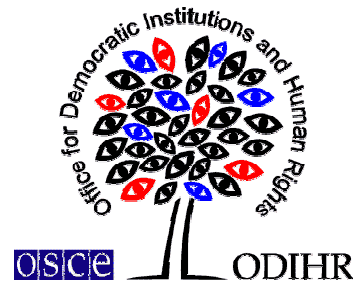




6-MONTH ANALYTIC REPORT:
“Preliminary Findings on the
Experience of Going to Court in Moldova”

OSCE TRIAL MONITORING PROGRAMME
FOR THE REPUBLIC OF MOLDOVA

30 November 2006
By OSCE Mission to Moldova



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First and foremost, the preliminary observations described in this 6-Month Analytic Report on implementation of the OSCE Trial Monitoring Programme in Moldova would not have been possible without the dedication, commitment, talent, vision, and hard work of the National Coordinator, Laurentiu Hadirca. The Senior Programme Assistant, Liliana Calancea, further made a key contribution, especially in entering and maintaining in the Trial Monitoring Database the hundreds of reporting forms filled with collected data and compiling the resultant statistical data into the graphs contained in this report.

Appreciation also must be extended to the dedicated and energetic team of some 20 National Trial Observers (also referred to as Trial Monitors), without whom there would be no data upon which to report in this 6-Month Analytic Report. The National Trial Observers overcome daily frustrations and logistical obstacles with patience and perseverance in order to observe trials throughout the Chisinau Municipality, to record their observations in a neutral and unbiased manner, and thereby, to contribute to the overall process of improving the administration of justice in Moldova. In the interests of protecting their security, their names are not listed here.

Implementation of the Trial Monitoring Programme further depends on close partnerships with two key local implementing partners. Firstly, the Institute for Penal Reform (IPR), and more specifically, the Director of IPR, the esteemed Igor Dolea, Ph.D, whose expertise and insights into the inner workings of the criminal justice system in Moldova have been essential. Dr. Dolea further serves as a leader, guide, and mentor to all those involved in daily implementation of the Programme. The OSCE Mission to Moldova is proud to consider him a close professional friend and colleague. Secondly, the American Bar Association Central European and Eurasian Law Initiative (ABA/CEELI) in Moldova, and more specifically, the Country Director, Corinne Smith, the Criminal Law Liaison, Jim Calle, and the Criminal Law Staff Attorney, Olimpia Iovu. They have generously provided legal analysis and offered their international expertise in legal reform in countries of the former Soviet Union, as well as their support and camaraderie through the daily challenges of implementation of the Programme. From November 2005 through October 2006, ABA/CEELI also provided office space and professional support for the National Coordinator in its premises in Chisinau, Moldova. ABA/CEELI's work in Moldova is supported by the U.S. Agency for International Development and the U.S. Department of Justice.

Within the OSCE family, all the Mission Members and Staff of the Human Rights and Democratisation Programme as well as the Anti-Trafficking and Gender Programme of the OSCE Mission to Moldova have contributed in one way or another to the development and implementation of the Trial Monitoring Programme in Moldova. Special thanks must be extended to the OSCE Mission to Bosnia and Herzegovina for loaning the expert services of Nihad Salkic, who contributed to developing the Trial Monitoring Database for the Programme and who shared his invaluable technical experience with formulating statistical analyses based upon trial monitoring data. Several Staff of the Human Rights and Rule of Law Departments of the ODIHR have further offered their support, expertise, and insights from Warsaw, Poland, not to mention taking the important lead in fundraising for the Programme. Generous financial contributions from the OSCE Delegations of the United States, the United Kingdom, and France have made the Trial Monitoring Programme a reality in Moldova to date.

Even at this interim stage of implementation of the Trial Monitoring Programme, the OSCE Mission to Moldova extends its thanks and appreciation to all those who have contributed to making this Programme a reality and who will continue to do so in the future in the interests of promoting peace, justice, and human rights in Moldova.

*Antonia De Meo and Kristin Franklin
Co-Programme Managers of the OSCE Trial Monitoring Programme in Moldova
30 November 2006*

I. EXECUTIVE SUMMARY

This 6-Month Analytic Report summarizes the preliminary findings from the first six full months of trial observation conducted in the framework of the OSCE Trial Monitoring Programme for the Republic of Moldova (TM Programme). The TM Programme was designed and is being implemented by the OSCE Mission to Moldova in partnership with the OSCE Office of Democratic Institutions and Human Rights (ODIHR). Utilizing a human rights-based approach, the purpose of this TM Programme is to analyze actual compliance of the Moldovan judicial system with both national and international fair trial standards, to draw the attention of national authorities to areas for needed improvement, and to encourage and assist national authorities to find solutions to enhance human rights protection and strengthen the rule of law.

The OSCE Mission and the ODIHR launched the TM Programme on 21 March 2006. Since then, starting in April 2006, some 20 national trial monitors/observers have attended, observed, and reported on 789 trial court hearings (excluding any pre-trial hearings) in all district and appellate courts within the Chisinau Municipality. Cases selected for monitoring focus on trafficking in human beings, domestic violence, trafficking in arms, crimes against justice, and corruption and other crimes committed by public officials.

With respect to the *experience in the courthouse*, the principal findings to date are as follows:

Court premises and facilities: Moldovan courts have inadequate premises. Poor quality or insufficient lighting, cleanliness, furniture, equipment, public facilities, and building repairs created discomfort and were not conducive to solemnity or dignity. Courthouses mostly consist of small rooms, now used as judges' offices; due to lack of courtrooms, most trials were held in judges' offices. Holding trials in judges' offices effectively restricted publicity; led to frequent interruptions and distractions; blurred boundaries between private and public space; reduced adversarialness; placed victims and witnesses in close proximity to defendants; encouraged casual behaviour by all participants; and gave rise to the appearance of impropriety in *ex parte* conversations. No courthouse has separate facilities to secure the safety of victims and witnesses.

Public access to trials: Usually trial monitors were granted access to the trial hearings they were assigned to monitor, although sometimes they were excluded or restricted without apparent legal justification. Public access to trial proceedings was hampered because many judges did not publicly post their calendar or schedule of cases. The notion that regular trial hearings are public events which should be open to everyone to attend is not yet fully accepted in principle or applied in practice in the courts in the Chisinau Municipality.

Delays and postponements: Many trials were beset by delays and postponements that bred disenchantment, eroded respect for the proceedings and perpetuated a cycle of late arrivals or absences, causing yet more delays. More than 15% of trial hearings commenced at least 30 minutes late, usually due to poor punctuality of the parties. Postponements were frequent: more than half resulted from the absence of a key participant at trial, namely the prosecutor, defence attorney,

victim, or witness, often with no explanation or prior notification for their absence. Judges often tolerated parties systematically arriving late or not appearing in court, without applying legally permissible sanctions. The practice at the Chisinau Court of Appeals and the Supreme Court of Justice of scheduling all cases on a given day to commence at 10 a.m. often resulted in crowded and chaotic courtrooms in the mornings, as well as long delays for cases called in the afternoons or eventually postponed at the days' end.

Security and public order: Insufficient judicial police officers meant there could be no police officer available to secure the forced delivery of a person to court as ordered by a judge or prosecutor. Coordination between the escort police service and judges was often not effective.

With respect to the *participants in trial proceedings*, the principle findings to date are as follows:

Reaction to trial monitoring: Judges generally accepted monitors into trial proceedings while other actors were relieved, suspicious, or perplexed. Some expressed the hope that monitors would report on poor conditions and excessive caseloads and thereby encourage increased resources. Some judges and prosecutors believed that monitors' presence meant that a case was being “taken under control”, presumably by someone with influence. Monitors' presence visibly resulted in greater due process and solemnity during trials.

Judges: While most judges acted professionally, others were disrespectful to trial participants, deviated from due process requirements, engaged in procedural shortcuts, were frequently inattentive to or distracted from proceedings, and allowed an overly relaxed atmosphere. Some judges engaged in frequent *ex parte* communications with prosecutors and sometimes with defence attorneys, giving rise to an appearance of impropriety and partiality.

Prosecutors: Prosecutors were mostly professional and well prepared for and active during court proceedings, with notable exceptions, who were unprepared, passive, and undisciplined. However, most prosecutors displayed less significant improprieties with greater frequency. Also, before the Supreme Court of Justice, prosecutors were usually passive and provided only a formal presence.

Defence Attorneys: Monitoring observed a wide range of competence among defence attorneys, with better-known attorneys performing well and being accorded more respect by other professional actors. Many defence attorneys displayed exemplary performance, while others performed poorly and passively, especially many *ex-officio* appointed defence attorneys. More than one out of three defence attorneys was not properly prepared for court. The appellate courts frequently replaced chronically absent privately contracted defence attorneys, on the spot, with *ex-officio* defence attorneys, offering them some 10 minutes to review the case file before making arguments.

Court Clerks: Many court clerks did not perform their professional duties diligently, often acting passively at trial and being reluctant to register anything in

the minutes. In one out of five cases, court clerks did not properly record the minutes of the trial proceedings.

Interpreters and Translators: There are insufficient interpreters and translators available in trial courts, and the courts are staffed only with interpreters and translators for Moldovan/Romanian and Russian languages. Nearly 40% of interpreters appearing in court proceedings did not translate in a fully satisfactory manner, delivering poor quality translations, selectively translating, or not knowing correct terminology; they also seldom translated the minutes prior to presenting them to the parties for signature.

Victims and Witnesses: The rights of victims and witnesses were not fully respected in court: they were often treated abusively and insensitively and forced to confront defendants informally while waiting in corridors. Judges and prosecutors did not always intervene when defendants approached victims and witnesses to try to intimidate them and influence their testimony, nor did judges prevent all irrelevant and humiliating questions directed to victims and witnesses. Sometimes minor (*i.e.*, juvenile) victims were not assisted by a legal representative, although required by law. Victims and witnesses frequently failed to appear in court; 25% of all postponements were due to their absence.

In conclusion, based upon six full months of trial monitoring before all the national courts in the Chisinau Municipality, the preliminary findings of the TM Programme show that while some progress has been made in implementing reforms in the judicial system in Moldova, significant improvement is still necessary, especially to make procedural and substantive protections provided by law a reality in practice. Today the Moldovan justice system, as a whole, does not appear to function fairly in all cases, and the public further does not believe that it always functions fairly. Progress will require financial, procedural, attitudinal, and behavioural changes. The professional actors involved in the administration of justice, who primarily perform their duties responsibly, cannot make all the necessary changes alone: additional human and financial resources are also required to ensure that justice, fairness, and human rights are a reality for every Moldovan citizen.

II. INTRODUCTION TO TRIAL MONITORING PROGRAMME

A. Objectives

As a participating State of the Organization for Security and Co-operation in Europe (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 [predecessor to what is 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.”¹

Taking these commitments in the area of human dimension into consideration, this Trial Monitoring Programme for Moldova (TM Programme) was designed by the Human Rights and Democratisation Programme of the OSCE Mission to Moldova in partnership with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw, Poland. The ODIHR and OSCE missions have implemented similar trial monitoring programmes in Albania, Azerbaijan, Bosnia and Herzegovina, Croatia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Serbia, and Montenegro. These programmes, which each have some distinguishing features dictated by specific programmatic objectives and local circumstances, provided guidance in the development of the unique TM Programme for Moldova.

The overall goal of this TM Programme, as set forth in the initial Programme Document of 17 July 2005, is to enhance compliance by Moldova with its OSCE commitments 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 trial observation 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 on the right to a fair trial and violations thereof among national and international actors. Emphasizing a human rights-based approach, special attention is also being paid to the rights of victims and witnesses involved in trial proceedings. Underlying the TM 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.

¹ OSCE Copenhagen Commitment (1990), para. 12 (emphasis added).

The general objectives of this TM Programme fall into three main categories: 1) capacity building of local civil society in the area of monitoring and reporting; 2) monitoring the application of international fair trial/procedural standards; and 3) monitoring the application of substantive legal protections in the areas of trafficking in human beings, domestic violence, trafficking in arms, crimes against justice, and corruption and other crimes committed by public officials. Taking into consideration the unique context of Moldova, more specific objectives for implementation of the TM Programme in Moldova are as follows:

- To build the capacity of local civil society to monitor trials in a professional manner and in accordance with international standards and to accurately report such monitoring to relevant national and international bodies;
- To obtain systematic and impartial information on criminal trials from the perspective of compliance with international fair trial standards;
- To obtain systematic and impartial information on implementation of the new Criminal Code and Criminal Procedure Code in Moldova;
- To monitor the use of language and the use of the assistance of interpreters and translators in court proceedings;
- To provide relevant actors and national authorities with information and analysis on fair trial violations and implementation of the new Codes to be used as a tool for advocating the relevant structures to bring about any necessary and appropriate changes to the law and practice;
- To identify accurately areas and patterns of non-observance with international fair trial standards and to assist the national authorities to improve compliance with these fair trial standards;
- To raise awareness on the right to a fair trial and violations thereof among relevant officials and the general population;
- To provide systematic information and analysis on the outcomes of certain categories of select criminal cases (namely trafficking in human beings, domestic violence, trafficking in arms, crimes against justice, and corruption and other crimes committed by public officials);
- To monitor the application and implementation of victim-witness protection, as provided for by the governing law in Moldova, and insofar as this protection is observable in public court proceedings;
- To monitor legal procedures, behaviours, and practices by all the actors in the courtroom that affect victim-witness safety and defendant accountability, focusing on adherence to human rights standards; and
- To identify accurately areas of substantive or procedural weakness regarding the prosecution of cases of trafficking in human beings, domestic violence, trafficking in arms, crimes against justice, and corruption and other crimes committed by public officials and to assist the national authorities to improve prosecution in these areas.

Building upon OSCE/ODIHR experience in other countries, it has been concluded that utilizing national trial observation networks increases the awareness of civil society in 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”. This principle of “open justice” lies at the heart of trial monitoring because “justice” implies fair outcomes achieved through fair

procedures. The relevant observer is a fair-minded observer, acting reasonably. Thus, 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.

B. Implementation

After nearly two years of planning and preparations, the OSCE Mission to Moldova and ODIHR officially launched the TM Programme in Chisinau, Moldova, on 21 March 2006. As designed, the TM Programme has included the selection of the National Coordinator, the selection of National Trial Observers (*i.e.*, monitors), the training of those trial observers/monitors, the collection of data on individual cases before the national courts, the creation of a unique questionnaire/reporting form and database to record the information collected on individual cases, and the preparation of a comprehensive trial observation manual and guidelines for the monitors. The TM Programme further envisages the preparation of analytical reports on the functioning of the judicial system in Moldova. This 6-Month Analytic Report forms the first such report on the data collected to date through the TM Programme, and although preliminary, it is anticipated that the findings contained herein will be confirmed in later analytic reports.

In order to ensure successful implementation of the TM Programme, the OSCE Mission to Moldova concluded in March 2006 Memoranda of Understanding with the Superior Council of Magistracy and the General Prosecutor’s Office, who are considered important partners in the implementation of this Programme. At the official launching ceremony for the Programme on 21 March 2006, which was attended by the press, the Deputy General Prosecutor and a member of the Superior Council of Magistracy offered remarks and congratulations on the launch of such an important project for Moldova. To further inform the relevant national authorities, Moldovan legal community, and the general public about the scope and objectives of the TM Programme, the National Coordinator wrote an article about the Programme that was published in *Avocatul Poporului*, a prominent nationwide law magazine for jurists, in August 2006.

Soon after the launch, the Superior Council of Magistracy issued an official note to all courts in the Chisinau Municipality informing them about the TM Programme and asking for their full cooperation with trial monitors. In an effort to secure this effective cooperation, the National Coordinator then visited personally the Presidents of all Chisinau District Courts and the Chisinau Court of Appeals. During these meetings, the National Coordinator provided more information about the TM Programme, its scope and objectives, a list of crimes to be monitored, the names of all monitors, and a brochure explaining the TM Programme. All the Presidents of the courts agreed to inform their judges about the TM Programme and to cooperate with and assist the OSCE in its implementation. Each court appointed contact persons, who are responsible for preparing and providing to the National Coordinator, upon request, a list of cases scheduled for trial in the relevant period within the scope of the TM Programme. The National Coordinator supplements this information with information obtained from the public rosters of scheduled trial proceedings, when available.

Similarly, the National Coordinator also personally visited the General Prosecutor’s Office (GPO) in order to arrange a cooperation mechanism. Pursuant to this arrangement, a contact person was assigned at the GPO to write a notification letter to all

prosecutors in Chisinau, informing them about the TM Programme, seeking their cooperation, and asking them to report on any cases of domestic violence when the case-file materials are finalized and sent to court (since these cases are difficult to distinguish from their basic case information as there is no separate article in the Moldovan Criminal Code specifically dedicated to domestic violence).

Within the framework of this TM Programme, monitoring in the national courts commenced on 19 April 2006. On that date, a select group of national monitors began attending trial hearings before the courts in the Chisinau Municipality, including the five district courts, the Court of Appeals, and the Supreme Court of Justice. In particular, they observe trial hearings (*i.e.*, pre-trial hearings are beyond the scope of the TM Programme) in cases of trafficking in human beings, domestic violence, trafficking in arms, crimes against justice, and corruption and other crimes committed by public officials. Monitoring is performed from the perspective of internationally recognized fair trial standards. Emphasizing a human rights-based approach, particular attention is paid to the observance of the human rights of defendants, witnesses, and victims throughout court proceedings. Therefore, trial monitoring is intended to serve as a tool to assess both the observance of fair trial standards and other complementary human rights of defendants, victims, and witnesses, as well as the *de facto* functioning of the courts overall.

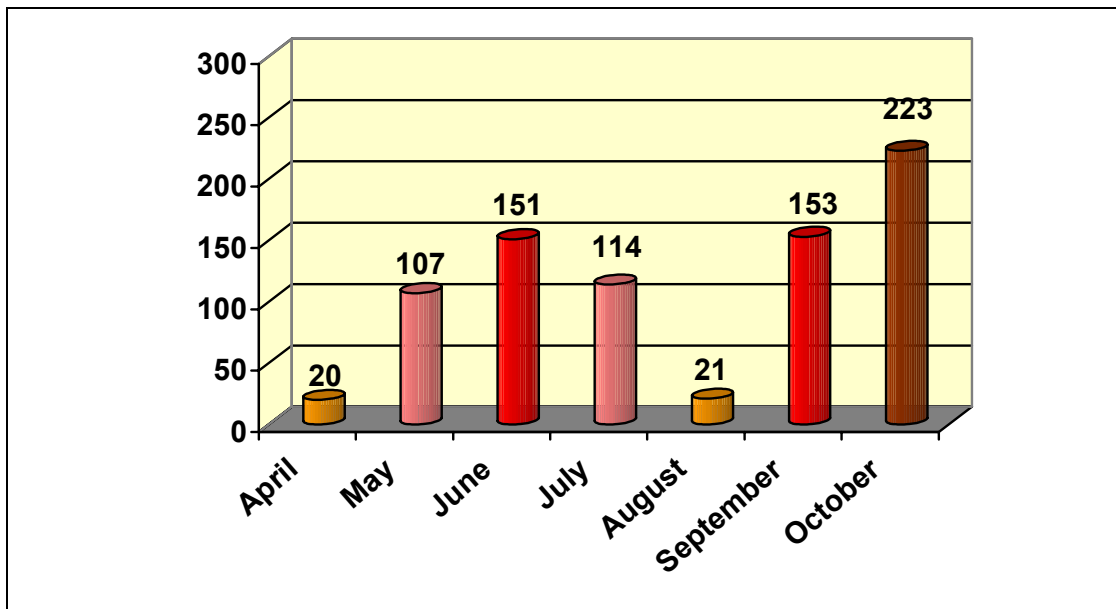
In practice, trial monitoring is carried out by teams comprised of two trial monitors, who were selected and trained by the OSCE Mission to Moldova together with its local implementing partners, the Institute for Penal Reform (IPR), a national non-governmental organization (NGO), and the American Bar Association Central European and Eurasian Law Initiative (ABA/CEELI) in Moldova, an international NGO. All monitors are Moldovan law school graduates, with some holding additional masters of law degrees or licenses to practice law. In March 2006 all monitors successfully completed an intensive training course on international fair trial standards and human rights specifically developed for them by the OSCE Mission to Moldova. Their trainers were international and national legal experts. In connection with their training, monitors were presented with the *OSCE Trial Observation Manual*, also developed by the OSCE Mission to Moldova specifically for this TM Programme. This Manual, which is some 230 pages long, is specifically tailored to the Moldovan legal system and includes chapters on the following topics: national and international fair trial standards; victim and witness protection; trafficking in human beings; domestic violence; and public corruption. Monitors further received written *Guidelines for Trial Monitors* and the *OSCE Code of Conduct* of 1 August 2003. Upon completion of their training, they each signed the *Code of Conduct for Monitors/Observers* and were issued individual OSCE identification cards.

The role of monitors is attentively and neutrally to observe everything that occurs in and surrounding the trial proceedings they are assigned to monitor in the Chisinau Municipality. They also prepare accurate and detailed reports on each trial hearing attended using a comprehensive reporting form (*i.e.*, questionnaire) developed by the OSCE Mission to Moldova to collect both statistical information and factual descriptions. Since one of the fundamental principles underlying trial monitoring is respect for the independence of the judiciary, monitors have been instructed never to attempt to influence or intervene in proceedings and to be careful not to identify with either the prosecution or the defence. Monitors further cannot and do not assess evidence, evaluate the merits of cases, or determine a defendant's guilt or innocence. Rather, they

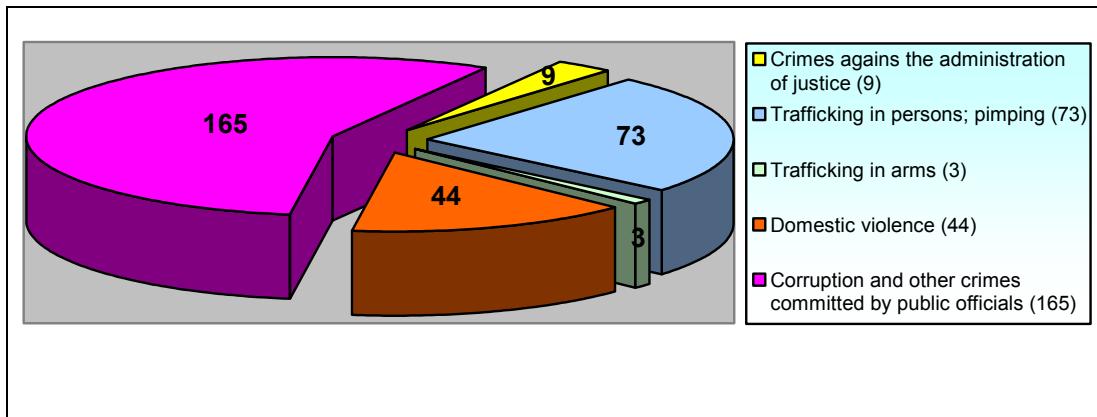
concentrate on the observance of procedural rules, the observance of the rights of defendants, witnesses, and victims, and the overall fairness of court proceedings in general. The information they collect and record on their reporting forms/questionnaires is then entered into the database specifically designed for the TM Programme, which is capable of compiling myriad statistical reports in real time.

When actual monitoring of trial hearings before the national courts first began on 19 April 2006, only a few trial hearings were monitored each week. Later, as more information on trial hearings scheduled before different courts throughout the Chisinau Municipality gradually was provided to the National Coordinator, he assigned more and more pairs of monitors to cases and they became operational. By May 2006, monitors were observing trial hearings in all the district courts and the Chisinau Court of Appeals, and by June 2006, they were also observing hearings in the Supreme Court of Justice. By the end of the first six months of monitoring, in October 2006, an average of more than 50 trial hearings per week were monitored. Overall, in the first six full months of the TM Programme (19 April to 31 October 2006), 789 trial hearings in 294 criminal cases have been monitored in all five district courts in the Chisinau Municipality, plus the Chisinau Court of Appeals and the Supreme Court of Justice. The number of trial hearings does not match the number of cases because the trial of each criminal case usually involves multiple hearings.

Number of Trial Hearings Monitored per Month (2006)



Number of Criminal Cases Monitored by Type of Criminal Offence



It is the hope of those involved in the TM Programme that the information collected and reported on will contribute to developing policy recommendations on the legal framework in Moldova, as well as recommendations for any specific training needs for law-enforcement officers, prosecutors, judges, defence attorneys, and other actors in the legal system. In this manner the information gained through trial monitoring will enable the OSCE Mission to Moldova, ODIHR, and other interested actors to work with the national authorities to promote changes in the judicial system that will increase fairness and human rights protections in Moldova. The end goal of this human rights-based approach to trial observation is to improve the impartiality and objectivity of the judiciary in Moldova, to ensure the protection of human rights of defendants, victims, and witnesses through full compliance with international fair trial standards, and to inform the public, civil society, and the national authorities on the proper functioning of their judicial system.

III. GOVERNING PRINCIPLE OF FAIRNESS

*“Justice should not only be done, but should
manifestly and undoubtedly be seen to be done.”*

— Lord Chief Justice Hewart (*Rex v Sussex Justices; Ex parte McCarthy* (1924)) —

A. International Fair Trial Standards

The principle of a fair trial is a fundamental tenet of any democratic society. The reasons are manifold why the right to a fair trial is held to be of such paramount importance. From the human rights perspective, the right to a fair trial can be viewed as the right of all people who are charged with the commission of a crime to have certain procedures respected in the process of the State holding them accountable for their alleged illegal actions. The right to a fair trial is also 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 anyone who has had his or her rights violated. From a broader, societal perspective, the right to a fair trial is a means to ensure that criminals are duly brought to justice as well as 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 precept of separation of powers, because it requires the judiciary independently to exercise its powers free from encroachment from other branches of government.

Thus, the right to a fair trial is a core element in the concept of the rule of law, as well as in the protection of human rights in general. The European Court of Human Rights in Strasbourg, France, in its case law, has held the right to a fair trial to be a “guarantee which is one of the fundamental principles of any democratic society, within the meaning of the [European] Convention [on Human Rights]”.² Under United Nations³ and Council of Europe⁴ standards, as well as political Commitments created under the auspices of the OSCE⁵ and the Stability Pact for South Eastern Europe,⁶ everyone is entitled to a fair trial in both civil and criminal proceedings.

The right to a fair trial is comprised of both substantive and procedural protections. 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 all proceedings in conformity with both the procedural standards set forth in key international human rights instruments in addition to those prescribed within the domestic legal system. The rights attached to a fair trial apply throughout all aspects of the procedure, not only the actual hearings before the court. Individuals may thus raise claims of violations concerning their arrest, the conduct of the investigations, through the final appeal at the domestic level, and afterwards during the execution phase. In certain cases, violations of the right to a fair trial may be brought

² See *Lawless v. Ireland*, European Court Human Rights, Judgement of 14 November 1960, Series A, No. 1, at page 13; see also *Golder v. United Kingdom*, European Court of Human Rights, Judgement of 21 February 1975, Series A, No. 18, at page 18, paragraph 36.

³ International Covenant on Civil and Political Rights (ICCPR), art. 14.

⁴ ECHR, art. 6.

⁵ Concluding Document of Vienna Meeting (1989), para. 13.9.

⁶ Stability Pact for South Eastern Europe Constituent Document of 10 June 1999, art. 10; Moldova joined the Stability Pact on 28 June 2001.

before international courts to seek redress. Indeed, most of the complaints brought before the European Court of Human Rights by Moldovan citizens have alleged violations of the right to a fair trial,⁷ underscoring the importance of implementing fair trial standards in the judicial system of Moldova.

B. National Fair Trial Standards

In Moldovan law, provisions guaranteeing a person’s right to a fair trial can be found in the Constitution,⁸ Criminal Procedure Code,⁹ and other laws. In fact, the Criminal Procedure Code of the Republic of Moldova underwent reform and a new Code was adopted in 2003, aiming to bring it into greater conformity with international standards. The Code includes rights fundamental to ensuring a fair trial, such as: independence of the judiciary, presumption of innocence, equality before the law, privacy, the right to defence, public hearings, freedom from self-incrimination, adversarialness of court proceedings, and equality of arms.

The reform also established the post of the criminal instruction judge, who ensures judicial control over criminal investigation and bears responsibility for authorizing criminal procedures such as: pre-trial detentions, searches, corporeal searches, seizures of objects, exhumations, and seizures of assets. The court may no longer produce evidence upon its own initiative; the burden of the prosecution lies with the prosecutor. Under the Criminal Procedure Code, the “prosecution side” is comprised of the prosecutor, the investigators, law enforcement, victims, injured parties, and civil parties. The “defence side” consists of the suspect, the accused, the defendant, the defence attorney, and any responsible civil party.

Where any contradiction exists between national criminal procedural law and international human rights treaties to which Moldova is a party, international law prevails. The Constitution of the Republic of Moldova states:

“Constitutional provisions on the human rights and freedoms shall be interpreted and applied under the Universal Declaration of Human Rights (UDHR), pacts and other treaties [to which] the Republic of Moldova is party.

“If there are disagreements between pacts and treaties on the fundamental human rights treaties [to which] the Republic of Moldova is party [] and its internal laws, priority shall be given to international regulations.”¹⁰

Likewise, Moldova’s Criminal Code, Criminal Procedure Code, Civil Code, and Civil Procedure Code refer to the supremacy of international law.¹¹ Both the Criminal and

⁷ To date, in 28 of the 40 judgements issued by the European Court of Human Rights against the Republic of Moldova, the Court found a violation of the right to a fair trial protected by Article 6 of the ECHR.

⁸ Constitution R.M. (adopted 29 July 1994); see, in particular, arts. 20, 21, 26, 117, 118, and 119.

⁹ Criminal Procedure Code (CPC) R.M. (adopted 14 March 2003); see, in particular, CPC at Title I, Chapter II and Special Part.

¹⁰ Art. 4(1)-(2), Constitution R.M.; see also art. 8, Constitution R.M. (re: Observance of International Laws and Treaties); Decision of Constitutional Court on Interpretation of Certain Provisions of Article 4 of the Constitution of the Republic of Moldova # 55 (14 October 1999), paras. 6, 8, 11, n.6 (ruling that universally recognized norms and principles of international law are binding on Moldova to the extent 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).

Civil Procedure Codes also contain provisions assuring free access to justice.¹² In cases of any contradiction, the courts shall directly apply the international provision, explaining in the decision the reason for doing so.¹³ The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in particular, functions as an integral part of the national legal system and shall be applied directly. The ECHR also maintains priority over incompatible national legal provisions.¹⁴ When applying the ECHR as a matter of priority over incompatible national legal provisions, the courts should reference any incompatibility in the judgement. Lastly, the jurisprudence of the European Court of Human Rights is binding on the courts of Moldova.¹⁵

Notwithstanding all these legal safeguards aimed at guaranteeing the observance of the right to a fair trial, general criticisms concerning fair trials and the functioning of the judiciary in Moldova are not uncommon. For example, the United States Department of State *Country Report on Human Rights Practices – 2005* on Moldova (issued on 8 March 2006) details the general absence of court calendars for the public, poor performance of *ex-officio* defence attorneys, problems with trials held in judges’ offices, official pressure on judges, and corruption among members of the judiciary.¹⁶ In addition, in its *Europe Report No. 175* of 17 August 2006, entitled *Moldova’s Uncertain Future*, the International Crisis Group notes that in Moldova judicial reform is lagging behind and the judiciary still lacks public trust and is not yet fully independent.¹⁷

The Parliamentary Assembly of the Council of Europe, in its Resolution 1465 on the functioning of democratic institutions in Moldova (adopted on 4 October 2005), has called upon Moldovan authorities to give priority, in the process of democratic reforms, to “the improvement of the functioning of democratic institutions” and in particular to strengthening “the independence and efficiency of the judiciary [...]”. It also calls on Moldovan authorities to “reform the judiciary in order to guarantee its independence and increase the effectiveness and professionalism of the courts” by “improving the working environment of the judiciary; by improving their training and working methods; by eliminating corruption within the system and training magistrates up to the highest standards”.¹⁸

The need to further train judges and court staff and to improve the functioning of the judiciary in general has been acknowledged by Moldovan authorities, who have committed themselves to this needed reform in international political documents. The European Union – Moldova Action Plan lists among its primary objectives the need to further strengthen institutions that safeguard democracy and the rule of law, and in

¹¹ Art. 1(3), Criminal Code; art. 2, CPC; art. 7, Civil Code; art. 2(3), Civil Procedure Code.

¹² Art. 19(1), CPC; art. 22, Civil Procedure Code.

¹³ Art. 7, CPC.

¹⁴ See Decision of Supreme Court of Justice on Application in Judiciary Practice by Judiciary Institutions of Certain Provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms #17 (19 June 2000), paras. 2 & 3 (holding that the ECHR is an integral part of the internal legal system, is directly applicable, and supersedes national law in cases of conflict).

¹⁵ Moldova has been a party to the ECHR since 12 September 1997.

¹⁶ US Department of State, *Country Report on Human Rights Practices – Moldova, 2005* (released by Bureau on Democracy, Human Rights and Labor on 8 March 2006).

¹⁷ International Crisis Group, *Moldova’s Uncertain Future* (Europe Report No. 175 – 17 August 2006) at pages 13, 14 and 17.

¹⁸ Parliamentary Assembly of Council of Europe, Resolution 1465 (2005) on the *Functioning of Democratic Institutions in Moldova*.

particular to raise the capacity of the judiciary, to ensure the independence and impartiality of the judiciary, and to improve the training of judges and auxiliary court personnel in the fields of human rights and judicial work.¹⁹ Similarly, Moldova’s recent application to the United States Government-funded Millennium Challenge Account indicates that Moldovan officials clearly acknowledge the need to raise public trust in the judiciary. Moldova specifically requested funding from the Millennium Challenge Account to address areas of persistent corruption in, *inter alia*, the judiciary and police agencies, as well as funding to assist media and civil society to spotlight such corruption and to ensure proper monitoring and evaluation of the Government’s performance.

Domestically, the *Strategy for Consolidating the Judicial System* (in draft form and currently scheduled to be adopted by the Moldovan Parliament), which has been developed by the Ministry of Justice, sets forth a series of reforms aiming, among other things, to ensure judicial independence and impartiality, ensure judicial transparency, improve the quality of the administration of justice, raise the efficiency and responsibility of the judicial system, guarantee free access to justice, improve relations between members of the judiciary and ordinary citizens seeking access to justice, as well as prevent and combat corruption in the judicial system. Such national documents, besides harnessing political support for the major task of ensuring a properly functioning judiciary, implicitly acknowledge that some gaps still persist in this field and that adequate measures are necessary to address them.

¹⁹ European Union-Moldova Action Plan, Section 2.1 para. 2, on *Political Dialogue and Reforms/ Democracy and the Rule of Law*.

IV. ANALYSIS OF COURT OBSERVATION DATA

The following analysis is based upon observations recorded by the national trial observers as they monitored trial court hearings (exclusive of pre-trial hearings) in the Republic of Moldova in all the national courts in the Chisinau Municipality during the period of 19 April to 31 October 2006. The data has been organized around two general themes: Firstly, the experience of visiting the courthouse, including court premises and facilities, public access to trial proceedings, delays and postponements, and security and public order; and secondly, the performance of the main participants at trial, including judges, prosecutors, defence attorneys, court clerks, interpreters and translators, and victims and witnesses. This general analysis is supplemented by charts and graphs, based upon statistical data collected through trial monitoring, as well as by vignettes, based upon real events observed by trial monitors in specific cases. Through this combination of general analysis, statistical data, and real life stories, a picture of the administration of justice in Moldova begins to unfold. None the less, as trial observation in the context of this OSCE Trial Monitoring Programme (TM Programme) has been underway for only six full months in Moldova, this analysis is preliminary and subject to confirmation in subsequent analyses based upon larger quanta of collected data.

A. Experience in the Courthouse

1. Court Premises and Facilities

a. Premises and Facilities of District Courts

Moldovan courts have inadequate premises as a result of chronic under-financing and poor infrastructure. Some district courts do not have separate buildings and must share a building with other State institutions, such as the territorial office of the Fiscal Inspectorate or the District “*pretura*” (*i.e.*, a local subdivision of the executive office). This sharing of premises inherently affects the dignity of the courts and leads to situations when court corridors and areas surrounding court buildings are crowded with people unrelated to court proceedings.

Moreover, even those district courts with separate buildings may have inadequate premises and facilities. Corridors and courtrooms are often poorly lit and dusty. Sometimes empty boxes lay around for days. There are offices with stained ceilings, tapestries fixed to the walls from floor to ceiling with scotch tape, and in one office, a national flag so old and faded that the national colours of red, yellow, and blue are tarnished to dirty pink, beige, and violet. Much of the furniture is old and unstable. 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 in courthouses, the offices of a few judges stand out for their comfortable appointments, due, at least in part, to the personal investment of some judges in their offices. None the less, despite these isolated cases of comfortable judicial offices, the general atmosphere in courthouses in the Chisinau Municipality is far from conducive to solemnity or dignity.

Vignette A²⁰ *Case of domestic violence.* The atmosphere in the courtroom was chaotic. The participants spoke in both Moldovan/Romanian and Russian, with no translator; they spoke whenever they pleased. The judge served as an interpreter several times. The judge was dressed inappropriately, as if he had come to a sporting event rather than to court. The prosecutor was not wearing his uniform, causing the judge to inquire as to his whereabouts whilst he was standing before the judge. The judge addressed the injured party in a rude manner and in general did not ensure an orderly and dignified atmosphere. The furniture was so old and rickety that it seemed as if a light earthquake was striking the courtroom: the defence table was falling apart, and the chairs on which the monitors sat were shaking and squeaking. It seemed to the monitors as if all the furniture in the courtroom was about to collapse.

The buildings occupied by the district courts in the Chisinau Municipality were not designed as courthouses and lack proper facilities for the administration of justice. The buildings mostly consist of small rooms, now used as judges’ offices, and they have only few rooms large enough to serve as courtrooms that can accommodate both the parties and the public. For instance, the Centru District Court has only one courtroom for its 18 judges; consequently, the vast majority of trials are held in judges’ offices. While other district courts have more courtrooms and a larger percentage of trials can thus be held in adequate physical surroundings, no district court in the Chisinau Municipality has a sufficient number of courtrooms to guarantee that *all* trials can be held in courtrooms.

Ratio of Judges to Courtrooms in District Courthouses

	District Courts from the Chisinau Municipality				
	Botanica	Buiucani	Centru	Ciocana	Riscani
Number of judges (excluding instruction judges)	16	17	18	12	17
Number of courtrooms in the courthouse	3	3	1	2	3
Trial hearings held in courtrooms (%)	14%	36%	13%	60%	29%
Trial hearings held in judges’ offices (%)	86%	64%	87%	40%	71%

Obviously, the insufficiency of courtrooms is an objective circumstance not attributable to judges. However, monitoring also revealed that sometimes judges preferred to hold proceedings in their offices, even when courtrooms were available which could better accommodate the trial hearing and its participants. Due to the shortage of courtrooms, on several occasions one judge was observed moving another judge and his trial out from a courtroom because the incoming judge had more participants in his trial; the displaced judge would then move his ongoing proceedings from the courtroom into his office. There was also one isolated incident when a trial

²⁰ The twenty-two vignettes set forth in this report describe actual events and discussions observed by monitors during the course of monitoring specific cases before courts in the Chisinau Municipality. They are set forth as precisely and accurately as possible. As the purpose of this report is to describe and analyze the findings and data of the TM Programme as a whole, and not to single out individual actors for exacting scrutiny, the vignettes have been sanitized to protect the identity of the participants to the court proceedings.

hearing could not be held in an available courtroom because the court clerk could not find the key to the locked courtroom.

b. Practice of Using Judicial Offices as Courtrooms

Holding trial proceedings in a judicial office is problematic for several reasons. Firstly, the physical dimensions of some offices effectively restrict the number of people who can attend the trial hearing. Monitors observed a case where up to 20 people squeezed into a judge’s office that had an area of only 8 to 9 square meters. In such cases, the parties were not provided with basic facilities, and the public was excluded from the trial. Occasionally judges informed monitors that they could not observe a trial hearing because there was insufficient space for them to stand inside the office. Some judges remarked that holding proceedings in their offices was particularly uncomfortable during the summer, when the lack of air conditioning renders crowded offices unbearably hot and stuffy.

Another drawback of holding proceedings in judicial offices is that these proceedings were often interrupted by people requesting signatures on documents, seeking to lodge complaints, or calling the judge. In many cases judges accepted such impromptu visits and even offered brief consultations in the middle of a pleading in progress. Monitors also observed judges initiating telephone calls, working on computers, printing documents, reading student diploma theses, and even playing music on their computers, despite being in the midst of presiding over ongoing proceedings requiring their attention. Some judges were thus observed failing to devote their entire attention to the proceedings underway, which also appeared to distract the attention of other participants away from the proceedings, in turn causing the proceedings to become more protracted.

By conducting trial hearings in their offices, many judges appeared to develop an improper sense of ownership over their offices, which in fact are public courtrooms during proceedings. This practice further tended to obfuscate the boundaries between a judge’s private space and the public space of a courtroom. Some judges arbitrarily prevented the public from attending trial hearings in their office, even though the hearing had not been officially declared closed to the public. Lastly, when the deliberation phase was reached in a trial conducted inside the judge’s office, the parties were forced to vacate the office and wait in the corridor while the judge “went into deliberation”, remaining all the while in his or her office.

The physical constraints of judicial offices also seemed to reduce the adversarial nature of proceedings conducted in them. In a courtroom, adverse parties normally stand opposite each other. In an office, the prosecutor, defence attorney, and interpreter sometimes stood on one side of the office, while the parties stood on the other. Such a practice made it almost impossible for the defendant to consult with his or her defence attorney during the proceedings or to hear the interpreter. Proceedings conducted inside small offices also placed victims in uncomfortably close proximity to defendants, either side-by-side or face-to-face. This could be particularly traumatizing for victims of serious crimes, and it may be one reason why many victims refuse to attend trial hearings, causing repeated postponements and more lengthy trials.

Conducting proceedings inside judicial offices appeared to affect not only the behaviour and performance of the judge but also the behaviour and performance of other participants. During such proceedings, prosecutors were more likely to joke with court clerks and defence attorneys. Clerks and interpreters were more likely to interrupt their official duties to chat, answer a telephone call, write a text message on their mobile phone, or leave the office, despite the need for their services. Even handcuffed defendants seemed to have less respect for the court: monitors observed cases when defendants asked their escorting police officers to go out with them to smoke a cigarette, and surprisingly, the police officers agreed.

In general, proceedings held in a judge’s office usually lacked a solemn and dignified character. In many cases such proceedings led to what is called in Moldova the “office justice” syndrome (“*justiție de birou*”), which is characterized by a breakdown in solemnity, formality, and procedural guarantees when court proceedings are conducted in the cramped space of a judge’s office. Although jokes, telephone calls, and other distractions may also occur in a courtroom, they are more likely in the intimacy of a judge’s office. In addition, the physical conditions of a judge’s office affect the public’s view of, and trust in, the judiciary.

<p>Vignette B <i>Case of excess of official authority</i>, illustrating the so-called “office justice” syndrome (“<i>justiție de birou</i>”). The trial hearing was held in the judge’s office, which has no State seal or official attributes. The judge did not wear a robe and was so sloppily dressed that initially the monitors could not discern who he was. The judge was visibly unhappy with the presence of monitors, asked them various questions, and made them stand and wait before deciding that they could attend the public hearing. During the trial hearing, the judge and the prosecutor spoke on the telephone a couple of times and the defence attorney read <i>Avocatul Poporului</i> magazine under the table. At one point, the judge ordered a five-minute break so the parties could consult the case-file, since it appeared they did not know the case well. During the break, the judge lit a cigarette and went out into the corridor, where he engaged in heated debates with the prosecutor and witnesses.</p>
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Notwithstanding these critical observations of proceedings conducted inside judicial offices, many judges managed to ensure that proceedings held in their offices had a solemn and dignified character. Some judges have larger offices that are better equipped, but more importantly, many judges exhibited highly professional conduct that ensured the dignity of the court proceedings. Some judges either refused to take telephone calls during sessions or responded only long enough to indicate that they were unavailable. Some judges had ingeniously prepared posters or signs that they hung outside their door announcing that proceedings were underway and asking not to be disturbed. Unfortunately, such efforts, based upon the observations conducted to date, represented the exception rather than the rule.

c. Public Facilities in Courthouses

No courthouse has separate facilities to secure the safety of victims and witnesses. There are no separate entrances and no special waiting rooms inside courthouses. Accordingly, victims and witnesses must use the same entrance and wait in the same corridors as defendants’ friends and relatives. This can be particularly uncomfortable and traumatizing for victims and witnesses of crimes such as trafficking in human beings and domestic violence. Taking into account the frequency of delayed proceedings, such

uncomfortable waiting periods for victims and witnesses can be quite lengthy, or worse, in the case of a postponement, unnecessary.

In some courthouses, basic facilities such as toilets are not generally available to the public. In one telling incident, an elderly witness, who had travelled from abroad to testify before a district court, had to walk up and down several floors in the courthouse searching for a toilet before someone finally unlocked a door leading to a toilet that appeared to be available only for court personnel.

d. Premises and Facilities of Appellate Courts

In comparison to the above observations, the Chisinau Court of Appeals and the Supreme Court of Justice have better facilities and courtrooms. The courtrooms of the Court of Appeals are large enough and have proper facilities to accommodate both the parties and the public. None the less, even these courtrooms were occasionally overwhelmed, resulting in standing-room-only crowds. This appeared to be a direct result of the practice of the Court of Appeals and the Supreme Court of Justice scheduling all trials for a given day at the same time of 10 a.m. This scheduling practice resulted in court proceedings that were disorderly, undignified, and lacking in solemnity. People travelling from the regions could wait an entire day before being called to offer 10 or 15 minutes of testimony. The situation was especially dramatic at the Chisinau Court of Appeals, where courtrooms were packed, on occasion the numerous defendants barely fit into the cages,²¹ people came and went from the courtrooms, and the judges could not be heard. Courtrooms at the Supreme Court of Justice were usually, although not always, less crowded and proceedings were conducted in a more solemn and dignified manner.

2. Public Access to Trial Proceedings

The right to a public trial is both a defendant’s right and the public’s right to open and transparent court proceedings. 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”.²² The right to a public trial is also instrumental in securing public trust in the judiciary, and it serves as “one of the means whereby confidence in the courts, superior and inferior, can be maintained”.²³ 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; and the publicity of a trial may enhance fact-finding by bringing new evidence to light as well as by persuading those who testify to speak more truthfully than if permitted to testify in private.²⁴

The principle of publicity of court proceedings is guaranteed by the Moldovan Constitution and other legislative acts.²⁵ From the general rule of holding all hearings in all trials in public, the Criminal Procedure Code specifies the following exceptions under

²¹ During court proceedings in Moldova, defendants who are under arrest or convicted are either held in metal cages in courtrooms so equipped or they are handcuffed and flanked by police officers.

²² *Pretto and Others v. Italy*, European Court of Human Rights, Judgement of 8 December 1983, Series A, No. 71, at 21-22.

²³ *Ibidem*, 21.

²⁴ Judith Resnick, *Due Process: A Public Dimension*, 39 UNIV. FLORIDA L. REV. 405, 419 (1987).

²⁵ See, in particular, art. 117, Constitution R.M.; art. 18(1), CPC; art. 10, Law on Judicial Organization.

which public access to a trial (including all the trial hearings) may be restricted by a reasoned court order: respect of 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.²⁶

Taking into account that one objective of this TM Programme is to monitor implementation of the Criminal Procedure Code in Moldova, as well as to assess the transparency of the Moldovan judiciary and its openness to public scrutiny, monitors paid close attention to whether judges, prosecutors, and court clerks allowed or restricted access to trial proceedings, noting the interaction between judges and court staff, on the one hand, and members of the general public, on the other hand. In general, trial monitors were granted access to most trial hearings they were assigned to monitor; if they were not always welcomed, they were at least tolerated. However, there were numerous incidents when a monitor’s access was refused, restricted, or otherwise conditioned, thus indicating that some judges and prosecutors did not fully understand the principles of publicity and transparency of trial proceedings. The specific sections below on judges, prosecutors, and court clerks provide greater detail on their reactions to the presence of monitors.

During monitoring, it was noteworthy that some proceedings that were otherwise open to the public were declared closed at the very moment when monitors appeared in court to attend them. Some of these instances of denying publicity, *i.e.*, access, may have been well-grounded. However, there were several proceedings that were declared closed to the public, *i.e.* to monitors, without the judge issuing a reasoned decision on holding the proceeding *in camera* at the moment when the judge pronounced the proceeding closed to the public and asked monitors to vacate the office. Such a practice violates Article 18(3) of the Criminal Procedure Code, which expressly requires the judge to provide reasoned argumentation for any decision to hold proceedings *in camera*. In isolated instances, public access was denied on improper grounds, such as “in order to protect the defendant’s reputation” or “because this is a preliminary hearing and all preliminary hearings are closed to the public”. In a few cases monitors reported that court clerks asked all non-parties to vacate the room before the proceedings commenced, even though the proceedings were to be conducted in a courtroom, so there was no issue concerning lack of space.

Vignette C	<i>Case of human trafficking.</i> Before the trial hearing commenced, the court clerk asked the monitors sitting in the courtroom to identify themselves. After she relayed this information to the judge, the monitors were called into his office. The judge inspected the monitors’ identification, made notes of the identification data, and then asked the monitors why they had selected his case to monitor. The judge then explained that it is very difficult to differentiate between a case of pimping and a case of human trafficking, even for the Plenum of the Supreme Court of Justice. The judge said, “These young ladies are prostitutes, they go abroad and prostitute themselves, then they are not happy with the money they get, so upon their return, they complain they were trafficked. But I know their kind, I’ve seen their pictures, they’re all smiling while dancing, and then they say that they were trafficked. By the way, prostitution is perfectly legal in Turkey, you know....” The judge allowed the monitors to remain, but at the end of the trial, he announced that the court would deliberate for 30 minutes and then
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²⁶ Art. 18(2), CPC.

deliver a verdict and sentence. The monitors returned after 20 minutes and saw the defence attorney speaking with the judge at length. The defence attorney then said something to a relative of the defendant, who appeared relieved and immediately started making telephone calls and saying that the defendant was about to be set free with only a fine. Shortly thereafter, the judge delivered the verdict: re-classifying the criminal charge down from human trafficking to pimping and sentencing the defendant only to a fine.

Pursuant to the Criminal Procedure Code, some proceedings should be closed to the public for the purpose of protecting the private lives of parties. In such cases, the OSCE and the Superior Council of Magistrates agreed in the written Memorandum of Understanding that the presence of monitors shall be allowed, provided the parties to the case consent. For instance, when a judge declares a trial in a case of human trafficking closed to the public for the protection of the private life of a party, monitors may still attend and make observations, provided none of the parties objects to their presence. In practice, however, monitors' presence at such trial hearings depended on the judge's discretion. Some judges did not seek the parties' consent and instead appeared relieved to have a legitimate reason to evict the monitors. Some judges did so emphatically, declaring “all trafficking cases are closed to the public!” Other judges were more accommodating, making the effort briefly to explain to everyone the limited role of the monitors, the confidentiality of their reports, and their non-interventionist guiding principles. In such cases, the parties usually agreed to allow the monitors to attend the closed proceeding, even when the cases involved sensitive information.

Public access to trial proceedings was further hampered because many judges did not publicly post their calendar or schedule of cases, thereby preventing the public from knowing when particular trial hearings would take place and restricting the public's ability to access such hearings. Although the Criminal Procedure Code requires judges to post such lists at least three days before a scheduled hearing,²⁷ monitors almost never saw such lists in certain district courts. Judges at other courts had a better record of posting their case calendars, but some of these lists contained insufficient or incorrect data or were out of date. In addition, when monitors asked or observed others asking judges and court personnel to provide them with information about the date and time for a particular trial hearing, some refused, even though such information should have been publicly posted. On a frequent basis, particular judges and clerks were arrogant in refusing to provide the parties and monitors with basic information about the scheduling of proceedings.

Vignette D *Case of corruption.* A monitor, after waiting some time for a trial hearing to commence, asked the court clerk whether the hearing would take place. The judge, who was passing by, heard the question and asked, “Who in the world are you to ask that?” After learning that the individual was a monitor, the judge then supplied the requested information.

The reaction of many judges to the presence of monitors in their courtrooms or offices, and the fact that sometimes they only “accepted” monitors because they had special status in the framework of the TM Programme, indicates a distorted understanding of the fundamental principles of publicity of court proceedings, public access to court proceedings, and transparency of the judiciary. The notion that regular trial hearings are

²⁷ Art. 353, CPC.

public events which should be open to everyone to attend is not yet fully accepted in principle or in practice in the courts in the Chisinau Municipality.

3. Delays and Postponements

Trials before the national courts in Moldova are slow and inefficient because of frequent delays and postponements. Such protracted proceedings may further result in a violation of the defendant’s right to trial within a reasonable time, as guaranteed by Article 6 of the European Convention on Human Rights, because when a case takes more than a reasonable time to be examined and resolved, it may become tainted with unfairness.

Statistical information collected through the TM Programme indicates that delays and postponements are the rule rather than the exception in the courts of the Chisinau Municipality. As shown below, more than half of all trial hearings before the district courts commenced at or within 15 minutes of the appointed time. However, more than 15% of all trial hearings commenced with delays of thirty minutes or more.

Delays in the Commencement of Trial Proceedings (Average % per District Court from Chisinau Municipality)

Length of Delay	District Courts from Chisinau Municipality				
	Botanica	Buiuani	Centru	Ciocana	Riscani
<i>On time</i>	29%	21%	25%	21%	26%
<i>0-15 min.</i>	39%	37%	36%	24%	41%
<i>15-30 min.</i>	17%	27%	27%	33%	20%
<i>30-60 min.</i>	11%	15%	8%	16%	8%
<i>over 1 hour</i>	4%	0%	4%	6%	5%

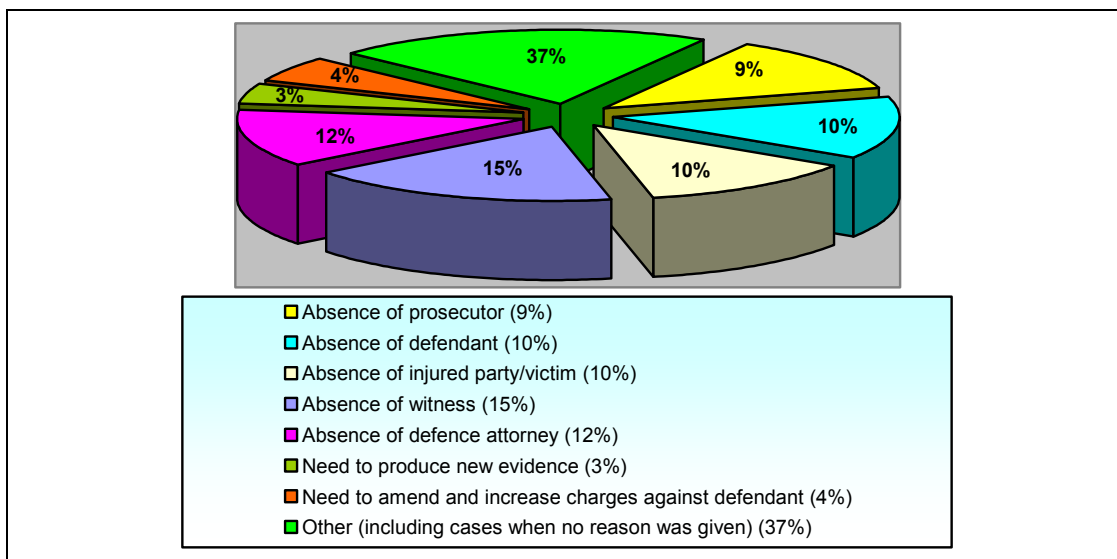
Delays were usually caused by poor punctuality and discipline of the parties; that is, court sessions were delayed because one of the parties, most frequently the defence attorney or the prosecutor, arrived late. Often no explanations were offered for tardiness or other delays, which gave the impression that poor punctuality is an accepted practice. Other times, trial hearings did not start on time because the judge had not finished the preceding case. Sometimes proceedings were delayed because the case involved too many parties to be accommodated in the judge’s office and no courtroom was available. In such instances, the judge with the larger gathering of parties and witnesses would exchange rooms with the judge occupying the courtroom. Such a practice, while practical, resulted in delays to both sets of proceedings. Monitors also observed a few isolated instances when trial hearings were delayed because the judge was strolling down the corridor from office to office, chatting with other judges, although it was clear that all the parties were standing at the office door ready for trial.

Vignette E *Case of pedalling in influence.* In one case where the prosecutor was systematically late for court, the defence attorney asked the judge: “How come these monitors are always on time, while the prosecutor keeps coming late?” The judge replied, “Well, you know, the prosecutor, unlike them (*i.e.*, the monitors), doesn’t get paid by the European Court of Human Rights or the Chelsea football team.”

Lengthy delays were uncomfortable for all the parties, but especially for victims and witnesses in cases involving serious crimes. As mentioned above, Moldovan courts are not equipped with special entrances and waiting rooms for victims and witnesses testifying in complex or emotional cases. Delays therefore increased the amount of time victims and witnesses sat in corridors waiting for proceedings to commence. Moreover, while waiting in the dark and cramped corridors of the courthouse, victims and witnesses often were forced to confront defendants and their friends, family, and attorneys. In cases of human trafficking or domestic violence, long periods of waiting and confrontation could be not only uncomfortable but also traumatizing.

None the less, while delays were unpleasant for everyone involved in trial proceedings, they caused less frustration than postponements. Indeed, all categories of trial participants complained to monitors about frequent postponements of court proceedings. Statistics show that more than 40% of all postponements were attributable to the absence of one or more of the parties. When this is added to the postponements attributable to the absence of witnesses, more than half of all postponements resulted from the absence of a key participant at trial. Often parties failed to appear in court for excusable reasons, such as the death of a close relative, serious illness, or absence from the country. However, there were numerous postponements caused by unjustifiable reasons, such as unannounced vacations or attendance at a football match with colleagues. In addition, many times prosecutors and defence attorneys failed to provide any explanation or prior notification for their absence.

Reasons for Postponements
(Average % per All Courts from Chisinau Municipality)



Such postponements, in addition to interfering with the efficient administration of justice, angered and annoyed those parties who did appear in court. Victims, injured parties, witnesses, and defendants expressed ire and indignation when a trial was delayed or postponed because the judge was absent or the prosecutor or defence attorney failed to appear, particularly when it was clear that advance notice could have been given but was not. Based on monitoring observations, it appeared that some parties who initially attended all scheduled court hearings eventually stopped appearing in court because they lost confidence in the judicial process after repeated delays and postponements.

<u>Vignette F</u>	<i>Case of bribery.</i> In a case involving a bribe of 60 MDL (~4 Euros), when the trial was postponed into a second year, the defendant said, “Give me any paper and I’ll sign it, I’ll admit to everything, let’s just finish this once and for all.”
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Surprisingly, some judges appeared reluctant to apply legal sanctions to deter and prevent unjustified delays and postponements.²⁸ These judges tolerated parties systematically arriving late or not appearing in court, without applying legally permissible sanctions such as fines or ordering the forced delivery of the person to court. However, sometimes judges appeared to lack effective measures for dealing with some causes of postponements. For example, in cases where judges had ordered the parties to be forcibly delivered to court, there were not enough judicial police officers to locate and escort the party to court. Moreover, judicial police officers, even when available, did not always diligently perform their duties. In one case, the court repeatedly asked for a person to be forcibly delivered to court, but for various reasons the police failed to execute the court order. The judge did not sanction the responsible police officers but simply kept repeatedly postponing the trial.

Monitoring also revealed that the usual procedure followed to order a postponement is not the one prescribed by the applicable law. Trial hearings were often postponed without being formally opened, in violation of the procedure set forth in the Criminal Procedure Code.²⁹ For instance, if a trial was chaired by a panel of judges and the panel knew the hearing would be postponed, then often only the presiding judge would open the hearing and announce the postponement. Sometimes no judges appeared at all: only the court clerk met the parties, announced the postponement, and set the new trial hearing date. In such cases, the court clerk often offered no reason for the postponement or stated, for example, that the judge was sick, was attending a seminar, or had been “called to the Presidency”. Trials were also often postponed by telephone.

Some trial hearings were postponed because the courts lacked basic technical equipment. In one district court case, a prosecutor needed to show videotapes as evidence, but there were no televisions or video cassette recorders (VCRs) available in the courthouse. Consequently, the hearing was postponed, with the prosecutor promising to bring the necessary equipment to the next hearing. In this case, the hearing was postponed on two further occasions until the prosecutor finally managed to locate and deliver the necessary video equipment to the court.

Vis-à-vis length of postponements, monitoring revealed frequent postponements that lasted more than one month due to the busy agendas of judges, prosecutors, and

²⁸ See art. 320-324, CPC.

²⁹ See, in particular, art. 331, CPC.

defence attorneys. In one case involving a high political figure, court sessions were postponed from early May until late September because first the prosecutor and then each judge on the panel planned to go on vacation. Such practices caused even simple trials with few witnesses to last an unduly long period of time.

Lastly, the practice must be noted at the Chisinau Court of Appeals and the Supreme Court of Justice of scheduling all cases (sometimes more than 20 cases) on each given day to commence at 10 a.m. Obviously not all cases can be examined at one time, yet this practice requires all trial participants to be present in the courtroom at one time. Firstly, this practice caused the courtrooms to be unnecessarily full and sometimes chaotic during the first few hearings of the day. Secondly, participants involved in cases called for examination late in the day were forced to wait long hours, sometimes all day, before their case was called. Participants residing in the regions who must travel long distances to Chisinau bore an especially great burden as a result of this scheduling practice. Moreover, sometimes the Chisinau Court of Appeals or the Supreme Court did not manage to examine all the cases on the docket, which meant that after waiting an entire day, some trial participants were informed by the court that their case had been postponed and they must return on another day at 10 a.m. Trial participants viewed these delays and postponements as unreasonable and avoidable.

<p><u>Vignette G</u> One elderly woman from a village complained that she had begun her trip to Chisinau very early in the morning in order to be present at the Supreme Court at 10 a.m. Then she waited the entire day for her case to be examined: she was afraid to go to lunch or even to the bathroom for fear that her case would be postponed in her absence. The day finally ended without her case being examined. The justices postponed her case to another day because they had reached the end of their working day. In addition to being disappointed about having lost an entire day in court, the elderly woman was also distressed because she had missed the last bus back to her village.</p>
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4. Security and Public Order

Based upon trial monitoring, it appears that security in court premises in the Chisinau Municipality is not effectively secured. While no major security incidents were recorded directly through trial monitoring, it is well known that in some cases judges were threatened or assaulted by defendants in the middle of trials. This lack of security further affected the experience of victims and witnesses in court while awaiting trial.

Each court in the Chisinau Municipality has several, usually three or four, judicial police officers who are responsible for maintaining public order. This insufficient number of judicial police officers meant that sometimes there was no police officer available to secure the forced delivery of a person to court as ordered by a judge or prosecutor. The failure to bring those persons to court led to further delays and postponements of the proceedings. In some cases the escort police officers and arrested defendants arrived late to court and contributed to delays in the proceedings. Monitoring further revealed a lack of effective coordination between the escort police service and the judges, as sometimes trial hearings were scheduled for specific days and times when escorts were not available, again resulting in postponements. One judge, frustrated by the lack of effective coordination with the escort police service, said, “I hope at least these monitors will write about this in their report, because I have called the Ministry of Justice and the Ministry of Interior, and they say it’s not their responsibility to bring defendants

from penitentiaries to court.” This complaint was echoed by other judges as well, who noted both the insufficient number of judicial police officers as well as the failure of judicial police fully to comply with orders given to them by judges.

With respect to the performance of police officers who escorted arrested defendants to court, monitoring showed that the majority of police officers exhibited professional and neutral conduct in court. There were a few isolated circumstances when it appeared that some defendants enjoyed preferential treatment; for example, in one case involving multiple defendants facing the same charges, some defendants were escorted without handcuffs and with seemingly greater respect from the escorting officer than other defendants in the same case. Conversely, there were other cases in which defendants, who did not appear to pose a threat to society, were escorted and guarded by masked and heavily armed police officers. These cases appeared to be deliberate displays of force aimed at intimidation and casting negative publicity on the defendants.

Finally, international fair trial standards require that no physical attributes of guilt be borne by the defendant during the trial that might affect the presumption of his or her innocence. As such, 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 officers 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 presumption of innocence concerns, in particular circumstances may also amount to degrading treatment of the defendant.³⁰

B. Participants in Trial Proceedings

During trial court proceedings, there are various professional actors and several key lay persons who must participate in the proceedings. With respect to professional actors, firstly, there is the judge who presides over the proceedings and is ultimately responsible for ensuring that justice is done. Secondly, there is the prosecutor, who represents the State, and the defence attorney, who represents the defendant. Thirdly, there is the court clerk, who is primarily responsible for recording the minutes of trial hearings in order to make an official record of the case. Fourthly, in cases in which not all the parties understand or can communicate in the State language (*i.e.*, Moldovan/Romanian), there is the interpreter or translator, who assists the parties with any necessary translation. With respect to lay persons, depending on the nature of the criminal offence and the circumstances of the case, there may be a victim or a witness or both. Each of these actors plays an important role, and each has rights and obligations that contribute to the administration of justice and the fairness of the proceedings overall. Accordingly, in order to understand how the judicial system functions in total, it is important to understand the performance of each of these actors individually and collectively.

³⁰ See *Sarban v. Moldova*, European Court of Human Rights, Judgement of 4 October 2005, para. 90 (Court found that because the defendant “was always brought to the court in handcuffs and placed in a metal cage during the hearings” and because his doctor “had to measure his blood pressure through the bars of the cage in front of the public”, such treatment constituted degrading treatment in violation of Article 3 of the ECHR).

As a point of digression, when considering the observations about the performance of each of the professional participants in the judicial system in Moldova, it may be useful to keep in mind the low official salaries paid to some of them.³¹ Judges in Moldova were recently given raises. Justices at the Supreme Court of Justice now earn 6,000 Moldovan Lei (MDL)³² (~360 €) per month gross salary, plus 200 to 500 MDL (~12 to 30 €) for “recognition of teaching grades and academic titles” (“*grad de atestare*”); judges at the Court of Appeals earn 5,200 MDL (~310 €) per month gross salary, plus the same additional recognition amount; and judges at the District Courts earn 4,200 MDL (~250 €) per month gross salary, plus the recognition amount. However, in 2006, including the period of monitoring, judges did not receive their entire salaries due to a shortage of State funds. Prosecutors serving in the General Prosecutor’s Office earn 3,900 to 6,000 MDL (~235 to 360 €) per month gross salary, while prosecutors serving in the territorial prosecutor’s offices earn 3,800 to 4,800 MDL (~230 to 290 €) per month gross salary. Private contracted defence attorneys charge on average 100 to 700 MDL (~6 to 40 €) per hearing, while *ex officio* appointed defence attorneys earn 80 MDL (~5 €) per hearing attended. Translators, interpreters, and court clerks each earn 600 to 900 MDL (~35 to 55 €) per month gross salary, plus 200 to 500 MDL (~12 to 30 €) for the recognition amount. Presumably, if judges did not receive their entire salaries in 2006, then other professional actors paid by State funds also may not have received their entire salaries in 2006, but as of the date of this report, this assumption has not been confirmed.

1. Judges

a. Reaction of Judges to Monitoring

The reaction of judges to the presence of monitors has varied greatly. In some respects, the reactions of judges to monitoring can be related to the general level of transparency in their work as well as their openness to public scrutiny. Most judges accepted monitors freely, saying that hearings are public under the Constitution; therefore, everyone may attend them. Many judges exhibited a neutral attitude about monitoring and seemed unaffected by the presence of monitors, asking only a few questions about the TM Programme in their first encounter with monitors. Occasionally judges were polite and forthcoming; some invited monitors to review the case file to ensure the accuracy of their observation reports. Some judges took extra efforts to accommodate monitors by bringing additional chairs into their small offices or by inviting monitors to attend particularly “interesting” cases. For the purposes of the TM Programme, however, it did not matter whether judges were cooperative or simply ignored monitors, as long as they allowed monitors to attend public proceedings and exhibited a proper understanding of the principle of publicity of court proceedings.

Unfortunately, despite the Memorandum of Understanding with the Superior Council of Magistracy, monitors encountered judges who were reluctant to admit them into trial proceedings. Some judges only admitted monitors after carefully checking their OSCE identification cards, while other judges further checked and made notes from their Moldovan identification cards. Judges on several occasions told court clerks to note monitors’ names and presence in the courtroom in the minutes of the trial hearing. Some

³¹ See Annexes 3 and 4, Law on the System of Salaries in the Budgetary Sector, no. 355-XVI of 23 December 2005 (Official Gazette no. 35-38/148 of 3 March 2006), with subsequent amendments.

³² As of the date of this report, the exchange rate is approximately 16.7 MDL per 1 Euro; the calculations contained in this paragraph are based upon this exchange rate.

judges asked detailed questions about the TM Programme and inquired why they or their particular case had been selected for monitoring. Some judges asked inappropriate questions about how much money monitors were being paid for their work, who paid for “this pleasure”, and whether monitors did not have something better to do with their time. Some monitors reported feeling intimidated by particular judges on occasion.

Some judges were suspicious of monitors and reluctant to allow them into their offices, even during a public trial. Numerous judges were surprised to encounter monitors and asked why they had not been informed in advance of their presence. One judge allowed monitors to be present but told them that they could not take notes because they were not “ministers” and could not just come in and start taking notes; nevertheless, this judge conducted the trial in a professional and dignified manner. Another judge allowed monitors to attend the trial but warned them straightforwardly to be careful about what they wrote in their observation notes.

<p><u>Vignette H</u> <i>Case of (passive) corruption.</i> Upon the arrival of monitors, the judge reacted: “How did you learn about this case? I did not invite you here. When the clerk came asking about cases for your [Trial Monitoring] Programme, I did not give any information about this case!”</p>
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Regrettably, some monitors were rudely ejected from proceedings and even had doors slammed in their faces. For example, at one public trial, a judge from a district court threw monitors out of his office shouting: “Out! Out! Go monitor in the corridor!” A few judges told monitors not to bother to show up again because they would not be allowed to attend any future proceedings.

Several judges invoked the pretext of not having enough space in their offices to preclude the presence of monitors. As explained above, many judges do have small offices that cannot suitably accommodate all the parties; none the less, it was apparent that the diminutive size of offices frequently served as an excuse to avoid monitoring. On a few occasions, monitors noticed an open and available courtroom even as they were being evicted from a judge’s office and told that there was not enough space to accommodate them in the proceeding. While ejecting them, some judges emphatically asked monitors to note in their reports that the State should provide more courtrooms for the courts.

Some judges who did not exclude monitors viewed them with suspicion. For instance, one judge who did not initially react to monitors’ presence during the proceedings later remarked to the defence attorney: “Look, we don’t need all this circus here. I know you brought these monitors to help your case....” The defence attorney and monitors objected, but they could not persuade the judge that the monitors were neutral observers.

Monitors’ mere presence often had a direct impact on the proceedings. When they learned monitors were present, some judges immediately put on a robe, turned off their mobile phone, and searched for a courtroom. Other judges, seeing monitors, resumed proceedings by saying: “look, we must do everything by the book now” or other similar phrases. Such instructions seemed to astonish everyone, particularly prosecutors and defence attorneys.

Vignette I *Case of pedalling in influence.* Prosecutor, sitting relaxed and pointing towards the monitors while addressing the judge: “Why weren’t these witnesses removed from the courtroom?”
Judge: “They are not witnesses, they are monitors. Why in the world do you think we are bothering to write down the minutes of the hearing? This case is complicated and under control.”

More unexpectedly, some judges interpreted the presence of monitors as an indication that the case had been “taken under control” (“*luat la control*”). This phrase in the Moldovan/Romanian language expresses that a higher authority is watching or guiding—literally controlling—the situation. Several judges, upon seeing monitors, told the parties: “This case is a complex one, and it has been taken under control. We are being monitored, and therefore we must do everything by the Code.” Such remarks, while exhibiting a basic misunderstanding about the role of monitors, also raise concerns about the degree to which judges feel they are truly independent.

Conversely, monitors also observed that judges in some cases appeared relieved when they saw monitors present. One possible explanation for this reaction is that with monitors present, these judges could more easily withstand any external pressure applied on them. Such was the explanation offered in one high profile case, where the judge approached monitors and expressed thankfulness for their presence because it made it easier for the judge to withstand pressure from the prosecutor, who had even attempted to offer the judge a bribe.

Overall, the presence of monitors appeared to result in judges’ ensuring a greater respect for due process and more dignified court proceedings, which in itself attests to the value of trial monitoring. Based upon the reaction of some trial participants to the judges’ conduct in the presence of monitors, it appeared that certain legal procedures were being followed for the first time. For instance, one prosecutor looked stunned when the judge told him that everything had to be done in an orderly fashion and strictly by the Code this time. An interpreter was stupefied when warned of criminal liability for deliberately falsifying translations. A court clerk was visibly uncomfortable with having to write everything in the minutes of the trial hearing. It must also be noted, however, that based upon their overly formal conduct, remarks, and ironic smiles, at times it was obvious that certain judges and parties were simply putting on a show for monitors.

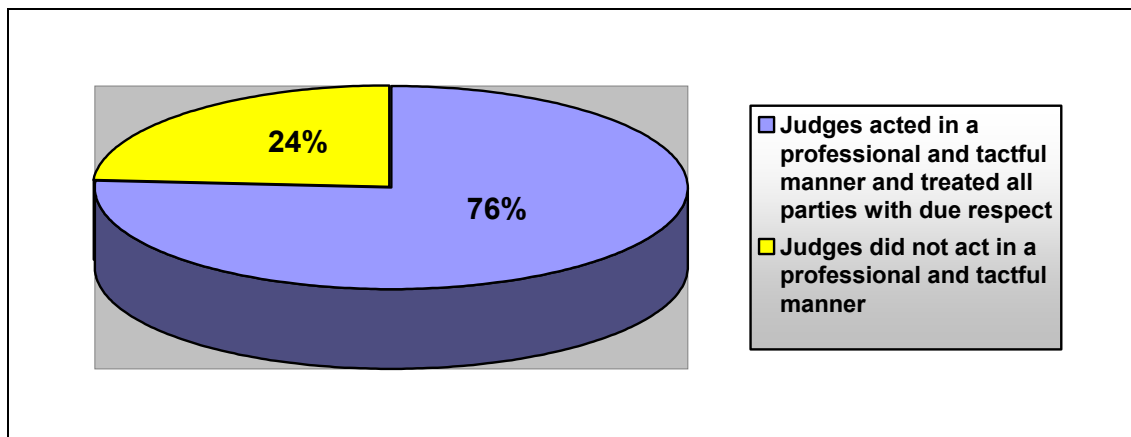
Vignette J *Case of abuse of office.* Judge to defence attorney: “Where is your Criminal Procedure Code? Why don’t you keep it on the table during the hearing? Huh?”
Defence Attorney: “But where does it say that I must keep the Code on the table?”
Judge: “I know where. You just don’t have a Code, that’s all.” To the clerk the judge said, “Write somewhere in the minutes of the hearing that the defence attorney does not have the Code on the table.” (This was a pointless remark as the clerk was not registering anything at all in the minutes of the hearing.)
In the end the defence attorney took out the Code and ostentatiously put it on display on the table.

b. Professional Performance of Judges

Based upon trial monitoring, most judges serving in the Chisinau Municipality display professionalism at trial. Most did not unjustifiably restrict public access to trials.

When opening a trial hearing, most verified that all the parties had been informed of and understood their rights and obligations. Most listened attentively to and did not arbitrarily restrict pleadings or arguments. Most asked only clarifying questions and did not become actively engaged in questioning witnesses or the defendant. And most appeared to act independently and impartially while addressing parties in a tactful manner and ensuring that proceedings were conducted in as orderly and dignified a manner as possible, taking into account the conditions of judges’ offices where trials were conducted.

Ethical Performance of Judges during Trial Proceedings (Average % per all Courts from Chisinau Municipality)



Monitoring further revealed, however, notable exceptions to the general rule of judicial professionalism, with particular judges deviating from legally prescribed due process requirements. For example, some judges did not explain a party’s rights in an understandable manner. Later, when it became clear that the party did not understand his or her rights or a question addressed to him or her, the judge simply repeated it, often more loudly and more impatiently, or made an improper remark about the person.

Vignette K *Case of bodily harm.* During a district court trial, the judge asked the defendant if he had his identification card, but the defendant said he had forgotten it. The judge then asked, “Why didn't you bring your ID? Do you think this is a marketplace, a disco, or what?” The defendant's mother explained that her son has some “mental problems”, to which the judge replied, “That's all right, we can fix that. We've got special places for his kind.” (“У нас для таких как он есть специальные места.”) The judge then asked the indigent defendant if he had a defence attorney. When the defendant responded “no”, the judge did not explain that he could be assigned an *ex officio* defence attorney, but instead said, “Well then, what are you waiting for? Go look for one. Next time come here only with a lawyer. Go out and find yourself a lawyer.”

Monitors also observed many judges making improper remarks during proceedings. These remarks often took the form of inappropriate jokes, dismissive replies, or impolite comments that were unrelated to the case and exhibited the judge’s arrogance and lack of respect for the parties. Monitors recorded the following such remarks by judges:

- To a prosecutor: “Why don’t you shut up!” (*Da mai tashi, mai!*);

- To a defendant: “Get up, you!” (*Ridica-te in picioare, vai!*); and, limiting another defendant’s testimony: “Ahhh, alright, that’s enough for you now” (*Offf, gata, ti-ajunje*); and
- To a defence attorney: “Whether I talk to you or your defendant, it’s all the same” (*Ori cu tine sa graiesc, ori cu inculpatu’, tot asheia*).

Vignette L	<i>Case of domestic violence. Party: “Your honour....” (“Ваша честь....”)</i> Judge (interrupting): “My honour is fine so far, thank you.” (“С моей честью пока все в порядке, спасибо.”)
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In isolated cases, judges made side comments that revealed bias or preconceived ideas and appeared to prejudge the defendant. For example, the judge in one case, while looking at the case file, remarked: “Why, this guy should be given a medal, he killed his mother-in-law after all....” Everyone in the hearing laughed. In another case, the judge said, “This guy has killed her and now refuses to be present at trial.” Although these comments did not always elicit an objection from defence attorneys, they call into question the principle of the presumption of innocence and indicate fundamental lack of respect for defendants and victims.³³

In response to ever-increasing workloads, judges were occasionally observed sacrificing procedural niceties in the interests of efficiency. For instance, some judges did not read out the documentary evidence, as required by Article 373(3) of the Criminal Procedure Code, but rather only identified it and said it could be read out later should the need arise. Sometimes only the chairperson of a three-judge panel, or even just the court clerk, would attend a hearing if it was known in advance that the hearing would be postponed. Judges – usually at appellate courts but occasionally also in district courts – examined several cases in a row and then deliberated upon all of them at one time. On one occasion, a judge held the preliminary hearing without the prosecutor, in order to avoid yet another postponement of the case.

Such “shortcuts”, whilst in theory increasing efficiency, also occasionally resulted in more serious procedural violations. In one case, witnesses who should have been removed from the court remained throughout the hearing because the judge failed to follow the procedure of identifying all trial participants at the onset of the proceeding; the witnesses who remained then had to be dismissed in a move that may have prejudged one of the parties. Judges’ heavy workloads may also affect their interaction with the parties. Judges were sometimes impatient with and insensitive to victims and witnesses, and they tried to hasten testimonies, which at times led to victims and witnesses becoming inhibited and refusing to speak.

Monitors further observed that not all judges have altered their trial roles to reflect the more adversarial system required by the new Criminal Procedure Code, as amended in 2003, which shifted from a predominantly inquisitorial to a more adversarial system. As a result, judges should limit their trial interventions, ask mostly clarifying questions, and let prosecutors and defence attorneys play the leading roles in eliciting and producing evidence. Yet, monitoring revealed that many judges engaged in detailed questioning of witnesses, and, in some instances, judges seemed to take over the role of accuser. The

³³ See art. 6(2), ECHR; art. 14(2), ICCPR; OSCE Copenhagen Commitments, para. 5.19; art. 21, Constitution R.M.; art. 8, CPC.

failure of judges to adhere to the more limited role associated with adversarial proceedings, at times, appeared to be the result of arrogance and what is sometimes referred to as “black robe disease”. In their defence, judges sometimes were forced to be active in eliciting information and evidence from witnesses because the prosecutors and defence attorneys were overly passive. In some cases judges even had to ask or instruct prosecutors and defence attorneys to be more active in the case.

In addition, monitors witnessed instances where judges suddenly changed the agreed order of judicial examination without consulting the parties. For example, the parties and the court may have initially agreed to hear witnesses first, but then the judge unilaterally changed the order of evidence so that defendants testified first. This led to great frustration among the parties, particularly for witnesses who appeared in court that day for nothing.

With respect to witness testimony, monitors witnessed judges refusing to hear a witness’ testimony. In one case, an injured party stood to speak but was immediately ordered by the judge to sit down and wait. The judicial debates then ended without testimony from the injured party, in breach of Articles 377 and 378 of the Criminal Procedure Code. On the other hand, in several trafficking cases, monitors observed judges asking humiliating questions that were not relevant to the case, such as how many clients the victim had to entertain each day and how much time she had spent with each of them. In other cases, judges did not react when irrelevant or insulting questions were posed to victims or witnesses, although they are required to protect individual rights and dignity.³⁴ Such conduct also violates the Criminal Procedure Code, which expressly prohibits questions intended to insult or humiliate a person³⁵ and obliges judges to ensure the safety, dignity, and honour of victims and witnesses.³⁶

Monitors noted that proceedings were frequently conducted in an overly relaxed atmosphere. Judges did not always display a serious demeanour, did not dress appropriately, and sometimes let proceedings stray off course. Monitors observed judges from the panel leaning on one another, putting their arms behind each other in relaxed poses, exchanging notes, and making jokes. One judge instructed a witness about to take an oath to “swear on that drape over there” (“*jiura shi tu pe perdica sheia*”), much to everyone’s amusement. Such comments may affect the solemnity of court proceedings, even when they are intended to make people feel more comfortable.

With respect to judicial attire, although not clearly prescribed by law,³⁷ it is understood that a judge should wear a robe or, at least, be dressed in a neat and sober manner to maintain the solemnity and dignity of court proceedings. While judges of the Supreme Court of Justice and Chisinau Court of Appeals always wore robes during court proceedings, judges of the district courts exhibited a more liberal attitude towards their dress. Understandably, robes become a substantial burden during summer months when temperatures rise, particularly in light of the absence of air conditioners in the district courthouses. Nevertheless, many judges did wear robes at least during sentencing. When they did not wear robes, judges in the vast majority of cases were formally and

³⁴ See art. 15(1), Law on Status of Judges.

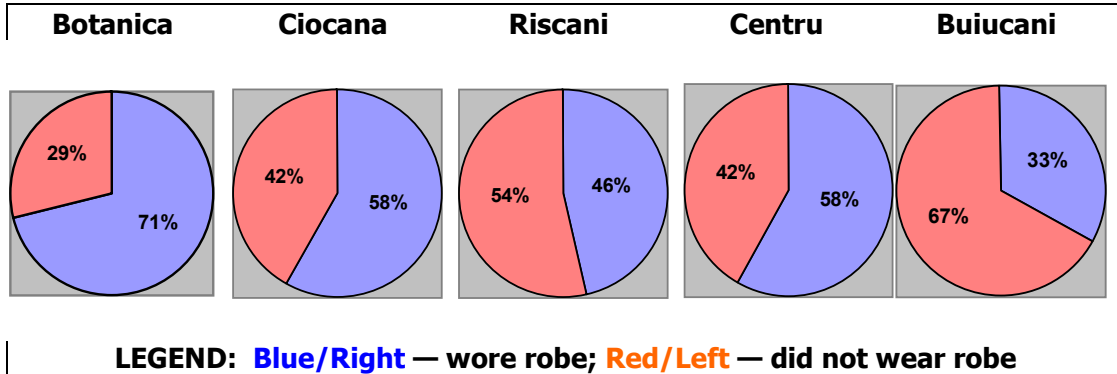
³⁵ Arts. 105(8) and 109(2), CPC.

³⁶ Art. 215, CPC.

³⁷ Art. 16, Law on Status of Judges (provides that “judges must have the attire prescribed by law”, without further detail).

appropriately attired. However, in isolated instances, monitors observed judges wearing jeans, t-shirts, and sneakers while presiding over court proceedings.

**Judges* Wearing Robes during Trial Proceedings
 (Average % per District Court from Chisinau Municipality)**



Monitors noted frequent disruptions to the proceedings because judges either stopped paying attention or engaged an activity other than presiding over the case at hand. Judges were seen reading the *Official Gazette* or a student diploma thesis, typing into computers, printing documents, and calling people to pick up documents. Some judges had prolonged telephone conversations that were quite disruptive to the ongoing trial proceedings. Other judges left the courtroom to speak freely on the telephone without announcing any break to the ongoing proceedings. Monitors saw some judges bring and use both a mobile telephone and a radio/cordless telephone in the courtroom. In an extreme instance, one judge spoke nine times on the telephone during a single court session. Moreover, the topics of judges’ telephone conversations during court sessions were often amazingly unimportant; they included discussions about recipes, detailing all cooking ingredients, and discussions about vehicles, including technical engine details. Of course, many judges refused to take telephone calls during proceedings or engaged in conversation only long enough to defer the call. These judges demanded similar respect from all the parties and often instructed everyone to turn off mobile telephones while in court. Such proceedings were accordingly more solemn and dignified.

When judges sat as a panel, monitors frequently noted that only the presiding judge or the judge reporting on the case actually paid attention to the proceedings, while the other judges read other case files or even left the courtroom before returning to deliberate. On a few occasions some judges on a panel fell asleep in the middle of ongoing proceedings.

Vignette M *Case of Trafficking in Human Beings.* The district court judge appeared to fall asleep after resting his head on the Criminal Code lying on his desk. The defendant quickly took advantage of the situation to threaten the victim with non-verbal hand gestures simulating cutting her throat. With the judge apparently still sleeping, the prosecutor joking with the court clerk, and no counsel for the victim, nobody took notice of this intimidation except the trial monitors.

* Note, these statistics are based upon 789 monitored court hearings; although an attempt was made to attend proceedings presided over by as many judges as possible, not all district court judges were observed.

Some judges frequently showed a lack of respect for the parties. In one case, everyone was present and waiting at the judge’s office for the trial hearing to start at the scheduled hour, but the judge nevertheless continued to slowly stroll along the corridor from office to office for about 20 minutes. Other judges displayed a lack of concern for finishing a trial within a reasonable time.

<p>Vignette N <i>Case of domestic violence.</i> The following conversation took place when a defendant failed to appear on 6 June 2006: Prosecutor: “Maybe he was afraid to come today. It’s the 6th day of the 6th month of the year ’06.” (Laughs) Judge: “That must be it! Well then, let’s schedule the next hearing for the 13th of July at 13:00. Let’s see if he comes then. And after that, we’ll schedule the hearing for the 13th of the next month, and so on. Let’s see what he’ll do. (Everyone laughed and agreed with the judge.) Defence Attorney: “I will be on vacation on the 13th of July, but that’s alright, you keep working, I’ll return sometime in September.”</p>

Monitors also witnessed other inappropriate practices for which judges were at least partially responsible. Monitors quite often saw prosecutors and sometimes defence attorneys individually meeting with the judge in lengthy private sessions. The prosecutor or defence attorney would then come out and announce that the hearing had been postponed, invoking various reasons such as absence of parties or insufficient time for the hearing. While no one can say with certainty what occurred during private sessions in judges’ offices, the mere presence of only one side behind closed doors with the judge gave rise to concerns about the judge’s impartiality and negatively affected the appearance of propriety. Monitors further observed cases of people entering a judge’s office with handfuls of bags and departing from the same office with empty hands, which easily raised suspicions of judicial impropriety. Such informal and non-transparent practices further directly affected the solemnity and dignity of court proceedings.

Thus, preliminary monitoring indicates that while most judges in the Chisinau Municipality performed their duties in a professional manner and with due diligence and responsibility, there were also some judges who disregarded procedural rules or displayed conduct not befitting the holder of judicial office. However, even a few such judges can influence the overall administration of justice as well as the public’s trust in the judiciary.

2. Prosecutors

The limited scope and mandate of the TM 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 about the way prosecutors perform in court in terms of their professional qualification and discipline and their interaction with the public in general.

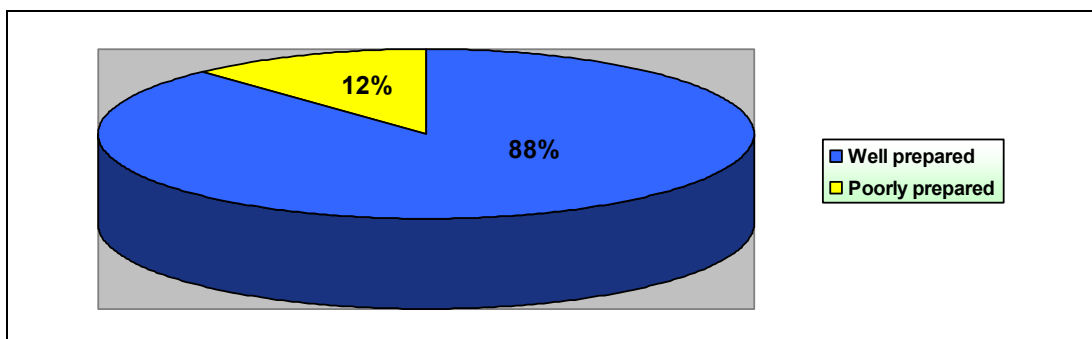
The reaction of prosecutors to the presence of monitors varied considerably from one prosecutor to another. Some prosecutors showed little respect for monitors, referring to them as “unwanted guests” and trying to eject them from particular trial proceedings by asking the judge to close the trial. Such attempts raised concerns about potential prosecutorial abuses in those cases. Some prosecutors, like some judges, interpreted monitors’ presence as an indication that the case had been “taken under control” (“*luat la*

control”), and they were suspicious of monitors. Other prosecutors interacted well with monitors and even seemed relieved to have them present in some cases in which judges behaved arrogantly. Numerous prosecutors complained to monitors about being overloaded with cases and lacking adequate time properly to prepare their cases. Several prosecutors commended monitors for their work and suggested that monitoring be extended to pre-trial stages of the proceedings as well, as that is where they claimed most procedural violations occurred. Interestingly, a number of judges echoed this suggestion.

Prosecutors, as a rule, were well prepared for trial proceedings and in general were more disciplined than defence attorneys. The majority of prosecutors demonstrated a clear strategy in presenting the accusation. They were generally active throughout the trial hearing, displayed good interrogation/examination skills, and elicited relevant information from their witnesses. Prosecutors continued to have problems securing the appearance of witnesses at trial, and monitors witnessed several instances when prosecutors were forced to proceed with their case in the absence of witnesses who had repeatedly failed to appear in court.

Conversely, monitors observed some instances when prosecutors came to trial unprepared and were passive. In some cases, it appeared from their remarks that they had opened the case file for the first time on the day of the trial. In a few isolated cases the prosecutor was so obviously unprepared that the judge had to give him a warning and announce a 10-minute break so he could review the case file. According to prosecutors, one reason why they are sometimes unprepared is their heavy caseload, which leaves them with insufficient time to prepare for each case. While certainly true, monitors also observed the occasional prosecutors reading newspapers under the table during trial, slowly turning the pages, before then asking others to repeat what they had said.

**Performance of Prosecutors during Trial Proceedings
(Average % per all Courts from Chisinau Municipality)**



There were also several trials during which the prosecutor left the courtroom in the middle of the proceedings, forcing someone later to go in search of him or her. In isolated cases, some young prosecutors seemed not to know even basic trial practice, such as the proper order of judicial examination or the meaning of certain procedural terms. Such occurrences among prosecutors represented the exception rather than the rule, however.

Vignette O *Case of abuse of service.* During a trial in district court, the judge made several remarks to the prosecutor and reminded him of the proper order of examining

witnesses. The judge then offered the prosecution the opportunity to ask questions. When the prosecutor continued to sit, relaxed, taking no action, the judge repeated: “Mr. Prosecutor, word is given to the Prosecution, please ask your question.” The prosecutor replied, “Didn’t you say that word is given to the Prosecution?” The judge looked at the prosecutor and asked, “Mr. Prosecutor, what is your role then?” The prosecutor responded: “I am the Accusation!” The judge replied: “Aren’t Prosecution and Accusation the same thing?” “No,” the prosecutor answered, “I am the Accusation.” At this point all the parties burst into laughter.

While generally professional, prosecutors displayed less significant improprieties with greater frequency. For example, prosecutors were often late for court, sometimes did not stand when addressing the court, usually failed to identify themselves to the parties when replacing another prosecutor, and often failed to wear their uniforms. In Moldova, it is custom for prosecutors to wear a uniform that resembles a dark blue military-like suit with up to three gold stars as part of an epaulet on the shoulder, depending on the rank of the prosecutor. All prosecutors should possess such a uniform for official court appearances since there is an Order of the General Prosecutor obliging prosecutors to wear uniforms whenever they present the State accusation. Notably, although monitors observed that prosecutors often did not wear their uniforms for routine cases, they always wore them for high profile cases involving political figures. The reason for this discrepancy in attire is not known.

**Prosecutors Wearing Uniforms during Trial Proceedings
 (Average % per all Courts in Chisinau Municipality)**

	Supreme Court of Justice	Chisinau Court of Appeal	Centru District Court	Ciocana District Court	Riscani District Court	Botanica District Court	Buiuani District Court
Wore uniform	93%	84%	12%	38%	15%	12%	14%
Did not wear uniform	7%	16%	88%	62%	85%	88%	86%

While such improprieties cannot by themselves be viewed as serious violations of due process, together they may damage the solemnity and dignity of court proceedings, particularly from the perspective of lay persons. Moreover, the wide-spread practice of prosecutors entering a judge’s office before and after a trial hearing and remaining alone with the judge for some time gave rise to an appearance of impropriety and may raise doubts as to the judge’s independence and impartiality.

Some prosecutors also seemed reluctant to seek effective preventive measures against defendants, even in the face of circumstances clearly calling for preventative actions. In one domestic violence case involving a defendant with a criminal history, the victim, who was the defendant’s wife, as well as some witnesses, repeatedly complained in court that the defendant was threatening them with reprisals and pressuring them to change their testimony. In response, the prosecutor remained passive and did not seek any adequate preventive measures against the defendant.

Prosecutors, as compared to defence attorneys, appeared to enjoy preferential treatment from particular judges. While most judges treated both the prosecution and defence with equal respect, there were some judges who showed a clear predisposition in favour of the prosecutors, to whom they listened with particular attention, whilst subjecting defence attorneys to contempt and ridicule. A prosecutor’s solicitation of such preferential treatment and a judge’s granting of favoured status, which is reminiscent of the former Soviet era, can be interpreted as a violation of the principles of judicial impartiality,³⁸ equality of arms,³⁹ and adversarialness of court proceedings.⁴⁰

A special note is due about the performance of prosecutors at the Supreme Court of Justice, which was usually passive, superficial, and purely formal. This may be a consequence of their heavy caseload. Regardless, with few exceptions, prosecutors before the Supreme Court usually did nothing more than read one or two standard phrases stating their position in favour of, or against, the appeal in cassation; then they sat down and waited for the next case to commence, for which they delivered the same standard phrases. Infrequently, a prosecutor provided a more detailed and in-depth analysis of the case.

Thus, similar to the situation with judges, preliminary monitoring indicates that while most prosecutors in the Chisinau Municipality substantially performed their duties in a professional manner, some prosecutors lacked discipline and did not properly serve the public interest. None the less, even this minority of prosecutors interfered with the overall administration of justice and contributed to lack of efficiency of the courts.

3. Defence Attorneys

Defence attorneys generally welcomed and were cooperative with monitors. In contrast to judges and prosecutors, defence attorneys seemed more open to public scrutiny and displayed less antipathy towards outside monitoring.

Monitors noted quite a few cases where defence attorneys and their clients were visibly relieved to have monitors present at their trial and where they took the opportunity to complain to monitors about law enforcement or prosecutorial misconduct and other procedural violations. Some defence attorneys sought additional information about the TM Programme and its objectives. Some further called the National Coordinator to inquire whether monitors could attend other trials during which they alleged many procedural violations were occurring because high-ranking officials had a stake in the cases. Several defence attorneys commended monitors for their work and asked them to detail everything they witnessed. Defence attorneys also alleged that they and their clients would be subjected to negative repercussions from judges if they individually reported abuses they witnessed. Monitors noted instances in which defence attorneys, who were initially cooperative and supportive of monitoring, suddenly ceased interacting with monitors or became openly hostile towards them. The only apparent explanation for this change in behaviour is that the defence attorneys may have been privately reprimanded by either judges or prosecutors or warned to cease their collegial interactions with monitors.

³⁸ Art. 26(3), (5), CPC.

³⁹ Art. 9, CPC.

⁴⁰ Art. 24, CPC; art. 10(3), Law on Judicial Organization.

Monitors were instructed to pay particular attention to the professional performance of defence attorneys because it is directly tied to a defendant’s right to a competent defence, a right guaranteed by the Moldovan Constitution⁴¹ and the Criminal Procedure Code,⁴² as well as international conventions to which Moldova is a party, such as the European Convention on Human Rights.⁴³ The performance of defence attorneys also directly affects such principles as the adversarialness of court proceedings⁴⁴ and equality of arms.⁴⁵

Monitoring revealed a wide range of competence among defence attorneys. On the one hand, monitors observed many defence attorneys whose performance was exemplary, which visibly impressed the public and may have positively affected judges as well. According to monitors, famous defence attorneys commanded much greater respect than other defence attorneys, even more than some prosecutors, and in their presence, trial proceedings were always conducted in an orderly and dignified fashion.

On the other hand, monitors observed numerous defence attorneys who performed poorly. In fact, more than one out of three defence attorneys was not properly prepared for court. In particular, *ex-officio* appointed defence attorneys performed poorly, usually acting merely as a formal presence in the case and exhibiting no initiative to protect the defendant’s interests. There were also cases when privately contracted defence attorneys were clearly not prepared and used their time in court to read through the case file. There were even cases where defendants were more active in conducting their defence than their contracted defence attorneys, sometimes filing petitions and expressing objections while their attorney passively sat by doing nothing. Furthermore, monitors witnessed defence attorneys who, although requested by the court, failed to present their license or certification that they were the attorney-of-record for the defendant, were systematically late for trial proceedings, wore improper attire, addressed the court improperly, and talked on the telephone during oral arguments and pleadings. Monitors noted some defence attorneys displaying a substantial degree of familiarity and affability with prosecutors and judges, whom they saluted with warm greetings or jovial hugs in front of everyone.

<p>Vignette P <i>Case of abuse of office.</i> At one court session the defence attorney was busy playing with his mobile telephone and solving crossword puzzles. After a while, he disappeared into the corridor to make a telephone call. Several people looked for him to no avail. Then the judge said, “Well, let’s wait for a while; he must be finishing his crosswords somewhere.”</p>

In quite a few trials, defence attorneys appeared not to care about their clients. Some defence attorneys seemed more concerned with their accompanying young interns than their clients. In one instance, a defence attorney and intern wrote short messages back and forth to each other during the entire trial hearing, while smiling and disregarding arguments and witness testimony. In a few isolated cases, defence attorneys publicly referred to their clients as “some drunkards” (“*niste betivani*”), not only showing disrespect to their clients but also prejudicing their cases. In one particularly flagrant ill-

⁴¹ Art. 26, Constitution R.M.

⁴² Art. 17, CPC.

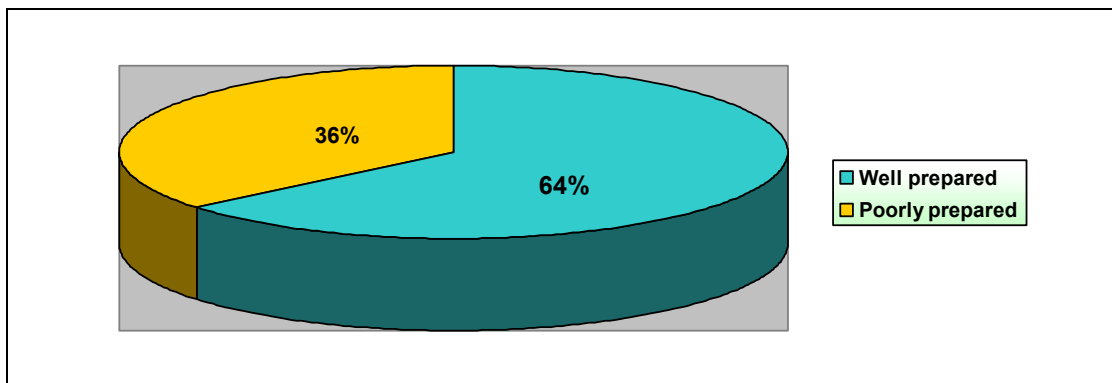
⁴³ Art. 6(3)(c), ECHR.

⁴⁴ Art. 24, CPC; art. 10(3), Law on Judicial Organization.

⁴⁵ Art. 24(2), CPC.

performance, the defence attorney appeared in court so inebriated that at the next hearing he could not recollect his previous actions and had to ask others for necessary explanations.

**Performance of Defence Attorneys during Trial Proceedings
(Average % per all Courts from Chisinau Municipality)**



Before the Court of Appeals and Supreme Court of Justice, monitors witnessed a particularly startling practice where privately contracted defence attorneys who repeatedly failed to appear in court were replaced on the spot at the insistence of judges with *ex-officio* defence attorneys. The appellate court usually gave these newly appointed *ex-officio* defence attorneys some 10 minutes to review the case file before making arguments to the court on behalf of their new defendant. Monitors noted that *ex-officio* defence attorneys in general, and certainly those appointed at the last minute, performed poorly and in the vast majority of cases failed to display initiative and were merely a formal presence. Apparently this practice by the appellate courts is an effort to avoid further delays and to try the case within a reasonable time. None the less, such a practice encroaches on a defendant's right to a defence of his choice and to a competent defence. It goes without saying that a defence produced in 10 minutes cannot be effective, which in turn means that the defendant's right to a fair trial may be violated by this practice.

As previously mentioned, in some cases it was apparent that defence attorneys were not on equal footing with prosecutors, as some judges were clearly more inclined in favour of the prosecution and seemed to attach greater importance to comments and arguments from the prosecutor. No doubt the lack of preparation and competence of some defence attorneys contributed to this inclination. However, this imbalance shifted in cases where particularly famous defence attorneys represented defendants, as they commanded greater respect from judges, often even more than prosecutors. None the less, any imbalance in the respect shown by the court to, or the actual professional competence exhibited by, the prosecution and defence calls into question the principles of impartiality, equality of arms, and adversarialness of court proceedings in practice.

4. Court Clerks

Though not central figures in trial court proceedings, court clerks are usually the first court officials the general public comes into contact with when they appear in court. As such, court clerks play a key role in shaping public opinion about both the functioning

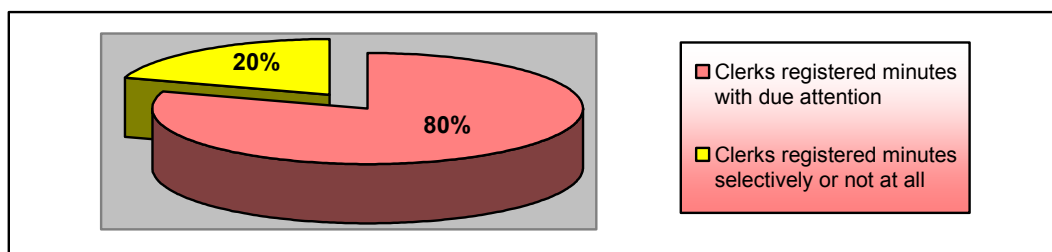
of the judiciary and the administration of justice. Moreover, court clerks are responsible for the crucial task of recording the minutes of court hearings “completely and exactly”.⁴⁶

The reactions of court clerks to monitors varied considerably and in general mirrored the reaction of the respective judges with whom they were assigned to work. Many court clerks exhibited exemplary professional behaviour, treating both monitors and the public with respect regardless of how busy they were. Unfortunately, monitors also encountered court clerks who behaved arrogantly and who refused to provide even simple information, such as whether the hearing would commence as scheduled or when the next hearing was scheduled. Many court clerks preferred to consult with their judges before supplying basic information. There were also court clerks who addressed monitors and the public in a rude and defiant manner, saying things like: “You know, this judge seldom allows observers to attend his/her trials.”

Leaving aside the issue of politeness and good manners with the public, monitoring revealed that many court clerks did not perform their professional duties diligently. On many occasions monitors observed court clerks who were inattentive during trial proceedings. Instead of recording all the statements in the minutes, they preferred to chew gum, chat with the interpreter, or flirt openly with the prosecutor or defence attorney. A few times court clerks left the trial hearing without asking for permission from the judge, who continued as if nothing had happened. Court clerks also liberally used their mobile telephones during proceedings. Afterwards, they would frequently ask the parties to repeat everything they had said because they had “lost their chain of thought” or simply “did not hear anything”.

Many court clerks were passive at trial and reluctant to register anything in the minutes of the trial hearing.⁴⁷ According to monitoring data, in one out of five cases court clerks did not properly record minutes of the proceedings. In a few cases, monitors observed clearly that the court clerks did not record anything whatsoever in the minutes and simply gave a blank piece of paper to the parties to sign, saying she would write the minutes of the hearing later. When court clerks did record minutes, monitors frequently noticed that they recorded statements selectively, often only upon a direct order from the judge, who rephrased the statements and testimony and told the court clerk precisely what to record in the minutes.

Performance of Court Clerks during Trial Proceedings (Average % per all Courts from Chisinau Municipality)



⁴⁶ Art. 83, CPC.

⁴⁷ In Moldova there are 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 the proceedings.

Monitors observed a few cases when court clerks suddenly stopped recording the minutes, saying that “enough is enough” and they were “tired”. In one district court case, the court clerk simply put her pen down and emphatically said that she refused to do any more. After the judge insisted, the court clerk agreed only to finish the sentence, “but not more”. Occasionally court clerks disagreed with the judge or prosecutor as to the date for the next hearing, saying things like, she refused to work that day “out of principle”.

The fact that court clerks registered the minutes by hand inevitably slowed down the pace of trial proceedings. Proceedings were further slowed because court clerks tended to wait for the judge to rephrase statements and testimony of other court participants. In fact, some judges would literally tell the court clerk what to record or omit from the minutes, as well as direct the translator what to translate, all of which extended trial proceedings. Indeed, it sometimes seemed to monitors that trials were transformed into series of dictations, with participants taking turns dictating statements to the court clerk to record in the minutes, under the guidance and direction of the judge.

<p><u>Vignette Q</u> <i>Case of (passive) corruption.</i> The judge directly dictated to the court clerk what to record in the minutes of the trial hearing for more than 10 minutes. Then the prosecutor dictated to the court clerk. After a while, the defence attorney exclaimed, “Why don’t we all just start dictating for the court clerk! How about if she just writes everything down by herself?”</p>

Monitors also noted that court clerks occasionally fulfilled functions that were either inappropriate or not within the scope of their competence. In several isolated incidents, monitors reported that before the start of the trial, the court clerk entered the courtroom and asked all those present to identify themselves and to state their relationship to the trial; then, even though the trial was public, the court clerk asked all those with no status in the case to vacate the courtroom. A few times court clerks questioned parties, asking not only clarifying questions but also detailed inquiries into the facts of the case. Monitors further witnessed court clerks sitting in for the judge when a hearing was being postponed. In such circumstances, the court clerk met with the parties, informed them the hearing would not take place (sometimes indicating the reason for the postponement), and then agreed with the parties on the date for the next scheduled hearing.

Finally a word about the attire and corresponding demeanour of court clerks, most of whom are women. Unlike judges and prosecutors, court clerks in Moldova have no robe or uniform to wear during court proceedings. Rather, they wear street clothes to court. However, monitors observed that many court clerks dressed in an inappropriately casual style, if not overtly provocative on occasion. Complimentary gestures, behaviours, and attitudes were observed, such as when some court clerks flirted openly with prosecutors and defence attorneys.

5. Interpreters and Translators

a. Insufficiency of Interpreters and Translators

It is well known that there are insufficient interpreters (for oral translations) and translators (for written translations) available in the courts in Moldova. Moreover, courts are staffed only with interpreters and translators for Moldovan/Romanian and Russian

languages,⁴⁸ despite repeated need for interpreters and translators for other languages, such as Turkish and Gagauzian languages. Interpreters are in high demand for oral translation during court proceedings, and translators (often the same people) are overloaded with many written documents requiring urgent translation for use in court. When interpretation or translation is required into a language other than Moldovan/Romanian or Russian, judges must locate and occasionally pay those interpreters or translators themselves or ask the person or party who needs the translation to come to court with a private interpreter.

Vignette R

Case of abuse of office. After a 20-minute delay, during which all the parties were gathered and the judge considered whether to allow monitors to attend the proceedings, the trial hearing finally commenced. The judge ordered everyone to speak in Russian. Some people said they did not speak or understand Russian well and requested interpretation. The judge responded that he would not provide an interpreter, “What, do you think we have interpreters just sitting around here in the corridors?” The proceedings continued in Russian, with many people struggling to express themselves in that language. One expert witness in particular found it very difficult to use Russian for specialized scientific terminology. The judge was clearly dissatisfied with the witness’ knowledge of Russian and occasionally interrupted him to correct his Russian. The court clerk also appeared to have a poor command of Russian, and the judge was forced to dictate to her, occasionally one syllable at a time, what to record in the minutes of the hearing.

One reason why trial hearings were delayed or postponed is that the courts could not provide an interpreter when necessary for one of the parties or witnesses. Due to this lack of interpreters, frequently trial proceedings commenced in one language, usually Russian, and then switched to the State language, Moldovan/Romanian, when the interpreter arrived. When no interpreter was available, proceedings were often chaotically conducted in both languages, Russian and Moldovan/Romanian, simultaneously, with each participant speaking in the language of his or her fluency. Moreover, it was not uncommon for some people to make statements or offer testimony in court in a mixture of both languages, starting in one language and then switching to the other for certain phrases or terminology. For example, monitors recorded hearing the following multi-lingual statements during court proceedings:

- “It has been proven that these (Russian) adhesive seals (Romanian) were forged (Russian).” (“*Было доказано, что эти (Russian) sigilii lipicioase (Romanian) были подделаны (Russian).*”);
- “These (Russian) minutes (Romanian) have been examined (Russian).” (“*Эти (Russian) procese verbale (Romanian) были исследованы (Russian).*”);
- “The legal representative (Romanian) presented documents (Russian).” (“*Reprezentantul legal (Romanian) представил документы (Russian).*”);
- “As concerns (Russian) the person (Romanian) whose name has not been identified (Russian)...” (“*Что касается (Russian) persoana (Romanian) имя которой не установлено (Russian)....*”).

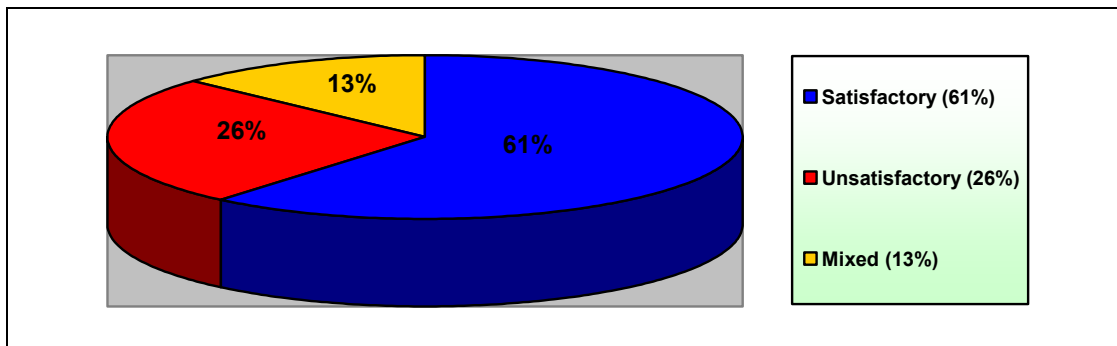
⁴⁸ See art. 16, CPC; see also art. 15, Law on Functioning of the Spoken Languages, no. 3465-X of 1 September 1989 (still valid), which provide that criminal, civil, and administrative proceedings shall be conducted in the State language or in a language acceptable for the majority of the persons involved in the proceedings; effectively this means court proceedings in Moldova today are conducted in Moldovan/Romanian and Russian languages.

In other instances, parties or participants at trial provided necessary interpretation. Monitors observed one case in which no interpreter was available, and the judge ordered the intern lawyer who was accompanying the defence attorney to translate. The defence attorney and intern protested, explaining that the intern had poor command of Russian, but the judge insisted and warned the intern against criminal liability for deliberate false translation.

b. Quality of Translation

Even when an interpreter was provided by the court, there was no guarantee that the person who needed interpretation in fact benefited from it. Monitoring revealed a number of instances when an interpreter’s presence was a mere formality. Monitors observed a significant number of court interpreters delivering poor quality translations, selectively translating, or simply not knowing the correct legal terminology. In such circumstances, the judge or prosecutor was forced to intervene and assist with the translation. Moreover, interpreters and translators often conducted themselves in a manner similar to that of court clerks, with whom they frequently engaged in small talk at the expense of their official duties. This, no doubt, affected the quality of their translations during these trial proceedings.

Performance of Interpreters during Trial Proceedings (Average % per all Courts from Chisinau Municipality)



As shown through monitoring, interpreters and translators generally were not informed about their duties and obligations and the criminal liability they may incur for deliberate false translations. Presumably judges did not provide this formal information because, as court staff, interpreters and translators should already know their duties and obligations. However, it was notable that in one case, after monitors arrived, the judge informed the interpreter about potential criminal liability for deliberate false translations and the interpreter was visibly stunned.

In the midst of trial proceedings, monitors further observed interpreters who stopped translating so they could talk on their mobile telephone, left the courtroom without permission for varying periods of time, and were generally reluctant to translate. In one case the defendant had to ask repeatedly for the interpreter to translate for him. The interpreter would then translate a few sentences and stop. After a few minutes the defendant would pull the interpreter’s sleeve or otherwise indicate he needed translation, and the interpreter would translate another sentence and stop again. This scenario repeated throughout the court proceeding.

Vignette S *Case of domestic violence.* The defendant refused to sign the minutes of the trial hearing because he had not had a proper interpreter and could not understand the hearing (or presumably the minutes). The judge replied that the respective interpreter was the best the court had available, and in the future, the defendant should arrange for another interpreter, at his own expense, if he was not satisfied with the court interpreter. The defendant noted that he could not afford a private interpreter, implying that he would be forced to suffer through the poor quality interpretation provided by the court.

In some cases, although an interpreter was present and translated for the parties, the judge translated in parallel for the court clerk, telling her precisely what to record in the minutes of the trial hearing. In a few isolated cases, judges expressly ordered interpreters to “sit here, just so, for the minutes” and to “sit there and translate only the important stuff” or “only the stuff I tell you to translate”.

Other procedural improprieties related to the fact that interpreters seldom translated the minutes of the hearing after the court session closed. Consequently, people ended up signing minutes of the hearing written in a language not known to them, or not known well to them, without having the chance to review and correct the minutes in their own language. Many interpreters were also seen leaving the courtroom without signing the minutes of the trial hearing, even though the Criminal Procedure Code requires them to confirm the completeness and precision of their interpretation and the translation included in the minutes.⁴⁹

Adding these errors by interpreters to the earlier observation that minutes of trial hearings were not always recorded fully and accurately by court clerks, and a dismal picture unfolds as to the quality of communication during trial proceedings, as well as to the accuracy of the minutes of those proceedings, which form the official court record in the case.

6. Victims and Witnesses

Taking into account the human rights-based approach of this monitoring, one of the main goals of the TM Programme is to observe the application of human rights protections for victims and witnesses, particularly in cases of trafficking in human beings and domestic violence. Many of these protections relate to the pre-trial stage of the proceedings and thus did not fall within the scope of the Programme. Nevertheless, six months of monitoring during trial proceedings revealed significant difficulties for victims and witnesses in court. In particular, victims and witnesses were not always treated with due sensitivity and consideration by officers of the court, and frequently they were forced to confront defendants and their families informally while waiting in corridors for trial proceedings to commence.

Moldovan law expressly provides that judges are obliged to protect a person’s rights, freedoms, honour, and dignity.⁵⁰ In most observed cases, judges appropriately protected victims and witnesses. For instance, monitors observed many judges paying particular attention to vulnerable persons, trying to make them feel comfortable and

⁴⁹ Art. 85(4)8, CPC.

⁵⁰ Art. 215, CPC; art. 15(1), Law on Status of Judges.

secure, and not allowing any insulting or humiliating questions. Conversely, monitoring further revealed incidents when certain judges exhibited disdain for victims and witnesses, resulting in ill-treatment and trauma in court. Some judges occasionally treated victims and witnesses abruptly, without sensitivity or patience, perhaps due to their heavy workloads.

Vignette T *Case of (active) corruption.* In district court, after a witness said she could not recall all the requested details, the judge simply kept repeating the question again and again and then started shouting at the witness. The judge asked her why she could not remember, whether she suffered from some mental disease. The witness, a young woman, became visibly inhibited and, with tears in her eyes, did not say anything more.

Monitors witnessed judges and prosecutors failing to intervene when defendants approached victims and witnesses to try to intimidate them and influence their testimony.

Vignette U *Case of domestic violence.* The husband-defendant had severely injured his wife-victim, and she repeatedly stated in court that her husband, who had already been given an administrative sanction for domestic violence, kept beating her. Before the trial hearing commenced, monitors saw the defendant intimidate the victim and instruct her to say that she forgave him. Women from the same community who were witnesses testified that the defendant threatened them and said that if they testified against him, then he would make sure they suffered just like his wife. Despite this, the prosecutor did not react and did not request that the defendant be placed under arrest. In the same case, the defendant’s daughter, who was a witness to the domestic abuse, was not informed that she had the right to refuse to testify against her father.

Some judges allowed defendants and their defence attorneys to ask victims irrelevant and humiliating questions. Monitors also observed judges and prosecutors engaged in inappropriate conversations about the statements of victims or witnesses. In one human trafficking case, the male prosecutor asked the female victim how long she had stayed in the brothel. The victim misunderstood the question and answered that she had spent approximately 20 minutes with each client. The prosecutor smiled and commented that such an amount of time may not always be sufficient. The female judge then asked the prosecutor what, in his experience, is a sufficient amount of time, and other such questions. This dialogue was brief but inappropriate and showed a total lack of concern and respect for the victim, who was left awkwardly listening to them. In several other human trafficking cases, judges showed bias and preconceived ideas about the victims, referring to them as “those girls, if we may call them that”, “the ‘so-called’ injured party”, or, blatantly, “that prostitute”. One judge asked a trafficking victim, “Tell me, did you actually do this out of necessity or sheer pleasure?” (“*Ia spune, tu asta ai facut chiar din necesitate, sau din placere?*”) Another remarked, “and what, you were the favourite wife?” (“*shi, shi, ai fost iubimaya zhenay?*”)

Monitors further reported several cases where defence attorneys, prosecutors, and some judges failed to consider the protection of a victim or witness and instead gave more weight to the need to elicit additional evidence. Because greater emphasis was placed on obtaining evidence than protecting vulnerable persons, victims and witnesses were sometimes directly confronted with defendants at trial, often repeatedly, without any safeguards for their psychological well-being. In the 789 trial hearings monitored in the

first six months of the TM Programme, not one defendant was removed from the courtroom during the victim’s testimony.⁵¹ To the contrary, monitors observed many situations where the defendant and defence attorney repeatedly asked insulting and irrelevant questions about a victim’s private life without reprimand from the judge. In some cases the judge restrained the defence attorney only after the victim was overcome with emotion and burst into tears.

Vignette V *Case of domestic violence.* The defendant was accused of having inflicted bodily injuries while drunk. The judge and prosecutor agreed they needed additional evidence, and therefore decided to postpone the trial hearing until after the Wine Festival “in order to see what will happen then”. Even the defence attorney was amused by this idea and gladly accepted the postponement, anticipating some interesting new developments in the case.

Monitoring revealed numerous instances where procedural violations by one of the court officials negatively affected victims or witnesses. There were several cases during which victims were not provided with interpreters, although they had expressly requested one. In one case a victim complained three times that she could not understand Russian, but no interpreter was provided. In a few cases, witnesses were not sworn in as prescribed by law and were not informed of possible criminal liability for false testimony.⁵² On several occasions the court failed to verify the identity of a witness (*i.e.*, he or she was not asked to produce identification), which could have led to potential problems in the event the witness were to provide false testimony. In another case, because the judge neglected to call the parties at the opening of the trial hearing, he was unaware that there was a witness in the courtroom; consequently, because the witness was not vacated from the courtroom and heard other testimony in the case, the judge later dismissed her as a witness.

Monitors further observed a few trials in both district and appellate courts in which the injured party – a minor – was not assisted by anyone, although the Criminal Procedure Code requires the participation of a legal representative for minor victims.⁵³ In these cases, everyone knew the injured parties were underage because the cases involved trafficking in children and the victims were visibly under the age of 18 years.

As noted above, victims and witnesses frequently failed to appear in court for scheduled trial proceedings, which at least in part appeared to be due to the lack of respect and protection they experienced in court. In fact, 25% of all postponements were due to the failure of the victim, injured party, or witness to appear in court. Granted, victims and witnesses from the regions had to travel to Chisinau for these court appearances, which were then often delayed or postponed after long periods of waiting in court corridors. In one case, several witnesses from southern Moldova repeatedly failed to appear in court, resulting in successive postponements. Then, when they did finally appear in court, the prosecutor failed to appear. The judge was visibly frustrated and attempted to locate the prosecutor, to no avail. Ultimately the judge had no choice but to postpone the trial again, thus perpetuating the cycle of postponements. In other cases,

⁵¹ Art. 369(1), CPC (amended on 11 August 2006 to allow the examination of the victim/injured party in the absence of the defendant, with the defendant being provided the opportunity to be informed about the statements made by the victim/injured party and to ask additional follow-up questions).

⁵² Art. 108, CPC.

⁵³ Art. 481(3), CPC.

after frequent postponements, the victims sometimes declared that they wished to withdraw their complaints because they were tired of coming to court and wasting their time for nothing.

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

V. CONCLUSION

Based upon the preliminary findings of the Trial Monitoring Programme, it appears that while Moldova has made marked progress in implementing necessary reforms, especially *de jure*, its judiciary must still make significant improvement, especially *de facto*, in order to satisfy all its commitments in the fields of human rights and rule of law. Without these reforms, Moldovan citizens will not be fully secured their rights to a fair trial, to access to justice, and to the efficient and effective administration of justice, nor will they be guaranteed all other corresponding human rights.

In official proclamations, the Republic of Moldova has repeatedly confirmed its commitment to making all necessary reforms to its judicial system. None the less, it seems likely that such changes, which include financial, procedural, attitudinal, and behavioural changes, across the spectrum at both systemic and individual levels, will require at least some outside support. Even these preliminary findings disclose substantial problems with the infrastructure supporting the judicial system, as well as with the financial and human resources available to the judiciary, which must be addressed as fundamental starting points for necessary systemic reforms.

The professional actors involved in the administration of justice, namely the judges, prosecutors, defence attorneys, court clerks, and interpreters and translators, as a whole, perform their official duties adequately, but in each category of professional actor, there is a significant minority who do not. There are many actors who, whilst performing their official duties professionally, are suspicious of outside monitoring and unsupportive of greater transparency and public scrutiny of court practices. There are also many who commit seemingly petty procedural violations or errors, often with good intentions, which when cumulated together appear to undermine the public's trust in the judicial system. Sadly, as a result of the many cumulative individual violations or errors, combined with systemically poor infrastructure and human and financial resources, the Moldovan justice system today, as a whole, does not appear to function fairly in all cases, and the public rightfully does not appear to believe that it always functions fairly. This is especially true from the perspective of victims and witnesses, who, rather than enjoying full respect for their human rights, are often treated insensitively and as an afterthought to the primary task of holding the defendant accountable, not seeking justice for all.

The picture that unfolds of the experience of going to court in Moldova, based upon six full months of trial monitoring, is an experience fraught with frustration, complication, inconvenience, and lack of basic good manners and politeness. It appears that every person who comes into contact with the justice system in Moldova, from the highest level judge to a witness in a simple criminal case, feels this in one way or another and complains about it on a regular basis. The sense of duty, honour, respect, dignity, and solemnity that people should feel when they come to a court of law that administers fair outcomes achieved through fair procedures is, at least today, rarely part of this picture in Moldova. The OSCE Mission to Moldova and ODIHR challenge those involved in, with, and around the justice system in Moldova to change this picture, so that in the future Moldovan citizens will in fact experience and come to believe that Lady Justice (the well known, often blind-folded, female figure symbolizing the fair and equal administration of the law, without corruption, avarice, prejudice, or bias) is protecting them in all respects and that justice and fairness govern in their country.