees for a lawyer, the government requires the **Bar Association** to provide one. In practice, since the government is generally unable to pay ongoing legal fees,

defendants often do not have adequate legal representation (see [Legal Profession](#) above). Even though defence lawyers have a right of access to their clients and to review evidence, prosecutors occasionally use bureaucratic manoeuvres to restrict that access (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

Individuals have no direct right to petition the **Constitutional Court**; nor may the Constitutional Court examine cases of its own motion. Individuals have indirect access to the Constitutional Court through the **Supreme Court of Justice** if the latter raises an unconstitutionality plea during a trial. They may also refer to the Constitutional Court through the **Ombudsman**.

Moldovan Human Rights Centre

The 1997 *Law on Parliamentary Advocates No.1349-XIII* provides for three **parliamentary advocates (ombudsmen)**, and an independent centre for human rights, the **Moldovan Human Rights Centre** under their supervision (http://www.anticorruption.bg/ombudsman/eng/readnews.php?id=4419&lang=en&style=tex&l_style=default). Parliament has the power to appoint for a five-year term and to remove the three advocates, who have equal rights and responsibilities. Parliamentary advocates are empowered to examine individual claims for human rights violations. Among other things, centre personnel provide training for lawyers and conduct seminars and training programmes for judges, prosecutors and law students. A large number of the complaints received by the centre have dealt with access to justice. The **ICJ/CIJL** concluded in **February 2004** that the Office of the Parliamentary Advocates is ineffective in protecting individuals' rights or in providing access to justice (http://www.icj.org/news.php3?id_article=3263&lang=en), and that the role of parliamentary advocates in the provision of legal aid must be enhanced (www.icj.org/IMG/pdf/ICJ_Moldova_Report-2.pdf).

Legal reforms

The new *civil and criminal codes* that came into force in **June 2002** and **2003** respectively introduced the concepts of right to due process, presumption of innocence and right to refuse to provide self-incriminating testimony (http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860).

LEGAL REFORMS DURING THE PERIOD

- 18 April 2002:** *Law No. 985-XV, new Criminal Code* (Monitorul Oficial 128-129 of **13 September 2002**).
- 6 June 2002:** *Law No. 1099-XV* (Monitorul Oficial 100-101 of **11 July 2002**), amending Articles 3, 6, 8, 10, 26, 28, 32, 33 and III of the 20 July 1995 *Law No. 544-XIII on the Status of Judges* (Monitorul Oficial 59-60/664 of **26 October 1995**).
- 6 June 2002:** *Law No. 1107-XV, new Civil Code* (Monitorul Oficial 82-86 of **22 June 2002**).
- 14 June 2002:** *Law No.1137-XV* (Monitorul Oficial 103-105 of **18 July 2002**), amending Article 28 of the 13 December 1994 *Law No. 317-XIII on the Constitutional Court*.

- 18 July 2002:** *Law No. 115-116/922, on the ratification of the International Convention for the Suppression of the Financing of Terrorism (Monitorul Oficial of 8 August 2002).*
- 18 July 2002:** *Law No. 113-114/896, on the Adherence of the Republic of Moldova to the International Convention on the Struggle against Bomb Terrorism (Monitorul Oficial of 5 August 2002).*
- 18 July 2002:** *Law No. 115-116/924, on the Adherence of the Republic of Moldova to the International Convention Against the Taking of Hostages (Monitorul Oficial of 8 August 2002).*
- 21 November 2002:** *Law No. 1471-XV (Monitorul Oficial 169/1294 of 12 December 2002), amending Articles 115.1 and 116 of the Moldovan Constitution.*
- 14 March 2003:** *Law No. 118-XV on the Public Prosecutor's Office (Monitorul Oficial 73-75 of 18 April 2003).*
- 14 March 2003:** *Law No. 122-XV, new Criminal Procedural Code (Monitorul Oficial 104-110 of 07 June 2003).*
- 21 March 2003:** *Law No. 140-XV (Monitorul Oficial 67-69 of 11 April 2003), amending Article 11 of the 1995 Law No. 544-XIII on the Status of Judges (Monitorul Oficial 59-60 of 20 August 1995).*
- 8 May 2003:** *Law No 191-XV on the Modification and Amendment of Certain Laws (Monitorul Oficial 97-98 of 31 May 2003).*
- 29 May 2003:** *Law No. 206-XV on the Modification of Certain Laws (Monitorul Oficial 149-152 of 18 July 2003) amending Articles 5, 6, 7, 8 and 46 of the 19 July 2002 Law No. 1260-XV, on the Legal Profession (Monitorul Oficial 126-127 of 12 September 2002).*
- 30 April 2003:** *Law No. 225-XV, new Civil Procedural Code (Monitorul Oficial 111-115 of 12 June 2003).*
- 25 July 2003:** *Law No. 344-XV (Monitorul Oficial 170-172/721 of 8 August 2003), amending Articles 73, 110 and 111 of the Moldovan Constitution.*