

OSCE Trial Monitoring Programme
for the Republic of Moldova

Final Report



OSCE TRIAL MONITORING PROGRAMME FOR THE REPUBLIC OF MOLDOVA

FINAL REPORT
(April 2006 – November 2008)

Realised by
OSCE Mission to Moldova

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and we sincerely hope that this interest will continue to contribute to the development of the judiciary system in Moldova so that it may adequately meet relevant international standards and OSCE commitments.

*On behalf of the OSCE Mission to Moldova
Rita Tamm, Manager of the Trial Monitoring Programme in Moldova*

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General remarks about the Trial Monitoring Programme in the Republic of Moldova:

The Trial Monitoring Programme was developed by the OSCE Mission to Moldova in partnership with OSCE Office for Democratic Institutions and Human Rights (ODIHR). Monitoring started on 19 April 2006 in the following courts located in the municipality of Chişinău: Botanica, Buiucani, Centru, Ciocana and Rîşcani District Courts; the Chişinău Court of Appeals and the Supreme Court of Justice. Since September 2007 the Trial Monitoring Programme has been extended to the Southeast of the country to the following courts: Anenii Noi, Căuşeni and Ştefan Vodă District Courts and the Bender Court of Appeals. Court monitoring ended on 30 November 2008.

The Trial Monitoring Programme sought to assess the observance of internationally recognized fair trial standards and corresponding individual rights of the defendant, victim and witness; and to review the de facto functioning of the courts in general to the extent that it can be observed by monitoring court proceedings.

The analysis in this Final Report includes a summary of the findings for the entire monitoring period. It compares the current situation with the findings of the first two interim reports. It notes any differences between Chişinău courts and those located in the Southeast of the country. In addition, this Final Report presents the Moldovan legal community, the donor community and other interested parties with a series of recommendations on how the problems identified might be addressed.

Findings related to institutional conditions:

Court facilities are mostly inappropriate. The conditions of the courtrooms are largely poor. Courts lack adequate equipment. Heating remains a problem in winter. None of the courts monitored has separate entrances or special waiting rooms for victims and witnesses. Basic public facilities such as toilets and running water are generally not available to the public or are very shabby.

The courts are marked by organizational shortcomings, including cascading delays and postponements; 61% of scheduled hearings were postponed in the courts in Chişinău and 85% in Southeast of Moldova. Poor punctuality is an accepted practice.

Courts of Appeals have better premises and facilities than the district courts but are still overcrowded and the dominant atmosphere is chaotic. The practice of scheduling too many trials on any one day continued in Courts of Appeals and in the Supreme Court of Justice.

Findings related to the professional performance of participants:

Participants in all categories and all courts exhibited a lack of concentration and attention to the proceedings. Judges rarely admonished behaviour such as use of mobile phones or making inappropriate jokes or comments. Prosecutors and defence lawyers entered judges' offices before hearings. Participants used inappropriate expressions. In addition to the effect

on individual cases, the atmosphere negatively affects the public's and parties' perception of the judicial system.

Judges, while generally showing a good understanding of the law, often fail to devote sufficient attention and time to explaining the rights of the parties. Hearings were less formal when held in judges' offices or by only one judge in a courtroom. Prosecutors appeared inadequately prepared in some cases. Prosecutors sometimes failed to secure the appearance of witnesses, did not bring evidence to the court and asked the parties inappropriate questions. Monitors observed a slight improvement in prosecutors' punctuality record in the second monitoring period in Chişinău courts.

Defence lawyers sometimes performed poorly. Although monitors observed poorer performance by lawyers representing legal aid clients, privately contracted lawyers were sometimes clearly not prepared for the case and read through the case file in court. In isolated cases defence lawyers behaved in an unacceptable manner towards their clients.

Court clerks registered a slight improvement in performance in the second monitoring period regarding taking minutes and attitudes towards trial participants. However, monitors still observed many instances in which court clerks did not actively take minutes or took minutes very slowly and interrupted participants to ask them to repeat what they had said.

Quality of interpretation was poor. As a rule interpreters did not interpret everything, usually only summarizing the questions and answers.

Findings related to the rights of the defendant in a fair trial:

The right to a public hearing is generally respected. The small number of courtrooms and the preference of many judges and court clerks are the main reasons for a high percentage of hearings held in the judges' offices, which limits the right of the public to attend the court hearings. Lack of full and accurate information posted on information boards in courts is an impediment. Monitors observed improvement in the percentage of publicly posted case lists in the courts in Chişinău and a better situation in the courts located in the Southeast.

The right to an independent and impartial tribunal was hampered by frequent engagement of the judges in *ex-parte* communications in spite of the Superior Council of Magistrates' express prohibition, raising doubts about their impartiality. Courts of Appeals and the Supreme Court of Justice deliberated on several cases simultaneously, raising questions as to whether each case is decided free of emotions or impressions derived from other cases.

The right to a fair trial: The right to be present at one's proceedings seems to be well respected. Monitors noted several apparent violations of equality of arms and adversarial rights, such as judges interrupting the defence lawyers and the tendency of many judges to engage actively in prosecutorial questioning. In the Chişinău Court of Appeals monitors noted a particular problem with judges not paying attention to lawyer's questions or pleading unless the lawyer is well-known. Judges seem to attach less importance to continuity of representation by the defence lawyer than to the importance of having the same prosecutor represent the state throughout a case.

The right to trial within a reasonable time is negatively affected by cascading delays and postponements. Judges make visible efforts to ensure the examination of the case in a

reasonable time; however, often these efforts are at the expense of other rights.

The right to be presumed innocent was violated when judges demonstrated lack of interest in the parties' statements. In isolated cases monitors noted that the prosecutor used the term "criminal" while addressing the defendant. The practice of holding defendants handcuffed or in metal cages throughout the trial is notable.

The right to legal assistance and the right to adequate time and facilities are respected with regard to the presence or the appointment of a lawyer. Cases were noted in which a defence lawyer was either not well prepared or passive. In a few cases defence lawyers did not know the basic facts. When acting as legal aid lawyers, defence lawyers tended to be less active and show less interest than when privately contracted. Courts in Chişinău continued the problematic practice of appointing legal aid lawyers shortly before the court hearing. The practice decreased towards the end of the Programme, when the Law on State Guaranteed Legal Aid entered into force. No such practice was noted in the Southeast of the country.

The right to an interpreter is negatively affected by a chronic lack of interpreters, especially for languages other than Russian. The quality of interpretation is inadequate, including due to lack of legal-linguistic training and adequate remuneration. In many instances the judge took on the role of interpreter – in addition to that of judge and court clerk (dictating to the clerk exactly what to write in the minutes). The problematic practice continued of conducting hearings interchangeably in two languages – the state language and Russian – without interpretation.

Findings related to the rights of the victims and witnesses in a fair trial:

The right to physical security is negatively affected by the lack of appropriate court facilities and of adequate attention by prosecutors and judges to ensure victims' and witnesses' rights. Monitors noted instances in which the defendant directly threatened the victim, most frequently in trafficking and domestic violence cases, with no action taken by the judge or prosecutor.

The right to be treated with respect was affected when victims and witnesses were treated insensitively. Judges frequently failed to remind victims and witnesses that they had the right to read their statements before signing them.

The right to privacy is generally respected by judges, who usually decide not to hold public hearings in cases of trafficking, domestic violence or sexual offences to protect the interests of the victim. Monitors noted, however, that such decisions were often taken unilaterally by the judge without consulting the victim. Judges and other participants continued to ask inappropriate and unrelated questions about the intimate life of the victim.

The right to adequate interpretation facilities: Implementation of it is more problematic for victims and witnesses than for defendants. Monitors noted many cases in which the judge did not seek an interpreter though the victim or witness clearly needed one.

The right to legal assistance: Victims and witnesses have the right to legal assistance. Monitors observed, however, that few victims had legal representation and that mostly through NGOs; monitors did not observe witnesses with legal representation.

The right to timely examination of the case: Victims and witnesses were typically punctual for the first hearings but later lost interest because of delays and postponements.

I. INTRODUCTION

1.1. National and International Commitments and Obligations on the Right to a Fair Trial

The principle of a fair trial is fundamental to any democratic society. From a human rights perspective, the right to a fair trial can be viewed as the right of all charged with committing a crime to have certain procedures respected in the process of the state holding them accountable. The right to a fair trial is instrumental in the protection of other rights, including civil and human rights, in that it serves as a safeguard that guarantees judicial redress through the courts to those whose rights have been violated. From a broader societal perspective the right to a fair trial is a means to ensure that criminals are duly brought to justice and that no innocent person is erroneously convicted of a crime. On a more abstract and theoretical level, the concept of a fair trial, as a core element in the rule of law, is linked to the fundamental principle of separation of powers, because it requires the judiciary independently to exercise its powers free from encroachment by the executive and legislative branches of government. The right to a fair trial is thus a core element in the concept of the rule of law and in the protection of human rights in general.

Under United Nations¹ and Council of Europe² standards and under political commitments created under the OSCE³ and the Stability Pact for South Eastern Europe, everyone is entitled to a fair trial in both civil and criminal proceedings. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), which guarantees the right to a fair trial, has been interpreted extensively by the European Court of Human Rights (European Court) and has been one of the Convention's most dynamically evolving provisions.

In Moldovan law, provisions guaranteeing a person's right to a fair trial can be found in the Constitution,⁴ the Criminal Procedure Code,⁵ and other organic laws.⁶ Where contradiction exists between national criminal procedure law and international human rights treaties to which Moldova is a party, international law prevails.⁷ The European Convention, in particular,

1 Art. 14 of the International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976, and to which Moldova is a party since 26 April 1993.

2 Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (*European Convention*), entered into force on 3 September 1953, to which Moldova is a party since 12 September 1997.

3 Para. 13.9 of the Concluding Document of Vienna Meeting (1989). For a detailed list of OSCE commitments relating to the right to a fair trial see http://www.osce.org/documents/odihr/2005/01/4109_en.pdf.

4 Arts 20, 21, 26, 117, 118 and 119 Constitution of the Republic of Moldova, adopted on 29 July 2004.

5 Title I, Chapter II and the Special Part of the Criminal Procedure Code, adopted by Law No. 122-XV of 14 March 2003, entered into force on 12 June 2003, with subsequent amendments.

6 The Law on judicial organization, Law No. 514-XIII of 6 July 1995, entered into force on 19 October 1995, with subsequent amendments; the Law on the status of judges, No. 544-XIII of 20 July 1995, entered into force on 16 October 1995, with subsequent amendments.

7 See Art. 4 para. 1 and 2 of the Constitution; see also Art. 8 of the Constitution on Observance of International

functions as an integral part of the national legal system and is to be applied directly. The jurisprudence of the European Court is binding on the courts of Moldova and maintains priority over incompatible national legal provisions.⁸ Likewise, the Criminal Code, Criminal Procedure Code, Civil Code, and Civil Procedure Code refer to the supremacy of international law.⁹

1.2. Value of Trial Monitoring

As a participating State of the OSCE since 1992, the Republic of Moldova has accepted as a confidence building measure the presence of observers in proceedings before its national courts. Moldova thus recognizes that trial observation is a means to ensuring a well-functioning judiciary and effective human rights protections. As noted in the OSCE Copenhagen Commitment:

The participating States, wishing to ensure greater transparency in the implementation of the commitments undertaken in the Vienna Concluding Document under the heading of the human dimension of the CSCE [now the OSCE], *decide to accept as a confidence building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law; it is understood that proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments.*¹⁰

Building upon OSCE/ODIHR experience in other countries, it has been concluded that utilizing national trial observation networks increases the awareness of civil society of court procedures and the functioning of the judiciary and also serves as a means to enhance trust among citizens in the judicial system. As is often quoted, "Justice must not only be done, but must be seen to be done."¹¹ This principle of "open justice" lies at the heart of trial monitoring because justice implies fair outcomes achieved through fair procedures. The appropriate observer is a fair-minded observer who acts reasonably. In order for the justice system truly to function fairly and for the public to believe that it functions fairly, it is useful to identify, train, and support a national cadre of such fair-minded observers.

Laws and Treaties; Decision of Constitutional Court on Interpretation of Certain Provisions of Art. 4 of the Constitution of the Republic of Moldova No. 55 (14 October 1999), para. 6, 8, 11 and No. 6 (ruling that universally recognized norms and principles of international law are binding in Moldova to the extent that it has agreed to be bound, and that international treaties represent an integral part of the national legal framework and supersede national law in any conflict between the two); and Art.s 2 and 7 of the Criminal Procedure Code.

8 See Decision of Supreme Court of Justice on the Application in Judiciary Practice by Judiciary Institutions of Certain Provisions of the Convention on the Protection of Fundamental Human Rights and Freedoms No. 17 (19 June 2000), para. 2 and 3 (the ECHR is an integral part of the international legal system, is directly applicable, and supersedes national law in cases of conflict). One example of an incompatible provision with the ECHR was Art. 191 of the Criminal Procedure Code, before the amendment of 21 December 2006. It contravened Art. 5(3) of the ECHR by excluding the right of any defendant charged with an offence punishable with a sentence of more than 10 years from the possibility of release under judicial control. See *Boicenco v. Moldova*, judgment of 11 July 2006, para. 134-137.

9 Criminal Code Art. 1(3); Criminal Procedure Code Art. 2; Civil Code Art. 7; Code of Civil Procedure Art. 2(3).

10 OSCE Copenhagen Commitment (1990), para. 12 (emphasis added).

11 *Delcourt v. Belgium*, Judgment of 17 January 1970, para. 31.

Similar Trial Monitoring Programmes have previously been organized and implemented by the ODIHR and OSCE field presences in other countries including Albania, Azerbaijan, Bosnia and Herzegovina, Croatia, Kazakhstan, Kosovo, Macedonia, Serbia and Montenegro. Each of these programmes had distinguishing peculiarities dictated by specific programmatic objectives and local circumstances. The overall goal of each Trial Monitoring Programme, however, has been the same: to enhance compliance with commitments on human rights in general and the right to a fair trial in particular, to increase the transparency of the judiciary and to increase public trust in the court system.

1.3. Legislative Developments Relevant to the Judiciary during the Trial Monitoring Programme

This section of the report highlights the principal developments relating to the Moldovan judiciary and relevant to ensuring the right to a fair trial that occurred during the implementation of the Trial Monitoring Programme. The Moldovan judiciary is still undergoing reforms that began in 1994 with the adoption of the Constitution and the Concept for Judiciary and Rule of Law Reform in Moldova.¹² Judicial reform is an important part of the EU–Moldova Action Plan, Council of Europe Monitoring¹³ and the National Development Strategy for 2008–2011.¹⁴ The legislative and practical measures referred to briefly are all part of the ongoing effort to reform the Moldovan judicial system.

In terms of legislation, the Parliament has adopted a series of new laws meant to respond to important gaps in the functioning of the judiciary. Some of these laws are accompanied by practical measures. The adoption of the Law on the Status and Organization of the Activity of Court Clerks,¹⁵ the inclusion of court clerks as beneficiaries of the training activities carried out by the National Institute of Justice¹⁶ and the adoption of the Superior Council of Magistrates' Decision on the attestation of court clerks should improve the status and performance of the court clerks. The adoption of the Law on State-guaranteed Legal Aid¹⁷ should improve the quality of legal aid, which had been much criticized in a series of reports and assessments that preceded its adoption. A National Legal Aid Council has been set up to draft and implement legal aid policies in the country and to monitor the quality of legal aid. These activities will be carried out in cooperation with the Moldovan Bar Association. The National Legal Aid Council, although entrusted with important and necessary competencies, does not have permanent status. This could impede its ability to function effectively. The Law Regarding the Authorization and Remuneration of Interpreters and Translators applicable to the Superior Council of Magistrates, Ministry of Justice, prosecution offices, criminal investigation bodies, courts, notaries, lawyers and court bailiffs¹⁸ should improve the quality and increase the

12 The Concept for Judiciary and Rule of Law in Moldova, approved by Parliament Decision No. 152 of 21 June 1994.

13 See the last PACE Monitoring Report on Honouring of obligations and commitments by Moldova, Doc. 11374 of 14 September 2007.

14 National Strategy for Development for 2008–2011, approved by Law No. 295 of 21 December 2007.

15 Law on the Status and Organization of the Activity of Court Clerks, No. 59 of 15 March 2007, entered into force on 1 January 2008.

16 According to the Law on the National Institute of Justice, No. 152 of 8 June 2006, entered into force on 28 June 2006.

17 Law on State Guaranteed Legal Aid, No. 198 of 26 July 2007, entered into force on 1 July 2008.

18 Law regarding the Authorization and Remuneration of Interpreters and Translators applicable to the

availability of translators and interpreters. Although the law is an important step, it does not provide for the training of legal translators and interpreters or budgetary support for new fees. Further legislation by the government to address these issues is expected.

Several amendments have been made to the Law on Judicial Organization, the Law on the Status of Judges and the Law on the Superior Council of Magistrates since their adoption. However, to date, no assessment has been done on the impact of these new laws and amendments. Such an assessment is beyond the scope of this report and the amendments of the indicated laws are only noted as fact.

Several important decisions and measures to ensure and/or create conditions for implementing the right to a fair trial have been made by the Superior Council of Magistrates. The Council has adopted decisions on random assignment of cases in the courts¹⁹ and on the access of trial participants and their representatives to judges' offices.²⁰ The Council has also adopted an Ethical Code for Judges²¹ and a regulation regarding the publishing of judicial decisions and judgments online.²² The websites of the Supreme Court of Justice (www.csj.md) and of the Superior Council of Magistrates (www.csj.md) have been improved, and the website of the Courts of Appeals (<http://ca.justice.md>) has been launched.

The courts in Moldova are entitled to judicial police. These police must be provided by the Ministry of Justice. The necessary number of such judicial police, the means for maintaining them and the regulation of their activity are approved by the Government at the proposal of the Ministry of Justice and the Superior Council of Magistrates. The main tasks of judicial police are (i) to ensure the security of court premises and assets, judges and other trial participants, public order on court premises and during court hearings; (ii) to bring to court by force persons who refuse to appear willingly; (iii) to control entry to and exit from the court, including personal searches.²³ Although judicial police were to be transferred under the Ministry of Justice in July 2006, this transfer has been postponed until "when necessary conditions are created but no later than 1 January 2010."²⁴

In 2009, for the first time, the judiciary budget was adopted according to the procedures stipulated in Article 121 of the Constitution and Article 22 of the Law on Judicial Organization. The budget was approved by the Parliament at the proposal of the Superior Council of Magistrates. Under previous procedures, the Ministry of Finance set the maximum figure and the Ministry of Justice was directly involved in drafting the budget. This new procedure has gone a long way toward ensuring the financial independence of the judiciary, but the lack of personnel in the Superior Council of Magistrates and the confusion between the competencies of this body and those of the Department for Administration of Justice within

Superior Council of Magistrates, Ministry of Justice, prosecution offices, criminal investigation bodies, courts, notaries, lawyers and court bailiffs, No. 264 of 11 December 2008, to enter into force on 20 September 2009.

19 Decision of the Superior Council of Magistrates No. 68/3 of 1 March 2007.

20 Decision of the Superior Council of Magistrates No. 351/12 of 15 November 2007.

21 Decision of the Superior Council of Magistrates No. 366/15 of 29 November 2007, which entered into force on 1 January 2008.

22 Decision of the Superior Council of Magistrates No. 472/21 of 18 December 2008.

23 See for details see Art. 50 of Law on Judicial Organization.

24 Law regarding the amendment of article VI of the Law No. 247-XVI of 21 July 2006 regarding the amendment of certain legislative acts, No. 169 of 19 July 2007, entered into force on 3 August 2007.

the Ministry of Justice still leave room for further improvement and clarification.

The National Institute of Justice (NIJ) was created to reform the training of justice officials. Beneficiaries of the NIJ are judges, prosecutors, court clerks, court bailiffs, candidates for these positions and other persons working within the judicial system.²⁵ In 2008 UNDP Moldova, at the request of and in partnership with the NIJ, initiated **Project Strengthening the Institutional Capacity of the National Institute of Justice, which will continue to 2010**. The objectives of this project are:

- strengthening the administrative and financial management of the NIJ;
- developing a methodology for systemic drafting of the curriculum for effective training modules and publications;
- developing communication capacities and ensuring effective internal and external communication of the NIJ.

Within this project, the NIJ formulated a **curriculum for the initial training of judges and prosecutors** and drafted and published the course materials. The NIJ drafted the curriculum for court clerks' initial training and a practical guide for court clerks.

1.4. Goals and objectives of the Trial Monitoring Programme

The overall goal of the Trial Monitoring Programme, as set forth in the initial Programme document of 17 July 2005, is to enhance the Republic of Moldova's compliance with its OSCE commitments and other international standards on the right to a fair trial; **to strengthen the rule of law; and to promote respect for human rights. In particular, the purpose of the Programme is to monitor and disseminate information on compliance with fair trial standards, to build the capacity of civil society to monitor and accurately report on trials, and to raise awareness among relevant national and international stakeholders of the right to a fair trial and violations thereof.** Special attention is paid to the rights of victims and witnesses in trial proceedings. Underlying the Trial Monitoring Programme is the generally accepted view that organized and regular court monitoring standardizes the observation and information gathering process and provides a comprehensive means to examine the justice system, noting both the strengths and weaknesses in an impartial manner. The information gained through trial observation will enable the OSCE Mission, ODIHR and other interested organizations to **work with the national authorities to promote improvements in the judicial system that will increase fairness and human rights protections in Moldova.** The end goal of this approach to trial observation is to ensure an impartial and objective judiciary, to ensure the protection of human rights of both defendants and victims through full compliance with international fair trial standards, and to educate the public and civil society on the proper functioning of the judicial system.

The general objectives of the Trial Monitoring Programme fall into three categories: 1) monitoring the application of international fair trial procedural standards; 2) promoting respect for human rights and the rule of law; and 3) building capacity of local civil society to **monitor and report.** Specific objectives for the implementation of the trial monitoring programme in Moldova are as follows:

²⁵ Art.s 2 and 20 of Law on National Institute of Justice and the Statute of the National Institute of Justice, approved by the Council of the National Institute of Justice on 6 June 2007.

- To obtain systematic and impartial information on criminal trials from the perspective of compliance with international fair trial standards;
- To monitor the use of language and the use of the assistance of interpreters in court proceedings;
- To monitor legal procedures, behaviours, and practices by all the participants in the courtroom that affect victim-witness safety and defendant accountability, focusing on adherence to human rights standards;
- To identify accurately areas and patterns of non-observance of international fair trial standards and to assist the national authorities to improve compliance with these standards;
- To raise awareness of the right to a fair trial and violations thereof among relevant officials and the general population;
- To provide relevant trial participants and national authorities with information on and analysis of fair trial violations to be used as a tool for advocating the relevant structures to bring about any necessary and appropriate changes in law and practice;
- To build the capacity of local civil society to monitor trials in a professional manner and in accordance with international standards and to report such monitoring accurately to relevant national and international bodies.

1.5. Procedure and Time-line

The Trial Monitoring Programme was developed by the OSCE Mission to Moldova in partnership with ODIHR. Trial Monitoring Programme concept development began on 17 July 2005 and the Programme was launched on 21 March 2006. **Monitoring started on 19 April 2006** in the following courts in the municipality of Chişinău: Botanica, Buiucani, Centru, Ciocana and Rîşcani District Courts; the Chişinău Court of Appeals and the Supreme Court of Justice. All of these courts were monitored for the duration of the programme, i.e., **until 30 November 2008**. Starting in September 2007 the Trial Monitoring Programme was extended for the duration of the project to three District Courts in the Southeast of the country: **Anenii Noi, Căuşeni and Ştefan Vodă; and the Bender Court of Appeals.**

To ensure successful implementation of the Trial Monitoring Programme the OSCE Mission to Moldova concluded Memoranda of Understanding with both the Superior Council of Magistrates and the General Prosecutor's Office. These bodies were important partners in the implementation of the Programme. The OSCE Mission concluded a Memorandum of Co-operation with the Căuşeni Law Center which was the implementing partner for programme monitoring in the Southeast of the country.

Soon after the launch of the Programme, the Superior Council of Magistrates issued an informative note to all courts located in Chişinău informing them of the launch of Programme and calling upon them to co-operate with the trial observers. In an effort to secure cooperation, Trial Monitoring Programme staff visited the chairpersons of all Chişinău District Courts and of the Chişinău Court of Appeals to discuss the practicalities of programme implementation. The Trial Monitoring Programme presented each court president with a list of crimes to be monitored, a list of monitors who would attend hearings, and a brochure explaining the

Programme. Each court appointed a contact person who was tasked with preparing and periodically providing the Trial Monitoring Programme staff with a list of cases scheduled for trial. Monitors attended hearings according to this schedule. A total of 20 monitors in Chişinău were coordinated by the Programme’s National Coordinator and Senior Assistant. In the Southeast, the Programme assigned specific monitors to specific courts. There were a total of six monitors in the Southeast, two in each court. The pair monitoring the Căuşeni District Court also monitored hearings at the Bender Court of Appeals, located in the city of Căuşeni.

1.6. Methodology

The Trial Monitoring Programme focused on the following types of criminal cases: trafficking in human beings, trafficking in arms, domestic violence, crimes against the administration of justice, corruption and other crimes committed by public officials.

Table 1: Types of criminal cases monitored

Category of crimes monitored and related articles of the Criminal Code of the Republic of Moldova	
Trafficking in persons, pimping:	Art. 165. Trafficking in human beings Art. 206. Trafficking in children Art. 207. Illegally taking children out of the country Art. 220. Pimping
Trafficking in arms:	Art. 248, para. 3. Smuggling weapons, explosives, ammunition
Domestic violence:	Art. 145. Deliberate murder Art. 150. Inducement to commit suicide Art. 151. Deliberate grievous bodily harm or damage to health Art. 152. Deliberate average bodily harm or damage to health Art. 153. Minor bodily harm or damage to health Art. 154. Deliberate maltreatment or other acts of violence Art. 155. Threatening murder or to inflict grievous bodily harm or damage to health Art. 156. Deliberate grievous or average bodily harm or damage to health inflicted in a “state of affect” (temporary insanity) Art. 157. Grievous or average bodily harm or damage to health caused by imprudence
Crimes against the administration of justice:	Art. 303. Interference in the enforcement of justice and in criminal prosecution Art. 306. Knowingly holding an innocent person criminally liable Art. 307. The passing of an illegal sentence, decree, conclusion or decision Art. 308. Illegal detention or arrest Art. 309. Coercion to make statements Art. 309/1. Torture Art. 310. Falsification of evidence Art. 312. Making false statements, conclusions or incorrect translation

	<p>Art. 313. The refusal or evasion by a witness or injured party from making statements</p> <p>Art. 314. Coercion to make false statements, conclusions or incorrect translations, or to evade such duties</p> <p>Art. 315. Disclosure of information regarding a criminal investigation</p> <p>Art. 316. Disclosure of information regarding security measures implemented on behalf of the judge and participants in criminal proceedings</p> <p>Art. 318. Facilitating escape</p> <p>Art. 320. Deliberate failure to execute a court decision</p> <p>Art. 323. Abetting a crime</p>
Corruption and other crimes committed by public officials:	<p>Art. 243. Money laundering</p> <p>Art. 324. Passive corruption</p> <p>Art. 325. Active corruption</p> <p>Art. 326. Influence peddling</p> <p>Art. 327. Abuse of power or of an official position</p> <p>Art. 328. Exceeding one's authority or official powers</p> <p>Art. 329. Professional negligence</p> <p>Art. 330. Receiving an illicit reward from an official</p> <p>Art. 330/1. Violation of the rules on declaration of income and property by state dignitaries, judges, prosecutors, civil servants and some persons in management positions</p> <p>Art. 331. Refusal to carry out requirements of the law</p> <p>Art. 332. Falsification of public documents</p> <p>Art. 333. Bribery: receiving bribes</p> <p>Art. 334. Bribery: offering or giving bribes</p> <p>Art. 335. Abuse of service</p> <p>Art. 336. Exceeding one's job prerogatives</p>

Monitoring was carried out using as a baseline internationally recognized fair trial standards, with particular reference to the rights of defendants, witnesses and victims. The Trial Monitoring Programme was designed to assess observance of these standards and rights, as well as to review the actual functioning of the courts to the extent that this is apparent in court proceedings. In brief, the legal analysis in conducting the trial monitoring project was centred on and around the concept of a fair trial and the various procedural requirements and individual rights inherent in it.

Trial monitoring was carried out in Chişinău by teams of two monitors each, selected and trained by the OSCE Mission to Moldova. In the Southeast monitors were selected by the OSCE Mission to Moldova and the local implementing partner.²⁶ All monitors are law graduates and the majority hold LL.M. degrees and are licensed to practice law. Monitors attended a special training course on international fair trial standards taught by international and local experts. Monitors were given an OSCE Trial Monitoring Manual for the Republic of Moldova prepared specifically for this Programme by the OSCE Mission to Moldova in partnership with the Institute for Penal Reform and the American Bar Association (ABA) Rule of Law Initiative. The Manual contains overviews of legal standards applicable both in the

²⁶ Căuşeni Law Center was the local implementing partner for monitoring in the Southeast courts.

Moldovan and international context. It provides questionnaires to guide monitors as they evaluate court proceedings.

The role of the monitors was to observe attentively and neutrally everything that occurred during and surrounding the trial proceedings and to present correct and detailed reports on the trials that they monitored. The focus of the Trial Monitoring Programme was on procedural standards and not on the merits of individual cases. Accordingly, the role of monitors was not to assess the evidence or focus on the defendant's guilt or innocence, but rather the observance of procedural rules, the observance of the rights of defendants, witnesses and victims rights; and on court proceedings in general. All information collected by monitors was treated with confidentiality. One of the guiding principles for the Trial Monitoring Programme was respect for the independence of the judicial process. **Monitors were instructed never to intervene in or attempt to influence trial proceedings in any way whatsoever, and to be careful not to be identified with either the defence or the prosecution.**

The reaction of officials to the presence of monitors was marked. The First TMP Report described the challenges monitors faced in the beginning of the Programme in obtaining access to hearings. In the beginning of the Programme, in Chişinău courts, judges and court clerks appeared irritated by monitors, making inappropriate comments and failing to inform them of scheduled hearings. Judges often closed hearings to the public to avoid the presence of monitors. Lawyers and prosecutors seemed more open, but on occasion they requested that judges declare hearings closed for no apparent reason. With time and the publication of the First and Second TMP Report, officials became more comfortable with the Trial Monitoring Programme and more tolerant of the presence of monitors. The easier access to hearings was noted by all monitors in Chişinău during the second monitoring period. In the Southeast, access improved quickly. During the first two to three months of monitoring in the Southeast, monitors reported difficulties in access to hearings. After two to three months, however, monitors' access improved considerably. In one case a prosecutor asked the judge to declare a hearing closed and the judge explained the purpose of the trial monitoring, cited the Memoranda of Co-operation, and rejected the motion.

The Trial Monitoring Programme focused on observing court hearings, rather than following certain cases from the beginning to the end. A court hearing is any court action related to a certain case, including hearings on the merits of a case at the court of first instance, appeal hearings, considerations of a cassation complaint and postponements. A criminal case usually involves multiple court hearings. The monitors prepared detailed reports on each court hearing they attended, using a comprehensive reporting form, or questionnaire, developed for the purpose of collecting both statistical information and factual descriptions. The questionnaire has been amended throughout the implementation of the Programme, adjusted to the practicalities discovered or clarified during implementation. The questionnaire contains a series of questions which form the basis to collect and analyze statistical information for the Programme, as well as qualitative observations by the monitors on certain issues where positive, negative or extraordinary responses were noted at each monitored hearing.

The Trial Monitoring Programme staff entered each questionnaire into a database specifically designed for the Programme. The purpose of the database was to allow quantitative analysis of the observations collected. The questionnaires filled in by monitors were collected and

stored in the OSCE Mission to Moldova. In addition to the trial observation questionnaires, monitors produced reports (initially monthly and later, each quarter) in which they highlighted their main observations. These substantive findings were used to draft the analytical reports described below.

1.7. Reporting

The analytic reports produced by the Trial Monitoring Programme were drafted by local and international experts based on the findings of monitors. The drafters analysed monitors' completed questionnaires and monthly/quarterly reports. The draft reports were reviewed by OSCE Mission to Moldova and ODIHR staff. In addition, draft reports were sent for comment and review by the Superior Council of Magistrates and the General Prosecutor's Office. Comments and observations of these bodies were taken into account in finalizing each report.

Prior to the publication of this *Final Report: Trial Monitoring Programme in Moldova* (hereinafter referred to as the Final Report), summary and analysis of the main observations during the Trial Monitoring Programme were published in two interim reports: the *First Trial Monitoring Programme Report: Preliminary Findings on the Experience of Going to Court in Moldova* (hereinafter referred to as the First TMP Report), and the *Analytic Report: Observance of Fair Trial Standards and Corresponding Rights of Parties During Court Proceedings* (hereinafter referred to as the Second TMP Report).

The First TMP Report concentrated on an analysis of trial participants. It was based on data collected from monitoring almost 800 court hearings in courts located in Chişinău (i.e., five District Courts, the Chişinău Court of Appeals and the Supreme Court of Justice) during the first six months of the implementation of the Trial Monitoring Programme. The First TMP Report described the experience of going to court, including descriptions of court premises and facilities, public access to trial proceedings, delays and postponements, and security and public order. It also reported on the performance of the main participants at trials, including judges, prosecutors, defence lawyers, court clerks, interpreters, victims and witnesses.

The Second TMP Report provided an analysis of the observance and/or violation of pertinent fair trial standards and the corresponding rights of the parties during court proceedings. It presented the main findings of the Trial Monitoring Programme for its first full year of operation in courts located in Chişinău from April 2006 to May 2007.²⁷ It was based on observations of 2,395 hearings in 596 criminal cases. The legal analysis was conducted mainly from a European Convention perspective, given both the quality and breadth of the European Court's case law on the right to a fair trial and its direct relevance to the Republic of Moldova. The Second TMP Report had two main chapters: the first dealt with fair trial rights and standards as guaranteed by Article 6 of the European Convention, focusing on the rights of the defendant; the second dealt with the rights of victims and witnesses and relevant international standards regarding their treatment in court. Some fair trial rights and standards were not addressed in the Second TMP Report due to the limited scope of the Trial Monitoring Programme. The right to a fair trial does not relate only to trial proceedings. It

²⁷ The Second TMP Report included hearings monitored over 14 months, because *de facto* monitoring of all courts in the municipality of Chişinău started in April 2006 and included hearings monitored up to the end of May 2007.

also implies guarantees that apply both before the trial commences²⁸ and after the trial ends, at the execution phase.²⁹ The scope of the Trial Monitoring Programme, however, is limited strictly to the trial stage and therefore the analysis contained in the Second TMP Report was restricted for the most part to fair trial rights and standards that can be monitored at trial proceedings. That some rights and standards were not commented upon was not due to oversight or to omission, but rather to the fact that the Trial Monitoring Programme did not directly observe these issues.

The analysis in this Final Report includes a summary of the findings for the entire monitoring period for courts located in Chişinău, April 2006 to November 2008, and a summary of the findings from the entire period of monitoring in courts in the Southeast, September 2007 to November 2008. This Final Report assesses whether any changes in conditions, positive or negative, were observed during the implementation of the Trial Monitoring Programme. This assessment can be made only in the courts located in Chişinău where the monitoring took place over a longer period of time and the findings of the first two interim reports could be compared with the findings of subsequent monitoring. The period covered by the first two monitoring reports, between April 2006 and May 2007, is hereinafter referred to as the “first monitoring period.” The period between June 2007 and November 2008 is referred to as “the second monitoring period.” In addition to reporting findings for these monitoring periods, the purpose of this Final Report is to present to the Moldovan legal community, the donor community and any other interested parties a series of recommendations on how the problems identified might be addressed.

The findings of this Final Report are based on observations of 7,402 hearings (7,037 in Chişinău and 365 in the Southeast) in 1,755 criminal cases (1,655 in Chişinău and 100 in the Southeast). The details by court and monitoring period are given in Tables 2–5.

Table 2: Number of hearings monitored in the courts located in Chişinău

Courts located in Chişinău	Number of hearings monitored in the courts located in Chişinău, by monitoring period		
	First monitoring period: April 2006 – May 2007	Second monitoring period: June 2007 – November 2008	Entire monitoring period: April 2006 – November 2008
Supreme Court of Justice	88	180	268
Chişinău Court of Appeals	338	912	1250
Centru District Court	646	1070	1716
Ciocana District Court	198	474	672
Rîşcani District Court	444	780	1224
Botanica District Court	305	481	786
Buiucani District Court	376	745	1121
Total number of hearings monitored	2,395	4,642	7,037

28 See *Imbrioscia v. Switzerland*, Judgment of European Court, 24 November 1993, para. 36.

29 See *Hornsby v. Greece*, Judgment of European Court, 19 March 1997, para. 40.

Table 3: Number of hearings monitored in the courts of the Southeast of Moldova
(September 2007 – November 2008)

Courts in the Southeast	Number of hearings monitored
Bender Court of Appeals	48
Anenii Noi District Court	189
Căușeni District Court	98
Ștefan Vodă District Court	30
Total number of hearings monitored	365

Table 4: Number of hearings monitored by month

Year	Number of hearings monitored in the Trial Monitoring Programme by month											
	January	February	March	April	May	June	July	August	September	October	November	December
2006	-	-	-	20	107	151	114	21	153	222	262	261
2007	133	224	235	202	290	268	114	34	139	323	407	418
2008	197	366	414	384	357	417	193	69	240	361	306	-

Table 5: Average percentage of criminal cases monitored by type of criminal offence
(Chișinău and the Southeast)

Type of criminal offence	Chișinău			Southeast
	First monitoring period: April 2006 – May 2007	Second monitoring period: June 2007 – November 2008	Entire monitoring period: April 2006 – November 2008	Entire monitoring period: September 2007 – November 2008
Trafficking in persons, pimping, and trafficking in arms	28%	23%	25%	22%
Domestic violence ³⁰	9%	19%	16%	26%
Crimes against the administration of justice	3%	8%	6%	12%
Corruption and other crimes committed by public officials	60%	50%	53%	40%
Total number of hearings monitored	2,395	4,642	7,037	365

³⁰ Many domestic violence cases turned out to be cases in a different category or were re-categorized. The percentages indicated, therefore, are not entirely accurate.

It should be noted that although the monitoring data has been analyzed for all hearings monitored, some data has been calculated using a **limited number of hearings**. This is because the questionnaire used in compiling the database was updated with new questions as new issues were identified. Questionnaires already entered into the database without data on a specific question which was added later are not reflected in the count of hearings for that question.

The Trial Monitoring Programme was implemented during a period of an extensive reform of Moldovan judiciary. There is still criticism asserting that, notwithstanding many positive accomplishments, problems remain.³¹ An objective of this Final Report is further to inform the national authorities, the international community, civil society and the general public on the actual functioning of the judicial system. The aim is to help these institutions tailor their activities in addressing the problems identified. In the longer term, the information gathered should contribute to better administration of justice and to better observance of fair trial standards and human rights in the Republic of Moldova.

1.8. Methodological Disclaimer

Most data gathered by trial monitors – e.g., whether or not the judge wore robes, or how many minutes the hearing was delayed – are subject to quantitative analysis. Other data – how well the judge knew law relevant to a case, or how judges or other court officials acted towards victims or the accused – are not. This presents a limitation on findings: the most important data gathered in the course of the project tended to be those not subject to quantitative analysis. No one would seriously argue that whether a judge wears robes is remotely as important as whether he or she knows the law; no one could argue that a few

31 See the European Commission observations that judicial reform is an area in which Moldova is still lagging behind: "Further reform of the judiciary, in particular to ensure its independence, is needed. [...] [Though some progress is noted,] Further reforms of the judiciary remain a priority" (European Commission's ENP Progress Report on Moldova {COM (2006) 726 final}, pages 3 and 4, http://ec.europa.eu/world/enp/pdf/sec06_1506-2_en.pdf. Strengthening the judiciary is still one of the highest policy objectives of Moldova for 2007-2013 in the European Neighbourhood and Partnership Agenda, Republic of Moldova, Country Strategy Paper 2007-2013, pages 4 and 33, http://www.delmda.ec.europa.eu/eu_and_moldova/pdf/enpi_csp_moldova_en.pdf. Freedom House assessment that, "The reform of the judiciary has so far failed to address a series of practical problems ranging from judiciary overload to lack of sufficient office space and qualified personnel, to low salaries, insufficient financial resources allocated from the state budget, poor quality of judgments, poor implementation of judgments, poor independence of the judiciary (page 5); precarious state of the judiciary; low public trust; insufficient number of judges and auxiliary personnel (pages 19 and 20)" (Freedom House Report, *Nations in Transit 2007 – Moldova*), http://www.freedomhouse.hu/images/fdh_galleries/NIT2007/nt-moldova-proof-ii.pdf). UN Committee against Torture and the UN Human Rights Committee, "...allegations of a dysfunctional criminal justice system, caused in part by a lack of independence on the part of the judiciary and the prosecutors. The Committee Against Torture has called on Moldova to take effective measures to ensure a fully independent judiciary (and prosecution service), in conformity with the UN Basic Principles on the Independence of the Judiciary." EU Country Strategy Paper 2004-2006, National Indicative Programme 2005-2006 / Moldova, page 15, http://ec.europa.eu/comm/external_relations/moldova/csp/csp04_06_nip05_06.pdf. American Bar Association (ABA) Rule of Law Initiative for Moldova's Judicial Reform Index comparing findings on 30 factors related to the judiciary from 2002 to 2006 noting that slightly more than half received neutral correlations, while 12 factors were rated negatively and only 2 positively, ABA Rule of Law Initiative, *Judicial Reform Index for Moldova, 2007*, Volume II, at http://www.abanet.org/rol/publications/moldova_judicial_reform_index_01_2007_en.pdf.

minutes' delay in getting a trial underway is of a magnitude of significance equal to that of the efforts judges make or fail to make to be impartial and disinterested.

Nonetheless, the quantifiable data that monitors gathered deserves to be presented. We trust the reader to understand that subjects dealt with extensively in tables and numerical analysis are not thereby given priority over or greater significance than more central subjects that did not lend themselves to statistical analysis.

II. INSTITUTIONAL CONDITIONS AND PROFESSIONAL PERFORMANCE OF PARTICIPANTS

2.1. Introduction and Overview of Judiciary Organization

This chapter looks into the functioning of the courts. It begins with the overall *physical* environment: court premises and facilities. Many violations of the rights of defendants, victims and witnesses that were identified were not imputable to individual judges, but rather to infrastructural shortcomings. The chapter goes on to examine the *organizational* environment as observed by monitors, and describes how shortcomings in the organization of the Moldovan judiciary have an impact on the experience of people in court, their perception of justice and the outcomes of judicial proceedings. The chapter then goes on to discuss the *human* environment: the performance of the main participants and court support staff.

The criminal process in Moldova is composed of the following three mandatory procedural stages: the criminal investigation phase, the first instance trial and the implementation of the criminal sentence. Optional procedural stages are the following: ordinary appellate stage (appeal and cassation) and extraordinary appellate stages (cassation in annulment and extraordinary review of the case).

Criminal investigation is carried out by the prosecutor and criminal investigation officers of the Ministry of Internal Affairs, Center for Combating Economic and Organized Crimes, and the Customs Office. The prosecutor supervises the legality of the actions (or absence of action) of the criminal investigative bodies. The criminal investigation stage, with minor exceptions, does not allow significant input from defence council. This procedural phase is important because the judge receives the case file before starting the examination of the case. The defence lawyer has access to the entire case file when the criminal investigation is finished and he or she can take as much time as needed to become acquainted with the case file. However, time for case file review can be limited by the prosecutor if it can be shown that the lawyer is abusing this right. When the criminal investigation is finished, the case is sent to court.

Moldovan courts are organized into three levels. The first level is the District Courts, which are the courts of first instance with general jurisdiction. The first instance courts hear all criminal cases provided by the Special Part of the Criminal Code, except those cases assigned by law to other courts;³² hear requests and complaints against the decision and actions of criminal investigative bodies, and examine issues related to the implementation of the criminal sentence and other matters assigned by law.³³ District courts are situated in each centre of the administrative units in the country and each sector of Chişinău.³⁴

32 For example, criminal cases committed by soldiers are assigned to military courts by Art. 37 of the Criminal Procedure Code; or crimes of genocide or inhuman treatment are assigned to the Courts of Appeals by Art. 38 of the Criminal Procedure Code.

33 Art. 36 of the Criminal Procedure Code.

34 Moldova has 46 courts of first instance including 5 District Courts in Chişinău, according to Annexes 1 and 2 of the Law on Judicial Organization.

The second level is Courts of Appeals, which examine in the first instance, with trial proceedings, cases specifically assigned to them by the Criminal Procedure Code,³⁵ appeals from the courts of first instance, and cassations from the District Courts' judgments that cannot be subject to appeal. The Courts of Appeals can examine both the merits and the legal aspects of a case. There are five Courts of Appeals in the country.³⁶

The third level is the Supreme Court of Justice, located in Chişinău. The Supreme Court of Justice examines cassations on hearings from courts of first instance or Courts of Appeals, extraordinary appeals. **It can hear a case in the first instance when the defendant is the President of the country.** The Supreme Court of Justice typically examines only the legal aspects of a case, and only in cases against the President of the country can it examine the merits of a case. **In addition to examining individual cases, the Supreme Court of Justice has the competence to issue explanatory decisions on matters of jurisprudence to promote uniform implementation of criminal and criminal procedure legislation.** These decisions play an important role in shaping case law.

Hearings monitored during the Programme in District Courts and Courts of Appeals involved examinations of both merits and law. Hearings monitored in the Supreme Court of Justice involved exclusively matters of law.

The Superior Council of Magistrates (SCM) is responsible for the organization and functioning of the judicial system in Moldova and has been assigned the role of guarantor of the independence of judicial authority.³⁷ The SCM is composed of 12 members. It proposes candidate judges for appointment, promotion, transfer or dismissal by the country's President or Parliament and is tasked with ensuring judges' ethics and discipline. The SCM has important tasks related to the administration of the judiciary, including the adoption of regulations governing the method of assigning cases in courts, oversight of the organization and functioning of the courts. **It proposes the annual budget for the judiciary.** Given its competences, the SCM is positioned to play an important role in ensuring both the efficient functioning of the courts and respect for due process and other rights in court proceedings.

The prosecutor's office is an autonomous institution within the judicial authority. Within the limits of its attributes and competences, the prosecutor's office defends the general interests of society, legal order, and the rights and liberties of citizens; oversees and conducts criminal investigations; and presents state accusations **in courts.**³⁸ The prosecutor's office is a unitary, centralized and hierarchical institution with territorial and specialized offices overseen by the Prosecutor General. Relevant for the Trial Monitoring Programme were the territorial prosecutor's offices, which present state accusations **in courts of first instance unless the case is handled by a specialized office.** Such specialized offices include the specialized anticorruption prosecution offices and the prosecution office of the Courts of Appeals. The

35 Art. 38 of the Criminal Procedure Code.

36 The Courts of Appeals of Bălţi, Bender (Căuşeni), Cahul, Chişinău and Comrat (since the present Report refers only to criminal cases, the Economic Court of Appeals is excluded).

37 Law on Superior Council of Magistrates, No. 947 of 19 July 1996, which entered into force on 3 October 1996, with subsequent amendments.

38 Art. 1 of the Law on the Prosecutor's Office, No. 294 of 25 December 2008, which entered into force on 17 March 2009.

quality of a prosecutor's work and individual performance are supervised by hierarchically superior prosecutors up to the Prosecutor General. Individuals can complain of a prosecutor's acts or behaviour to hierarchically superior prosecutors and then to the court.

Defence lawyers practice law on the basis of a license issued by the Ministry of Justice according to the Law on the Bar.³⁹ A lawyer represents the client on the basis of a written contract, except in cases where the client is the husband/wife or relative of the lawyer to the fourth degree.⁴⁰ In legal aid cases, the lawyer represents the client on the basis of a contract the lawyer signs with the Territorial Office of the National Legal Aid Council after the latter nominates the lawyer.⁴¹ The lawyer's authority is further confirmed and delineated (i) in cases of private representation by the mandate issued by the lawyer's office, which indicates the lawyer's and client's names, the lawyer's license number, the date of the contract and the extent of the lawyer's competences in the respective case; or (ii) in legal aid cases by the description of legal aid representation.⁴² The quality of legal assistance in individual cases can be assessed by the Ethics and Discipline Commission of the Bar Association in cases when there is a complaint by a client. A general quality assurance mechanism within the Bar does not exist.

2.2. Court Premises and Facilities

Monitors observed that in general court premises are still inadequate. Some District Courts do not have separate buildings, but share facilities with other public institutions such as the territorial office of the Fiscal Inspectorate or the district *Pretura* (the local subdivision of the executive office of public administration). Sharing buildings with other state institutions negatively affects the dignity of the courts and the perception of their independence, and leads to situations in which court corridors and areas surrounding court buildings are crowded with people unrelated to court proceedings.

Because the buildings in which many of the District Courts in Chişinău are placed were initially designed for institutions other than courts, they are often inadequate and inappropriate for court purposes. The main problem is the design of these buildings, which have many small rooms that can be used as judges' offices but few rooms large enough to serve as courtrooms able to accommodate both the parties and the public. While the number of courtrooms varies among the District Courts, none of the District Courts has a sufficient number of courtrooms to guarantee that all trials are held in courtrooms. The ratios of judges to courtrooms in the Chişinău District Courts are as follows: Botanica 16:3, Buiucani 17:2, Centru 15:1, Ciocana 12:2 and Rîşcani 17:3. These ratios probably account at least in part for the high percentage of hearings held in judges' offices, illustrated in the following table:

39 In practice only licensed lawyers represent clients in criminal proceedings, although, according to Art. 67 para (1) of the Criminal Procedure Code, the defence lawyer can be: (1) the lawyer, (2) other persons authorized by law to act as defence lawyer, and (3) a foreign lawyer, when assisted by a local lawyer. The meaning of the phrase "other persons authorized by law to act as defence lawyer" in the legislation is unclear.

40 See Art. 9 para. (2) and Art. 52 para (1) of the Law on Bar, No. 1260 of 19 July 2002, which entered into force on 13 December 2002, with subsequent amendments.

41 See Art. 46 para. (1) of the Law on Bar, as well as Art.s 69 and 70 of the Criminal Procedure Code.

42 See Art. 52 para. (2) of the Law on Bar.

Table 6: Ratio of judges to courtrooms in district courthouses located in Chişinău

	District Courts of Chişinău (Entire monitoring period: April 2006 – November 2008)				
	Botanica District Court	Buiucani District Court	Centru District Court	Ciocana District Court	Rîşcani District Court
Number of judges (excluding investigating judges)	16	17	15	12	17
Number of court rooms in the courthouse	3	2 ⁴³	1	2	3
Hearings held in courtrooms	21%	29%	10%	37%	22%
Hearings held in judges' offices	79%	71%	90%	63%	78%
Number of hearings monitored	786	1,121	1,716	672	1,224

Table 7: Ratio of judges to courtrooms in courthouses in the Southeast

	Courts in the Southeast (Entire monitoring period: September 2007 – November 2008)			
	Bender Court of Appeals	Anenii Noi District Court	Căuşeni District Court	Ştefan Vodă District Court
Number of judges (excluding investigating judges)	4	5	6	3
Number of court rooms in the courthouse	1	2	2	2
Hearings held in courtrooms	85%	91%	38%	97%
Hearings held in judges' offices	2%	9%	62%	3%
Number of hearings monitored	48	189	98	30

As indicated in the above tables, the situation is significantly better in the Southeast, where in 2007-2008 the ratios of judges to courtrooms were as follows: Anenii Noi 5:2, Căuşeni 6:2, Ştefan Vodă 3:2 and Bender Court of Appeals 4:1. The percentage of hearings held in courtrooms is significantly higher in the Anenii Noi and Ştefan Vodă District Courts, indicating that a lack of a sufficient number of courtrooms in other District Courts, especially in Chişinău, may be one of the impediments to holding trials in the courtrooms and thereby allowing free and effective access to hearings by the public.

43 At the beginning of the Trial Monitoring Programme in 2006 there were 3 courtrooms at Buiucani district court. In 2008, this courthouse was reorganized and one courtroom was transformed into an archive room. At publication of the present Final Report, this courthouse has 2 courtrooms.

The data show no significant relationship between the ratio of judges to courtrooms and the percentage of hearings held in courtrooms. In Buiucani District Court, with 17 judges and 2 courtrooms, 29% of hearings were held in the courtrooms; in the Riscani District Court, with 17 judges and 3 courtrooms, 22% of hearings were held in the courtrooms. In Botanica District Court with 16 judges to 3 courtrooms, 21% of hearings were held in the courtrooms. In Ciocana District Court, with 12 judges and 2 courtrooms, 37% of hearings were held in the courtroom. In the Southeast: in Căușeni District Court, with 6 judges and 2 courtrooms, 38% of hearings were held in the courtrooms. **91% of hearings were held in courtrooms in the Anenii Noi District Court, with 5 judges and 2 courtrooms.** The data reinforced monitors' observations that often hearings are held in judges' offices not due to external reasons such as lack of available courtrooms, but to judges or clerks' preferences to hold hearings in the judges' offices.

In addition to the lack of courtrooms, there are problems with those which exist. **Many are in poor condition, with old and unstable furniture and dirty tapestries, some of which are fixed to the walls with scotch tape.** The corridors are in similar condition, poorly lit and dusty. These conditions are particularly characteristic of courts in Chișinău. Renovations were undertaken during the TMP in the Buiucani, Centru and Rîșcani District Courts in Chișinău, the Căușeni District Court and Bender Court of Appeals in the Southeast. However, the work was carried out during working hours without alternate working space, so that the parties were waiting in corridors with construction noise, dust, and dangerous conditions surrounding them.

The poor conditions of the courts have a negative impact both on judges, who cannot ensure the required solemnity in the courts; and parties. **Judges frequently expressed their dissatisfaction with court facilities, asking monitors to note in their reports the lack of courtrooms, poorly equipped offices, insufficient number of chairs for the parties, absence of space for the public, missing door handles and leaky roofs.** In contrast to the general state of disrepair, the offices of a few judges stand out for their comfortable appointments. Despite these isolated cases, the general atmosphere in courthouses in Chișinău is far from conducive to solemnity and dignity.

Conditions in the District Courts and the Bender Court of Appeals in the Southeast seem to be better, although monitors noted that not all courtrooms have all the attributes required by law; e.g., not all courtrooms have the national flag or coat of arms.

Monitors observed that the courts monitored lacked adequate equipment. **Not all courts have the basic video or audio equipment necessary for examining video or audio materials in a case.** This problem was noted in the First TMP Report and continued throughout the monitoring.

In one case, the judge had to postpone a hearing when the prosecution needed to present evidence in video format.

Heating is a problem. **Monitors noted that in winter the temperature in judges' offices was more or less acceptable (using electric heaters), but the temperature in the courtrooms and corridors was very cold.** This was often given as the reason for holding a hearing in the judge's office rather than in the courtroom.

Facilities in courthouses are poor and in need of investment. None of the courts monitored has separate entrances or special waiting rooms inside the courthouses designed for victims and witnesses. Accordingly, victims and witnesses must use the same entrance and wait in the same corridors as defendants' friends and relatives. This can be traumatizing for victims and witnesses, especially in trafficking and domestic violence cases. Taking into account the frequency of delayed and postponed proceedings, such uncomfortable waiting periods can be lengthy and repeated.

Basic public facilities such as toilets and running water are generally not available to the public in courthouses, or are very shabby and in dubious hygienic state.

2.3. Organizational Shortcomings

Monitors observed shortcomings that preclude the normal functioning of the courts. One of the main shortcomings identified is the problem of delays and postponements.

Data collected through the Trial Monitoring Programme indicates that delays are the rule rather than the exception. While we are not trying to present delays of under 30 or 60 minutes as significant in themselves, we shall see that they have a cascading effect that leads to postponements, which do have a significant effect on the conduct of trials.

Table 8: Delays in the commencement of trial proceedings in courts located in Chişinău (▲ – positive change; ▼ – negative change)

Courts located in Chişinău	Periods Monitored	Length of delay (in % of total cases monitored for each court)				
	Monitoring period I, April 2006 – May 2007 Monitoring period II, June 2007 – November 2008	on time	0-15 min.	15-30 min.	30-60 min.	over one hour
Supreme Court of Justice	Monitoring period I	40%	49%	6%	3%	2%
	Monitoring period II	46%	18%	15%▼	9%▼	12%▼
Chişinău Court of Appeals	Monitoring period I	53%	26%	3%	3%	15%
	Monitoring period II	49%	13%▲	12%▼	7%▼	19%▼
Centru District Court	Monitoring period I	25%	40%	25%	8%	2%
	Monitoring period II	43%▲	34%	16%▲	6%	1%▲
Ciocana District Court	Monitoring period I	38%	27%	22%	11%	2%
	Monitoring period II	42%	43%▼	12%▲	3%▲	0%▲
Rîşcani District Court	Monitoring period I	36%	36%	20%	6%	2
	Monitoring period II	49%	34%	13%▲	3%▲	1%▲
Botanica District Court	Monitoring period I	36%	35%	18%	9%	2%
	Monitoring period II	46%▲	33%	15%	5%▲	1%▲
Buiucani District Court	Monitoring period I	25%	37%	24%	12%	2%
	Monitoring period II	56%▲	26%▲	13%▲	4%▲	1%▲

As indicated in the above table, all District Courts in Chişinău and the Supreme Court of Justice registered improvements in commencing trial proceedings on time. All District Courts in Chişinău significantly reduced the number of hearings that started with a delay of over one hour. The Buiucani District Court is the only court that started proceedings on time in more than 50% of the hearings monitored. However, monitoring reflected some worsening of conditions in the second period of monitoring, e.g., a significant increase in the percentage of hearings that started with a delay of more than one hour in the Supreme Court of Justice (from 2% to 12%), and an increase in the percentage of hearings that started with a delay of more than one hour in the Chişinău Court of Appeals (from 15% to 19%).

In the Southeast the situation is very similar. The Ştefan-Vodă District Court appears to be the most disciplined court, although 17% of hearings started with a delay of 30-60 minutes. The Căuşeni District Court and the Bender Court of Appeals each registered significantly high percentages of hearings that started with a delay of over one hour.

Table 9: Delays in the commencement of trial proceedings in the Southeast courts

Courts in the Southeast	Length of delay				
	on time	0–15 min.	15–30 min.	30–60 min.	over one hour
Anenii Noi District Court	36%	32%	27%	3%	2%
Căuşeni District Court	50%	9%	14%	14%	13%
Ştefan Vodă District Court	67%	10%	3%	17%	3%
Bender Court of Appeals	55%	13%	20%	5%	7%

For the entire monitoring period, in Chişinău and in the Southeast, the monitoring showed the following delays in the starting of court proceedings:

Table 10: Delays in the commencement of trial proceedings
(Average percentage per all courts monitored, April 2006 – November 2008)

	Length of delay				
	on time	0–15 min.	15–30 min.	30–60 min.	over one hour
Courts in Chişinău	47%	30%	13%	5%	5%
Courts in the Southeast	45%	21%	21%	8%	5%
All courts monitored	47%	28%	14%	6%	5%

These overall figures confirm that starting proceedings on time is not the general rule in the Moldovan courts. While a delay of up to 15 minutes is more or less understandable, the courts must strive to reduce delays of over 15 minutes and especially those of over one hour. Unnecessary delays, especially of hearings in the beginning of case examinations, affect the punctuality of all parties and make it much more difficult for the judge to keep up

with the schedule for a particular case and those following. Delays of over 30 minutes are particularly problematic, as they can lead to further postponements, e.g. when one of the participants has another hearing scheduled right after the delayed hearing or when other appointments in participants’ agendas cannot accommodate unanticipated re-scheduling of court hearings.

The Trial Monitoring Programme database could not provide data for the reasons for delays for the entire monitoring period. Often no reasons are given by the court. Based on observations by some monitors, delays were caused most frequently by the prosecution or defence being late. In a few cases the judge or the panel of judges was late. Monitors noted that when trial participants were late they did not give an explanation, nor did the judge ask for one or issue a reprimand. This gave the impression that lack of punctuality is accepted. Such a practice sends the wrong message to non-professional trial participants, decreasing their respect for courts.

As noted above, delays that require victims and witnesses, to wait in the same small corridors as the friends, family, and defence lawyers of defendants (and the defendants themselves when they are not arrested) are of special concern, especially in domestic violence and trafficking cases. This is an unnecessary and avoidable exposure of victims and witnesses to potential influences and harassment by the other parties. It is uncomfortable and often traumatising for victims and witnesses. The administration of justice may be affected: victims and witnesses might change their testimonies, refuse to testify, or drop out of the legal process. To ensure both the proper protection of victims’ and witnesses’ rights and the good administration of justice, efforts should be taken to avoid both delays and the exposure of victims and witnesses to the influences of the defendant or his/her relatives, friends and lawyer.

Postponements of trial hearings are more serious and disruptive. All categories of trial participants complained to monitors of frequent postponements. Data collected during the monitoring period in courts in Chişinău show that 61% of scheduled hearings were postponed: 56% during the first monitoring period and 63% during the second. In the Southeast ,85% of scheduled hearings were postponed. These figures call for immediate attention to the reasons for postponements and action to reduce significantly their occurrence.

The table below indicates the breakdown by reason for postponement.

Table 11: Reasons for postponements

Reasons for postponements	Chişinău			Southeast
	First period: April 2006 – May 2007	Second period: June 2007 – November 2008	Entire period: April 2006 – November 2008	Entire period: September 2007 – November 2008
Absence of injured party/victim	8%	8%	8%	9%
Absence of witness	15%	13%	14%	10%
Absence of defendant	9%	11%	11%	17%

Absence of defence lawyer	12%	14%	13%	10%
Absence of prosecutor	9%	6%	7%	10%
Need to produce new evidence	3%	5%	4%	5%
Need to amend and increase charges against defendant	1%	1%	1%	1%
Other	43%	42%	42%	38%
Total number of hearings monitored	2,395	4,642	7,037	365

In Table 11 the category "Other" includes instances in which no reason for postponement was given or when other trial participants (judge, court clerk, translator etc.) were absent; and hearings that took place but were postponed for further examination of the case.

The highest percentage of postponements is due to the absence of witnesses. However, the significant percentage due to the absence of one of the parties indicates an urgent need for behavioural changes. Particularly problematic is failure by the prosecutors or defence lawyers to appear in court for several hearings in a row. As professional trial participants, prosecutors and defence lawyers set the tone and provide an example for the other trial participants. They should be particularly careful to appear on schedule and avoid postponements. Even if the victim or injured party and the witnesses are punctual at the beginning of a proceeding, they may stop coming to the hearings if they see that the professional trial participants exhibit a lack of punctuality. Judges have the authority to apply legal sanctions to deter or prevent unjustified delays and postponements.⁴⁴ However, monitors noted few instances when judges actually applied such sanctions.

Postponements are sometimes caused by the problematic functioning of the judicial police. Monitors noted cases in which the judge ordered a witness to be brought by force, but the judicial police failed to do so for several hearings. Other instances were noted in which a defendant who had been arrested was not brought to court for a scheduled hearing. This problem was highlighted in the First TMP Report.

Another problem noted during monitoring is the lengthy period of many postponements. This is a particular problem during the summer and early fall. Monitors noted several cases that were postponed for several months because the judge and/or other participants were planning to go on vacation. One monitor noted that the postponements in cases where the defendant remains in custody are longer than the duration of postponements for defendants that are free (up to three months as opposed to two to three weeks). The reasons for this difference are unclear and such delays clearly contradict the Criminal Procedure Code, which mandates urgent examination of cases that involve defendants in custody. This problem requires further research.

Monitoring yielded the following information regarding the length of postponements:

⁴⁴ See Art.s 320-324 of the Criminal Procedure Code.

Table 12: Length of postponements of hearings

Length of time hearings were postponed	Chişinău			Southeast
	First period: April 2006 – May 2007	Second period: June 2007 – November 2008	Entire period: April 2006 – November 2008	Entire period: September 2007 – November 2008
One day	8%	9%	9%	5%
Up to one week	14%	29%	27%	25%
Up to one month	65%	50%	52%	64%
Up to two months	9%	8%	9%	5%
More than three months	4%	4%	3%	0%

As indicated in the above table, the majority of hearings are postponed for a month. In addition to causing discomfort to the parties, such postponements are not in compliance with the requirement that proceedings be conducted in a reasonable amount of time.⁴⁵

Monitors observed instances in which established procedure for postponements⁴⁶ was not respected. In some instances, for example, the court clerk or judge simply announced the names of the parties and other trial participants and then declared a postponement. This was done without calling all participants, without declaring the hearing open, and without completing other necessary formalities, as required by law. This practice is particularly troubling, as it does not ensure that all parties and trial participants have been informed of the postponement and the next hearing date. Under the Criminal Procedure Code, the court is not required to subpoena parties for hearings that follow postponements. The logic behind this is that the dates and times of the subsequent hearings are decided during the present hearing and announced to the participants. When the formalities are not followed, however, there is a risk that not all parties will be notified to appear at the next hearing.

Monitors noted instances in which judges postponed hearings that apparently could have been continued without inconvenience. These instances were especially troubling in cases in which the defendant was under preventive arrest. For example, in such a case in the Southeast, a hearing took place on a Friday. After an initial delay of an hour, the hearing lasted 35 minutes and the judge postponed pronouncement of sentence until the following Monday. The pronouncement on Monday was delayed for half an hour (due to another trial at which the judge presided) and lasted three minutes. The defendant was sentenced to community service and let free following the hearing. The judge's decision to postpone pronouncement of sentence for two days while keeping the defendant in detention appears highly questionable.

Monitoring in the Southeast recorded similar problems related to postponements of trial hearings. One problem particularly apparent in this region was the practice of courts scheduling hearings for 8:00 a.m. A majority of the buses that connect the outlying villages

⁴⁵ See Art. 20 of the Criminal Procedure Code.

⁴⁶ See Art. 331 of the Criminal Procedure Code.

and the centre of the district where the court is situated arrive in the centre around 11:00 a.m. This situation may be one of the main causes for hearing delays. The problem could be addressed by changing the practice of scheduling such early start times for hearings to a more practical time when **witnesses are coming from outlying villages.**

Monitors noted that judges scheduled hearings for the same times that had been set aside for judicial staff meetings, especially in the Chişinău District Courts. This problem was noted most often in connection with Monday morning staff meetings. In such cases, trial participants arriving at the scheduled time and were required to wait for the judge and/or the court clerk to finish their meeting. This problem could be solved by not scheduling trial hearings at the same time as judicial staff meetings or other pre-existing commitments.

Another problem area noted by monitors is the inefficient functioning of, and uninviting hearing atmosphere in, the Courts of Appeals and the Supreme Court of Justice. Of particular concern is the state of affairs in the Chişinău and Bender Courts of Appeals. **Monitors observed similar shortcomings in both these courts. In general, the court premises and facilities seem to be better in the Courts of Appeals, i.e., the courtrooms are larger than in the District Courts, allowing better accommodation of parties and other trial observers.** The courthouses, however, are still overcrowded, especially the corridors, and the dominant atmosphere is one of chaos. The Courts of Appeals need to pay special care to how "justice is done" and how it is "seen to be done," particularly since **appeals are lodged only by parties unhappy with the outcome in the court of first instance. One significant problem highlighted** in the first two trial monitoring reports was the practice of scheduling all trials for a given day at the same time, 10:00 a.m., in the Courts of Appeals and in the Supreme Court of Justice. **Monitors noted a slight change in this respect in the Chişinău Court of Appeals, which started scheduling trials at different hours. The general situation and atmosphere, however, did not improve significantly in the Chişinău Court of Appeals.** Too many participants are still called for the same time, too many instances of persons waiting for hours to give 10-15 minutes of testimony persist, and too many hearings are postponed. Monitors noted the same situation for the Bender Court of Appeals, but indicated the problem was of a "smaller scale."

Monitors observed questionable practices in the examination and deliberation of cases in the Courts of Appeals and Supreme Court of Justice. Monitors noted that in the Chişinău Court of Appeals 25-30 cases were usually scheduled per panel, while in the Supreme Court of Justice the number was 20-25 cases. The panels at the Chişinău Court of Appeals would usually examine 10-15 cases, and then break for 30-45 minutes of deliberation. Similarly, in the Supreme Court of Justice the panels would usually examine 5-10 cases then break for deliberation. In the Bender Court of Appeals the panels would examine fewer cases per day, but would still hear a few cases before breaking for deliberation. This practice of hearing a number of cases and then breaking for deliberation raises questions regarding the judges' ability to analyze and decide on each case without influence from others. The short time allocated for each case raises concerns as to how deeply the judges have analyzed the case and taken into account testimony given in court. Monitors noted that due to scheduling too many cases at once, there was often too little space for lawyers at the tables designated for them, and they had to sit or stand somewhere else in the courtroom.

Monitors noted that participants find it impossible to follow many cases in the Courts of Appeals because they cannot hear all of the testimony. This is due to reasons such as poor

acoustics in the courtrooms, lack of order, several people speaking simultaneously, people whispering to each other, and judges or parties not speaking loudly enough.⁴⁷

Monitors observed the questionable practice of appointing legal aid lawyers shortly before hearings in the Chişinău Court of Appeals and the Supreme Court of Justice. This practice gravely affects the quality of defence. This issue is described in more detail in the section below on the right to legal assistance.

Monitors noted in all courts monitored that the solemnity of court proceedings was adversely affected by the behaviour of all categories of trial participants. Participants often spoke on mobile phones during the hearings, read and sent text messages, or made inappropriate jokes or comments. This appeared to be an accepted practice, given that monitors rarely noted judges admonishing participants for such behaviour. In addition to the negative effect on individual cases, the atmosphere negatively affects the public's and parties' perception of the judicial system. (See the following section for additional details regarding questionable behaviour by trial participants.)

2.4. Professional Performance of Participants (Judges, Prosecutors and Defence Lawyers)

The principal participants in a Moldovan criminal trial are: the judge who presides over proceedings and ensures that justice is done; the prosecutor who represents the state; the defence lawyer who represents the defendant; the court clerk who makes the official record of the case; and the interpreter or translator⁴⁸ who translates the proceedings and the key documents when all parties do not know the state language or the language of the proceedings. This chapter highlights the main issues and trends identified in relation to the performance of these participants. Officials have a direct responsibility to the court and their conduct influences the conduct of the lay participants.

Monitors noted many instances in which some officials did not act in a professional manner. Participants in all categories exhibited a lack of punctuality, as outlined above. Monitors noted one common observation about all categories of officials: a lack of full concentration and attention to the current hearing. Monitors noted participants (judges, prosecutors, lawyers, court clerks and interpreters) talking to each other during hearings. Most frequently, prosecutors or defence lawyers whispered or joked with the court clerk, spoke on mobile phones, wrote and read text messages or played games on mobile phones; the latter practice was most often noted for defence lawyers. Judges answered and made calls from land line phones during proceedings. All such behaviour denotes a lack of respect towards the court proceedings and sends an inappropriate message to the participants. While many other problems highlighted in this report require significant financial investments, changing such behaviour does not cost any money. It is troublesome that such behaviour appears acceptable. This behaviour was noted in all courts in Chişinău and in the Southeast. Only in exceptional cases did judges react and reprimand parties for such behaviour.

47 A particular problem in the Bender Court of Appeals is that the president speaks very quietly and the participants have great difficulty in hearing what he says.

48 The present report further refers only to interpreters. Given the scope of the Trial Monitoring Programme, monitors could only observe the performance of interpreters without reviewing case files. Therefore, monitors were not able to evaluate the performance of translators.

I. Judges

Monitoring showed that many judges acted professionally and did not unjustifiably restrict public access to trials. When opening a trial hearing, judges usually verified that all parties were present and that they had been informed of and understood their rights and obligations. Many judges listened attentively and did not arbitrarily restrict pleading or arguments. Many judges asked only clarifying questions and did not become actively engaged in questioning witnesses or the defendant. Many judges appeared to act independently and impartially, addressing parties in a respectful manner and ensuring that proceedings were conducted in as orderly and dignified a manner as possible, considering the poor and cramped conditions of the offices where many of the hearings were conducted.

In terms of the performance of judges in individual courts, the highest number of concerns were noted by monitors during the first monitoring period in the Rîșcani and Centru District Courts in Chișinău. It is encouraging to note that both of these courts, and all other courts, made progress in the area of judicial performance during the second monitoring period.

Many problem areas discussed below, however, do not permit an overall positive conclusion regarding judges' performance, and that call for continued attention by the judiciary.

Some judges do not devote sufficient attention and time to the important task of explaining the rights of the parties. In one case, the judge asked the defendant "Did you understand the charge?" The defendant answered "No" and nodded her head. The judge did not pause to explain the charge but continued the hearing as if there had been an answer in the affirmative. In another case, the judge asked the injured party "Do you have material or moral claims?" The injured party answered that she did not understand what that meant. The judge did not pay any attention to this answer and continued with the hearing. In another case, the defendant was sentenced to two years imprisonment, suspended, with a one-year probation period. The defendant asked what that meant and the judge only responded, "You are no longer under arrest; you are free to go home." No one explained to the defendant what the term "probation" meant and what her obligations would be during the probation period.

Monitors noted that some judges do not explain to victims and witnesses that they should read their statements before signing them. The statement is written down by the court clerk as the person makes the statement and may contain errors. Article 337 of the Criminal Procedure Code requires the court clerk to read the statement (or the person who made the statement can ask to read it) before the party signs it. However, this requirement is not routinely followed.

Judges sometimes forget to inform interpreters, victims and witnesses that they are criminally liable for their statements. Defendants are not subject to self-incrimination, but in one case the judge warned the defendant that he or she is criminally liable for his or her statement.

As noted in other sections of this report, judges often make inappropriate comments that imply either presumption of guilt or a disrespectful attitude toward a defendant, victim or witness.

Vignette: In a trafficking case the judge reprimanded the defendant because she came to court repeatedly without a lawyer. The defendant answered that her mother had not yet signed a contract with a lawyer. The judge replied, “When you went to Turkey you didn’t ask your mother to sign a contract with a lawyer, but now your mother is the one who has to go to the defence lawyer to talk and to pay.”

In some cases monitors noted that judges failed to react appropriately when prosecutors or defence lawyers pressured witnesses. **Judges continued asking questions of defendants and witnesses beyond the point where clarification had been achieved, displaying a biased attitude or otherwise inappropriately interjecting themselves into the adversarial proceeding.** In several cases monitors noted that judges asked **witnesses questions while defence and prosecution lawyers were either passive or did not ask any questions at all.**

In all courts, both in Chişinău and in the Southeast, monitors noted judges using inappropriate expressions and linguistically incorrect phrasing. The interchangeable use of Russian and the state language persists in all courts. Judges demonstrated an overuse of informal dialect and jargon.

Judges continued to receive parties in their offices before the start of proceedings without explaining the purpose to other parties or trial participants. **In many cases judges continued to demonstrate either an overfriendly or overly antagonistic attitude toward one of the parties, expressed through inappropriate comments, criticism of pleadings and dismissal of questions as irrelevant without giving the party an opportunity to explain the relevance.** Monitors noted that such inappropriate attitudes were mostly exhibited towards the end of the working day.

In all courts monitored it was noted that hearings were less solemn and formal when they were held in judges’ offices or by only one judge in a courtroom. Judges tend to not wear their robes in such cases, are more informal with the parties and do not follow all procedural requirements. The hearing is often interrupted by outsiders who drop by simply to greet the judge, obtain a signature or look for someone or something. Monitors noted that a few judges, commendably, took all necessary measures to ensure proper solemnity, even when presiding in their offices, such as **hanging signs on their doors asking not to be interrupted.**

Wearing or not wearing robes may not in itself affect the course of the trial, but is a good indicator of the solemnity of the trial’s atmosphere. The judge’s robe distinguishes him or her from the other trial participants and gives more solemnity to the proceedings. **Monitors recorded a slight improvement in all courts located in Chişinău during the second monitoring period as compared to the first monitoring period, except for the Centru District Court where a slight decrease was noted.**

Table 13: Judges wearing robes during trial proceedings (information by court)

Courts in Chişinău	Periods monitored: Monitoring period I, April 2006 – May 2007 Monitoring period II, June 2007 – November 2008	Judges wearing robes during trials	
		Yes	No
Supreme Court of Justice	Monitoring period I	100%	0%
	Monitoring period II	100%	0%
Chişinău Court of Appeals	Monitoring period I	99%	1%
	Monitoring period II	99%	1%
Centru District Court	Monitoring period I	47%	53%
	Monitoring period II	45%	55%
Ciocana District Court	Monitoring period I	66%	34%
	Monitoring period II	81%	19%
Rişcani District Court	Monitoring period I	45%	55%
	Monitoring period II	54%	46%
Botanica District Court	Monitoring period I	74%	26%
	Monitoring period II	86%	14%
Buiucani District Court	Monitoring period I	52%	48%
	Monitoring period II	68%	32%
Courts in the Southeast			
Bender Court of Appeals	September 2007 – November 2008	100%	0%
Anenii Noi District Court	September 2007 – November 2008	97%	3%
Căuşeni District Court	September 2007 – November 2008	76%	24%
Ştefan Vodă District Court	September 2007 – November 2008	83%	17%

The practice of wearing robes seems to be much more embedded in judges' routines in the Southeast where judges did not wear robes in only 7% of the hearings monitored. In comparison, 31% of judges did not wear robes in Chişinău for the entire period.

In some cases monitors noted that judges inaccurately informed defendants about the law on legal aid, sometimes suggesting indirectly that the defendant engage a certain lawyer present in the court room.

Vignette: The hearing was supposed to be a preliminary hearing. The defendant did not have money to contract a defence lawyer and was not assisted by a lawyer at the hearing. The prosecutor was in a hurry and the hearing was postponed. The judge said to the defendant: "You should look for a defence lawyer, as you are charged with a serious offence and the article provides for 10 years and more." The defendant mentioned that she had no money for a defence lawyer. The judge mentioned that she could try to file a request for a legal aid lawyer, but indicated that this would be difficult because legal aid lawyers are assigned for underage persons, elderly people and persons held under arrest. [Note: This is an incorrect interpretation of the law. Art. 69 of the Criminal

Procedure Code and the Law on State Guaranteed Legal Aid provide for a series of reasons for appointing legal aid lawyers, not only the ones mentioned by the judge.] A young lawyer not related to the case at hand was sitting in on this hearing and the judge offered the defendant the young lawyer as a potential defence lawyer.

II. Prosecutors

The limited scope and mandate of the Trial Monitoring Programme meant that monitors did not observe the entire spectrum of prosecutors' activities and professional duties, many of which relate to the pre-trial stage of court proceedings. Nevertheless, monitors were able to make some relevant observations from **prosecutors' courtroom performance of their professional qualifications, discipline and interaction with the public.**

Monitors observed that prosecutors were generally well prepared for trial proceedings and more disciplined than defence lawyers. **Most prosecutors demonstrated a clear strategy in presenting accusations.** They were generally active throughout the trial hearing, displayed good interrogation and examination skills, and elicited relevant information from witnesses.

However, monitors noted **other cases in which prosecutors were not adequately prepared.** In some, the judge took over the interrogation, asking questions that would be expected from the prosecutor. In one case the prosecutor came unprepared for the case and the defence lawyer was preparing to make a motion when the judge told the prosecutor to make a request that **the witness' statements from the criminal investigation stage be read out to show inconsistencies.** In another case, the judge asked the prosecutor, **"Why is the defendant's gun attached as a *corpus delicti* to the case file?"** to which the prosecutor answered "I did not supervise the criminal investigation and do not know the reason." The judge responded in a low tone, **"But when you come to court you should be prepared."** In another case, the defence lawyer asked a question to which the prosecutor did not know the answer, **saying he did not supervise or conduct the criminal investigation in the respective case.** The judge commented **"Leave him alone, it's not his case."** **These instances indicate that problems with prosecutors' preparation are still prevalent. They may be indicative of another systematic problem, strained or ineffective communications between the criminal investigation body and the prosecutor or between the prosecutor who conducts or supervises the criminal investigation and the one who appears in court.**

Monitors noted that prosecutors often fail to secure the appearance of witnesses at trial. This problem was noted throughout the Trial Monitoring Programme, both in the courts in Chişinău and in the Southeast. Judges' orders to bring witnesses by force are often required, but this can cause **further delays and postponements.** **Monitors witnessed instances in which prosecutors were forced to proceed in the absence of witnesses who repeatedly failed to appear in court.**

Several cases were noted in which the prosecutors did not bring the *corpus delicti* to the court. This occurred for varying reasons, most often because the prosecutor forgot or thought the court would not examine the *corpus delicti* at that particular hearing. This led to postponements.

Monitors noted a case in which the injured party was missing and the prosecutor asked the judge to postpone the hearing so that he could get his office to call the injured party and ask why she was missing. The judge asked **why he could not call from his cell phone so that the hearing would not be postponed unnecessarily**. To this the prosecutor answered hinting that he had to pay for the costs and was not willing to do so. Although prosecutors are given a business cell phone to be used for work-related purposes, the costs for its use seem not to be covered in all instances.

Monitors observed instances of prosecutors' inappropriate conduct, including tardiness and failure to identifying themselves to parties when replacing another prosecutor. The most frequent reason for lateness was an ongoing hearing in another case. In a few instances the prosecutor either admitted to having forgotten about the hearing or complained that he had not been informed about it and **requested that the court call him in advance for the next hearing**.

Moldovan prosecutors are required under the Law on the Prosecutor's Office to wear uniforms when representing the state accusation in court. The uniform is a **dark-blue military-like suit** with up to three gold stars as part of an epaulet on the shoulder denoting the rank of the prosecutor. Monitors observed that prosecutors tend to wear uniforms more often before the Supreme Court of Justice, before the Courts of Appeals and for high profile cases involving political figures. Throughout the monitoring and in feedback following the two prior trial monitoring reports, prosecutors complained to monitors that wearing uniforms should not be an indicator of performance. Many indicated difficulties that they face in connection with the uniform requirement, including that the uniforms are given to them in the form of material and must be made into a suit. In addition, they indicated that **only winter-weight material was typically provided**. (See more on this issue in section 3.3.)

Monitors noted instances in which **the prosecutor did not react to a defendant's threatening actions towards the victim, injured party and/or witnesses**. **Special attention to the protection of victims, injured parties and witnesses is fundamental, especially in cases of domestic violence and trafficking in human beings**. Monitors noted instances in which prosecutors' questions seemed inappropriate. In a trafficking case, for example, a prosecutor asked the victim "you were well paid, **US \$1,000–2,000 a month, why did you run away?**"

As indicated above, prosecutors continually entered judges' offices before hearings with no explanations to other participants. Such conduct is in violation of a decision of the Superior Council of Magistrates.⁴⁹

Monitors saw no significant differences between the performance of prosecutors in courts in Chişinău and the Southeast. Differences were noted in prosecutorial performance before the Supreme Court of Justice. Prosecutors in these cases were usually more passive and their performance was limited to a few standard phrases in favour of or against the appeal in cassation. After this, the prosecutor typically sat down and waited for the next case to commence, reiterating the same standard phrases in that next case. In fairness, some of the reasons for this kind of performance may be due to the nature of the proceedings before the Supreme Court of Justice.⁵⁰

49 See the Decision of the Superior Council of Magistrates No. 351/14 of 15 November 2007.

50 For example, proceedings in which the sentence is reviewed due to a change in the law. In such a case, the

III. Defence lawyers

Monitors were instructed to pay particular attention to the professional performance of defence lawyers, whose performance is tied directly to a defendant's right to an effective defence,⁵¹ the adversarial nature of court proceedings⁵² and the equality of arms principle.⁵³ Monitors observed a wide range of competence among defence lawyers. The performance of many defence lawyers was exemplary. The client received a good legal defence and even public attending the hearing was visibly impressed. Some monitors noted that famous defence lawyers commanded greater respect than other defence lawyers and that in their presence trial proceedings were always conducted in an orderly and dignified manner. In such hearings judges and prosecutors made fewer inappropriate comments and treated the clients of esteemed lawyers with more respect. This trend was noted throughout the Programme.

Monitors observed instances in which defence lawyers performed poorly. In Chişinău courts during the first monitoring period, defence lawyers were well prepared in only 44% of the hearings monitored. In 20% of hearings they were poorly prepared and in 36% their performance could either not be assessed or the hearing effectively did not take place. During the second monitoring period results were not significantly different. In 44% of hearings the lawyers were well prepared, in 13% they were poorly prepared and in 43% the performance could not be assessed.

Monitors in the Southeast observed similar results, registering performances by defence lawyers that were slightly better than those observed in courts in Chişinău. Defence lawyers were well prepared in 47% of the monitored hearings, poorly prepared in 12% of the hearings and the performance could not be assessed in 41% of the hearings.

Monitors noted particularly poor performance of legal aid lawyers. These often acted merely as a formal presence in the case and exhibited no initiative to protect the defendant's interests. The section on the right to legal assistance in this Final Report examines this issue in detail. Monitors observed cases in which privately contracted lawyers were clearly not prepared for the case and used their time in court to read through the case file. In some cases, defendants were more active in conducting their defence than their contracted lawyers, filing petitions and expressing objections while their lawyer sat by doing nothing.

Monitors noted several other less significant shortcomings in lawyers' conduct that affected the degree to which the interests of clients were protected and the general atmosphere of court proceedings. In several instances, lawyers failed to present their license or certification at the request of the judge. Such instances were noted throughout the monitoring period both in Chişinău and in the Southeast. Defence lawyers were frequently late for court hearings, to the frustration of the judge and other participants. In a few cases defence lawyers behaved in an unacceptable manner referring towards their own clients, prejudicing the cases. In exceptional cases defence lawyers appeared in court inebriated. In one case the client asked

prosecutor does not have much to say as the procedure is very simple and straightforward.

51 Guaranteed by Art. 26 of the Constitution; Art. 17 of the Criminal Procedure Code and Art.6(3)(c) of the ECHR.

52 Provided by Art. 24 of the Criminal Procedure Code; Art. 10(3) of the Law on Judicial Organization and Art. 6(3) of the ECHR.

53 Provided by Art. 24(2) of the Criminal Procedure Code; Art. 6(3) of the ECHR.

the defence lawyer to lower his voice and behave more seriously. In another case the lawyer at one hearing was too inebriated to remember anything from the prior hearing.

The section below describes the practice at the Supreme Court of Justice and the Chişinău Court of Appeals permitting the appointment of legal aid lawyers on the spot in hearings at which the private or legal aid defence lawyer has failed to appear. Lawyers thus appointed usually receive 10 minutes to prepare for the case and are consequently unprepared before the court. This usually results in a very poor defence. Although monitors noticed fewer instances of such snap appointments during the second monitoring period, the practice still occurs and efforts should be made to eliminate it.

From the beginning of the Trial Monitoring Programme defence lawyers generally welcomed, and were cooperative with, the trial monitors. They seemed more open to public scrutiny and displayed less antipathy towards outside monitoring throughout the entire monitoring period, both in Chişinău and the Southeast. During the first six months, defence lawyers and their clients appeared visibly relieved to have monitors present and took the opportunity to complain to monitors about law enforcement, prosecutorial misconduct and procedural violations. Some inquired whether monitors could attend other trials during which they alleged that many procedural violations were occurring because high-ranking officials had stakes in the outcomes of the cases. Defence lawyers also alleged that they and their clients would be subjected to negative repercussions from judges if they individually reported abuses they had witnessed. At later stages of the Programme, however, monitors noticed instances in which defence lawyers who had initially been cooperative with the monitoring suddenly ceased interacting with monitors or became openly hostile towards them. While this change led to questions as to the reasons, no facts were observed directly that could provide answers.

2.5. Quality of Supporting Court Staff (Court Clerks and Interpreters)

1. Court Clerks

Court clerks are public officials responsible for recording the minutes of court hearings.⁵⁴ They are required to record exactly and completely the actions and decisions of the court and all requests, motions, objections, statements and explanations by persons participating in the court hearing, as well as other circumstances that will be included or annexed to the case file.⁵⁵ The accuracy of the minutes depends entirely on the diligence of the court clerk. Accurate minutes are crucial to the effective exercise of the right to appeal. Court clerks play an important role in shaping the public's opinion of the functioning of the judiciary and the administration of justice. They are usually the first court officials with whom the public comes into contact when they appear in court. Monitors were instructed to pay attention to how diligently court clerks took hearing minutes and how they behaved towards the parties and other trial participants.

54 Moldova has no stenographic machines and no court stenographers to record court proceedings. Rather, court clerks are responsible for recording the proceedings in hand-written notes, referred to as the minutes of proceedings. During the second monitoring period, one court clerk was noted typing notes on a computer. Although faster and more legible, this is still not as fast or accurate as a court stenographer.

55 See Art. 83 para (2) p. 2) of the Criminal Procedure Code.

Monitors paid attention to the professional obligations of the court clerks. Monitors' general impression was that court clerks registered minutes with due attention, even more so during the second monitoring period. During the first monitoring period in Chişinău courts, court clerks registered minutes selectively or not at all in 15% of the hearings monitored. In the second monitoring period in these courts, court clerks registered minutes selectively or not at all in only 6% of the hearings. In the Southeast the situation was similar. Clerks registered minutes selectively or not at all in 6% of the hearings monitored. Biggest problems with court clerks' performance during the first monitoring period were observed (i) in the Supreme Court of Justice, where court clerks registered minutes selectively or not at all in 51% of hearings; (ii) in the Chişinău Court of Appeals, where court clerks registered minutes selectively or not at all in 43% of hearings; and (iii) in the Buiucani District Court, where court clerks registered minutes selectively or not at all in 12% of hearings. Each of these three courts registered significant improvements in recording minutes during the second monitoring period. Percentages dropped to 20% in the Supreme Court of Justice, 5% in the Chişinău Court of Appeals and 6% in the Buiucani District Court. A number of factors may have contributed to this improvement, including the entry into force on 1 January 2008 of the Law on the Status and Organization of Court Clerks' Activity in the Courts (hereinafter "Law on Court Clerks")⁵⁶ and training sessions for the court clerks organized by the National Institute of Justice.

In spite of these commendable improvements, monitors still observed many instances in which court clerks **did not actively register minutes**. In some rare cases court clerks declared that they were tired and could not work. In other cases clerks gave a party a blank piece of paper to sign, saying that the clerk would write down the statements made during the hearing later. Monitors noted isolated cases in which the court clerk gave the impression of inaccurately or incompletely recording minutes as exemplified in the following vignette:

Vignette: The judge spoke Russian during the hearing. Although an interpreter was present, the judge himself translated and reworded the statements into Romanian and dictated to the court clerk what to enter into the minutes. Not only the judge but the interpreter, the defence lawyer and the prosecutor were also involved in writing the minutes, often asking the clerk, "Did you write that down?" Monitors received the impression that none of the participants trusted the court clerk to write the minutes accurately.

Monitors noted that in instances in which the prosecutor or the defence lawyer mentioned that they had a written plea, the court clerk would not record anything in the minutes, indicating that he or she would attach the written plea that would subsequently be sent. While this practice may be convenient and time saving, it is of questionable accuracy: there is no guarantee that the lawyer or prosecutor will not introduce changes from the oral plea.

Monitors noted that some court clerks did not carry out some of their required functions. For example, few court clerks checked who was present at the hearing.⁵⁷ In such cases, this requirement had to be fulfilled by the judge.

⁵⁶ See the Law on the Status and Organization of the Court Clerks' Activity in the Courts, No. 59 of 15 March 2007, which entered into force on 1 January 2008.

⁵⁷ As required by Art. 318 para. (2) of the Criminal Procedure Code.

A problem noted in all courts monitored is the slowness with which hearing minutes are taken. This problem may be from the lack of stenographers and not solely the fault of court clerks. Court clerks typically write slowly, often interrupting the parties or trial participants to ask them to repeat what was just said. **Many times the court clerk does not understand, or claims to not understand, a statement; the judge then dictates to the clerk what to write in the minutes, often paraphrasing what the trial participant has said.**

Vignette: When hearing the witnesses, the judge dictated to the court clerk what to write in a separate statement to be attached to the minutes. He whispered to her to write only what he, the magistrate, was saying and not what the witness was stating.

This tendency is understandable in that judges wish to speed up the examination of a case to meet the reasonable time requirement. It is problematic, however, because judges may be violating the principle that requires the judge to base his or her decision only on evidence examined directly in court. In the case of paraphrasing, the minutes of the hearing will include the paraphrase and not a word for word quotation of what the witness actually stated. In addition to impacting upon the reasonable time requirement, the slow process of taking minutes often interferes with the testimony itself as the trial participants are constantly stopped and asked to speak up, speak slower, repeat what has just been said, etc. The onerous process used by the courts for minutes may cause witnesses to lose their line of thought and give incomplete or inaccurate testimony. This repetition can also be traumatic, especially for victims of domestic violence or trafficking.

Monitors reported several cases in which the court clerk was not taking the minutes, but overstepping his duties by asking questions to the participant testifying on the stand. In one case the prosecutor protested, asking ironically if he had changed places with the court clerk.

Monitors noted cases in which court clerks behaved unethically. Court clerks were observed addressing the trial participants in a brutal way; speaking on their mobile phones during a hearing and failing to record what took place during their telephone conversations. Monitors noted instances of court clerks speaking with one of the parties during the hearing, even openly flirting with the defence lawyer or prosecutor. Although such instances of inappropriate behaviour were noted during the second monitoring period in Chişinău and in the Southeast, monitors noted that such instances were exceptions rather than the rule. By the end of the monitoring period, monitors noted a commendable improvement in the openness and politeness of court clerks.

The First TMP Report noted that many court clerks dressed in an inappropriately casual style, even overtly provocative in some instances. Monitors reported an improvement in this respect during the second monitoring period. One possible reason for this is the entry into force of the new Law on Court Clerks, requiring court clerks to comply with an appropriate dress code during court hearings. Moreover, the Law on Court Clerks provided for court clerks to receive a dress code appropriate to their court. **The court clerks' dress code is to be approved by Government decision.**⁵⁸ Monitors noticed clerks wearing robes only in the Ciocana District Court. The dress code provision has not been implemented in any other court.

⁵⁸ See Art. 21 of the Law on the Status and Organization of the Court Clerks' Activity in the Courts.

Many clerks exhibited exemplary professional behaviour towards the public (including monitors), treating them with respect regardless of how busy they were. At the same time, many other court clerks behaved arrogantly, refusing to provide even basic information about hearing schedules. Some clerks refused to give any information without consulting the judge.

Many judges acknowledged problems in retaining qualified court clerks because of the low salary. Judges acknowledged that courts provide limited training to clerks before they begin working. The new Law on Court Clerks now requires all court clerks to undergo an initial training period of 3 months before starting their job and continuing professional development training at least once every five years. All training is to be provided by the National Institute of Justice. Several training sessions were carried out at the National Institute of Justice in 2008.

II. Interpreters

Monitors observed two major issues related to interpreters: an insufficient number of interpreters are available, particularly for languages other than Russian; and the poor quality of translation.

The present section discusses the quality of interpretation, while a subsequent section discusses in more detail the insufficient number of interpreters.

Monitors noted that the quality of interpretation is very low. Monitors observed that, as a rule, interpreters did not translate everything to the person in need of translation, most often the defendant. Usually the interpreters only translated a summary of the questions to the trial participant and the answers given by the trial participant. Interpreters rarely translated the entire hearing for a party who needed to follow the entire content of the hearing. Monitors noted instances of poor translation, especially as a result of misinterpretation of legal terminology.

Table 14: Performance of interpreters during trial proceedings
(Average percentage for all courts in Chişinău, April 2006 – November 2008)

Performance of interpreters during trial proceedings		
Satisfactory	Mixed	Unsatisfactory
60%	19%	21%

Table 15: Performance of interpreters during trial proceedings
(Average percentage for all courts in the Southeast, September 2007 – November 2008)

Performance of interpreters during trial proceedings		
Satisfactory	Mixed	Unsatisfactory
59%	24%	17%

These tables indicate that the situation is similar in the courts both in Chişinău and the Southeast.

As indicated in the following table, the monitoring noted some changes in the quality of interpretation in some courts during the monitoring period.

Table 16: Performance of interpreters during trial proceedings
(Courts in Chişinău)

Court	Periods monitored: Monitoring period I, April 2006 – May 2007 Monitoring period II, June 2007 – November 2008	Performance of interpreters during trials		
		Satisfactory	Mixed	Unsatisfactory
Supreme Court of Justice	Monitoring period I	80%	20%	0%
	Monitoring period II	100%	0%	0%
Chişinău Court of Appeals	Monitoring period I	63%	8%	29%
	Monitoring period II	70%	12%	18%
Centru District Court	Monitoring period I	63%	22%	15%
	Monitoring period II	63%	18%	19%
Ciocana District Court	Monitoring period I	47%	0%	53%
	Monitoring period II	96%	0%	4%
Rîşcani District Court	Monitoring period I	56%	26%	18%
	Monitoring period II	41%	32%	27%
Botanica District Court	Monitoring period I	73%	11%	16%
	Monitoring period II	62%	23%	15%
Buiucani District Court	Monitoring period I	48%	17%	35%
	Monitoring period II	39%	30%	31

This data shows that the performance of interpreters improved significantly in the Supreme Court of Justice and the Ciocana District Court from 80% satisfactory to 100% and from 47% to 96%, respectively. Improvement also was observed in the Chişinău Court of Appeals. The performance of interpreters worsened in the Rîşcani, Botanica and Buiucani District Courts, and remained the same in the Centru District Court. One explanation might be the small number of cases on the basis of which the data were analysed. The differences in the figures, especially the declines, indicate that further inquiry into this problem is needed.

With respect to the performance of interpreters in the Southeast, the following table indicates that the most problematic courts are the Căuşeni District Court and the Anenii Noi District Court, with the Bender Court of Appeals and the Ştefan Vodă District Court doing very well. Again, this data should be read with the caveat that the analysis is done on the basis of the small number of cases in which an interpreter was present.

Table 17: Performance of interpreters during trial proceedings
(Courts in the Southeast)

Performance of interpreters during trial proceedings	Courts in the Southeast (September 2007 – November 2008)			
	Bender Court of Appeals	Anenii Noi District Court	Căușeni District Court	Ștefan Vodă District Court
Satisfactory	100%	57%	0%	100%
Mixed	0%	27%	0%	0%
Unsatisfactory	0%	16%	100%	0

Monitors observed that many interpreters behaved **inappropriately**. In many instances, interpreters engaged in discussions with other trial participants, neglecting their interpreting. In a few cases interpreters refused to interpret everything to the defendant, saying, “You have a lawyer so let him translate for you.” In some cases interpreters left the hearing without notice. As the ultimate guardian of procedural fairness, the judge should make sure that translation is adequate. In a few instances judges legitimately reprimanded interpreters for poor interpretation. Judges should be encouraged to exercise this prerogative more frequently. Sometimes interpreters responded impolitely, replying they knew what they had to do. Such instances not only emphasize the problems with interpretation, but also compromise the judge’s authority and the **perception of the judiciary**.

III. FAIR TRIAL AND ASSOCIATED RIGHTS OF THE DEFENDANT

One of the principal goals of the Trial Monitoring Programme is to enhance observance of fair trial rights in Moldova. The focus of this chapter is on fair trial standards and the rights of the defendant inherent in the notion of a fair trial. The legal analysis is built upon factual events directly observed through trial monitoring. These are commented upon from the perspective of Article 6 of the European Convention⁵⁹ and Moldovan criminal procedure law.⁶⁰ The European Court in its case law has repeatedly underscored the importance of Article 6, holding that, “In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 paragraph 1 would not correspond to the aim and the purpose of that provision.”⁶¹

The right to a fair trial is often explained in two dimensions: the principle of equality of arms and the fundamental right that criminal proceedings should be adversarial.⁶² States have a positive obligation to establish and maintain an independent and impartial judiciary with full competence to review and issue final decisions in civil and criminal cases. Courts must conduct proceedings in conformity with both the procedural standards set forth in key international human rights instruments and those prescribed within the domestic legal system. The European Court approach is to look at the “entirety of domestic proceedings” when deciding whether the proceedings meet the standards of fairness required by Article 6.⁶³ Therefore, rights attached to a fair trial apply through all stages of the procedure, including not just hearings before the court but also the pre-trial proceedings, appeal and cassation levels of jurisdiction.

Before proceeding to an analysis of fair trial rights and standards, it must be emphasized that this chapter cannot offer a comprehensive and exhaustive analysis of all fair trial rights and procedural guarantees provided by Article 6 of the European Convention and relevant domestic legislation. That is beyond the scope of the Trial Monitoring Programme. Rather, the chapter analyses the main rights stemming from Article 6 through observation over time of court hearings without following the development of cases from beginning to end. The trial monitors did not have the task of assessing the substance of the application of the law. Their task was to observe and report on procedural compliance and the appearance of how “justice is done.” Summaries of the relevant international standards of fair trial that guided the Trial Monitoring Programme are given in the beginning of each section of the current chapter of this Final Report.

59 *European Convention on Human Rights*, Rome, 4 November 1950, ratified by the Republic of Moldova on 12 September 1997.

60 Relevant guarantees from the *Constitution of the Republic of Moldova*, adopted on 29 July 2004, the *Criminal Procedure Code*, adopted by Law No. 122-XV of 14 March 2003, entered into force on 12 June 2003, and other organic laws related to criminal proceedings.

61 See *Delcourt v. Belgium*, Judgment of the European Court, 17 January 1979, para. 25.

62 See *Belziuk v. Poland*, Judgment of the European Court, 25 March 1998, para. 37.

63 See *Granger v. United Kingdom*, Judgment of the European Court 28 March 1990, para. 44; *Imbrioscia v. Switzerland*, Judgment of 24 November 1993, para. 38.

3.1. The Right to a Public Hearing

The right to a public hearing is a unique component of the right to a fair trial. Whereas all the other component rights serve exclusively the rights and interests of the defendants, the right to a public trial has a more general, societal dimension. From the viewpoint of defendants in criminal cases or parties in civil cases, the public character of court proceedings “protects litigants against the administration of justice in secret with no public scrutiny”⁶⁴ and thereby protects parties from the exercise of arbitrary state power.

The right to a public trial is instrumental in securing public trust in the judiciary and serves as “one of the means whereby confidence in the courts, superior and inferior, can be maintained.”⁶⁵ Additional rationales for public trials are that they educate the public; they have therapeutic value for the community; the presence of outsiders may serve as a check on judicial power; the publicity of a trial may enhance fact-finding by bringing new evidence to light or by persuading those who testify to speak more truthfully than if permitted to testify in private.⁶⁶ As part of the obligation to ensure the public nature of a trial, the authorities must make information on the date and place of hearings available to the public. This is particularly important if a trial hearing is not held in a courtroom equipped as such. If the hearing is not held in a courtroom, the appropriate authorities must take additional measures to facilitate the attendance of the public and media.⁶⁷

Public court proceedings are guaranteed by the Moldovan Constitution (art. 117), Criminal Procedure Code (art. 18) and the Law on Judicial Organization (art. 10). The Criminal Procedure Code allows for some exceptions from the rule of holding all trial hearings in public, similar to those spelled out in Article 6, when public access to a trial (including all trial hearings) may be restricted by a reasoned court order based on morality, public order, or national security; protection of the interests of minors or the private life of parties to the proceedings; or special circumstances indicating that publicity may damage the interests of justice.⁶⁸ Art. 316 para 4 provides for an additional exception, namely when “the presiding judge at the trial hearing may limit the access of the public to the hearing, taking into account the conditions in which the case is examined.” The last provision may be reconsidered as it is too vaguely worded, giving unlimited powers to the presiding judge to limit the access of the public to the hearing.

Monitors observed that generally the right to a public hearing is well respected. The public (including trial monitors) were granted access to most trial hearings and, if not always welcomed, their presence was at least largely tolerated. As indicated below, however, access to trial hearings was not uniform throughout the Programme.

An important impediment to the exercise of the right to a public hearing is the resistance of some judges, defence lawyers and prosecutors. Throughout the Programme monitors noted incidents in which judges declared hearings closed to the public without explanation. Monitors noted a trend among some judges to declare hearings closed when the presence

64 *Pretto and Others v. Italy*, Judgment of 8 December 1983, Series A, No. 71, at 21-22. See also *Axen v. the Federal Republic of Germany*, Judgment of 8 December 1983, para. 25.

65 See *Axen v. the Federal Republic of Germany*, Judgment of 8 December 1983, para. 25.

66 Judith Resnick, *Due Process: A Public Dimension*, 39 UNIV. FLORIDA L. REV. 405, 419 (1987).

67 See *Riepan v. Austria*, Judgment of the European Court, 14 February 2001, para. 29.

68 Art. 18 para. 2, Criminal Procedure Code.

of monitors seemed undesirable. A few instances were noted in which judges did not permit the public to be present at the hearing, indicating as a reason that it was a “preliminary hearing.” Such an interpretation of law is wrong, as the Criminal Procedure Code makes clear exceptions from the right to a public hearing and a preliminary hearing is not one of them. Article 345 of the Criminal Procedure Code, regulating preliminary hearings, does not make any mention of the hearing not being open to the public. Similar misinterpretations were noted both in Chişinău and the Southeast. An explanation by the Superior Council of Magistrates regarding the correct interpretation of the law would be desirable.

Public access to case hearings is often prevented or impeded by external reasons such as a lack of space in the judge’s office where the hearing is held and/or a lack of information about the case hearing on the information board.

As discussed above, a high percentage of hearings are held in judges’ offices. Typically, these rooms are small and can barely accommodate the parties, leaving no space for the public. (See section 2.2. of the present Report for additional details.)

Monitors observed that information on hearings posted on the information boards is often inadequate in all courts monitored, posing an impediment to the right to a public hearing. The requirement to post trial schedules publicly is expressly provided for by Article 353 of the Criminal Procedure Code. Monitors noted that by the end of the Trial Monitoring Programme all courts monitored had information boards. At the beginning of the Programme boards did not exist in all courthouses.

Monitors observed an improvement in the percentage of publicly posted case lists at the Chişinău courts during the Trial Monitoring Programme. The percentage increased from 53% in the first monitoring period to 66% in the second monitoring period. The data from the Southeast are better; 86% of the hearings monitored were posted.

Table 18: Length of postponements of hearings

	Chişinău			Southeast
	First monitoring period: April 2006 – May 2007	Second monitoring period: June 2007 – November 2008	Entire monitoring period: April 2006 – November 2008	Entire monitoring period: September 2007 – November 2008
List of cases posted publicly at the courts	53%	66%	62%	86%
List of cases not posted publicly at the courts	47%	34%	38%	14%
Total number of hearings monitored	2,395	4,642	7,037	365

Some courts are considerably more disciplined than others in posting lists. This can be seen from Table 19.

Table 19: List of cases scheduled for trial posted publicly at the courts (information by courts)

Courts in Chişinău	Periods monitored: Monitoring period I, April 2006 – May 2007 Monitoring period II, June 2007 – November 2008	List of cases posted publicly at the courts	
		Yes	No
Supreme Court of Justice	Monitoring period I	100%	0%
	Monitoring period II	95%	5%
Chişinău Court of Appeals	Monitoring period I	98%	2%
	Monitoring period II	97%	3%
Centru District Court	Monitoring period I	38%	62%
	Monitoring period II	63%	37%
Ciocana District Court	Monitoring period I	78%	22%
	Monitoring period II	79%	21%
Rîşcani District Court	Monitoring period I	3%	97%
	Monitoring period II	29%	71%
Botanica District Court	Monitoring period I	43%	57%
	Monitoring period II	40%	60%
Buiucani District Court	Monitoring period I	83%	17%
	Monitoring period II	73%	27%
Courts in the Southeast			
Bender Court of Appeals	September 2007 – November 2008	92%	8%
Anenii Noi District Court	September 2007 – November 2008	86%	14%
Căuşeni District Court	September 2007 – November 2008	84%	16%
Ştefan Vodă District Court	September 2007 – November 2008	83%	17%

The monitoring data demonstrated that Rîşcani, Botanica and Centru District Courts are particularly problematic in terms of posting the lists for scheduled trial hearings. It is commendable that the Centru District Court improved considerably in the second monitoring period. Although they have exhibited some improvement, the Rîşcani and Botanica District Courts still fall behind other courts. The Buiucani District Court registered a better percentage of trial hearings posted on information boards, but it experienced a decrease in the percentage during the second monitoring period in comparison to the first monitoring period.

Monitoring shows that the quality of information on lists of cases scheduled for trial is inadequate. Monitors noted that there was not sufficient, correct and updated information on upcoming court hearings posted in any of the courthouses that were monitored. In the Southeast, monitors missed several hearings because information posted on the board was wrong. Monitors experienced problems with the information posted in all courthouses in Chişinău. The most common problems were failure or delay in posting or updating information and failure to include relevant times or room numbers for hearings listed. While some judges always posted their scheduled trial hearings, others only posted information regarding when they would be on sick leave or vacation. The Chişinău Court of Appeals

and the Supreme Court of Justice appeared to be posting the most accurate information on upcoming hearings.

3.2. The Right to an Independent and Impartial Tribunal

The right to be tried by an independent and impartial tribunal established by law is considered, "...by far the most important guarantee enshrined in Article 6," as it lays the foundation for the rule of law.⁶⁹ Violation of this right in the court of first instance cannot be remedied on appeal. In contrast, violation of other rights in the court of first instance, such as the publicity component, can be redressed on appeal. If the European Court on Human Rights finds that the court of first instance did not conform to the independence and impartiality requirements of Article 6, it will usually not examine other procedural circumstances, finding instead an immediate *per se* violation of the fairness provisions of Article 6.

The tribunal must be independent from both the executive body and the parties.⁷⁰ In assessing the independence of a tribunal, the European Court looks into the following:

- manner of appointment of its members;
- duration of their term of office (security of tenure);
- existence of guarantees against outside pressure;
- existence of the appearance of independence.⁷¹

The concept of impartiality is understood by the European Court to denote "...absence of prejudice or bias. [...] A distinction can be drawn in this context between a subjective approach, that is endeavoring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that is determining whether [the judge] offered guarantees sufficient to exclude any legitimate doubt in this respect."⁷²

The requirements of independence and impartiality are interrelated and sometimes difficult to dissociate;⁷³ the European Court often considers them together.

In Chapter IX of the Moldovan Constitution, on judicial authority, Article 116 paragraph (1) states that judges sitting in courts of law are independent, impartial, and not removable under the law. The Criminal Procedure Code further provides in articles 25 and 26 the right to access to an independent and impartial tribunal established by law. Laws that regulate the functioning of the judiciary, namely the Law on Status of Judges⁷⁴ and the Law on the Organization of the Judicial System,⁷⁵ also proclaim and detail the requirement of judicial independence and impartiality.

Most guarantees of independence and impartiality relate to the institutional framework of the judiciary⁷⁶ and thus fall outside the scope of the Trial Monitoring Programme which

69 Trechsel Stefan, *Op, cit*, p. 47.

70 See *Ringeisen v. Austria*, Judgment of the European Court, 16 July 1971, para. 95.

71 See *Campbell and Fell v. UK*, Judgment of the European Court, 28 June 1984, para. 78.

72 See *Piersack v. Belgium*, Judgment of the European Court, 1 October 1982, para. 30.

73 See *Langborger v. Sweden*, Judgment of the European Court, 22 June 1989, para. 32.

74 Law on the Status of Judges, No. 544-XIII of 20 July 1995, entered into force on 16 October 1995.

75 Law on the Organization of the Judicial System, No. 514-XIII, of 6 July 1995, entered into force on 19 October 1995.

76 The institutional framework of the judiciary refers to the legal establishment of the courts, the composition of courts and the manner of appointment of judges, the duration of their office, the existence of guarantees

deals only with procedural issues. The Programme has, however, made findings related to the appearance of independence and to the issue of whether judges present sufficient guarantees to exclude legitimate doubt of their impartiality.

Monitors observed that the appearance of independence and impartiality was damaged by the following practices in the courts monitored: engagement of the judges in *ex-parte* communications (parties entering the judges' offices before hearing with no explanations to the other party); judges' active engagement in questioning; judges' support of one of the parties; judges' hurrying the parties, particularly in connection with their pleadings and the final word of the defendant; and the practice by the Courts of Appeals of deliberating on several cases simultaneously.

The types of violations related to the independence and impartiality of judges have already been noted in the Second TMP Report. The final monitoring period in the courts in Chişinău did not present significant changes in the behaviour of judges. **Monitoring in the Southeast did not observe any significant differences from Chişinău. The findings of this section refer to the observations of the courts both in Chişinău and in the Southeast.**

The Second TMP Report highlighted the problematic practice of judges engaging in *ex-parte* communications with only one side or showing an excess of familiarity or friendly relations with one of the parties. The Superior Council of Magistrates has issued a decision⁷⁷ regarding the "access of the trial participants and their representatives to the judges' offices," stating the following intent: "to prohibit the access of parties and their representatives to the judges' offices except to attend trial hearings." **Although this decision was posted at all judges' offices, monitors noted that the practice of defence lawyers or prosecutors entering judges' offices before the hearing, without explanations to the other party, has continued. This same practice was noted in the Southeast.**

Several monitors highlighted the tendency of some judges to engage in active questioning of the defendant, witnesses, victims or experts, asking not only questions of clarification, but also questions with a clear prosecutorial or defence inclination.

Vignette: In one case the judge addressed a witness and the defendant saying "I will dare to ask you instead of the prosecutor: who is lying?"

In isolated instances the judge obviously favoured one of the parties. In one case, the judge put pressure on the prosecutor to change the category of the criminal charge from pimping to trafficking in human beings.

Vignette: After several hearings postponed by the judge in a pimping case, the judge addressed the prosecutor, mentioning the need "to consult with your boss," because "This is traffic here! Come on, she (the defendant) will have time to think in the prison." This statement was made at the beginning of the court examination, during the questioning of the first witness.

Such actions constitute an infringement of the defendant's right to an independent and impartial tribunal and to be presumed innocent.

against external pressure (namely the executive and legislative branches of state power and the parties in the case), and the rules regarding the participation of a particular judge in the same case in different roles and the withdrawal of judges when there are legitimate reasons to fear lack of impartiality.

77 See the Decision of the Superior Council of Magistrates No. 351/14 of 15 November 2007.

Monitors noted that judges sometimes compromised their impartiality by making inappropriate comments to one party. For example, at the end of one hearing, the judge told the defence lawyer, in the presence of all other trial participants, “Mr. ... (lawyer’s name), the discussion we had today will stay between us.” Even if their discussion had been a private one unrelated to the present hearing or case, the impression made on participants was that there was some connection between the judge and the defence lawyer tainting the judge’s impartiality.

In other instances judges openly took a biased position towards one party. In one case, a judge never asked the defendant if he had questions for the witnesses, though he provided opportunities to the prosecutor and injured party to ask questions. In an exceptional case, a judge who was passive and manifested no interest in managing the hearing commented to the prosecutor who was very active, “Very good that you are leading the hearing, no one can stop you.”

The independence of judges was drawn into question by instances, as noted in the Second TMP Report, in which a judge openly admitted that he was under pressure from the Ministry of Interior Affairs.

Several monitors noted that many judges tried to rush through the parties’ pleadings and/or the statements given by the defendant and trial participants. In one case, the judge discouraged the prosecutor from asking more questions saying, “One more question! It’s 16.00!” In several cases, judges interrupted defence lawyers’ pleadings saying that they should only refer to something new or in addition to what they had already written in the appeal plea. In another case, a judge rushed the witnesses’ statements, making it hard for the parties to take notes.

As indicated in Chapter II of this Final Report, monitors observed that at the Courts of Appeals and the Supreme Court of Justice panels of judges had a very high caseload and that these panels typically examined a few cases in rapid succession and then withdrew for deliberation of several. This practice reflects organizational shortcomings that negatively affect the public’s perception of the courts and infringe upon the defendant’s right to have his/her case heard by an independent and impartial tribunal. The practice of examining several cases at one time negatively impacts the judges’ ability to concentrate on any single case, giving it the full and reasoned consideration it deserves. In addition, there is no way to ensure that proceedings in one of the cases examined will not have an unwarranted impact on the judges’ decisions in other cases heard simultaneously.

3.3. The Right to a Fair Hearing

Article 6 paragraph 1 of the European Convention guarantees everyone the right to a “fair” hearing. The European Court, in its case law, has extensively developed the meaning of this term, declaring a series of underlying due process standards for a “fair hearing” that are not expressly set forth in the text of the Convention. These standards include the following guarantees: the right of access to a court, the right to be present during proceedings, freedom from self-incrimination, equality of arms, the right to adversarial proceedings and the right to a reasoned judgment.

Fair trial standards are provided, to a varying degree, in Moldovan legislation. Free access to a court is guaranteed by the Constitution⁷⁸ and the Criminal Procedure Code.⁷⁹ The Criminal

78 Art. 20 of the Constitution.

79 Art. 19 of the Criminal Procedure Code.

Procedure Code provides for a defendant's right to be present at the examination of his/her case in court⁸⁰ and states that trials *in absentia* can be held only in certain enumerated exceptional circumstances.⁸¹ The Criminal Procedure Code contains an express prohibition against forced self-incrimination and states that no one can be forced to confess guilt or to testify against himself/herself or his/her close relatives, spouse, or fiancé.⁸² The Code further guarantees the equal rights of parties during case examination and the principle of adversarial proceedings,⁸³ and requires that court judgments be legal, well grounded, and reasoned.⁸⁴

The Trial Monitoring Programme, given its limited scope, did not cover the observance of all aspects of the right to a fair trial. The right of access to a court provides that everyone must be afforded the right to have any claim relating to his/her civil rights and obligations brought before a court and includes the right to a final determination of the dispute.⁸⁵ This right clearly falls outside the scope of the Programme, as the Programme relates in a strict sense only to cases that are already being examined. As mentioned above, the Programme did not follow complete individual cases but specific trial hearings. Given this, no assessment could be made as to the observance of the court access guarantee.

Freedom from self-incrimination is comprised of "the right of anyone charged with a criminal offence [...] to remain silent and not to contribute to incriminating himself."⁸⁶ It is aimed at protecting the defendant from "...improper compulsion by the authorities thereby contributing to the avoidance of miscarriages of justice and to the fulfillment of the aims of Article 6..."⁸⁷ The protection of this right could not be observed by Programme monitors as this issue comes into question mostly during the pre-trial stage.

The right to a reasoned judgment involves the courts' obligation "to give reasons for their judgments, although this cannot be understood as requiring a detailed answer to all arguments."⁸⁸ The extent of the obligation depends on the nature of the decision and is determined in light of the circumstances of the case.⁸⁹ All submissions fundamental to the outcome of a case must be specifically addressed in the judgment. The Programme did not

80 Art. 66 para. (2) p. 23) of the Criminal Procedure Code.

81 Art. 321 of the Criminal Procedure Code.

82 Art. 21 para. (1) of the Criminal Procedure Code.

83 Arts 24, 314 and 315 of the Criminal Procedure Code. According to the current legislation, however, equality of arms is somewhat limited at the pre-trial stage, since the defence can administer evidence only through the opposite party. For example, Art. 100 para. (2) of the Criminal Procedure Code gives the defence the right to talk to physical persons if the latter agree to be heard according to the procedure established by law. This wording means that the person also has the right to refuse to talk to the defence and consequently testify. In contrast, if the criminal investigation body considers it necessary to hear a person, the latter cannot refuse to testify and also bears criminal responsibility for refusing to do so. For a detailed analysis of the issue, see Igor Dolea, *The principle of equality of arms and the right of the defence to administer evidence in the criminal proceedings in Moldova* (in Romanian), *Analele Științifice ale USM*, 2004, p. 371.

84 Art. 384 para. (3) of the Criminal Procedure Code.

85 See *Burdov v. Russia*, Judgment of the European Court, 7 May 2002, para. 34. See also *Jasiuniene v. Lithuania*, Judgment of the European Court, 6 March 2003, para. 27.

86 See *Funke v. France*, Judgment of the European Court, 25 February 1993, para. 44.

87 See *Saunders v. the United Kingdom*, Judgment of the European Court, 17 December 1996, para. 68-69.

88 See *Van de Hurk v. the Netherlands*, Judgment of the European Court, 19 April 1994, para. 19.

89 See *Balani v. Spain*, Judgment of the European Court, 9 December 1994, para. 27. See also *Ruiz Torija v. Spain*, Judgment of the European Court, 9 December 1994, para. 29.

include a review of court decisions and therefore made no assessment of compliance with the reasoned judgment requirement. Monitors, did, however, report limited observations indirectly relating to the reasoned judgment requirement. They noted a widespread lack of reasoning for declaring court hearings closed to the public. Judges many times only recited that the hearing was being closed “to protect the victim’s privacy” or “in the interests of justice.” This practice was noted in the Second TMP Report and continued to be observed by monitors during the second monitoring period both in Chişinău and the Southeast. Monitors observed instances in which the Courts of Appeals ignored a defence lawyer’s request for hearing an additional witness and provided a superficial response to the lawyer’s request to change the panel of judges on grounds that they were not impartial. In the latter instance, the president of the hearing simply read out the legal provisions regarding **recusal of judges** (Article 35 of the Criminal Procedure Code).

The right to be present during proceedings requires that the defendant be present at all trial hearings.⁹⁰ Correspondingly, a defendant’s absence should normally call for a postponement except (i) in cases where the authorities have acted diligently but were not able to notify the accused of the hearing;⁹¹ or (ii) as required by the administration of justice in certain cases of illness.⁹² Trials *in absentia* are not completely incompatible with the European Convention, but are highly undesirable and require strict observance of several conditions that the European Court examines in every case. A defendant can be removed from the court room (*hearings in camera*⁹³) if s/he is disturbing the proceedings. These instances are exceptional. Hearings *in camera* can also be held without the defendant present if this is necessary to protect the victim.⁹⁴

Monitors did not observe frequent violations affecting the defendant’s right to be present during proceedings. Judges consistently upheld this right and postponed hearings whenever the defendant was absent. Monitors noted, however, cases in which defendants in custody could not be present at their trials because, as the judges explained to those present, the police did not have enough fuel on that day to drive them from the penitentiaries to court. Such occurrences could reasonably be regarded as a violation of the defendant’s right to be present. Moreover, if such instances lead to repeated postponements, they could constitute a breach of the reasonable time guarantee.

The principle of equality of arms demands that each party to the proceedings have a reasonable opportunity to present his/her case to the court under conditions that do not place them at a substantial disadvantage in relation to the opponent, so that a fair balance is struck between the parties.⁹⁵

This principle is closely connected to the right to adversarial proceedings which requires that both parties to a criminal or civil trial have the opportunity to have knowledge of and

90 See *Ekbatani v. Sweden*, Judgment of the European Court, 26 May 1988, para. 25.

91 See *Colozza v. Italy*, Judgment of the European Court, 22 January 1985, para. 28.

92 See *Ensslin and others v. the Federal Republic of Germany*, 14 DR 64.

93 “*In camera*” hearings refer to hearings where one party is not present. The term is used in this Report particularly in instances where the defendant is removed from the court room (i) if s/he is disturbing the order of the court or (ii) in order to protect the interests of the victim or witness.

94 See Art. 15 of the *Recommendation R (85) 11*, Committee of Ministers, Council of Europe, 28 June 1985.

95 See *De Haes and Gijssels v. Belgium*, Judgment of the European Court, 24 February 1997, para. 53.

comment on all evidence adduced or observations filed.⁹⁶ It implies the availability to both parties of all evidence presented to the judge that could influence his/her decision, including evidence presented by an independent magistrate. The European Court has decided that national law can ensure this requirement in various ways. What is required is that the “opposite party” be informed when evidence is put forward and be given a chance to comment on it.⁹⁷ An inherent part of a “fair hearing” is the defendant’s opportunity to comment on evidence pertinent to facts in dispute even if the facts relate to a point of procedure rather than the alleged offence as such.⁹⁸

Monitors observed that, in general, judges respected the equality of arms and the adversarial nature of proceedings, showing the same respect for both prosecution and defence, providing equal opportunities for both parties to present their position and additional evidence. Judges generally afforded both the prosecution and defence the time and opportunity to comment on new evidence. As indicated below, however, monitors noted several apparent violations of equality of arms and adversarial rights. Monitors observed neither significant changes relating to the protection of such rights during the monitoring period nor significant differences in the protection of such rights between Chişinău and the Southeast. Accordingly, the findings set forth below refer to the entire monitoring period and both monitored areas.

Monitors observed that in a few cases judges interrupted defence lawyers when they were asking questions or making their pleas. This practice was observed less frequently in relation to prosecutors. Monitors noted that when hearings were held in judges’ offices with limited space at a desk, defence lawyers were usually sitting in chairs and taking notes on their laps while prosecutors were usually seated at the desks. In one case the prosecutor shared the desk with the judge.

As discussed above, monitors noted the tendency of many judges to engage actively in questioning the defendant, injured parties, experts and witnesses, asking questions that would normally be expected from the prosecutor. This affects both the appearance of impartiality of the judge and the right to an adversarial proceeding.

In the Chişinău Court of Appeals monitors noted a problem with judges not paying attention to lawyer’s questions or pleadings unless the lawyer is well-known.

On several occasions monitors noted that judges approved prosecutors’ requests to read the written statements of witnesses given at the criminal investigation stage, in the absence of these witnesses, in spite of defence lawyers’ objections that there was no evidence that it was impossible to summon the witness to court.

Monitors noted that the Moldovan legal framework seems to place the parties in unequal positions. For example, the Law on the Prosecutor’s Office⁹⁹ requires prosecutors to wear uniforms. This requirement is discussed in more detail in Chapter II above. The current uniform

96 See *Ruiz-Mateos v. Spain*, Judgment of the European Court, 23 June 1993, para. 63.

97 C. Bîrsan, *European Convention on Human Rights. Commentary by article* (in Romanian: *Convenția Europeană a Drepturilor Omului, Comentarii pe articole*), Bucureşti, Editura ALL PECK, 2005, p. 512-513.

98 See *Kamasinski v. Austria*, Judgment of the European Court, 19 December 1989, para. 102.

99 Art. 36 of the Law on Prosecutor’s Office of 14 March 2003, applicable during the Trial Monitoring Programme implementation period. Similar provisions are included in Art. 55 of the new Law on Prosecutor’s Office of 25 December 2008.

of the prosecutors is a holdover from Soviet uniforms and resembles a military uniform. The uniform has distinctive attributes stemming from the time when the prosecution office had the function of “general supervision of the law,” putting prosecutors above the judiciary. The fact that only prosecutors have uniforms, not defence lawyers, creates the impression of placing the parties in unequal positions or Parliament should consider mandating either that both defence lawyers and the prosecution should be required to wear a robe, distinguishing them from the other parties; or that none should.

3.4. The Right to Trial within a Reasonable Time

The European Court has provided a particularly rich body of case law on the right to be tried within a reasonable time. According to some estimates, the reasonable time guarantee is addressed in more European Court judgments than any other issue.¹⁰⁰ In terms of numbers, it has been the subject of almost one-third of judgments delivered since 1968.¹⁰¹

There are several reasons why the right to trial within a reasonable time is given such importance. The common rationale lies in the truism that justice delayed is justice denied. From a defendant’s perspective, it is unfair to have a trial that lasts an unjustifiably long time; psychological insecurity inevitably accompanies criminal proceedings. From a more general perspective of legal certainty, the guarantee of reasonable time is based on the fundamental due process principle that a trial which lasts an unreasonably long time becomes tainted with injustice and in general undermines the course of justice. The European Court has explained that the aim of the reasonable time guarantee is to protect, “...all parties to court proceedings [...] against excessive procedural delays,”¹⁰² and to guarantee the, “...rendering [of] justice without delays which might jeopardize its effectiveness and credibility.”¹⁰³

Through its wealth of case law, the European Court has progressively developed the meaning of the guarantee of reasonable time and has established that an assessment of whether the length of court proceedings is reasonable or not must be based on the following criteria: the complexity of the factual or legal issues raised by the case; the conduct of the applicant; the conduct of the State’s judicial and administrative authorities; and what is at stake for the applicant.¹⁰⁴

Moldovan law expressly enshrines the principle of holding criminal proceedings (criminal investigations and trials) within a reasonable time.¹⁰⁵ The criteria used to assess the reasonableness of the length of proceedings are similar to, and mirror, the ones developed by the European Court. Under Moldovan law, the responsibility for ensuring observance of the guarantee of reasonable time is assigned to the prosecutor at the criminal investigation stage and to the court during trial proceedings.¹⁰⁶

100 N. Mole, C. Harby, *Op. cit.*, p. 24.

101 Frederic Edel, *The length of civil and criminal proceedings in the case-law of the European Court of Human Rights* (Human Rights Files No. 16), 10 July 2007.

102 See *Stogmuller v. Austria*, Judgment of the European Court, 10 November 1969, para. 5.

103 See *H v. France*, Judgment of the European Court, 24 October 1989, para. 58.

104 See *Zimmermann and Steiner v. Switzerland*, Judgment of the European Court, 13 July 1983, para. 24; see also *Buchholz v. Germany*, Judgment of the European Court, 6 May 1981, para. 49.

105 See Art. 20 of the Criminal Procedure Code.

106 See Art. 20 para. (4) of the Criminal Procedure Code.

Monitoring indicated that delays and postponements of trial hearings were the rule rather than the exception in all monitored courts, as detailed above, Chapter II section 2.3. Postponements of trial hearings were accepted as a matter of practice, with 62% of all scheduled hearings postponed. This high percentage of postponed hearings may be primarily explained by the tradition of examining a case in several hearings spread over a period of time rather than examining a case in a single sitting. In any event, it is a very high percentage. The percentage of postponements resulting from prosecutors failing to appear (7% in Chişinău and 10% in the Southeast) and defence lawyers failing to appear (13% in Chişinău and 10% in the Southeast) were particularly troubling. These officials have a professional duty to be on time. Monitors noted instances in which the defence lawyer or the prosecutor justified their failure to appear at the previous hearing (which was postponed) by citing an overlap with other hearings. This appears to be a systemic problem that could be resolved by all three groups of participants (judiciary, prosecutor's office and defence lawyers) putting more effort into the coordinated and efficient scheduling of hearings.

Monitors observed that judges often rush trial participants in their pleadings or when they are addressing questions to witnesses, justifying their hurry with the need to ensure that proceedings are conducted within a reasonable time. This attitude is hard to square with the tolerance of postponements. In several instances a hearing was postponed because the judge was missing (for staff meetings, vacations or unknown reasons) or because the judge arrived too late and the parties had already left. In some instances judges appeared to postpone hearings for no particular reason. These instances were especially troublesome in cases where the defendant was in custody.

Delays and postponements negatively affect the defendant's right to a trial within a reasonable time. They also negatively affect the quality of witness examinations as many witnesses become tired of the constant delays and postponements and discontinue their appearance at hearings. Although improvements were noted in the time of commencement of trial hearings during the full monitoring period, the courts still need to make greater efforts in this area.

3.5. The Right to be Presumed Innocent

Article 6 paragraph 2 of the European Convention states, "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." As the European Court put it, the presumption of innocence embodied in Article 6 paragraph 2 and the various rights, a non-exhaustive list of which appears in paragraph 3, are constituent elements, amongst others, of the notion of a fair trial in criminal proceedings.¹⁰⁷ This right requires that "[w]hen carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused."¹⁰⁸ Consequently, the judge and other public authorities¹⁰⁹ should have an impartial attitude toward the defendant and

107 See *Deweert v. Belgium*, Judgment of 27 February 1980, para. 56.

108 See *Barbera, Messegue and Joabardo v. Spain*, 6 December 1988, para. 77.

109 See, for example, *Alenet de Ribemont v. France*, Judgment of 10 February 1995, para. 36 and 37, in which the Court found the remarks of two senior police officers made at a press conference held during the judicial investigation and supported by the Ministry of Interior violated the right to be presumed innocent, as they were, "...clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority."

refrain from doing or saying anything that might imply that the defendant is guilty. When examining evidence adduced by the prosecution, the judge should give the defendant benefit of the doubt.

The presumption of innocence of all accused is guaranteed in Article 21 of the Constitution and Article 8 of the Criminal Procedure Code.

Certain aspects of the European Court's interpretation of the right to be presumed innocent were beyond the scope of the Trial Monitoring Programme assessment (e.g., evaluation of evidence and allowing presumptions of law and fact). This section describes only observations regarding the attitude of the judge and other participants towards the defendant during the trial.

Monitors noted that the defendant's right to be presumed innocent was usually upheld. There were several instances, however, in which judges' comments or attitudes toward defendants (as demonstrated either by comments or the manner in which judges addressed questions to the defendants or defence lawyers) indicated a clear breach of the defendants' right to be presumed innocent. This type of comments and attitudes were noted in the Second TMP Report and continued during the second monitoring period in both Chişinău and the Southeast.

Vignette: The judge stated to the defendants, before completion of the trial and the pronouncement of judgment: "Tell me where you have lied, as you are guilty anyhow and you cannot deceive me."

Violations of the right to be presumed innocent included instances in which judges demonstrated a lack of interest in the parties' statements, giving the impression that they had already reached a verdict. In other cases, judges gave the impression that they had already taken a position on the case prior to examining the entirety of the evidence.

Vignette: In one case at the Chişinău Court of Appeals, where there was not enough space to fit all trial participants and one defendant sat next to his lawyer, the judge addressed the defence lawyer: "The place of the defendant is behind bars or in the second or third row in the courtroom... not behind you."

Vignette: In another case, the judge addressed the defendant's mother, who sought permission to attend the hearing: "So you have raised a prostitute and now come to the hearing?"

The remarks above demonstrate judicial bias and do not inspire confidence that the judiciary is making appropriate efforts to uphold the fair trial rights of defendants.

Throughout the monitoring period, monitors noted instances in which judges were in too much of a hurry to finish the case, allowing insufficient time for the presentation and assessment of the evidence or rushing the defence lawyer, the prosecutor or the defendant. Rushing defendants was even noted during the presentation of the defendant's final statement, an important aspect of Moldovan trial proceedings. Such pressure might be justified as a means of meeting the reasonable time requirement, but the practice should be carefully limited and implemented to preclude deleterious effects on other important rights of the defendant.

To protect the defendant's right to presumption of innocence, prosecutors must be careful in presenting the indictment in court. Although the prosecutor should be convincing in presenting the charge, she/he should avoid using terms, phrases or expressions that presume

the guilt of the defendant before it is proved in a fair trial. For example, in a few cases monitors noted that the prosecutor used the term “criminal” while addressing the defendant.

The degree to which the presumption of innocence is respected can also be inferred from the way the defendants are brought to court and held during trials. International fair trial standards require that “[n]o attributes of guilt [be] borne by the accused during the trial which might impact on the presumption of their innocence. Such attributes could include holding the accused in a cell within the courtroom, requiring the accused to wear handcuffs, shackles or a prison uniform in the courtroom, or taking the accused to trial with a shaven head in countries where convicted prisoners have their heads shaved.”¹¹⁰ In this regard, the Moldovan practice of holding defendants handcuffed or in metal cages throughout the trial is notable. These practices, however, must be balanced against the need to ensure public order and security in the courts, especially considering the insufficient number of judicial police and the fact that there have been cases (not during monitoring) when armed persons entered courtrooms and threatened judges. It should further be considered that such practices, in addition to raising concerns about the presumption of innocence, in some circumstances may amount to degrading treatment of the defendant.¹¹¹ Judges should assess the appropriateness of these measures and should not apply them unless absolutely necessary. Monitors often noted the lack of a **judicial police officer in the court. This may be the principal reason why judges too often permit the use of handcuffs on defendants.**

3.6. The Right to Legal Assistance and the Right to Adequate Time and Facilities

Article 6 paragraph 3 (b) of the European Convention states, “[I]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to have adequate time and facilities for the preparation of his defence.” It follows that the right has two dimensions: adequate time and adequate facilities. The case law of the European Court on this right falls more or less into these two categories.

Adequacy of time does not have a clear definition in European Court case law. Adequacy of time depends on the complexity of the case and the stage proceedings have reached.¹¹² The European Court will usually look into each case to decide whether the defence has been allowed sufficient time to prepare and put forward its arguments.¹¹³ Adequacy of facilities usually refers to timely and full access to the case file. The prosecution is required to disclose to the defence all evidence for or against the accused¹¹⁴ except when it may be necessary to withhold certain evidence from the defence to preserve the fundamental rights of another individual or to safeguard an important public interest. Measures restricting the rights of the

110 See the Amnesty International Manual on Fair Trials, chapter on presumption of innocence, available at http://www.amnestyusa.org/Fair_Trials_Manual/151_The_presumption_of_innocence/page.do?id=1104715&n1=3&n2=35&n3=843, 20 December 2007.

111 See *Sarban v. Moldova*, Judgment of 4 October 2005, para. 90.

112 See *Albert and Le Compte v. Belgium*, 10 February 1983, para. 41; see also *X v. Belgium*, 9 DR 169.

113 For example, in *Ocalan v. Turkey*, Judgment of the European Court, 12 May 2005, para. 145-148, two weeks to read a 17,000 page file, access to which was obtained only at a very late stage in the proceedings was found to have, “...so restricted the rights of the defence that the principle of a fair trial, as set out in Art. 6, was contravened.”

114 See *Edwards v. United Kingdom*, Judgment of the European Court, 16 December 1992, para. 36.

defence are permissible only if they are strictly necessary and the judge¹¹⁵ has access to all evidence and can rule on the question of disclosure.¹¹⁶ Adequacy of facilities includes access to legal materials, access to a copy of the text of the reasoned judgment, access to a medical examination as needed,¹¹⁷ and timely and unrestricted access to a lawyer.¹¹⁸

Article 6 paragraph 3 (c) of the European Convention states, “[In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled] to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.” It follows that a defendant is entitled to (1) defend him/herself in person, if she/he so chooses, (2) benefit from the legal assistance of his/her own choosing, or (3) be given legal assistance for free when s/he does not have sufficient means to pay for it and the interests of justice so require.

The right of the defendant to defend him/herself in person is not absolute. The state has the option of **appointing a lawyer against the wishes of the defendant if it is well justified in the interests of justice.**¹¹⁹ The right to benefit from legal assistance of his/her own choosing is not an absolute right either, as the state can place some restrictions on who can act as defence lawyers, e.g. specialized lawyers for supreme courts¹²⁰ or professional lawyers instead of lay persons.¹²¹

If the defendant is poor and the interests of justice so require, she/he is entitled to free legal assistance. The defendant has the burden to prove his/her lack of sufficient means to retain a lawyer; however, this does not have to be “beyond all doubt.”¹²² In deciding whether the interests of justice require appointing a legal aid lawyer, the authority making the decision should consider one of the following: the seriousness of the offence and the severity of the potential sentence, “what is at stake for the accused;” or **the complexity of the case and the personal situation of the defendant.**¹²³ The European Court further stated, “Where deprivation of liberty is at stake, the interests of justice in principle call for legal representation.”¹²⁴

Legal assistance must be effective, as the European Convention is intended to guarantee rights that are practical and effective, not theoretical or illusory.¹²⁵ The requirement of “practical and effective” has served as the basis for further examination by the European Court of the quality of legal assistance provided to defendants. European Court case law on this issue, however, is underdeveloped and the subject continues to be debated at the national level. The legal assistance requirements are not met by the mere presence or nomination of a lawyer: “[M]ere nomination does not ensure effective assistance since the lawyer appointed

115 Or another neutral authority, see for a discussion on this matter in Stefan Trechsel, *Op. cit.* p. 227.

116 See *Rowe and Davis v. United Kingdom*, Judgment of the European Court, 16 February 2000, para. 61-67.

117 See for details and examples of case law Stefan Trechsel, *Op. cit.*, p. 236-241.

118 See *Ocalan v. Turkey*, Judgment of the European Court, 12 May 2005, para. 131-137 where the Court considered that the restriction on the number and length of the applicant’s meetings with his lawyers was one of the factors that made the preparation of his defence difficult.

119 See *Crossant v. Germany*, Judgment 25 September 1992, para. 34.

120 See *Meftah and Others v. France*, Judgment 26 July 2002, para. 47.

121 See *Mayzit v. Russia*, Judgment 20 January 2006, para. 68.

122 See *Pakelli v. Germany*, Judgment of the European Court, 25 April 1983, para. 34.

123 See *Quaranta v. Switzerland*, Judgment of the European Court, 24 May 1991, para. 33-35.

124 See also *Behnam v. UK*, Judgment of the European Court, 10 June 1996, para. 61.

125 See *Artico v. Italy*, Judgment of the European Court, 30 April 1980, para. 33.

for legal aid purposes may [...] shirk his duties. If they are notified of the situation, the authorities must either replace him or cause him to fulfill his obligations.”¹²⁶ The authorities must take “positive action” to ensure that the defendant enjoys an effective defence and should provide adequate time and facilities for it. National authorities are, however, required under Article 6 paragraph 3 (c) to intervene only if failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way.¹²⁷

The case law does not make a clear-cut distinction between the guarantee provided in paragraph 3 (b) and other guarantees. Complaints regarding the adequacy of time and/or facilities for preparing the defence are often examined under, or in conjunction with, paragraph 3 (c), guaranteeing the right to real and effective defence; or paragraph 3 (a), guaranteeing the right to be promptly informed of the charge. Sometimes, complaints about facilities for the defence are also examined under Article 8 under the heading of the right to confidential communication with a lawyer. Given this overlap, it is not surprising that many of the monitors’ observations regarding adequate time and facilities are similar to observations regarding the right to legal assistance. For this reason, both of these fair trial rights are examined in this section in the present Report.

Moldovan law guarantees the right to adequate time and facilities in Article 17 of the Criminal Procedure Code. The obligation to provide adequate time and facilities is the responsibility of the criminal investigative body and the court. The Criminal Procedure Code provides details in Article 293 on the procedure for the defence lawyer and the defendant to acquaint themselves with the complete case before it goes to court. The time for acquaintance with the case file is not limited, but the prosecutor can set a time limit if the defendant or the defence lawyer abuses this right. Although not expressly provided, it follows that if the defendant or defence lawyer feels that the prosecutor has restricted their time, they can file a complaint with the court. The investigating judge, at the prosecutor’s request, can limit access to some materials or personal data of persons mentioned in the case file to protect a state, commercial, or other legally protected secret or the life, corporal integrity, and liberty of a witness or other persons. Although the judge is the key authority for ensuring the right to adequate time and facilities, criminal investigators, prosecutors, and prison authorities also have an important role to play, especially at the pre-trial stage. The defence lawyer and defendant also have responsibility, as the guarantee is not absolute in nature and a violation is present only if some degree of prejudice is shown. The judge’s challenge is to achieve a proper balance between the requirement to provide adequate time and facilities and the obligation that trials be concluded within a reasonable time.

The Constitution guarantees the right to defence in Article 26, stating in paragraph 3 that throughout a trial the parties have the right to be assisted by a lawyer, either chosen or appointed *ex-officio*. The Criminal Procedure Code restates the general guarantees of the right to defence in Article 17 and in Article 69 which provides a detailed and exhaustive list of circumstances that require the mandatory participation of a lawyer.¹²⁸ The investigative

126 See *Artico v. Italy*, Judgment of the European Court, 30 April 1980, para. 33.

127 See *Kamasinski v. Austria*, Judgment of the European Court, 19 December 1989, para. 65.

128 **The participation of a defender in criminal proceedings will be compulsory, if:**

- 1) It is requested by the suspect, accused, defendant;
- 2) The suspect, accused, defendant has difficulties defending himself, being dumb, deaf, blind or has other essential difficulties of speech, hearing, seeing and physical or mental disabilities;

authority and the court are responsible for ensuring the participation of a lawyer when required by law. The new Law on State-Guaranteed Legal Aid¹²⁹ that entered into force on July 1, 2008, created the National Legal Aid Council and the Territorial Offices, which are responsible for appointing legal aid lawyers. The Trial Monitoring Programme overlapped only for two months¹³⁰ with the new system of legal aid. Therefore, the conclusions in the present Report regarding the implementation of the right to legal assistance are largely based on observations of how legal aid functioned under the previous system.

The right to legal assistance starts before the case goes to trial and is only meaningful to the defendant if it is provided to the him or her in an unrestricted manner both early in the case and throughout the proceedings. The scope of the Trial Monitoring Programme permitted observations only during the trial phase and not throughout the entire proceedings.

Monitors observed that, in general, the right to legal assistance is respected with regard the presence or the appointment of a lawyer. Both in Chişinău and the Southeast, monitors noted that a defence lawyer was usually present and that when a defence lawyer was not present the judge usually appointed a legal aid lawyer or postponed the hearing. Only a few cases were noted in which **the judge either started the hearing or pronounced sentence** when the lawyer was not in the courtroom or judge's office.

Monitors noted that if the defence lawyer was not present at the hearing the judge would usually ask the defendant if he or she agreed to have a legal aid lawyer appointed rather than postpone the hearing. **When the prosecutor did not show up for a hearing, the judge typically declared a postponement.** The appointment of a legal aid lawyer in such cases is made to speed up the proceedings to comply with the reasonable term requirement. At the same time, the almost automatic appointment of another defence lawyer (rather than checking why the lawyer is not present, postponing the hearing and informing the lawyer to participate), in conjunction with the routine practice of postponing hearings **when the prosecutor is not present**, denotes a certain bias or attitude of judges that attaches less

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- 3) The suspect, accused, defendant does not speak the language well enough or does not speak the language in which the criminal proceedings are conducted;
 - 4) The suspect, accused, defendant is under age;
 - 5) The suspect, accused, defendant is a military man in service;
 - 6) The suspect, accused, defendant is accused or suspected of a serious, extremely serious or exceptionally serious crime;
 - 7) The suspect, accused, defendant is under arrest as a preventive measure or is sent for a judicial expert examination in a medical institution;
 - 8) The interests of the suspects, accused, defendants in a case are contradictory and at least one of them is assisted by a defender;
 - 9) The defender of the injured party or of the civil party participates in the case;
 - 10) The interests of justice require the participation of a defender in first instance, in appeal, in appeal in cassation, and in the examination of the case under extraordinary proceedings;
 - 11) The criminal proceedings are conducted in respect of an irresponsible person accused of having committed dangerous actions or in respect of a person who became mentally ill after such crimes were committed;
 - 12) The criminal proceedings are conducted for the rehabilitation of a person deceased when the case is examined.

129 Law on State Guaranteed Legal Aid, No. 198-XVI of 26 July 2007, which entered into force on 1 July 2008.

130 Although the legal aid law should have entered into force on 1 July 2008, the process of entering into force was delayed until 1 September 2008. The Trial Monitoring Programme, therefore, effectively overlapped only for two months with the new legal aid system.

importance to the continuity of representation by the defence lawyer than of having the same prosecutor represent the state throughout a given case. This practice is perhaps encouraged by existing law which provides in art. 331 para. 1 of the Criminal Procedure Code that the court can postpone the hearing if one of the parties or witnesses is missing, or for other reasons, after consulting the parties. Art. 320, para. 3 of the Criminal Procedure Code provides that, **“If the prosecutor is not present at the hearing, the hearing is postponed.”** Art. 322 para. 3 of the Criminal Procedure Code provides that, **“If the lawyer is not present and it is impossible to have him replaced in the same hearing, the hearing is postponed.”** Art. 322 para. 4 further requires that the replacement of the lawyer that did not appear for the hearing be done only with the consent of the defendant.

With respect to the performance of defence lawyers in court, as discussed above in Chapter II section 2.4., monitors noted (in both Chişinău and the Southeast) that while many defence lawyers appeared well prepared to defend their clients there were many instances in which the defence lawyer was either not well prepared or acted passively. A few cases were noted in which the lawyers appeared not to know the basic facts of the case; the Law on the Bar expressly prohibits a lawyer from entering a case without prior examination of the case file.¹³¹

During the first monitoring period, as noted in the two previous monitoring reports, monitors observed differences in lawyers’ representation depending on whether the client was a private client or a legal aid client. These differences were noted during the second monitoring period both in Chişinău and the Southeast. Throughout the monitoring period, when acting as legal aid lawyers defence lawyers tended to be less active and show less interest in doing their job than when privately contracted.

One reason for differences in performance by legal aid lawyers, as admitted by legal aid lawyers themselves, is the low pay.

Vignette: In a trafficking case the defendants were sentenced respectively to 15 and 10 years of imprisonment. At the end of the case, the legal aid defence lawyer approached monitors and said, “The defendants ought to appeal the sentence. The witnesses that were present today must be heard and new evidence must be presented, and that means that it is important to work a little and probably they (defendants) will be acquitted.” The defence lawyer also added “I could go to the police to find some evidence and it is really possible to do something if you work, but I am sorry, I cannot do this for the 20 MD lei the state gives me. Is it not possible to give at least 150 MD lei per hearing?”¹³²

Legal aid lawyers acted in 11% of the hearings monitored in Chişinău and 15% in the Southeast, a sufficiently high percentage of cases to permit the rather negative comparative evaluation of the performance of legal aid lawyers described in this Final Report.¹³³ Isolated

131 See art. 46 para. (5) of the Republic of Moldova Law on Bar.

132 Note: legal aid fees have been increased, as provided by the National Legal Aid Council’s regulation on legal aid tariffs, as of 29 January 2009. It is also noted that even according to the old regulation the amount indicated by the respective lawyer is significantly lower than that regulation provided for legal aid representation. This indicates either the lawyer did not know his or her rights regarding the payment for legal aid or the implementation of the rules was problematic in practice.

133 Note that this percentage is not representative of the overall caseload in courts, as the gravity of the crimes and the specific subjects of the crimes included in the TMP usually mandate that the client contract a private lawyer rather than using legal aid.

cases, however, were noted in which the lawyer was privately contracted and he or she was poorly prepared (e.g., giving the impression he or she had not read the case file and not asking any questions, only mentioning, "I support client's request or appeal." There is a clear need to give priority to raising professional standards among defence lawyers in general to implement the right to an effective defence in criminal proceedings.

A more detailed description of defence lawyers' performance is set forth above. It is, however, worth reiterating that **13% of postponements in Chişinău and 10% in the Southeast were** due to the absence or late arrival of defence lawyers. Some defence lawyers complained that this resulted from the practice of judges and prosecutors often setting the time of hearings without consulting the defence lawyer. The high incidence of postponements owing to the absence of defence lawyers is harmful to clients, particularly those who are incarcerated.

When the errors of defence counsel are manifest or sufficiently brought to the attention of the authorities the latter must take measures to ensure the right to effective defence, especially in cases involving legal aid.¹³⁴ Article 70 paragraph (4) p. 3 of the Criminal Procedure Code states that a criminal investigative body or court can request that the Territorial Office of the National Legal Aid Council (the relevant District Bar prior to 1 July 2008) change the legal aid lawyer if s/he is not able to provide effective legal assistance. Monitors observed few instances in which judges reprimanded defence lawyers for poor performance. In one case the judge told a defence lawyer that he had not filed an appeal on time and warned the lawyer that the Bar Council would be so informed. In many more instances, however, when defence lawyers, especially legal aid lawyers, were passive and did not actively defend their clients, judges did not replace them or make them fulfill their obligations. Judges were frequently aware that defence lawyers were not prepared, but tolerated the defence lawyers' inadequate efforts without taking measures to ensure an effective defence.

Defence lawyers occasionally complained that their requests are not respected on an equal level with those of the prosecutors. Monitors observed instances in which the judge ignored defence lawyers or limited their ability to defend their clients effectively. In several hearings monitors noted that judges interrupted the defence, laughed or talked among themselves while the defence made statements, or did not permit defence lawyers to ask questions.

The first two monitoring reports revealed the problematic practice in Chişinău courts of appointing legal aid lawyers shortly before the hearing. **This practice continued during the second monitoring period.** The practice raises serious concerns regarding the effectiveness of the defence given the inadequate time and facilities afforded to (i) prepare the defence, (ii) discuss the defence strategy with the client in a meaningful way and (iii) provide quality representation to the client. The problem of appointing legal aid lawyers (or "ex-officio lawyers" as they were denoted in the two previous reports) shortly before the hearing was extensively discussed in the two prior reports. This Final Report confirms that this practice continues, systematically before the Chişinău Court of Appeals and the Supreme Court of Justice, and in rare cases before the District Courts. Monitors noted an improvement in District Courts over the course of the monitoring: judges began to prefer to give additional time to find a defence lawyer rather than appoint a lawyer on the spot without time for preparation.

¹³⁴ See *Czekalla v. Portugal*, Judgment of 10 October 2002, para. 60-71.

Vignette: Both defendants were represented by a defence lawyer who was not present at the hearing. The defendants told the court that they had given up on the existing lawyer and they both agreed to be defended by a legal aid lawyer. The judge replied then, "Yes, do you think that the legal aid lawyers are hanging on the fence and you take them and bring to trials? I give you time till Friday to come and tell me what's the matter with your lawyer." Note: this case took place in November 2008, namely after the entry into force of the Law on State Guaranteed Legal Aid.

Monitoring indicated instances in which access to case materials was not fully provided to the defence. Such violations generally occurred at pre-trial proceedings and thus fell outside the scope of the Programme.

Monitors noticed a case in which the lawyer asked that her complaint be noted in the minutes of the hearing, but her request was refused by the judge. By refusing to note a complaint or a request of the defence in the minutes, the judge breaches the rule that minutes must be accurate. Such a refusal deprives the defendant of the opportunity to raise the argument on appeal.

Many of the problems relating to the right to effective legal defence that were indicated in the Second TMP Report continued to occur in Chişinău and the Southeast during the second monitoring period. Other problems noted in the second monitoring period, particularly in the Southeast: defence lawyers did not have their ID, which is required to register trial participants in the minutes; lawyers did not speak the state language though required by the Law on the Bar.

3.7. The Right to an Interpreter

Article 6 paragraph 3 (e) of the European Convention states, "[in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled] to have the free assistance of an interpreter if he cannot understand or speak the language used in court." The European Court has detailed this right in its case law, stating that, "Article 6, read as a whole, guarantees the right of the accused to participate effectively in a criminal trial. In general this includes, *inter alia*, not only his right to be present, but to hear and follow the proceedings."¹³⁵ This means the defendant should not be impeded by any hearing or language-related problems from participating in the trial.

The article guarantees the right to free interpretation, defined as: "...for anyone who cannot speak or understand the language used in court, the right to receive the free assistance of an interpreter, without subsequently having claimed back from him payment of the costs thereby incurred."¹³⁶ In addition, "[a]n accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which are necessary for him to understand in order to have the benefit of a fair trial."¹³⁷ Thus, the European Court has established that "[t]he right to free assistance of an interpreter

135 See *Standford v. United Kingdom*, Judgment of the European Court, 23 February 1994, para. 26.

136 See *Luedicke, Belkacem and Koç v. Germany*, Judgment of the European Court, 28 November 1978, para. 40 and 46.

137 *Ibid.* para. 48.

applies not only to oral statements made at the trial hearing but to documentary material and the pre-trial proceedings..." However, Article 6 paragraph 3 (e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. "The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events."¹³⁸

The defendant should complain if he or she cannot follow the proceedings or if he or she feels the interpretation is not adequate, although it is the judge, as "the ultimate guardian of the fairness of the proceedings,"¹³⁹ who bears the burden of verifying whether the defendant needs an interpreter and assuring that interpretation is adequate. As to the "language used in court," Article 6 paragraph 3 (e) does not grant the defendant the right to use a specific language or his or her native language. Therefore, it meets the standard if proceedings are held in a language in which the defendant is conversant or can understand and speak, or if interpretation is provided in such a language.¹⁴⁰

Article 118 of the Constitution and Article 16 of the Criminal Procedure Code guarantee the right to become acquainted with all documents and materials of the case and to speak before the criminal investigative bodies and the court through an interpreter if the defendant does not know or speak the state language. The Constitution and the Criminal Procedure Code also provide for the right to hold court proceedings or to conduct criminal proceedings in another language acceptable for the majority of the persons participating in the proceeding, provided that all procedural decisions are issued in the state language.

Monitors observed three major problems relative to the right to an interpreter: (i) the lack of interpreters, especially for languages other than Russian; (ii) problems with the quality of the translation; and (iii) procedural violations regarding the translation. These problems were described in detail in the Second TMP Report and continued to occur during the second monitoring period in Chişinău. Similar problems were observed in the Southeast. This section discusses the availability of interpreters and procedural problems related to the appointment of interpreters. The quality of interpretation is analyzed in Chapter II section 2.5 of this Final Report.

In Chişinău, monitors observed that translation was required in 18% of the hearings monitored. While translation was required in 1,256 hearings, the court provided an interpreter in only 1082 hearings. The breakdown on a percentage basis among the parties requesting translators in Chişinău, was as follows: defendants and defence counsel 65%; injured parties 22%; witnesses 11%; prosecutors 1% and other parties 1%. In the Southeast interpretation was needed in 51 hearings out of a total of 365 (14%), and the percentage breakdown among the requesting parties was as follows: defendants and defence council 89%, injured parties 4% and witnesses 7%. These figures indicate that there was a substantial need for interpretation in all courts monitored.

The lack of translators and interpreters is an acknowledged and widespread problem throughout the country. Not only monitors noted the problem. Many judges also expressed

138 See *Kamasinski v. Austria*, Judgment of the European Court, 19 December 1989, para. 74.

139 See *Cuscani v. United Kingdom*, Judgment of the European Court, 24 December 2002, para. 38-39.

140 Trechsel, Op, cit. p. 330.

a deep dissatisfaction with the **situation, complaining that they often have to postpone trials** or play the role of a translator due to the unavailability of a translator. While interpreters for the Russian language are more or less available, translators for other languages are very difficult to secure.

Monitors observed that during the entire monitoring period, in Chişinău courts interpreters were not provided in 16% of the 1256 hearings where they were needed. The situation in the Southeast seems to be better. Interpreters were unavailable in only 2% of hearings where they were required. This figure, however, is based on observation of only 51 hearings where an interpreter was needed.

Monitors observed that when interpreters were available, the quality of interpretation was often below standard. As noted above, Chapter II section 2.5., monitors noticed that interpreters as a rule did not translate everything to the person needing their services (most often the defendant). Usually the interpreter only summarized both the questions to the party and the party's answers. Interpreters rarely translated the entire hearing for the party requiring interpretation. Monitors noted instances of poor interpretation, especially as a result of misinterpretation of legal terminology.

Monitors noted that as a result of the lack of an interpreter or the poor quality of the translation, the judge often took the interpreter's role, playing at once **the role of judge, interpreter and court clerk** (dictating to the clerk what to write in the minutes). It is understandable that judges act in this way to speed up the procedure, **or many trials would drag on. In taking on** the role of interpreter, however, a judge risks compromising other important fair trial rights and principles. It is doubtful that a judge can maintain his or her unbiased and neutral role and fully focus on a court hearing while simultaneously interpreting and dictating to the court clerk.

Monitors noted a few cases in which judges postponed a hearing due to the lack of an interpreter, **stating that the right to an interpreter deserves proper attention. These were** examples of good practice that more judges should be encouraged to follow. If more trials were delayed because of the lack of translation, the state might **take the issue more seriously** and allocate sufficient resources for interpreters.

Many of the problems cited above are not the fault of judges or interpreters. Specifically, interpreters do not have specialized legal-linguistic training and they do not receive adequate remuneration for their services. Monitors **did, however, observe procedural** violations and behavioural mistakes that could be prevented if judges and interpreters took more responsibility. For example, in both Chişinău and in the Southeast monitors noted numerous cases in which interpreters were not warned of **the criminal liability for incorrect** interpretation.

A final problem regarding interpretation, noted in the two previous monitoring reports, is the practice of conducting hearings interchangeably in two languages – the state language and Russian – without provision for interpretation. Participants in such cases were often confused as they were not all able to follow both languages and, consequently, the entire proceeding. This practice created difficulties for the court clerk who had to translate and summarise the debates simultaneously. Under applicable law, the clerk was required to keep the minutes of the hearing in only one language, the language chosen for the proceedings in that case.

IV. FAIR TRIAL AND ASSOCIATED RIGHTS OF VICTIMS AND WITNESSES

The principle of proportionality between the need to fight crime (including the protection of victims' rights) and the interests of the accused permeates European Court jurisprudence, the European Convention¹⁴¹, and recommendations and decisions of the Council of Europe¹⁴² and the European Union.¹⁴³ Other international documents provide important guarantees for victims and witnesses.¹⁴⁴

Moldovan law defines the terms "victim,"¹⁴⁵ "injured party,"¹⁴⁶ "civil party"¹⁴⁷ and "witness"¹⁴⁸ and grants to each person so defined different substantive and procedural rights. For the sake of brevity, the term "victim" in this Final Report is used to refer to all three – victim,

141 See *Doorson v. The Netherlands*, Application No. 20524/92, 26 March 1996, para. 70, where the European Court stated that, "It is true that Article 6 does not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However, the life, liberty or security of a person may be at stake, as may interests coming generally within the ambit of Article 8 of the Convention. Such interests of witnesses and victims are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, principles of a fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify."

142 See Recommendation No. R (85) 11 of the Committee of Ministers to member states on the position of the victim in the framework of criminal law and procedure, 28 June 1985.

143 See European Council Framework Decision on the Standing of Victims in Criminal Proceedings, 15 March 2001.

144 Art. A (4), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, United National General Assembly Resolution 40/34, 29 November 1985.

145 "any physical or legal person who suffered moral, physical, or material damage resulting from a crime," Art. 58 para. (1) of the Criminal Procedure Code. Of note, in contrast to international law, the criteria of definition under Moldovan law is somewhat restrictive in that it does not expressly recognize persons directly related to the actual victim as victims as well (See Section A (2), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/4, 29 November 1985, which declares that victims may also include "where appropriate, the immediate family or dependents of the direct victims, and persons who have suffered hard in intervening to assess victims in distress or to prevent victimization"). The victim has the right to have her/his complaint registered by the criminal investigative body and from that moment to be informed about the results of the investigation.

146 "...the physical person who suffered moral, physical or material damage resulting from a crime and has been recognized in this capacity, according to the law, with the consent of the victim." - Art. 59 para. (1) of the Criminal Procedure Code.

147 "...the physical or legal person regarding whom there are sufficient reasons to consider that s/he has suffered moral or material damage resulting from a crime, and who has filed a civil claim with the criminal investigation body or the court against the defendant or the persons materially liable for the defendant. The civil claim is examined by the court within the criminal trial if the volume of the damage is undisputed." - Art. 61 para. (1) of the Criminal Procedure Code.

148 "...the person summoned in this capacity by the criminal investigative body or the court, as well as the person who testifies as a witness in a way set by the present code. Persons who have information regarding a certain circumstance, which needs to be determined in the case, may be summoned as witnesses." - See Art. 90 para. (1) of the Criminal Procedure Code. Witnesses are obliged to give statements, except a list of persons provided in Art. 90 para. (3) who are excluded from the obligation to give statements as witnesses. Close relatives, as well as the husband, wife, of fiancée of the defendant, are not obliged to testify. The criminal investigative body or the court is obliged to bring this circumstance to the attention of these people under signature.

injured party and civil party – unless it is relevant to emphasize the quality of the injured or civil party in the given context.

The Trial Monitoring Programme focused on the application of human rights protections for victims and witnesses, particularly in cases of trafficking in human beings and domestic violence. Many of the guarantees provided by international standards and national law to victims and witnesses relate to the pre-trial stage of proceedings and thus fall outside of the scope of the Programme. Nonetheless, several cases monitored in the Programme allowed observations about the protection of the rights of victims and witnesses during trials, particularly with regard to the following: the right to physical security; the right to be treated with respect; the right to privacy; the right to adequate interpretation facilities; the right to legal assistance; and the right to timely examination of the case.

4.1. The Right to Physical Security

“While respecting the rights of the defence, the protection of witnesses, their relatives and other persons close to them should be organized, where necessary, including the protection of their lives and personal security before, during and after trial.”¹⁴⁹

The Criminal Procedure Code provides, “Where there are sufficient grounds to consider that the injured party, the witness or other persons taking part in proceedings and members of their families or their close relatives may be threatened with death, with the use of violence, with the deterioration or destruction of assets or with other illegal acts, the criminal investigative body and the court is bound to take the measures prescribed by the legislation for the protection of the life, health, honour, dignity and assets of these persons, and for identifying and holding persons responsible.”¹⁵⁰ More specifically, national law provides for various urgent and protective measures that include personal protection, protection of the home, protection of a person’s goods, protection of identification data, interrogation with the use of special methods, change of identity, change of residence.¹⁵¹

Monitors observed several types of violations of victims’ rights during both monitoring periods in both Chişinău and the Southeast.

In a series of instances the defendant directly threatened the victim. This occurred most frequently in trafficking and domestic violence cases. In these cases neither judge nor prosecutor took protective measures or reprimanded the defendant. Even in cases in which the witness declared that the defendant had called him or her to influence his or her testimony, neither the judge nor the prosecutor reacted to the allegation.

Vignette: The victim declared: “Honourable court, I do not trust anyone, I am afraid and now when I came to this office I am still anxious because the defendants are very influential people and they are threatening me.” To which the judge replied: “If you are afraid and anxious, why don’t you go to a doctor?”

149 See Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence, Committee of Ministers of the Council of Europe, adopted on 10 September 1997.

150 See Art. 215 para. (1) of the Criminal Procedure Code.

151 See for details Art.s 13 and 14 of the Law on Protection of Witnesses and Other Participants of the Criminal Proceedings, No.105 of 16 May 2008, which entered into force on 27 September 2008.

As mentioned above, Chapter II section 2.2., the lack of special waiting rooms for victims and witnesses is a problematic situation in all courts in Chişinău and the Southeast. Special waiting rooms or different corridors would allow victims and witnesses to enter and leave the courtroom and/or wait until the hearing starts without having to see or sit together in a small space with the defendant and/or his or her relatives. Under current conditions victims are particularly vulnerable to pressures from the relatives of the defendant. Of particular concern was the practice in the Chişinău Court of Appeals of scheduling many hearings at one time and having all parties in a small space together. Similar issues related to the protection of victims and witnesses arose in cases in which hearings were held in tiny judges' offices, the parties sitting next to each other with easy access to influence or threaten one another.

Monitors did not note instances in which the identity of a witness was withheld to protect his or her safety. Monitors did not note special means used to question witnesses in need of protection. Monitors did not note cases in which a defendant was asked to leave the courtroom during a victim's or witness' testimony for the sake of protecting their security.

4.2. The Right to be Treated with Respect

Judges and criminal investigative authorities are obliged to ensure the respect of the "dignity and honour" of persons involved in criminal proceedings and to take necessary measures when these are infringed upon.¹⁵² During a trial this right requires the judge to refrain from actions that could compromise the dignity or honour of victims or witnesses and to react appropriately to such actions by other participants.

The Second TMP Report noted several cases in which victims and witnesses were treated insensitively. Such conduct violates the rights of victims and witnesses and negatively impacts the collection of evidence. **Such incidents continued in Chişinău during the second monitoring period and also occurred in the Southeast courts.**

For example, in one case the prosecutor asked leading questions containing answers. The defence lawyer objected, but the judge did not stop the questioning. The prosecutor intimidating the witnesses to such an extent that one began to sweat; another witness, a lady, said that she had high blood pressure and did not understand why the prosecutor was repeating the questions she had already answered.

In a trafficking case, the judge repeatedly asked the victim about the number of clients she had had per night, how much time she had spent with each, how much she charged per hour, etc. In another case the judge asked the victim whether she had had sexual relations before leaving the country. These questions, in the context of the cases, seemed inappropriate and irrelevant.

Monitors noted instances in which the victim or witness did not have his or her ID, forcing the judge to postpone taking testimony and to **display irritation with the victim or witness.** In some cases judges allowed victims or witnesses to give testimony without their IDs.

¹⁵² See Art. 15 of the Law on the Status of the Judge, No. 544-XIII, of 20 July 1995, which entered into force on 16 October 1995.

As noted above in Chapter II section 2.3., throughout the monitoring period, monitors observed that victims and witnesses typically were punctual for the first hearings in a case, but later became less committed in their attendance because of the numerous delays and postponements.

Monitors observed that judges frequently failed to remind victims and witnesses that they had the right to read their statements before signing them. Monitors noted **few instances** in which judges provided such a reminder. Given the difficulties that many victims and witnesses face in travelling to court, it is unlikely that they would **subsequently return** to review the minutes of the hearing (which includes their statements) for accuracy within the **three-day period provided by law**. **The effective result is that the majority of victims and witnesses do not review the statement they have signed, even though they are criminally liable for its content.**

4.3. The Right to Privacy

Referring to the interests of victims and witnesses in the course of criminal proceedings, the European Court stated, "The life, liberty or security of a person may be at stake, as may interests coming generally within the ambit of Article 8 of the Convention. Such interests of witnesses and victims are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organize their criminal proceedings in such a way that those interests are not unjustifiably imperiled."¹⁵³

In cases of trafficking and domestic violence, protection of privacy is of particular importance to victims and witnesses alike. Both international standards¹⁵⁴ and domestic law¹⁵⁵ require states to protect the victim's private life and identity means of doing so, including closed hearings and/or non-disclosure of identity and/or change of name, among others.

Monitors observed that in general judges took into account the right to privacy of victims and witnesses. Monitors noted several cases in which judges decided not to hold public hearings to protect the interests of the victim. In appropriate cases, this is a legitimate and necessary measure required to protect the privacy of victims. Limiting the access of the public to court hearings in these cases prevents the public disclosure of confidential information about the victim in accordance with his or her privacy rights. Monitors noted, however, that such decisions to close hearings were often taken unilaterally by the judge without consulting the victim. In some instances this may contradict the wishes of the victim. Judges, therefore, should take into account the desires of the victim when deciding whether to close a hearing to protect the victim's privacy.

During both the first and the second monitoring periods monitors noted a few instances in which judges asked inappropriate questions about the intimate life of the victim that appeared to have no relevance to the substance of the case.

153 *Doorson v. The Netherlands*, Application No. 20524/92, 26 March 1996, para. 70.

154 See, for example, Art. 11 of the Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005.

155 See Art. 12 of Law No.1458-XIII, 28 January 1998, Op. cit.

4.4. The Right to Adequate Interpretation Facilities

Victims and witnesses have the right to testify in their native language or another spoken language, and to become acquainted with their written or registered statements.¹⁵⁶ Ensuring appropriate interpretation for victims and witnesses is crucial to ensuring that communication between them and the judge is effective.

Monitors observed that providing interpreters to all victims and witnesses needing interpretation is a challenge. Many judges complained of the lack of interpreters in courts. In many cases, however, the judge did not send anyone to look for an interpreter despite the clear need for one. Monitors got the impression that due to the chronic lack of interpreters many judges do not even attempt to secure one for victims or witnesses. As mentioned above in Chapter III section 3.7., in some cases judges themselves served as the interpreter or switched back and forth between Russian and the state language to move the proceedings along. In other cases interpreters were used only when statements were taken from the victim. The following vignette presents a typical occurrence.

Vignette: The judge was conducting a hearing in a generally unprofessional manner. She hurried the witnesses while they were testifying and at one point said to them in Russian, “We have nine more witnesses. Don’t think too much. It is not mathematics here for which you have to think.” Later when one of the witnesses asked the court to provide his testimony in the Russian language, the judge stated, “You are Moldovan, so you will give testimony in the language in which the hearing is conducted.” (It should be noted that there was an interpreter present in the courtroom.) The witness began to speak the state language poorly, continuing to insist that he be heard in Russian. The judge became irritated, saying, “Do not engage in demagoguery in the courtroom! I see you know Romanian language very well. You speak half Romanian half Russian. When you gave testimony during the criminal investigation, did you need an interpreter then?” The witness declared that the criminal investigation body did not provide a translator for him. The judge then instructed the clerk to register in the minutes a statement that the witness did not need an interpreter during the criminal investigation.

The same interpreters provide interpretation to both defendants and victims, as needed, and monitors observed similar problems regarding the quality of interpretation for victims as noted in Chapter III above with respect to the quality of interpretation provided to defendants. The principal difference is that victims face a greater challenge than defendants in securing interpreters because of the lack of interpreters in the courts.

4.5. The Right to Legal Assistance

The Criminal Procedure Code provides that victims have the right to choose a lawyer or to have a lawyer appointed by the state in very grave or exceptionally grave cases if they do not have means to retain one.¹⁵⁷ The Code provides that injured parties also have the right to choose a lawyer or to have one appointed in cases in which the injured party does not have financial means to hire one.¹⁵⁸

¹⁵⁶ See Art. 16 and Art. 90 para. (12) p. 8 of the Criminal Procedure Code.

¹⁵⁷ Art. 58 para. (4) p. 2 of the Criminal Procedure Code.

¹⁵⁸ Art. 60 para. (1) p. 18 of the Criminal Procedure Code.

The foregoing provisions are new and have not yet been elaborated upon by the relevant bodies. Monitors observed that victims and injured parties do not make use of the provisions on a regular basis. Victims and injured parties were represented in few cases, and in each of these instances it was an NGO that represented the victim or injured party.

Witnesses have the right to legal assistance,¹⁵⁹ but the state is not obliged by law to offer a defence lawyer. It may hire a lawyer on a contractual basis to represent them; this is perhaps why witnesses rarely make use of legal assistance.

4.6. The Right to Timely Examination of the Case

Throughout the monitoring period, a significant percentage of hearing postponements were attributable to the absence of victims and/or witnesses. In the courts in Chişinău 8 % of cases monitored were postponed because of the absence of the victim and 14% because of the absence of witnesses. The corresponding percentages for courts in the Southeast were 9% and 10%, respectively.

Monitors observed in several postponements that the judge was not able immediately to establish the date of the next hearing and left the scheduling for later. In such instances, monitors noted that judges usually consulted the prosecutor and the defence lawyer on a time for the next hearing, but not victims or witnesses. Rescheduling hearings without consulting or immediately informing witnesses or victims of the new date reduces their likelihood of appearing. While it is obviously impossible to consult all trial participants about the time for a hearing, efforts should be made to include victims and witnesses in the scheduling process, especially when victims and witnesses must travel a long distance to attend hearings. Such efforts at inclusion might improve attendance.

159 Art. 90 para. (12) p. 10 of the Criminal Procedure Code.

V. CONCLUSIONS AND RECOMMENDATIONS

The right to a fair trial is fundamental to democracy, the rule of law and the protection of human rights as it provides a mechanism for the protection of democratic values and other human rights, and guarantees procedural justice for individuals charged with the commission of criminal acts.

Recent legislative reform in the Republic of Moldova has resulted in a progressive legal framework with the potential to ensure compliance with international fair trial standards. Provisions guaranteeing the right to a fair trial in criminal proceedings are found in the Constitution; the Criminal Procedure Code; the Law on Judicial Organization; the Law on the Status of Judges; the Law on the Superior Council of Magistrates; the Law on State-Guaranteed Legal Aid; the Law on the Status and Organization of the Activity of Court Clerks; the Law Regarding the Authorization and Remuneration of Interpreters and Translators Engaged by the Superior Council of Magistrates, Ministry of Justice, Prosecutor's Office, Criminal Investigation Bodies, Courts, Notaries, Lawyers and Court Bailiffs; other legislation; and numerous decisions by the Superior Council of Magistrates. Where contradiction exists between national law and international human rights treaties to which Moldova is a party, international law prevails. The European Convention of Human Rights and Fundamental Freedoms, in particular, functions as an integral part of the national legal system and is to be applied directly. The jurisprudence of the European Court is binding on the courts of Moldova and takes priority over incompatible national legal provisions.

Despite accomplishments in the improvement of fair trial standards during the implementation of the Trial Monitoring Programme in Moldova, a number of problems still require attention. In particular, the letter of the law provides standards which are not always adequately implemented in practice. Findings of the TMP lead to the overall conclusion that the legacy of the past continues to influence the Moldovan judiciary, negatively impacting compliance in fact with both international and national fair trial standards.

One of the primary factors working against the optimum performance of judges and other officials is the tradition of the judiciary's **subordination to, and dependence on, the political branches**. The judiciary's **lower ranking within the governmental system is evidenced** by insufficient budget allocations resulting in inferior court physical infrastructures and ineffective operating systems. Courthouses in disrepair, insufficient space and equipment, excessive workloads, a low level of salaries and insufficient quality of human resources all negatively affect the performance of judges and other officials. These conditions must be addressed through capital and operating expenditures, support for the modification of operational frameworks, and the acquisition of new competencies and skills by officials to facilitate a decisive step toward the practical implementation of fair trial standards.

The operational culture within the system of justice continues to be influenced by the prevailing attitude that the judiciary is an instrument to "fight criminality" rather than a neutral and objective arbiter. This attitude, coupled with a weak commitment to professional ethics encouraging a dignified and compassionate delivery of justice, often results in accusatorial bias that imperils a range of fair trial guarantees and undermines public trust in the institution of the court. Judges, in particular, should recognize that in the current

system of government they represent an independent power assigned the higher task of guarding democratic values, the rule of law and human rights. Judges should make every effort to raise ethical standards to ensure solemn, even-handed and effective case handling and resolution.

Infrastructural Problems

Monitors observed inadequate court houses, including buildings not fit for the purpose of a court; buildings in disrepair; buildings with poor acoustics; and buildings lacking space and necessary equipment and facilities such as public restrooms. Over and above the inconveniences these conditions create, **they diminish the dignity and authority of the institution of the court. Poor conditions also cause systemic difficulties in observing defendants' rights to public and fair hearings and victims' rights to physical security, privacy and respectful treatment.**

A high percentage of hearings were held in judges' offices that could not accommodate the public. In such cases, many judges do not observe procedural requirements, do not wear robes, answer phone calls, and allow the hearings to be interrupted by outsiders. The principal reason for holding hearings in judges' offices is the lack of sufficient courtrooms. Another reason in winter is the cold temperature, as small offices retain more heat than larger courtrooms. Some judges or court clerks appear to prefer to hold the hearings in the judges' offices even when courtrooms are available. Holding hearings in the judges' offices affect negatively not only the right to public hearings, but also the judges' attention.

Because none of the courts monitored had separate entrances or waiting rooms inside the courthouse designed for victims and witnesses, victims and witnesses were often exposed to traumatizing and unsafe **contact with defendants' relatives and supporters. This problem** is aggravated by systemic delays that sometimes cause case resolution to continue for extended stretches of time. On the appellate level, the problem is exacerbated by the practice of scheduling numerous hearings for the same time.

Poor court infrastructure conditions necessitate holding defendants handcuffed or in metal cages throughout the hearing. In some cases monitors noted that defendants were held handcuffed or in metal cages throughout the hearing without **justification given by the judge.** Fair trial standards require that no attributes of guilt should be borne by the accused during the trial to ensure **presumption of their innocence.**

Minutes of court hearings, an essential procedural document to ensure fairness, continue to be taken manually by court clerks. This obsolete method combined with the professional laxity of court clerks results in serious irregularities. During numerous hearings clerks did not take minutes at all. In certain instances court clerks requested that a trial participant sign a blank piece of paper, informing him or her that the statements would be written later. When minutes were taken, court clerks worked slowly, interrupting trial participants to ask for repetition. Interruptions cause incomplete or inaccurate testimony, as trial participants lose their line of thought. During some hearings the judge orally instructed the court clerks what to write in the minutes or statements, often incompletely paraphrasing what had been said. These practices raise concerns about the accuracy of minutes and of statements and consequently of the fairness of hearings.

Interpreters implement the defendant's right to understand the charge and the proceedings. Monitors observed, however, that the poor quality of interpretation often caused judges to take on the role of interpreter. A particular problem is the practice of conducting hearings interchangeably in two languages – the state language and Russian – when no interpretation is available. This is in direct contravention of defendants' and victims' rights to interpretation into a language which they can understand.

Monitors noticed numerous instances of unprofessional and unethical behaviour by auxiliary court staff. Court clerks questioned trial participants, the role of the public prosecutor. Both court clerks and interpreters spoke on the phone or engaged in conversations with other trial participants. Court clerks and interpreters occasionally displayed a lack of basic manners and politeness. In some instances interpreters left court hearings without notice. Judges rarely reprimanded court clerks or interpreters for poor work or improper behaviour. This lenient treatment might be explained by the judges' interest in retaining a court clerk or interpreter even if his or her performance is unsatisfactory. Sub-standard working conditions, low pay, heavy workloads and limited opportunity for professional training make it difficult to attract and retain qualified and motivated court clerks and interpreters.

New and effective policy decisions, followed by the allocation of sufficient resources and concentrated efforts by the political branches of government and judicial authorities, are required to improve the physical conditions of the courts, bring about the technical modernization of the courts and improve the quality of human resources necessary for the support of timely and fair criminal adjudication.

Inefficient Operational Culture

Regular delays and postponements of court hearings illustrate the inefficient operational culture of Moldovan courts. Lack of punctuality is the accepted norm. Delays are caused most frequently by the late appearance of the prosecution or the defence and, less often, by judges. Postponements lead victims and witnesses to become less punctual or absent entirely. Postponements often take place with no date is set for the next hearing, reducing the likelihood of subsequent appearances by witnesses and victims and leading to further postponements. Postponements affect the right to a trial within a reasonable time and may affect the quality of the final act of justice if crucial witnesses have given up on their attendance. Delays and postponements cause overlaps in hearings for public prosecutors and defence lawyers, contributing to case backlogs. This results in constant time pressure and leads to haste to compensate for lost time, insufficient time for presenting and assessing, and in consequence negative effects on the fairness of the proceedings.

Ineffective operational practices were reflected in the malfunctioning of the posting system used to inform the public of scheduled court hearings. Although all courts monitored had installed information boards by the end of the monitoring programme, the information posted on those information boards about upcoming hearings was not sufficient, correct or up to date. These practices impede the right to a public hearing and the right to trial within a reasonable time.

Monitors particularly noticed at the appellate level organisational shortcomings affecting the fairness, impartiality and solemnity of proceedings and the right to an effective defence. The

appellate courts consistently scheduled numerous hearings for the same time, contributing to an unseemly and unsafe environment in the courthouses. Monitors noticed that trial participants, including crime victims, frequently had to wait in cramped corridors for hours to give 10-15 minutes of testimony. Defence lawyers were not provided with sufficient space at the tables designated for them in courtrooms.

Panels of judges at the Courts of Appeals and the Supreme Court of Justice typically hear a few – but in certain instances up to 30 – appeals in rapid succession before breaking for deliberation. This practice raises concerns with regard to the quality, and consequently the fairness, of case re-evaluation on appeal. Under such circumstances, it is questionable whether judges are able to concentrate sufficiently on the relevant facts in each case. The practice raises doubts about the judges' impartiality, as they may be influenced by other cases that are examined concurrently.

The record in a number of countries demonstrates that improving professional administration (e.g., optimal internal organization; effective personnel, space and case flow management; automation of functions such as case information and recording of hearings; and attention to victims and witnesses, including their privacy and safety) considerably benefits the fairness of court hearings. Some recent steps undertaken in Moldova in this area should continue and expand. In particular, introduction of professional management in Moldovan courts or, at a minimum, training of judges and court staff in relevant management techniques should be one of the priorities of judicial reform. The capacity of Moldovan courts to comply with fair trial standards will continue to suffer until more professional management is encouraged.

Problematic Professional Ethics

The dominant feature of professional ethics among judges, public prosecutors and some defence lawyers is the persistence of a tradition of state-dominated criminal procedure that diminishes the significance of defence lawyers and stands in direct contradiction to the defendant's rights to effective legal assistance and equality of arms.

Vestiges of this legacy can be found in currently effective legislation. The Criminal Procedure Code provides that if defence counsel does not appear at a hearing, the judge can look into the possibility of replacing that counsel with the defendant's consent. If replacement is not possible, the judge may adjourn the hearing. In the case of non-appearance by a public prosecutor, on the other hand, the hearing must be adjourned unconditionally. Continuity of legal assistance for the defence is thus considered less important than consistency of prosecutorial attendance.

The practice of replacing shortly before hearings defence lawyers who fail to appear is common at the appellate and cassation levels. Lawyers appointed in this manner appear unprepared before a panel of judges and cannot provide an effective defence. The presence of defence lawyers is often treated as a formality, at all levels being interrupted or neglected by judges; in instances of judges openly scorned their motions, questions, pleadings and statements. Such behavior directly contradicts the right to equality of arms.

State power is emphasized by the legal requirement (not strictly observed) that public prosecutors wear a military-style uniform during proceedings. There is no legal provision requiring defence lawyers to wear robes or uniforms.

Monitoring pointed to a number of troubling ethical practices that appear to have been influenced by the legacy of state supremacy in criminal proceedings, such as the greater consideration and deference that judges gave prosecutors as compared to defence lawyers.

During the monitoring, prosecutors' attitudes and actions reflected prejudgement of the defendant's guilt. Public prosecutors have used the expression "criminal" in reference to defendants during court hearings with no reaction from the presiding judge. Judges actively engaged in prosecutorial questioning, calling the impartiality of the state into question.

In some instances the inadequate protection of a defendant's fair trial rights was attributable to the actions or inactions of defence lawyers, including substandard performance and unethical behaviour. Defence lawyers sometimes displayed of a case and/or questionable courtroom manners. Monitoring concluded that legal aid lawyers¹⁶⁰ gave particularly poor performances compared with privately retained lawyers. However, privately contracted lawyers were also noticeably ill prepared. In several instances, lawyers contributed to prejudice against their clients by referring to them in a disrespectful manner.

Despite encouraging exceptions, judges typically do not serve as guardians of the fairness of criminal proceedings. Notably judges, contrary to the Superior Council of Magistrates' proscription of *ex parte* communication, allow public prosecutors or defence lawyers to enter their offices before hearings, without explanation to the opposing side.

Monitoring has evidenced disrespect of the rights of non-professional trial participants. Judges often do not clearly explain the procedural rights of parties and do not take positive steps to ensure them. Judges have ignored allegations of torture and pressuring of witnesses. On occasion, judges failed to react to threats made in the courtroom against victims and witnesses. Judges consistently failed to consult witnesses and victims about rescheduling postponed hearings.

On occasions judges apply, and permit public prosecutors and defence lawyers to apply, inappropriate pressure while questioning witnesses and victims. Judges ask, and permit other officials to ask, inappropriate questions about the intimate life of victims that are irrelevant to the case. Judges use, and allow others to use, improper language and make, and allow others to make, inappropriate comments toward the parties. Judges do not ensure due concentration, order and solemnity in the courtroom. The rights to a fair trial are broader than the sum of the legally defined guarantees and depend on the entire conduct of the trial. The cumulative effect is procedural unfairness and weakening of public trust in the judicial system.

Internationally accepted standards of judicial ethics require that judges avoid situations which reasonably might be perceived as raising doubts about their independence and impartiality. During hearings, they should act diligently and expeditiously to maintain order and they should remain patient and courteous toward all participants. In particular, judges should exercise vigilance in controlling the manner of questioning of witnesses and victims

160 *Ex-officio* lawyers as used in the first two TMP Reports. As stated in the present Report, the monitoring overlapped only for two months with the entry into force of the Law on State Guaranteed Legal Aid. Therefore no conclusions can be made about changes in the quality of legal aid after the entry into force of this law.

in accordance with the procedural rules and should give special attention to the equal treatment of the participants in the proceedings. Judges should avoid degrading comments or conduct and ensure that any person participating in the proceedings refrains from such comments or conduct. Vigorous encouragement and enforcement of these practices should be a significant part of further judicial reform efforts.

Removal of court practices from public scrutiny by declaring court hearings closed without good reason indicates a **general antipathy toward publicity of hearings**. This attitude, however, is a **sign that judges and other relevant officials are aware of the malfunctioning of the criminal justice system**. Awareness of the problem represents an opportunity for change. The next step should be the **development and effective implementation of a comprehensive set of targeted measures to enhance compliance with international and national fair trial standards in the actual functioning of the Moldovan criminal justice system**. Concerted efforts of political branches and judicial authorities should encompass a range of legislative, financial, organizational and educational measures across a broad spectrum.

The findings and conclusions of the Trial Monitoring Programme lead to the following set of recommendations:

To the Political Branches of Government

- Follow up on the commitment to comprehensive judicial reform by giving greater priority on the state political agenda to strengthening of the judicial branch.
- Support this priority by increasing budget allocations for the judiciary to improve infrastructure and in particular to provide capital investment for the construction and renovation of court houses.
- Foster the role of the Superior Council of Magistrates in judicial reform by eliminating confusion between the powers of the Council and the Department for Administration of Justice within the Ministry of Justice and by providing the Council with sufficient staff and adequate facilities.
- Through legislative changes
 - ◆ Introduce professional management into the courts.
 - ◆ Introduce a legal procedure for challenging court delays providing parties the right to lodge judicial complaints against lengthy proceedings in pending cases.
 - ◆ Eliminate remaining symbols of prosecutorial power vis-a-vis private parties. In particular, consider eliminating the requirement for public prosecutors to wear uniforms or provide for a requirement for both prosecution and defense to wear robes in court.

To the Superior Council of Magistrates

- Initiate measures to secure funding to address infrastructure problems that negatively impact on the fairness of court hearings, including problems relating to the inadequacy of court houses, the shortage of space and modern equipment, and the ineffectiveness of court support staff.
- In support of the call for increased funding, update minimum operational standards for

courts such as ratios of judges and court staff to their caseloads, benchmark numbers and sizes of courtrooms, norms for workspaces for judges and support personnel, standard equipment and supplies. Compile information on the degree to which these standards are met in practice.

- Elaborate a comprehensive plan addressing practical obstacles to the implementation of international obligations and recent legislative solutions designed to ensure fairness of court proceedings. The plan should include measures for dealing with infrastructural problems and enhancing the organisational capacity, effectiveness and productivity of the courts. The plan should specify direct actions to improve professional knowledge and ethics.
- Continue efforts to develop professional management in courts at all levels to increase administrative capacity. Require that persons seeking appointments for court managerial functions possess the relevant education and skills.
- Prioritise continual training for court presidents, judges and staff in modern techniques of management; organisation and maximisation of space, court clientele, personnel, time and case flow management; trial recording; and use of current technology to increase the ability of courts to deal with the increasing number of cases in an orderly and timely manner.
- Use regulatory powers and available mechanisms for oversight of professional ethics to address – in cooperation with the General Prosecutor's Office and the Bar Association – delays and postponements leading to case backlogs and lengthy adjudication.
- Initiate introduction of a legal procedure to challenge court delays by providing to the parties the right to lodge judicial complaints against lengthy proceedings in pending cases.
- Develop effective mechanisms to eliminate the practice of holding hearings in judges' offices when courtrooms are available.
- Through appropriate regulations prohibit the practice of scheduling numerous cases at the same time at the appellate level, hearing many cases and then deliberating on them in-bulk.
- Through appropriate regulations, eliminate the practice of replacing defence counsel shortly before hearings.
- Encourage the use of existing alternative means of criminal case resolution as a means of reducing case backlogs and the length of court proceedings, e.g., mediation and plea-bargaining (with appropriate amendments to the latter regarding the defendant's certainty about the punishment, if s/he enters the plea.)
- Enhance the status and professionalism of court clerks and court interpreters. Ensure that their qualification requirements include knowledge of fair trial standards, awareness of their own procedural significance and familiarity with requirements of professional ethics. Also provide for their continuing professional training.
- Endorse automation of certain court functions, including case information and trial recording practices, to enhance work effectiveness and accuracy. Encourage audio recording during hearings to ensure greater accuracy of trial records.

- Initiate the elimination of remaining symbols of prosecutorial power vis-a-vis private parties, including the requirement for public prosecutors to wear uniforms in the absence of a similar requirement for defence.
- Through appropriate regulations, address court practices and conditions that are detrimental to the rights of victims and witnesses, including (i) conditions that cause unsafe contacts between victims or witnesses and defendants, their relatives and supporters; and (ii) inconsiderate and inefficient practices for scheduling and re-scheduling court hearings. In particular, insist on abolition of the practice of scheduling numerous cases for the same time and in-bulk hearings at the appellate level. Emphasize courts' obligations ensure respect for victims' and witnesses' safety, dignity, time and expense.
- Review current standards and interpretations of judicial and prosecutorial ethics. Make sure the following practices constitute direct grounds for disciplinary action:
 - ◆ manifestations of inequality between parties, in particular between the state prosecution and defence; ex parte communications between judges and prosecutors or defence lawyers;
 - ◆ infringements of the rights of defendants; in particular, prohibit indication of the defendant's guilt before the pronouncement of verdict, tardiness in the resolution of cases involving individuals held in pre-trial detention, and violations of the right to competent and accurate interpretation. Use of coercion to compel a person to make a statement or admit guilt should be expressly prohibited. Allegations of torture or other cruel, inhuman or degrading treatment under the codes of ethics should be promptly examined;
 - ◆ disrespect for victims and witnesses and placing constraints on their rights, including improper summoning and scheduling practices, indifferent treatment within court houses, inadequate explanation of procedural rights, violation of the right not to testify against family, application of pressure during testimony, failure to react to threats against victims or witnesses, unnecessary disclosure of personal information, and use of improper language and inappropriate comments;
 - ◆ lack of diligence and supervision in case handling, including neglecting to inform participants about hearings, disordered scheduling, undue delays and postponements, overly lengthy adjudication, lack of convincing reasons for closing court hearings and other symptoms of disorganisation.
- Use assigned authority to boost disciplinary accountability of judges for acts or omissions incompatible with the probity and integrity of judicial office and which, in particular, damage the integrity of court proceedings.
- Strengthen the link between rules of professional ethics and mechanisms for selection, promotion and periodic evaluation of judges' performance. In particular, ensure that quantitative performance indicators for periodic evaluation and promotion are balanced against qualitative criteria such as the efficiency of case processing and professionalism in conduct. Appraisal of court presidents should include the effectiveness of court operations.
- Encourage input from Moldovan society, especially from court clients, into the evaluation

of judges' performance and their promotion. Representatives of other public and private institutions and civil society should be included in existing evaluation mechanisms. Opportunities should be provided for the feedback about court operations and performance of judges and court personnel. For this purpose, consider installation in each court of secure boxes for collecting public opinions and complaints.

- Assess whether the current curriculum for continuing professional training of magistrates addresses the "whole person" behind the profession or whether it merely concentrates on immediately relevant legal topics. If necessary, initiate expansion of the curriculum by including topics that have been brought to the fore by the increased relevance of the judiciary in a democratic system of government and consequent public demands for competence, effectiveness and integrity on the part of judicial officials.
- Take measures to eliminate unjustified obstacles that hinder or prevent public scrutiny of court proceedings, clarifying broadly worded legal grounds for closing hearings and discouraging or prohibiting their unreasoned application by judges.

To the National Institute of Justice

- Expand the curriculum for continuing professional training of judges and prosecutors to reflect the ever-increasing relevance and responsibility of the judiciary in Moldova by including topics related to:
 - ♦ democratic theory;
 - ♦ the role of the judge, prosecutor and lawyer in a democratic society;
 - ♦ in-depth analysis of fair trial standards;
 - ♦ standards and practical application of judicial, prosecutorial and legal professional ethics and conduct;
 - ♦ courtroom psychology;
 - ♦ judicial skills such as legal reasoning, methods of legal interpretation, judicial decision-making, and opinion writing;
 - ♦ administrative skills such as efficient work organization, backlog reduction techniques, effective case management, time management, and use of technology.
- As an immediate priority, develop and propose managerial courses for court presidents that include information on modern techniques for management, organisation and maximisation of available space, management of court clientele, personnel and case flow, the advantages and opportunities for automation, etc.
- Refine the training of court staff, in particular court clerks and interpreters, to take into account the impact of fair trial guarantees and professional ethics on their functions.

To the General Prosecutor's Office

- Review the current text and application of the Code of Ethics for Prosecutors. Make sure indications of defendant's guilt before the pronouncement of a judgement, and use of pressure to make statements or admit guilt constitutes direct grounds for disciplinary action.

- Heighten disciplinary accountability of prosecutors for acts or omissions incompatible with the integrity of prosecutorial office, in particular those harmful to the integrity of court proceedings.
- Encourage the use of the existing means for alternative case resolution at the pre-trial stage to reduce the court workloads.

To the Bar Association and the National Legal Aid Council

- Take available and appropriate measures to improve professionalism, ethics and court performance by the members of the Bar. Emphasize that the acceptance by Moldova of international fair trial standards requires a changed perception of, and increased role by, lawyers in criminal hearings. Encourage and require better preparation by defence lawyers and the adoption of a more assertive attitude during hearings (within the limits of the law). Defence lawyers should be encouraged to take advantage in appropriate circumstances of statutory authorizations to submit motions, pose questions and make observations that benefit their clients even if such measures are met with resistance by judges and prosecutors.
- Prioritise improving quality control on performance to reduce ineffective defence and unethical behaviour by defence lawyers. Pay particular attention to quality control of lawyers working within the system of state guaranteed legal aid. Encourage efforts to eliminate the practice of replacing defence counsel shortly before hearings. Provide for and implement disciplinary action against defence lawyers in instances of unprepared entry in a case, uninterested or passive demeanour at hearings or disrespectful treatment of clients.

ANNEX: SAMPLE OF QUESTIONNAIRE

Signed by: (monitors' signatures)

I. Case Information

Case/file number _____
Category of crime (article number) _____
Date and hour when the hearing is monitored _____
Date first hearing monitored _____

Criminal investigation body

The criminal investigation was carried out by:

- prosecutor
- police bodies of the Ministry of Internal Affairs
- Center for Combating Economic Crimes and Corruption
- Customs services

Court where case was monitored

Indicate the court:

Stage of case examination

- first instance
- appeal
- recourse in annulment

For "appeal" and "recourse in annulment" indicate

Date appeal/recourse filed _____

Appeal/recourse filed by:

- prosecutor
- defendant/defence lawyer
- injured party
- other persons

Indicate the ground for appeal/recourse in annulment _____

Appeal/recourse accepted (yes/no/not applicable)

Defendant details

Name of defendant _____

Nationality (citizenship) of defendant _____

Defendant has criminal history/record (yes/no/unknown)

Date when defendant was notified of indictment _____

Participation of defence lawyer mandatory in this case (art. 69 Criminal Code) (yes/no)

If "yes,"

Ground for mandatory participation of defence lawyer according to art. 69 of CC:

Custody

Name of defendant (separately for each defendant) _____

Defendant was taken into custody (yes/no/unknown)

If "yes,"

Date custody ordered _____

Indicate ground for custody _____

Defendant released after expiry of custody term (yes/no/unknown)

Preventive measures

Preventive measures applied (yes/no/unknown)

If "yes,"

Name of defendant (separated for each defendant) _____

Indicate the type of preventive measure applied _____

In case of "pre-trial arrest," indicate

Date pre-trial arrest ordered _____

Ground for pre-trial arrest _____

Defendant subsequently released from under pre-trial arrest (yes/no/unknown)

If "yes,"

Date pre-trial arrest terminated _____

Pre-trial arrest replaced with another preventive measure (yes/no/unknown)

If "yes,"

Indicate type of preventive measure _____

Comments

Charges and sentence

Defendant (separated for each defendant) _____

Charges (article) _____

Relate in briefly about the charges brought against the defendant:

Sentence was pronounced (yes/no)

If "yes,"

Date sentence pronounced _____

Crime was re-qualified (yes/no; if "yes," indicate it)

Sentence reached:

- conviction
- acquittal
- termination of criminal case

If 'conviction sentence' was pronounced, indicate

Punishment prescribed by the sentence _____

Punishment was reduced as compensation for violating the defendant's rights, committed during the criminal investigation or on trial (yes/no)

Comments

II. Hearing Information

Hearing details

Date when hearing is monitored _____

List of cases scheduled for trial was posted publicly at the court (yes/no)

Hearing was open to the public (yes/no)

If 'no' to above,

Ground for closed hearing:

- morality
- public order
- national security
- interests of minors
- protection of private lives of parties
- interests of justice

Reaction of judge and parties when monitors asked permission to attend the closed hearing:

Language in which hearing conducted:

- State language
- Russian language
- both State and Russian languages

Hearing started on time, as scheduled (yes/no)

If 'no' above, then

Length of delay in start of hearing:

- 0-15 min
- 15-30 min
- 30-60 min
- over 1 hour

Delay caused by:

- judge
- prosecutor
- defence lawyer
- defendant
- injured party
- witness

Postponement of hearing

Hearing was postponed for another date (yes/no)

If "yes,"

Reason for postponement:

- absence of judge
- absence of prosecutor
- absence of defence lawyer
- absence of defendant
- absence of injured party
- absence of witness

Signed by:

- need to produce new evidence
- need to amend and increase charges against defendant
- other

Date and hour next hearing scheduled _____

Comments

Judge/court hearing

The case was examined by:

- single judge
- panel of judges

Name of judge(s) _____

Judge(s) wore robe (yes/no/not applicable)

Hearing took place in judge's own office (yes/no; "no" means that the hearing took place in the courtroom)

Room where hearing took place had adequate facilities to accommodate all participants (yes/no)

Room where hearing took place had official state symbols (flag, state heraldic) (yes/no)

Monitors had unrestricted access to the room where the hearing took place (yes/no/not applicable)

Judge(s) asked limited questions, without actively engaging in the interrogation on the defendant, victim, injured party or witness (yes/no/not applicable)

Judge(s) ensured that the hearing had an orderly and solemn character (yes/no/not applicable)

Judge(s) appeared independent (yes/no)

Judge(s) appeared impartial and free of personal bias or prejudice (yes/no)

Judge(s) spoke and acted in a professional and tactful manner (yes/no)

Judge(s) rejected impertinent and humiliating questions that could infringe the dignity of parties (yes/no/not applicable)

Judge(s) rejected leading questions and questions not related to the facts of the case (yes/no/not applicable)

Court clerk registered the minutes of the hearing with due attention (yes/no/not applicable)

Comments (*explain each violation observed*)

Injured party/victim

Injured party/victim exists in this case (yes/no/unknown)

If "yes," then

Select status:

- injured party
- victim

Injured party/victim is present at this hearing (yes/no)

Injured party/victim is assisted by a lawyer at this hearing (yes/no/unknown)

Comments

Witness

Witnesses present in this case (yes/no/unknown)

If "yes," then

Witness present at this hearing (yes/no)

Comments

Defence lawyer

Defendant(s) name _____

Defendant(s) represented by a lawyer at this hearing (yes/no)

If the answer above is 'no,' then

Indicate reason for not being represented by a lawyer at this hearing

If the answer is 'yes,' then

Name of defence lawyer (if known, indicate for each defendant separately) _____

Defence lawyer appointed ex-officio (yes/no/unknown)

Defence lawyer demonstrated familiarity with the case and was well prepared for trial (yes/no)

Defence lawyer demonstrated good questioning skills, eliciting relevant information from participants (yes/no/not applicable)

Defence lawyer objected to leading questions and inadmissible evidence (yes/no/not applicable)

Defence lawyer was generally active throughout the trial (yes/no/not applicable)

Comments

Prosecutor

Name of prosecutor (if known) _____

Prosecutor was wearing uniform (yes/no)

Prosecutor demonstrated familiarity with the case and was well prepared for trial (yes/no/not applicable)

Prosecutor demonstrated good questioning skills, eliciting relevant information from participants (yes/no/not applicable)

Prosecutor objected to leading questions and inadmissible evidence (yes/no/not applicable)

Prosecutor was generally active throughout the trial (yes/no/not applicable)

Translator

Translation/interpretation was needed by any of the parties (yes/no)

If "yes" above, then

Translation needed by:

- prosecutor
- defendant
- injured party/victim
- witness

Foreign language into which translation was needed _____

The court provided a translator/interpreter (yes/no)

If "no" above, then

Reason for not providing a translator/interpreter _____

If "yes" above, then

Signed by:

Translator was informed of criminal liability for deliberate false translations and for evading carrying out his/her duties (yes/no)

Performance of translator:

- satisfactory
- unsatisfactory
- mixed

Comments

Additional information

Indicate what exactly happened during the present hearing (for example, is it a preliminary hearing or not; how the witnesses are heard, how the judicial debates take place etc.). How long did the hearing last? Did you observe some specific violations during the examination of the case?

The present questionnaire was completed in a correct and detailed manner, as we confirm by signature:

Monitor I _____

Monitor II _____