

JUDICIAL REFORM INDEX

FOR ARMENIA

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Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central and East European Law Initiative (ABA/CEELI). Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA/CEELI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA/CEELI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, ABA/CEELI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criterion may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

- (1) The reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).



The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615. Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: "judges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy." Larkins, *supra*, at 616.

ABA/CEELI's Methodology

ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary*; *Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"*; and *Council of Europe, the European Charter on the Statute for Judges*. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA/CEELI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA/CEELI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA/CEELI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally how to address this issue. During the 1999-2001 time periods, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of ABA/CEELI's Executive and Advisory Boards, as well as outside experts, ABA/CEELI decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear the JRI is *not* intended to be a comprehensive assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a



“neutral.” Cf. Cohen, *The Chinese Communist Party and ‘Judicial Independence’: 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a brief summary describing the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help ABA/CEELI — and its funders, collegial organizations, and host states — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues rose (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA/CEELI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well trained. Moreover, the nexus between outside assistance and the country’s judiciary may be tenuous at best. Clearly, building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA/CEELI offers this product as a step in this direction and welcomes constructive feedback.

Acknowledgements

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association Central and East European Law Initiative (ABA/CEELI) (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI, developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-Present) directed the finalization of the JRI. Assistance in research and compilation of the JRI was provided by Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI.

During the course of developing the JRI, ABA/CEELI benefited substantially from two expert advisory groups. ABA/CEELI would like to thank the members of ABA/CEELI’s First Judicial Advisory Board, including Tony Fisser, Marcel Lemonde, Ernst Markel, Joseph Nadeau, Mary Noel Pepys, and Larry Stone, who reviewed earlier versions of this index. Additionally, ABA/CEELI would like to thank the members of its Second Judicial Advisory Board, including Luke Bierman, Macarena Calabrese, Elizabeth Dahl, Elizabeth Lacy, Paul Magnuson, Nicholas Mansfield, Aimee Skrzekut-Torres, Roy T. Stuckey, Robert Utter, and Russell Wheeler, who



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Armenia Background

Legal Context

Armenia's legal system currently operates under the 1995 Constitution, which provides for an independent judiciary and a separation of powers. Moreover, Armenia's Law on the Status of Judges and the Civil Code of Procedure mandate judicial independence in the administration of justice, subordinating judges only to law and not accountable to any state body or official. However, many JRI respondents remarked that, in practice, there are several issues, such as the executive branch's powers in the judicial appointment, disciplinary, and dismissal procedures, that infringe on the independence of the judiciary.

Armenia is in the process of amending its constitution, primarily motivated by its recent accession to the Council of Europe in January 2001. As of April 2002, there are two proposed amendment packages: The "President's Draft," which was compiled by a committee formed by Armenian President Kocharian in 2001, and the "Unified Draft," which is a combined effort of several opposition political parties. In many respects, these drafts change important judicial structures and legal provisions. For example, both amendment packages would institute changes to the judicial appointment process that would enhance judicial independence, would establish an ombudsman's office to investigate human rights abuses, and both would expand the right to challenge the constitutionality of laws to natural persons, albeit in differing degrees. Reference will not be made to these drafts in this JRI, as they do not yet impact the judiciary (copies are on file with ABA/CEELI). Still, it is important to mention the amendment process, since the 2002 JRI will serve as the baseline against which CEELI will compare future changes in the structure and independence of the judiciary.

Another element that bears consideration in analyzing judicial reform in Armenia is its communist past. Armenia's current legal system follows civil law conventions. Three of the four main laws/codes – the Civil Procedure Code, the Civil Code, and the Criminal Procedure Codes – were passed in 1998, replacing their Soviet predecessors. However, a new criminal code has not yet been adopted despite much discussion and many drafts, thus leaving the 1961 Criminal Code still in effect. There are numerous conflicts among provisions of these codes and other laws, and amendments are regularly adopted to correct these inconsistencies. In addition to laws that date back to the communist period, legal culture in Armenia, mainly in the criminal law field, is still dominated by Soviet-era thinking that puts the Procuracy at the top of the legal system, followed by judges, and lastly defense advocates. Similar attitudes about these three professions persist and will likely jeopardize efforts to reform the judiciary.

Finally, the conflict over the disputed territory of Nagorno-Karabakh with Azerbaijan has both real and perceived consequences for judicial reform in Armenia. A blockade of two of Armenia's four borders by its neighbors Azerbaijan and Turkey severely limit the country's economic development. The dire state of the economy and the resulting negative emigration process are often associated with the slow development of the rule of law in Armenia.

History of the Judiciary

Armenia declared independence from the Soviet Union in 1991, which led to the subsequent formation of a national judicial system. The 1995 Constitution introduced a new, three-tiered, national court system of general jurisdiction and a separate system for reviewing the constitutionality of laws and government decrees. The Constitutional Court, which has sole jurisdiction over determining the constitutionality of laws, was the first court to begin operating in 1996. The Court of Cassation, the highest court of appeals for general jurisdictional matters,



began functioning in the summer of 1998. The two lower-level courts, the Courts of First Instance and the Courts of Review, began functioning in January 1999. The Law on the Status of Judges and the Law on the Judiciary, which implement the new Constitutional judicial structure, went into effect in January 1999. An Economic Court was created in October 2001.

The reorganization of the judiciary constituted part of a broader overhaul of Armenia's justice system. In the late 1990s, both the Procuracy and defense counsels similarly underwent reorganization. In 1998, the Law on Advocate Activity and the Law on the Procuracy were enacted in June 1998 and July 1998 respectively.

Structure of the Courts

The Armenian Constitution stipulates that the courts are to administer justice solely in accordance with the Constitution and the laws. The courts of general jurisdiction in Armenia are the Courts of First Instance, the Courts of Review, and the Court of Cassation (also referred to as the Court of Appeals in some translations. The term Cassation Court will be used in this document). There is a Constitutional provision for the establishment of economic, military, and other courts, as may be provided by law, although the establishment of extraordinary courts is prohibited. The Constitution envisions jury trials in cases provided by law, although this provision has not yet been invoked, and there is no indication that it will be invoked in the near future possibly due to political, financial, and logistical constraints.

The **Constitutional Court** has exclusive jurisdiction over matters related to the constitutionality of laws, National Assembly, government resolutions, orders and decrees of the president, and international treaties. Cases initiated in the courts of general jurisdiction may be referred to the Constitutional Court through the president of Armenia to resolve constitutional matters set forth in Article 100, although this procedure has never been used effectively. The Constitutional Court also rules on referenda and national election disputes. Standing to appeal to this Court is extremely limited and has been used very infrequently, with approximately 350 decisions being rendered since the Court's creation. Court decisions are based on a majority vote among its nine members, with the exception of a decision on the suspension or prohibition of a political party, which requires the vote of two-thirds of the Court members. CONSTITUTION, art. 100(9).

There are 17 **Courts of First Instance** in Armenia, one in each of Armenia's 10 administrative regions (*marzes*), and seven in Yerevan (one in each community or designated communities). Each court is seated in its corresponding *marz* or community. As of April 2002, there were 112 judges in the Courts of First Instance. Each Court of First Instance has a chairman who carries out general administration of personnel in that particular Court, among other responsibilities. Courts of First Instance consider all civil, criminal, military, and administrative cases; resolve issues connected with detentions; issue on search warrants; and can restrict the right for secrecy of communication. Cases in First Instance Courts are considered by one judge.

The **Economic Court**, which is located in Yerevan, has jurisdiction over business-related disputes (referred to as economic disputes in the civil code) among commercial organizations and individual entrepreneurs. Prior to the creation of the Economic Court in October 2001, the Courts of First Instance ruled on economic disputes. There are 15 appointed judges on the Economic Court, including a chairman. First-instance cases in the Economic Court are heard by one judge. There is only one level of appeal, which is to the Court of Cassation. Cases reversed by the Court of Cassation, except bankruptcy cases and others defined by law, are re-tried by a panel of judges from the Economic Court.

There are two **Courts of Review** (sometimes referred to as Courts of Appeal) in Armenia, one of which has jurisdiction over civil appeals, the other hears criminal and military appeals. Both are located in Yerevan. The Court of Review for civil cases has a chairman and 12 judges; the Court of Review for criminal and military cases has a chairman and 15 judges. Cases before the Courts



of Review are considered by three-judge panels (i.e., the “full court”) with decisions rendered by majority vote. The chairman of each Court of Review is responsible for ensuring proper operation of the court, among other responsibilities.

The **Court of Cassation** is the highest court of appeals in Armenia and is located in Yerevan. The Court is composed of the chairman of the Court of Cassation, the Chamber on Civil and Economic Cases, and the Chamber on Criminal and Military Cases. Each Chamber is composed of its chairman and five judges. Cases in the Court of Cassation are considered jointly by the majority of judges and the chairman of the respective chamber.

Military Courts per se do not exist in the Armenian court system. Trials involving military personnel take place in the ordinary court system, with criminal prosecution handled by the military prosecutors.

The **Council of Justice** has significant powers over the judiciary, including recommending to the president the appointment and removal of judges. The president of Armenia heads the Council, and the minister of justice and the prosecutor general serve as the Council's vice-presidents. The Council's 14 members include two legal scholars, nine judges, and three prosecutors, who are appointed by the president to five-year terms. Of the nine judicial members of Council, three are appointed from each of the three general jurisdiction court levels, i.e., Courts of First Instance, Courts of Review, and Court of Cassation. The general assembly of judges submits three candidates by secret ballot for each of the nine judicial seats on the Council. The prosecutor general submits the names of candidates for the prosecutors' seats on the council. However, the president, can reject nominees and has done so in the past. The Council of Justice was first convened in late 1995 and holds meetings as needed, generally meeting at least monthly. The Council's members do not suspend work on their primary jobs (i.e., judge, prosecutor) while working on this Council, nor do they get paid additional compensation.

The **Council of Court Chairmen (CCC)** consists of the chairmen of the Court of Cassation, Chambers of the Court of Cassation, Courts of Review, Economic Court, and Courts of First Instance. The chairman of the Court of Cassation is the chairman of the CCC. A special structural body was created among the personnel of the Court of Cassation with the purpose of assisting the operation of the CCC. The CCC has a number of administrative functions, including budget development and court administration, as well as non-administrative functions including summarizing judicial practice, making consultative explanations of law application, and developing as well as adopting a Code of Judicial Conduct. The meetings of the Council of Court Chairmen are called when necessary, but not less than once a quarter. CCC meetings are required to have a two-thirds quorum in order to effect decisions. Decisions are adopted with the majority of votes of members participating at the meeting.

Conditions of Service

Qualifications

Judges of the Courts of General Jurisdiction are required to have completed higher legal education, have at least three years of professional experience as a lawyer, be competent to work as a judge, and be at least 25 years old. There is no legal requirement that new judges have practiced before a tribunal or that they take any required courses prior to taking the bench.

Members of the Constitutional Court are required to have completed higher education – although a legal education is not specifically required – have at least 10 years of work experience, have experience in the legal field, in the government, or scientific institutions, be of high moral character, and have command of the Armenian language.



Appointment and Tenure

At the recommendation of the minister of justice and the Council of Justice, the president of Armenia appoints all judges. The Council can only propose judicial nominees to the president that have been selected by the minister of justice from the List of Official Fitness. The president also appoints four of the nine members of the Constitutional Court; the National Assembly appoints the remaining five members in accordance with the procedure established in the Constitution. The president of the Constitutional Court is designated by members of the National Assembly on the basis of a proposal made by the Assembly president. LAW ON THE CONSTITUTIONAL COURT, art. 2. Once appointed, all judges have tenure until the age of 65, and members of the Constitutional Court have tenure until age 70.

Training

The Council of Court Chairmen (CCC) is charged with overseeing the continuing legal education of judges, although there is no formal, comprehensive judicial training program for judges and no legal requirement that sitting judges undergo continuing legal education courses. A number of judicial training courses are offered on an ad-hoc basis, and they are generally organized through the Judicial Training Center (JTC), created by the CCC in April 1999. In December 2001, the Education Council was created within the CCC to oversee the activities of the JTC.

Assessment Team

The Armenia JRI 2002 analysis assessment team was led by Maria Longi and benefited in substantial part from the efforts of Narine Gasparyan, Heidi Silvey, and Artashes Emin. The conclusions and analysis are based on interviews that were conducted in Armenia during March 2002 and relevant documents that were reviewed at that time. ABA/CEELI Washington staff members Scott Carlson, Claude Zullo, Julie Broome, and Stephanie Larsen served as editors. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI and are kept confidential.



Armenia JRI 2002 Analysis

The Armenia JRI 2002 Analysis reveals a developing judicial system faced with difficult economic conditions and structural limitations. While the factor correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

I. Quality, Education, and Diversity		
Factor 1	Judicial Qualification and Preparation	Negative
Factor 2	Selection/Appointment Process	Negative
Factor 3	Continuing Legal Education	Negative
Factor 4	Minority and Gender Representation	Neutral
II. Judicial Powers		
Factor 5	Judicial Review of Legislation	Neutral
Factor 6	Judicial Oversight of Administrative Practice	Positive
Factor 7	Judicial Jurisdiction over Civil Liberties	Neutral
Factor 8	System of Appellate Review	Neutral
Factor 9	Contempt/Subpoena/Enforcement	Neutral
III. Financial Resources		
Factor 10	Budgetary Input	Negative
Factor 11	Adequacy of Judicial Salaries	Negative
Factor 12	Judicial Buildings	Negative
Factor 13	Judicial Security	Negative
IV. Structural Safeguards		
Factor 14	Guaranteed Tenure	Positive
Factor 15	Objective Judicial Advancement Criteria	Negative
Factor 16	Judicial Immunity for Official Actions	Positive
Factor 17	Removal and Discipline of Judges	Negative
Factor 18	Case Assignment	Negative
Factor 19	Judicial Associations	Neutral
V. Accountability and Transparency		
Factor 20	Judicial Decisions and Improper Influence	Negative
Factor 21	Code of Ethics	Neutral
Factor 22	Judicial Conduct Complaint Process	Negative
Factor 23	Public and Media Access to Proceedings	Positive
Factor 24	Publication of Judicial Decision	Negative
Factor 25	Maintenance of Trial Records	Negative
VI. Efficiency		
Factor 26	Court Support Staff	Negative
Factor 27	Judicial Positions	Negative
Factor 28	Case Filing and Tracking Systems	Neutral
Factor 29	Computers and Office Equipment	Negative
Factor 30	Distribution and Indexing of Current Law	Negative



I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	Correlation: Negative
Formal legal education is a requirement of all judicial appointees, except members of the Constitutional Court. There is no legal requirement that judges have practiced before tribunals, nor is it mandatory that they take relevant courses upon taking the bench.	

Analysis/Background:

The Council of Justice, based upon the opinion of the minister of justice, recommends judicial candidates to the president in the form of an annual "List of Official Fitness." LAW ON COUNCIL OF JUSTICE, art 13 (see Factor 2 on the appointment process). The List is supposed to include persons who are 25 years of age or older, have higher legal education, have at least three years of professional experience as a lawyer, and can work (not defined) as a judge. The minister of justice compiles this List for review by the Council. Many respondents voiced concern that three years of experience is not sufficient and that the requirement for professional experience as a lawyer is loosely interpreted.

Constitutional Court members must be citizens of Armenia, at least 35 years old, and have the right to vote in Armenia. LAW ON THE CONSTITUTIONAL COURT, art. 3. She or he must have completed higher education, have at least 10 years of work experience, have experience in the legal field in the government or scientific institutions, be of high moral character, and have command of the Armenian language. *Id.*

Twenty-four new judges to the Civil Court of Appeals and to the Courts of First Instance were appointed as of October 2001, as well as five new judges to the Economic Court (the remaining 10 judges were transferred from other courts). While the law does not require formal training for newly appointed judges, the Judicial Training Center (JTC), with financial and technical assistance from Chemonics International, a USAID-funded contractor, provided new judges with seven full days of training on such topics as recitation of laws and Council of Court Chairmen decisions, the role and place of the judge in the justice system, judicial challenges, overruling verdicts, enforcement, sentencing, and international law. One sitting judge wrote a handbook of practical advice that was distributed to the new judges and their aides. The Economic Court judges have not received such training since the Court's formation in November 2001, although the JTC expressed interest in doing one in the future.

More than 35 private law schools have been licensed since the early 1990s, and, presently, there are five state-sponsored universities with law faculties. Of these five state institutions, American University of Armenia offers only a graduate law degree program. In Spring 2001, the Ministry of Science and Education began accrediting private universities, and, as of April 2002, six law faculties have been accredited. As in the past, Yerevan State University (YSU) continues to be the largest and most prestigious law school, with the majority of judges in Armenia having graduating from this institution.



It is the general consensus among practicing lawyers and academicians that there are a number of problems within the legal education system in Armenia that affect the quality of legal studies. Law school curriculum for key substantive areas of the law, such as criminal law and administrative law, has not changed substantially since the collapse of the Soviet Union. Professors do not always receive their salaries regularly, and there are many reports of bribery in the classroom and in the admissions process. There are very few, if any, practical skills courses offered. The internship requirement of the past has been decreased to as short as two months, depending on the program. It is hoped that accreditation of law schools will help elevate legal education standards, although most respondents were of the opinion that the newly accredited private universities still provide sub-standard legal education.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

Conclusion	Correlation: Negative
Although a judicial qualification test is in place to evaluate legal knowledge, an interview process not adequately described in the law is also extensively relied on to appoint judges to the bench. The lack of objective criteria for the actual interview process fosters doubts about its impartial implementation and hence the independence of the judges that are appointed.	

Analysis/Background:

Almost all respondents expressed concern that the executive branch, using powers granted to it under the Constitution and legislation, has too much power in the actual judicial appointment process.

As of 1999, judges in Armenia are no longer elected as they were under the Soviet system. In accordance with the procedure established by Article 95 of the Constitution, the president of Armenia is responsible for appointing the chairmen and judges of the Court of Appeal and its chambers, the courts of review, the courts of first instance and other courts pursuant to Article 55 (11) of the Constitution. See *Also* LAW ON THE JUDICIAL SYSTEM, art 11. Upon the recommendation of the minister of justice, the Council of Justice drafts the List of Official Fitness, which is supposed to be based on the candidates' competence, moral standing, and professional qualifications. CONSTITUTION, art. 95(1). The Council then submits this list to the president at the beginning of each year for his approval. *Id.* The Council of Justice is responsible for proposing candidates for the presidency of the Court of Cassation, the presidency and judgeships of its chambers (civil and criminal), the presidency of Courts of Review, Courts of First Instance, and other courts, including the Economic Court, to the president of Armenia. It also makes recommendations about other judicial candidates proposed by the minister of justice. Constitution, art 95(3). In addition to having the power to appoint and nominate judges, the president and minister of justice, respectively, also have the ability to take part in all Council deliberations and evaluations.

The president of Armenia heads the Council, and the minister of justice and the prosecutor general serve as the Council's vice-presidents. CONSTITUTION, art. 94. Of the nine judicial members of Council, three are appointed from each of the three general jurisdiction court levels, i.e., Courts of First Instance, Courts of Review, and Court of Cassation. The general assembly of judges submits three candidates by secret ballot for each of the nine judicial seats on the Council.



The prosecutor general submits the names of candidates for the prosecutors' seats on the council. *Id.* According to the Law on the Council of Justice, the minister of justice presents judicial candidates to the Council. LAW ON THE COUNCIL OF JUSTICE, art. 16. Any member of the Council can nominate candidates for chairmanships of any court, as well as judges to the Court of Cassation. *Id.* at art. 15. The initial recording and selection of judicial candidates are implemented according to the procedures stipulated by the Charter of the Ministry of Justice. CHARTER OF THE JUSTICE MINISTRY OF THE REPUBLIC OF ARMENIA, chapter 4. In practice, the minister of justice employs a two-step evaluation process for potential candidates to the List of Official Fitness that includes a written test and an interview. In order to take the exam, the Charter requires candidates to register with the Ministry of Justice and provide documents required by the Ministry (the list of documents, however, is not set forth in the Charter). Notice of the application deadline must be printed in the press, although some respondents indicated that this is not always timely.

The minister of justice creates a five-member Commission to organize the test, which is held every December. *Id.* Test questions are confidential, although the first exam held in 1998 consisted of 100 multiple-choice questions taken from a pool of 800 questions that were previously published. The format of the exam has since been changed to a two-day essay exam in which the applicants write a court decision on a civil and a criminal case. Most respondents believe that this is a better test of the applicant's knowledge. Test results can be appealed to a committee (created by the chairman of the Commission), the decisions of which are final. Members of the media and invited monitors can be present for the test with the Commission's permission.

The Minister can invite candidates who have met the requirements of the test results to an interview for the purpose of developing the proposed lists of official fitness and professional advancement of judges. CHARTER OF THE JUSTICE MINISTRY OF THE REPUBLIC OF ARMENIA, chapter 4, para. 31. There is much controversy over the subjectivity of the interviews, since nothing about the interview process or evaluation criteria is delineated in the law or in the Ministry's Charter. Some factors listed by respondents as being significant to a successful interview include party affiliation, personal or family contacts, experience (especially for the new Economic Court judges), clan (political) affiliation, money/contributions, and knowledge (as nominally measured by the exam).

After the interviews, the minister of justice presents one candidate for each vacant position by describing the professional, practical, and moral characteristics of the candidate. If the Council does not approve a candidate, the Minister presents a new candidate. If a candidate is approved, his or her name is presented to the president on the List of Official Fitness for a specific appointment.

There are 17 **Courts of First Instance** in Armenia, one in each of Armenia's 10 administrative regions (*marzes*), and seven in Yerevan (one in each community or designated communities). Each court is seated in its corresponding *marz* or community. LAW ON THE JUDICIAL SYSTEM, art. 13. As of April 2002, there were 112 judges in the Courts of First Instance. LAW ON THE JUDICIAL SYSTEM, art. 14 and 15. Judges in the new judicial structure were appointed in January 1999 (Cassation Court judges in summer 1998). About half of the appointed judges in 1999 were judges under the old structure. In fall 2001, 29 judges were added, in part to staff the newly created Economic Court, which has jurisdiction over business-related disputes (referred to as economic disputes in the civil code) among commercial organizations and individual entrepreneurs. Civil Procedure Code, art. 16(1). A few more judges were appointed in spring 2002, bringing the total now to 169, as summarized below. Once included on the List, a person is retained for the next year's list if not appointed.



Year	Applicants for Examination	List of Official Fitness	Appointment	Presidential Decree
1999	466	150	120	1/5/99
2000	66 (38 added to list)	203	3	7/3/99
2001	95 (7 added to list)	218	9 appointed or transferred	
2002	61 (14 added to list)	231	12 transferred 23 appointed to the Courts of General Jurisdiction 15 Economic Court: five are new 10 are transfers 1 appointment	9/25/01 9/25/01 9/25/01 10/19/01

*Statistics provided by the Staff of the Council of Justice, 3/26/02

The Constitutional Court is composed of nine members: the president of the Republic of Armenia appoints four members and the National Assembly appoints the remaining five. CONSTITUTION, art. 99. Based on procedures set forth in the law and the Constitution, the appointment of a new member of the Constitutional Court to a vacant position must be made within two months after termination of an existing member's duties. LAW ON THE CONSTITUTIONAL COURT, art. 15. The president of the Constitutional Court is designated by members of the National Assembly on the basis of a proposal made by the Assembly president. LAW ON THE CONSTITUTIONAL COURT, art. 2. If the National Assembly fails to fill a vacancy for the Presidency of the Constitutional Court within 30 days, the president of Armenia appoints the Court's president within one month. *Id.* at 15(2).

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally-prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion	Correlation: Negative
There is no legal requirement that sitting judges participate in continuing legal education (CLE) programs. The body responsible for CLE is not explicitly funded, inhibiting its ability to offer a comprehensive training program.	

Analysis/Background:

The law states that a judge must be concerned with raising the level of his or her professional knowledge and quality of work. LAW ON STATUS OF JUDGES, art. 14. The new Rules of Judicial Conduct, adopted in December 2001, also state that a judge shall continually upgrade his professional knowledge and be cognizant of legislative changes. RULES OF JUDICIAL CONDUCT, Rule 4. The Council of Court Chairmen (CCC) is responsible for organizing professional studies and the re-training of judges. LAW ON THE JUDICIAL SYSTEM, art. 27. Despite this advisory language concerning CLE, there are no enforceable requirements that judges must undergo continuing legal education courses.



The CCC, however, did create a permanent Judicial Training Center (JTC) in April 1999, and it adopted statutes governing its operation in November 2001. Although not a legal entity, it is staffed by a director, three assistants, and one attorney, all appointed by the CCC. The staff is funded through the Court of Cassation. There is no specific funding for the training center in the court budgets. Library resources (books, furniture, and computers) were purchased with funding from ABA/CEELI and other international donors. Many international entities have attempted to provide curriculum assistance and other CLE support to the JTC in the past. As a result, courses are offered on an ad-hoc basis. Recent courses have included such topics as the European Convention on Human Rights and Fundamental Freedoms (ECHR) and media law (sponsored by ABA/CEELI and Council of Europe); courses on commercial law (sponsored by Chemonics International); and other courses sponsored by the *Gesellschaft für Technische Zusammenarbeit* (GTZ), the Open Society Institute (OSI), and the Constitutional and Legal Policy Institute (COLPI).

In adopting the JTC statutes, the CCC formed the seven-member Education Council to oversee the work of the JTC and to approve its annual curriculum. STATUTES OF THE JUDICIAL EDUCATION CENTER OF THE CCC OF ARMENIA, art. 2.4. Since 2000, the JTC has compiled an annual CLE curriculum based on annual surveys it conducts on the judges' practice and interest and a review of court statistics. Since CLE courses are 100 percent financed by donors, the JTC is tasked with matching particular funding to its curriculum. The JTC claimed that 70 percent of the curriculum in 2001 was executed successfully.

Courses are always free of charge to judges and are generally taught by other judges or invited international lecturers. Armenian judges generally expect to receive an honorarium of approximately 50 USD/day for teaching. Many judges expressed a desire for an expanded offering of courses by the JTC on international law, new domestic laws, and other legal systems. The JTC sometimes identifies courses as "mandatory," although there is no mechanism to enforce these requirements. If not mandatory, the Court chairmen generally select the participants from their individual court. The JTC cites lack of funding, classrooms, and equipment as the biggest impediments to success.

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion	Correlation: Neutral
Women represent 21 percent of the judiciary and are present at all levels of the judiciary. There are few, if any, minority judges in Armenia; the minority population in Armenia is estimated to be less than 5 percent.	

Analysis/Background:

The Constitution does not mandate an ethnic or gender balance on the courts. As of April 2002, women constituted 21 percent of the judiciary overall and 17 percent of the Court of Cassation, 34 percent of the Court of Appeals, 20 percent of the Economic Court, and 19 percent of the First Instance Court. Of the nine Constitutional Court judges, only one is a woman. While this does not reflect the population as a whole, most respondents, including female judges, did not view gender discrimination as a problem in Armenian courts. Indeed, this is a higher percentage of women than in the Procuracy.

Ethnic minorities make up less than 5 percent of Armenia's population and include Russians, Jews, Kurds/Yeazdis, Assyrians, Georgians, and Greeks. There are no official statistics on



minority representation in the judiciary, or in law schools; however, based on the respondents' assessments, there may be one or two Yezdi judges. This is not perceived as a problem or indication of discrimination by those interviewed.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

Conclusion	Correlation: Neutral
The Constitutional Court has the power to determine the constitutionality of legislation and official acts, although standing to bring cases to this court is limited to the president and the deputies of the National Assembly.	

Analysis/Background:

The Constitution has supreme juridical force, and its norms are directly applicable. CONSTITUTION, art. 6. Laws and other juridical acts found to contradict the Constitution and the law have no legal force. *Id.* The Constitution mandates that the Constitutional Court has responsibility for deciding whether the laws, resolutions of the National Assembly, orders and decrees of the president, and resolutions of the Government conform with constitutional principles. CONSTITUTION, art. 100(1). See *Also*, LAW ON THE CONSTITUTIONAL COURT, art. 5. Although the Constitution and related laws do not explicitly give exclusive jurisdiction to the Constitutional Court on constitutional matters, this seems to be the practice. Courts of General Jurisdiction have seldom decided on constitutional matters since they were established in 1999, despite the Constitution being “directly applicable” to cases. The Code of Civil Procedure even stipulates that Courts of General Jurisdiction are not to try cases in which the purpose is to determine the constitutionality of a law, as this is the exclusive jurisdiction of the Constitutional Court. CODE OF CIVIL PROCEDURE, art. 106(1). Respondents described that some judges interpret the Constitution as allowing them to make these types of decisions, but they do not do so explicitly in their rulings. When judges of the Courts of General Jurisdiction have addressed constitutional issues it has been related to the facts of a particular case and not striking down statutes as unconstitutional as a matter of law. A case in point is a ruling by the Criminal Court Chamber in a case in which a search was deemed unconstitutional.

Only parties with official standing can initiate proceedings before the Constitutional Court. This includes the president, at least one third of the deputies of the National Assembly, presidential and parliamentary candidates (over disputes involving election results), and the government, in prescribed cases such as illness or insurmountable obstacles affecting the performance of the president. CONSTITUTION, art. 101. See *Also*, LAW ON THE CONSTITUTIONAL COURT, art. 25. The Law on the Constitutional Court limits appeals on constitutional matters to the president of Armenia and at least one third of the National Assembly’s deputies. LAW ON THE CONSTITUTIONAL COURT, art. 55. Citizens and the Courts of General Jurisdiction are not able to initiate proceedings at the Constitutional Court. The Constitutional Court will not review a case if the issue raised is not within its jurisdiction, if the appealing party is not authorized to appeal to the Court, or if the issue raised has been the subject of a prior decision of the Constitutional Court. LAW ON THE CONSTITUTIONAL COURT, art. 32.



Since the Constitutional Court's inception in 1996 until April 2002, it has ruled on 350 cases. LETTER FROM THE CONSTITUTIONAL COURT OF ARMENIA TO CEELI, OCTOBER 2, 2002. Only nine of those cases – eight laws and one decision of the National Assembly - addressed the constitutionality of laws (e.g. telecommunications law, radio/television law, property law). Only one law, the Law on Election of the Local Self Governmental Bodies, was declared to be in conformity with the Constitution. In the remaining cases, more than ten provisions of the laws and the above-mentioned decision of the National Assembly were declared unconstitutional by the Constitutional Court.

The Constitutional Court must consider the following factors in determining constitutional conformity:

- The form of the act;
- The time at which the act was adopted, as well as whether it was signed, made public, and implemented in compliance with established procedures;
- The content of the act;
- The necessity for the protection and free exercise of human rights and freedoms enshrined in the Constitution, as well as the grounds for and limits on their permissible restriction;
- The principle of the separation of powers as enshrined in the Constitution;
- The necessity of ensuring the direct application of the Constitution. LAW ON THE CONSTITUTIONAL COURT, art. 55.

Decisions of the Constitutional Court are final, cannot be revised, and come into force from the time of publication. LAW ON THE CONSTITUTIONAL COURT, art. 64. Findings concerning the constitutionality of laws must be made by a majority of members. *Id.* Decisions are to be based on the literal meaning of the act in question and existing legal practice. LAW ON THE CONSTITUTIONAL COURT, art. 67 (1).

There are procedures for ordinary courts to appeal constitutional issues indirectly to the Constitutional Court. If a court in a civil proceeding finds that the applicable law or other legal act contradicts the Constitution, the court can suspend the proceedings and apply to the Council of Court Chairmen (CCC) in order to initiate a procedure concerning the case as established in the Law on the Judicial System. CODE OF THE CIVIL PROCEDURE, art. 106(2).

Criminal proceedings, by the initiative of the court or at the request of the participants in the proceedings, can be suspended if the court finds an applicable law or other legal act contradict the Constitution. In this case, the court is entitled to suspend the criminal proceedings and apply to the CCC to initiate proceedings. CRIMINAL PROCEDURE CODE, art. 31(2). The CCC shall then address the Armenian president for mediation in addressing the Constitutional Court concerning compliance with the Constitution of a certain law, resolution by the National Assembly, decree or an order by the president, or a government resolution. LAW ON THE JUDICIAL SYSTEM, art. 27. A criminal case will remain suspended until one of the following three outcomes occurs: The CCC rejects the request to apply to the president for a motion; the president does not apply to the Constitutional Court within a year after receipt of the motion from the CCC; or the Constitutional Court makes a decision based on the application of the president. CRIMINAL PROCEDURE CODE, art. 31(6).

Since 1999, only two cases have been suspended and forwarded to the CCC under these procedures, but the CCC has never requested the president to review an issue in this context. Most respondents see this as a convoluted process not worth pursuing and would prefer to have standing to go to the Constitutional Court directly on these issues.



Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

Conclusion	Correlation: Positive
The courts are authorized by law to review administrative acts and compel government action where rights or laws have been violated.	

Analysis/Background:

In Armenia, justice is administered only by courts, which are permitted to examine and resolve cases of administrative offense. LAW ON THE JUDICIAL SYSTEM, art. 2 and 3. The term "administrative" includes governmental acts as well as misdemeanors (e.g., hooliganism) and police custody. There is no separate administrative court, and most respondents did not feel that this was necessary or affordable given the country's current economic malaise. Many administrative cases seem to be tax cases, and enforcement did not create much concern for the respondents.

Any person subjected to administrative liability is entitled to challenge in court the decision to impose a penalty for the violation. CODE OF CIVIL PROCEDURE, art. 156. Civil and economic courts can hear appeals on penalties if filed within 10 days of their imposition. The court accepting the appeal makes an immediate decision about the suspension of the decision to impose the administrative penalty. *Id.* Procedures for this administrative review hearing are set forth in the Code of Civil Procedure.

Courts can also consider null and void, or appeal against their action or in-action, acts committed by state or local self-government bodies or their officials when such acts contradict a law or constitute a breach of rights or freedoms guaranteed by the Constitution. The court can obligate the appropriate government body or official to adopt an act that restores the rights and/or freedoms guaranteed by the Constitution. CODE OF CIVIL PROCEDURE, Chapter 26, art. 159 -163.

Most concerns from respondent lawyers in this area stem from alleged violations of the Code of Administrative Violations, which is a list of misdemeanors handled and punished by administrative agencies that was adopted in 2000. Often persons are held in "administrative custody" as opposed to custody under the criminal laws, since the holding requirements under this structure are more lax. Enforcement of administrative cases in other instances is generally not less problematic.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion	Correlation: Neutral
The judiciary has exclusive jurisdiction over cases concerning civil rights and liberties, although cases concerning the violation of civil rights and liberties, such as freedom of expression and freedom of association, are not frequently initiated.	



Analysis/Background:

Articles 15 to 38 of the Constitution enumerate several rights and liberties that everyone, or every citizen, is entitled to, including the right to life, the right to be secure in their person, the right to defend oneself, the freedom of movement, equal rights between men and women, and the freedom of expression and association. Article 38 entitles persons to defend their rights and freedoms in court, and Article 39 states that “everyone is entitled to restore any rights that may have been violated and to have a public hearing by an independent and impartial court, under the equal protection of the law and fulfilling all demands for justice, to clear himself/herself of any accusation.” Additionally, everyone is entitled to receive legal assistance from the moment of arrest, detention, or charging. *Id.* art. 40. The Law on the Judicial System reaffirms these rights. LAW ON THE JUDICIAL SYSTEM, art. 3 and 4.

Courts of First Instance consider all civil, criminal, military, and administrative cases; resolve issues connected with detentions; issue on search warrants; and can restrict the right for secrecy of communication. LAW ON THE JUDICIAL SYSTEM, art.13. The Civil Procedure Code explicitly states that interested persons can apply to the Court in order to protect one’s own or another person’s rights, freedoms and legal interests stipulated and envisioned by the Constitution, laws and other acts. CIVIL PROCEDURE CODE, art. 2. In cases envisaged by the Code of Civil Procedure and other laws, the person entitled to defend the rights, freedoms, and other legal interests of other persons can apply to the court for the purpose of defense. *Id.* The Criminal Procedure Code likewise declares that respect for the rights, freedoms, and dignity of a person is mandatory for all bodies and persons participating in criminal proceedings. CRIMINAL PROCEDURE CODE, art. 9(1). Everyone has the right to liberty and immunity. CRIMINAL PROCEDURE CODE, art. 11. While the court is permitted to temporarily limit those freedoms, this is only permitted where necessary and supported with legal grounds. CRIMINAL PROCEDURE CODE, art. 9(2). Everyone has the right to defend his or her rights and freedoms by any means not prohibited by law. *Id.* at (5).

Many respondents stated that, in practice, civil rights and liberties are not generally raised in court cases in Armenia due to their inexperience with these issues, the lack of public confidence in the judiciary, the low income levels among most of the population, and the “national tradition” of not addressing these issues directly. Government legal aid is only provided in criminal cases, which amounted to approximately 6 million Armenian dram (AMD) in 2001 (approximately \$11,000) and 10 million AMD in 2002 (approximately \$18,000). It is estimated that lawyers are used by parties in no more than 50 percent of civil cases, primarily due to economic constraints. The citizenry is not generally aware of its rights and has very low confidence in the judicial system (only 2 percent of people are willing to use the courts, according to a survey on “Accessibility and Quality of Public Services” conducted in 2001 by the independent local NGO Armenian Democratic Forum with the financial assistance of the World Bank), which explains the small number of civil rights cases in the court system. The Constitution envisions jury trials in cases provided by law, although this provision has not yet been invoked, and there is no indication that it will be invoked in the near future possibly due to political, financial, and logistical constraints. CONSTITUTION, art. 91.

At the same time, Armenia became a member of the Council of Europe in January 2001. On April 26, 2002, the National Assembly ratified the European Convention on Human Rights and Fundamental Freedoms (ECHR) after review by the Constitutional Court. The Convention’s provisions are now a constituent part of Armenia’s legal system, and its terms prevail in case of conflict with domestic law. CONSTITUTION, art. 6. However not all protocols to the convention were satisfied, notably Protocol 6, concerning the abolishment of the death penalty. Lawyers have been referencing the ECHR during the past year, and believe judges are starting to respond positively to these arguments. Judges have begun to familiarize themselves with relevant international standards, primarily through JTC CLE courses.



Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

Conclusion	Correlation: Neutral
Although judicial decisions, by law, can only be reversed through the judicial appellate process, certain external influences and structural factors impact the integrity and effectiveness of this process.	

Analysis/Background:

Every person convicted of a criminal act is entitled to have his conviction reviewed by a higher court in a manner prescribed by law. See, CRIMINAL PROCEDURE CODE, art. 103(7). This concept applies to civil cases as well. Courts of Review consider cases appealed to them from the Courts of First Instance *de novo*. The Court of Review is not constrained by the arguments of the appeal for rehearing and considers a case in full volume. LAW ON THE JUDICIAL SYSTEM, art. 19. Additional evidence may also be submitted in certain instances. CODE OF CIVIL PROCEDURE, art. 217. The Courts of Review examine appeals against First Instance Court verdicts that have not come into effect. CODE OF CIVIL PROCEDURE, art. 206. See Also, CRIMINAL PROCEDURE CODE, art. 45. Appeals from Courts of First Instance must be brought within 15 days after the announcement of the verdict. CODE OF CIVIL PROCEDURE, art. 207, and CRIMINAL PROCEDURE CODE, art. 379.

The Court of Review for civil cases has a chairman and 12 judges; the Court of Review for criminal and military cases has a chairman and 15 judges. LAW ON THE JUDICIAL SYSTEM, art. 18. Cases before the Courts of Review are considered by three-judge panels (i.e., the “full court”) with decisions rendered by majority vote. LAW ON THE JUDICIAL SYSTEM, art. 7. See Also, CIVIL PROCEDURE CODE, art. 20(1), and CRIMINAL PROCEDURE CODE, art. 387. The chairman of each Court of Review is responsible for ensuring proper operation of the court, among other responsibilities. LAW ON THE JUDICIAL SYSTEM, art. 19. The Courts of Review can confirm the First Instance Court decisions or adopt a new verdict (either partially or completely). CRIMINAL PROCEDURE CODE, art. 394. The verdicts or decisions of Appellate Courts come into effect 10 days after their announcement for criminal cases and 15 days for civil cases. CRIMINAL PROCEDURE CODE, art. 402 and CIVIL PROCEDURE CODE, art. 219. A verdict of the Economic Court comes into legal force 15 days after the Court renders its decision, CIVIL PROCEDURE CODE, art. 221.4, and can only be appealed to the Court of Cassation. LAW ON THE JUDICIAL SYSTEM, art. 30.1

The Court of Cassation is composed of the chairman of the Court of Cassation, the Chamber on Civil and Economic Cases, and the Chamber on Criminal and Military Cases. Each Chamber is composed of its chairman and five judges. LAW ON THE JUDICIAL SYSTEM, art. 21. Cases in the Court of Cassation are considered jointly by the majority of judges and the chairman of the respective chamber. LAW ON THE JUDICIAL SYSTEM, art. 7. See Also, CIVIL PROCEDURE CODE, art. 237, and CRIMINAL PROCEDURE CODE, art. 416. The Court can reconsider the resolutions, judgments, and decisions of the Courts of First Instance that have entered into legal force. It can also hear the resolutions, sentences, and decisions of the Economic Court and Courts of Review. Economic court cases reversed by the Court of Cassation, except bankruptcy cases and others defined by law, are re-tried by a panel of judges from the Economic Court. *Id.* at art. 19(2.1). See Also, LAW ON THE JUDICIAL SYSTEM, art. 20.1. Resolutions, judgments, and decisions of the Courts of First Instance and Courts of Review that have entered into legal force (i.e. after the appeals deadline has passed) may be reviewed by the Court of Cassation based on appeals filed by the prosecutor general, his or her deputies, or specially licensed lawyers registered with the



Court of Cassation. CONSTITUTION, art. 93. See *Also*, CODE OF CIVIL PROCEDURE, art. 223, and CRIMINAL PROCEDURE CODE, art. 404. Resolutions, judgments, and decisions of the Courts of Review that have not yet come into force may be appealed by the following: all parties involved in the case, parties not involved in the case but whose rights and obligations are affected by a decision, the prosecutor, and each party's legal representative. The prosecutor cannot appeal against a civil claimant's verdict or decision.

The Court of Cassation can:

- leave the resolution, judgment, or decision unchanged, thus leaving the appeal unsatisfied;
- overrule the resolution, judgment, or decision completely or partially and send the case back for a new trial with a new set of judges at the Court of Appeals or at the Economic Court that initially tried the case;
- nullify the case; or
- dismiss the claim without a hearing.

CODE OF CIVIL PROCEDURE, art. 236 for civil cases, and CRIMINAL PROCEDURE CODE, art. 419 for criminal cases.

In criminal cases, the Cassation Court can also turn down a judgment or decision on grounds given in the Criminal Procedure Code. CRIMINAL PROCEDURE CODE, art. 419. Decisions of the Court of Cassation come into legitimate force from the moment of issuance and are not subject to appeal. *Id.* See *Also*, CODE OF CIVIL PROCEDURE, art. 239. See *Also*, CRIMINAL PROCEDURE CODE, art. 424.

Respondents noted that very few cases are appealed in practice. According to court statistics on civil cases compiled by the Council of Court Chairmen (CCC) for 2000, seven percent of cases from the Courts of First Instance were appealed to the Court of Civil Appeals, and only 1.4 percent to the former Court of Economic Appeals (since 2001, first instance economic disputes are heard by the new Economic Court, with appeals going to the Court of Cassation – see background section on the court structure on page 2 for details). Only 0.3 percent of all court cases brought were appealed to the Court of Cassation. See, STATISTICS 2000. In 2000, special advocate license holders brought 41 percent of the 431 civil appeals to the Court of Cassation; prosecutors brought 8 percent; citizens and organizations brought 51 percent of those cases (no statistics exist for civil cases). See, STATISTICS 2000.

Respondents link the low number of appeals to several logistical and structural impediments. First, the Courts of Appeal, the Economic Court, and the Court of Cassation are all located in Yerevan. The relatively short appeal deadlines (10 and 15 days), poverty, poor transportation and communication infrastructure discourages and may often prohibit an effective appeal remedy for individuals living in the regions. The CCC has passed a resolution to alleviate deadline problems, which states that if a deadline is missed through no fault of the applicant, it must be admitted. However, this is not a law, and it must be personally approved by the CCC chairman.

Second, respondents also note that the Court of Cassation is not entitled to make a "final determination" if it does not approve a Court of Appeals or Economic Court ruling. This means that if it does not approve the verdict in full, it must remand the case back to the review courts, which must then hold a new trial on the matter. This has resulted in lengthy cycling of cases between these two levels of courts, causing much frustration and expense to all parties involved. While this does not happen frequently, most respondents expressed an interest in having the law changed in this regard. In April 2002, it was reported that a draft has been presented to the National Assembly on this issue. In 2000, 60.1 percent of civil and economic appeals to the Cassation Court were reversed (259 cases), either partially or in full, meaning that they had to return to the Court of Appeals for another trial. Potentially, all of these cases could be appealed again to the Cassation Court.



Third, the majority of respondents believed that appeals are influenced by outside factors. For example, many respondents reported that it is a common occurrence for a lower court judge to contact a higher instance judge for "clarification" or "interpretation" of the law on a particular case. Many lawyers saw this as a "clearing" mechanism to ensure they would not be reversed on appeal. In criminal cases, there are still very few acquittals, signifying to many respondents the continued influence of the prosecution on the judiciary. It was also reported during this assessment that in practice, it is common for judges to receive phone calls from members of the National Assembly, government officials, or parties, requesting a decision be made a certain way. While facts to prove such influence are hard to elicit, the prevalence of this claim is significant.

Fourth, in cases of "newly discovered circumstances," an appeal can be made indefinitely by either a special license holder (see Law on Advocate Activity for this licensing procedure) or the prosecutor after the appeals deadline has passed. CIVIL PROCEDURE CODE, art. 225. Sixteen such cases were filed in 2000 with the Court of Cassation due to newly emerged circumstances. See, STATISTICS 2000. In criminal cases, there is no such deadline for appealing judgments and decisions entered into force, "with the exceptions determined in the Present Code." CRIMINAL PROCEDURE CODE, art. 412(2). This means that, in certain instances, there is no finality of judgment.

Factor 9: Contempt/Subpoena/ Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion	Correlation: Neutral
Judges have contempt and subpoena powers, and the Service of Compulsory Enforcement within the Ministry of Justice is responsible for enforcement of judgments.	

Analysis/Background:

Contempt

Insulting a judge, intentionally not carrying out any judgment or decision, obstructing its implementation, as well as disrespectful conduct toward a court by persons participating in a case or present at a court session, in whatever manner displayed, shall bring forth liability as prescribed by law. LAW ON STATUS OF JUDGES, art. 7. See, ADMINISTRATIVE CODE OF VIOLATIONS, art. 206.1 (providing for fines and administrative detention of up to 15 days), and CRIMINAL CODE, art. 191(3).

If a court order is violated during a court session, the chairperson (i.e., the judge who hears the case, if only one judge, or a selected judge if a full panel is hearing a case) is entitled to warn the person who violated the order and, when necessary, to expel that person from the courtroom. CODE OF CIVIL PROCEDURE, art. 115. Judges will also file a complaint with the advocate's union (the body responsible for disciplining advocates) in cases of contempt.

Most respondents felt that Armenian judges have sufficient control of their courtrooms, although instances were described in which judges did not effectively use their contempt powers. Respondents indicated that fines for contempt are negligible, and they have little impact on behavior. In at least one recent case, a criminal proceeding was initiated against an advocate who "insulted" the judge during a court session.



Subpoena

In civil cases, the court can summon witnesses as suggested by parties. CODE OF CIVIL PROCEDURE, art. 44(2). If summoned, a witness must appear and provide information known to him. If the summoned witness fails to appear for reasons considered unjustified by the court, the court is entitled to force the appearance of the witness in court. The court's ruling is carried out immediately, in accordance with procedure established in the law on enforced implementation of court acts. *Id.* at (4) and (5). The required contents and method of serving summons are provided by law. CODE OF CIVIL PROCEDURE, art. 78.

In criminal cases, summons must indicate the place and time the witness must appear and the case about which the witness must be interrogated, as well as the consequences of the failure to appear. CRIMINAL PROCEDURE CODE, art. 86 (3) and CRIMINAL CODE, art 197. Witnesses are obliged to arrive upon being summoned by the court conducting a criminal trial to give evidence and to participate in the investigation and other procedures. CRIMINAL PROCEDURE CODE, art. 86(3). Failure of a witness to appear produces criminal responsibility prescribed by law. *Id.* at (4). See, CRIMINAL CODE, art 197. If a suspect, the accused, the victim, or a witness fails to appear in court, the court can require him or her to be forcibly brought to court. CRIMINAL PROCEDURE CODE, art. 153. If "substantial reasons" (not defined) exist why one of the above cannot appear when summoned, she or he must inform the court. *Id.* The body of inquest executes the decision of forcible appearance in court. *Id.* A court can issue a decree for arrest as a measure to secure the appearance of a suspect, the accused, and other persons listed. CRIMINAL PROCEDURE CODE, art. 280.

If a defendant fails to attend a court session without "good motives" (not defined), she or he can be brought in by force or by court decree, and, with grounds, more severe methods can be used to secure his appearance (not defined). CRIMINAL PROCEDURE CODE, art. 303. Force may also be used to bring in victims who fail to attend without good motives. CRIMINAL PROCEDURE CODE, art. 307. During trial, the court hearing explanations of the accused and the opinions of other parties is entitled to select, alternate, or eliminate the means to secure appearance. CRIMINAL PROCEDURE CODE, art. 312.

Respondents noted that subpoena powers are seldom used in civil cases except at the insistence of one of the parties. Pursuant to a motion, the Court determines whether a witness is necessary or not, taking into consideration the circumstances presented in the motion. Most lawyers reported having many problems with witnesses not appearing when summoned, possibly due to corruption on the part of the police who are charged with enforcing the subpoena. At times, the failure of witnesses to appear prohibits attorneys/prosecutors from fully developing their case. The rejection of a motion for summons by the court does not restrict the rights of a party to make the same motion later. The court can also, by its own initiative, decide to summon a witnesses. CRIMINAL PROCEDURE CODE, art. 330

Enforcement

Because a separate service is responsible for enforcement of court judgments, judges have little involvement in this area. The Ministry of Justice is responsible for arranging and carrying out the compulsory implementation of court decisions, resolutions, and at times sentences. LAW ON THE JUDICIAL SYSTEM, art. 12. Enforcement of judgments was transferred from the courts in 1998 to the Service of Compulsory Enforcement within the Ministry of Justice by passage of the Law on Compulsory Enforcement of Judicial Acts.

A court act that has come into effect is mandatory for all state bodies, local self-government bodies, their officials, legal entities, and citizens and is subject to execution in the whole territory of Armenia. CIVIL PROCEDURE CODE, art. 14. After the adoption of the verdict and by petition of



the persons participating in the case, the court takes measures for the execution of the verdict. CODE OF CIVIL PROCEDURE, art. 141.

A criminal court has the power to send a verdict to be executed and resolve issues arising with the execution. CRIMINAL PROCEDURE CODE, art. 41(2). A judge is empowered to implement administrative actions for preparation of the court session or for securing the execution of its verdict or other decision. CRIMINAL PROCEDURE CODE, art. 42. The court decision in a criminal case that comes into effect is implemented by the court making the decision, and the case must be implemented within three days after coming into effect or returning from Appellate or Cassation Court. CRIMINAL PROCEDURE CODE, art. 427. An acquitted defendant must be immediately released in the courtroom after the announcement of the verdict. *Id.*

The court provides instructions to those entitled to carry out court decisions, including a copy of the decision and any appellate court decision. CRIMINAL PROCEDURE CODE, art. 428. These bodies must immediately inform the court that made the decision about the implementation of the decision. *Id.* Issues concerning execution of court decisions are considered by the court at the court session with participation of the convict. CRIMINAL PROCEDURE CODE, art. 438.

As long as the Constitutional Court is fulfilling duties within its power, it is mandatory for state organs, legislative bodies, institutions, organizations, and citizens to fulfill the Court's orders. Its orders must be fulfilled within five days after their receipt, unless the Court has specified a different time limit. LAW ON THE CONSTITUTIONAL COURT, art. 54. Refusing or avoiding implementation of the orders, failing to meet time limits, not fulfilling the orders, or fulfilling them inadequately shall be punishable by law. *Id.* Failure to apply the decision of the Constitutional Court or to obey it adequately, as well as preventing its observance, will expose offending persons to liability. LAW ON THE CONSTITUTIONAL COURT, art. 70.

In practice, parties must apply to the court to obtain an enforcement act that must be granted by the court within 3 days of receipt of the application. The act must be presented for enforcement within one year of the date the court decree became legally effective. LAW ON COMPULSORY ENFORCEMENT OF JUDICIAL ACTS, art. 18 and 23. The court is not involved in enforcement except if a party initiates suit against the Service of Compulsory Enforcement for violation of its law. The Service can apply to the prosecutor for non-performance or intentionally impeding the enforcement of court actions. *Id.*, at 72. The Law on the Service Providing the Compulsory Execution of Judicial Acts provides more detail on the Service, its employees, and its authority.

In 2000, the average enforcement time was 4.5 months. During that year, 36,519 execution proceedings were registered (approximately 12,000 from the previous year), 7,384 were completed, and 11,691 were discontinued. At the end of 2000, 17,444 proceedings remained. The World Bank has a project to network all 40 branches of the enforcement office to its headquarters in Yerevan. It is in the process of identifying training areas and other needs for more efficient operation. Full implementation of this project is anticipated within the next few years.



III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion	Correlation: Negative
The judiciary has a limited ability to influence decisions concerning its funding, although it does have control over how funding is expended once received.	

Analysis/Background:

The law stipulates that the state financially support the court system. The Law on the Judicial System states that the courts are to be financed from the state budget, LAW ON THE JUDICIAL SYSTEM, art. 29. The Civil and Criminal Codes of Procedure stipulate that all costs associated with the court in tried civil and criminal cases in the courts are paid to the state budget. CODE OF CIVIL PROCEDURE, art. 71, CRIMINAL PROCEDURE CODE, art. 168(2).

The Council of Court Chairmen (CCC) is responsible for drafting and submitting budgets for all ordinary courts to the government. LAW ON THE JUDICIAL SYSTEM, art. 27. Each court chairman submits a proposed annual budget to the chairman of the CCC, who, together with an assigned staff member, assesses the budgets. Sometimes budgets are discussed at the CCC plenary sessions.

The president of the Constitutional Court is responsible for drafting and submitting a budget for that court to the government. LAW ON THE CONSTITUTIONAL COURT, art. 7. She or he is also responsible for the expenditures of the Court to ensure its normal functioning. LAW ON THE CONSTITUTIONAL COURT, art. 17(8).

After the CCC completes its internal budgeting process, the Council chairman presents the consolidated draft to the Ministry of Finance and Economy. Further discussions and negotiations may ensue before the minister of finance presents it to the full cabinet, which, in turn, presents it to the National Assembly in November of each year. The budget is broken down by salaries, maintenance, transportation, and supplies. The Minister of Finance must approve all re-distributions from these categories, although the re-distribution of actual money received is reportedly not a problem. The CCC and the Association of Judges of the Republic of Armenia (AJRA) do not directly lobby the government concerning the budget, as this is not yet a common practice in Armenia.

All JRI respondents agreed that the judiciary is severely underfunded, primarily due to the country's difficult financial straits. The budget for judicial activities in 2001 was 1.4 billion AMD (0.6 percent of the state budget) and was 3.3 billion AMD (approximately 1.3 percent of the state budget) in 2002. Since 1995, the judiciary has not actually received its approved allocation, due most likely to budgetary shortfalls. Courts do not have meaningful allocations for maintenance and equipment and are substantially indebted to the utility companies. Most judges report having to pay for their own supplies. Court chairmen do receive their monthly allocations, although most of this amount is dedicated to salaries alone.



The inadequate funding of the judiciary is often cited by respondents as one of the biggest impediments to judicial reform in Armenia. One judge estimated that a threefold increase in the budget would be sufficient, yet a tenfold increase would be necessary to include modernizing equipment as well. Most respondents do not feel the courts are disproportionately under-funded as compared to other governmental agencies, but this issue requires serious attention. The World Bank has a capital improvement program for various judicial projects totaling 11.2 million USD, and is cited by some respondents as the reason the government does not approve additional money for the courts.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.

Conclusion	Correlation: Negative
While judges' salaries are now paid in a timely manner and are comparable to the salaries of other high level government officials, they are not adequate to support a respectable livelihood.	

Analysis/Background:

Although specific amounts are not stated, the law prescribes judicial salary levels based on which court a judge sits and the judge's position on the court. The Law on the Status of Judges requires all judges belonging to a particular court of instance be remunerated equally, as are their respective chairmen, and specifies that the salaries of judges and chairmen of higher courts of instance exceed the salaries of their lower court counterparts by 10 percent. Specifically, salaries of judges and the chairman of the Court of Cassation are to exceed the salaries of the judges and chairmen of the Courts of Review by 10 percent respectively. The same principle applies to the salary differential between chairmen and judges of the Courts of Review and their counterparts on Courts of First Instance and to the salary differential between judges and the chairmen on a particular court of instance. LAW ON STATUS OF JUDGES, art. 16.

Additional remuneration is provided on top of a judge's salary based on qualification rank and work experience. LAW ON STATUS OF JUDGES, art. 17. Qualification ranks are awarded to judges based on their occupied position, work experience, professional and practical features, and minimum time of service in the previous qualification rank. LAW ON STATUS OF JUDGES, art. 34. These qualification ranks range from the fifth or lowest qualification rank (reserved for judges on the courts of first instance) to the highest qualification rank (for judges on the Court of Cassation). LAW ON STATUS OF JUDGES, art. 33 and 35. Qualification ranks are awarded by the president of Armenia based on Council of Justice recommendations, which are initiated by the minister of justice. LAW ON STATUS OF JUDGES, art. 35.

Remuneration based on qualification ranking ranges from 15 percent for the lowest qualification mark to 50 percent for the highest mark. LAW ON STATUS OF JUDGES, art. 37. The Council of Justice is supposed to consider professional preparedness, occupied position, and length of service when recommending a qualification rank. LAW ON COUNCIL OF JUSTICE, art. 18. Additional remuneration for work experience ranges from an additional 5 percent (5-10 years), to 25 percent or more (25 years of experience, plus 1 percent for each year above 25). LAW ON STATUS OF JUDGES, art. 37. "Work experience" includes work or service that carries military, special, honorary, or other ranking grade and any other work as a lawyer. *Id.* Through this



procedure, respondents noted that the possibility of influence by the president of Armenia on the salary of a judge is not excluded.

The Law on the Constitutional Court mandates that the state provide this Court's members with adequate living and working conditions in order to ensure the activities of members. LAW ON THE CONSTITUTIONAL COURT, art. 13(1). The salaries of Constitutional Court members are determined by law, with pensions typically set at 75 percent of a judge's salary. Id., at (2) and (3).

Based on these guidelines, salaries together with additional compensation for judges reportedly range from \$200 to \$400 per month in April 2002. Although now paid in a timely manner, judicial salaries are not deemed adequate by virtually all respondents, even though they compare to ministers' salaries. Low salaries are one of the major reasons cited for the presence of bribery in the judicial system. Many believe that a salary of \$1,000 per month would significantly reduce bribery among judges estimated by some respondents to exist in at least half of all civil cases and somewhat less in criminal cases. Most respondents felt that most, if not all, judges take bribes, although the poor economic situation was cited as the main reason for this state of affairs.

Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

Conclusion	Correlation: Negative
Although judicial buildings are easy for most to find, they are typically in substandard condition and do not provide a respectable environment for the dispensation of justice.	

Analysis/Background:

Although at least one Court of First Instance is located in each of Armenia's 10 *marzes* (provinces), the Courts of Review, the Economic Court, and the Court of Cassation are all located in Yerevan. Respondents noted that given the limited appeal timeframes (see Factor 8) in a country where the postal system does not function well, having all appeals courthouses located in one city can be a deterrent to an effective appeal remedy.

The government is required by law to provide the Constitutional Court with its own building and with the equipment necessary to ensure its normal function. LAW ON THE CONSTITUTIONAL COURT, art. 7(3). However, aside from the Constitutional Court building, which is the best maintained and equipped courthouse in the country, respondents noted that virtually all courthouses lack respectable environments for the dispensation of justice. Most are not sufficiently heated in the winter, have no air conditioning in the summer, and are not maintained by a janitorial service. The deplorable state of the courthouses leaves a negative impression of the judiciary on all that enter. In addition, courthouses in Armenia are not generally well marked inside or out, although, for the most part people know where the courthouses are located.

There is a scarcity of courtrooms in some of the 45 courthouses throughout the country, often causing delays in trials or requiring hearings to be held in judges' chambers. Most do not have separate rooms for counsel to use, nor do they have deliberation rooms for the judges, libraries, or security. See, *Monitoring Report on Working Conditions in First Instance Courts in the Shirak, Gegharkunik, and Syunik Marzes*, A.D. Sakharov Armenian Human Rights Foundation, 2002.



A significant portion of a World Bank project totaling 11.4 million USD (12.4 million USD, including contributions from Armenia) is dedicated to improving court infrastructure. The Bank plans to renovate 20 courthouses by 2004/5. Of those 20, seven are earmarked as pilot courthouses, the renovations for which will include furnishings. The Armenian government is expected to supply furnishings for the remaining 13 renovated courthouses. The first pilot courthouse was expected to become operational in May 2002 and is supposed to have four modern courtrooms, a library, and a computer room. Although the World Bank project will refurbish less than half of the country's courthouses, respondents see it as a significant step toward addressing a huge impediment to judicial reform in Armenia. See, *World Bank Project Appraisal Document for Armenia Judicial Reform Project*.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

Conclusion	Correlation: Negative
Threats and sometimes assaults against judges do occur, although rarely. Court security is minimal.	

Analysis/Background:

Threatening a judge or his or her relatives in connection with the administration of justice is subject to liability as prescribed by law. LAW ON STATUS OF JUDGES, art. 7. See, CRIMINAL CODE, art. 191.2. A judge or members of his or her family are under the special protection of the state. Upon a judge's application, competent state bodies (e.g., Ministry of Internal Affairs, police) must undertake all necessary measures to ensure the security of a judge and members of his or her family. LAW ON STATUS OF JUDGES, art. 24. Judges, however, seldom invoke this provision. The security of the Constitutional Court and its members is ensured in a manner "prescribed by law" (not defined). LAW ON THE CONSTITUTIONAL COURT, art. 12(5).

A judge has the right to have and wear a weapon and "special' means of defense" (not defined). LAW ON STATUS OF JUDGES, art. 25. The new Rules on Judicial Conduct state that a judge can carry a weapon, that she or he can only use it in unspecified cases of self defense, and that she or he shall not give it to other people. The weapon cannot be displayed or used in the courthouse or other public places, except in cases of objective necessity for self-defense or protection of other peoples' lives. RULES OF JUDICIAL CONDUCT, Rule 7.

Courthouse security is not specifically allocated in the budget. There is no special court police force, although the police under the authority of the Ministry of Interior are present in limited numbers at the courthouses. Many judges do have monitors in their offices, although generally their offices do not have anterooms or separate entrances to the courtroom. Except for the Cassation Court and Constitutional Court buildings, there are no metal detectors in the courthouses, nor is there typically any type of entrant screening. There have been several instances in which judges were threatened and assaulted, and many respondent judges expressed they do not feel secure. A female judge was assaulted in her courtroom in March 2002. Most respondents feel courthouses do not have enough security.



IV. Structural Safeguards

Factor 14: Guaranteed Tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

Conclusion	Correlation: Positive
Once appointed, all judges and Constitutional Court members have tenure until the constitutionally designated retirement age.	

Analysis/Background:

Judges may hold office until the age of 65, and a member of the Constitutional Court may do so until the age of 70. CONSTITUTION, art. 96. Judges may be removed from office only in accordance with the Constitution and the laws. *Id.* See Also, LAW IN STATUS OF JUDGES, art. 10. See Also, LAW ON THE CONSTITUTIONAL COURT, art. 13 (3).

Judges have the right to receive a pension that equals 75 percent of the salary earned in his or her last office as a judge. If a person worked less than 3 years or if his or her powers were terminated by the president under certain circumstances, then this pension is not guaranteed. LAW ON STATUS OF JUDGES, art.18. Constitutional Court members are also entitled to the same 75 percent pension. LAW ON THE CONSTITUTIONAL COURT, art. 11

Most respondents agree that the life tenure provisions provide welcomed job security to judges, although they also emphasized that this is not necessarily "security" considering the extensive powers of the minister of justice to remove and discipline judges.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria, such as ability, integrity, and experience.

Conclusion	Correlation: Negative
The criteria for advancement are not delineated in the law, and the discretion of the minister of justice in this procedure is not excluded.	

Analysis/Background:

The president, at the recommendation of the Council of Justice and the minister of justice, has the authority to promote all judges, court chairmen, and court presidents. LAW ON COUNCIL OF JUSTICES, art. 13. This is done through submission of a "List of Professional Advancement" to the president in January of every year. The List should include those persons on the List of Official Fitness (see Factor 2) who deserve promotion due to their professional, practical, and moral qualifications. *Id.* These terms are not defined in the law and are felt by many respondents to be applied subjectively by the minister of justice. The same five-member commission created by the



minister of justice to administer the judicial qualification exam (see Factor 2) is responsible for organizing tests for those judges wanting to be considered for promotion. CHARTER OF JUSTICE MINISTRY, Chapter IV, art. 21. The test for promotion is held in January each year, and the results are not appealable. *Id.* at art. 28. Those meeting the “requirements of the test results” (not defined) are included on the List, and if one is on the List one year, she or he will be retained on the next year's List. *Id.* at art 31, 32. Nowhere are the promotion criteria specified, which raised concerns among many respondents. Most respondents expressed that, as with the appointment process, the minister of justice's extensive role in the promotion process inhibits the separation of powers between the judicial and executive branches.

In 1999, there were 43 judges on the List of Professional Advancement; in 2000, 42 judges; in 2001, 49 judges; and in 2002, 51 judges. With the current structure and with life tenure in place, there are few vacancies to fill at any one time (2001 being an exception due to creation of the Economic Court). The Ministry of Justice is responsible for summarizing judicial statistics and for researching, inspecting, and summarizing judicial practice. LAW ON JUDICIARY, art. 12. This is done through the Ministry's Audit Department. In addition, each court submits periodic court statistics to the Council of Court Chairmen (CCC), which then compiles an annual report. These statistics include types of cases (criminal, civil, administrative) per court. It is not known whether these statistics play a role in the compilation of the List for Professional Advancement, although most respondents agree that the periodic review of judges should come into play.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Positive
Judges have immunity for their official acts and non-official acts.	

Analysis/Background:

The Law on the Status of Judges states that “[a] judge shall be immune,” without providing more detail on the scope of that immunity. LAW ON STATUS OF JUDGES, art. 11. Only the prosecutor general may commence a criminal prosecution against a judge, with the investigation overseen by the prosecutor general himself. *Id.*

A judge may not be taken into custody or brought to criminal and administrative responsibility in a judicial proceeding without the consent of the president, based on a recommendation of the Council of Justice. LAW ON STATUS OF JUDGES, art. 11. When a judge is arrested, detained, or his or her personal effects or home are searched, the pertinent body must immediately notify the president, the Council of Justice, and the chairman of the Council of Court Chairmen. *Id.* This overwhelming power of the president has seldom been used. Note that this immunity is not limited to actions taken in their official capacity. Most respondents are pleased with the immunity afforded judges and do not believe this privilege is abused.

Members of the Constitutional Court have personal immunity and may not be detained or subjected to administrative or criminal prosecution through judicial proceedings without consent of the body that has appointed him/her and a decision of the Constitutional Court. LAW ON THE CONSTITUTIONAL COURT, art. 12(2). In the case of arrest or search of a member of the Constitutional Court, the president of the Constitutional Court and the body that has appointed him/her must be immediately informed. LAW ON THE CONSTITUTIONAL COURT, art.12(3). A



member of the Constitutional Court may be arrested or searched only on the basis of a warrant of the prosecutor general. LAW ON THE CONSTITUTIONAL COURT, art. 12(4).

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

Conclusion	Correlation: Negative
Subjective criteria can be used to remove or discipline a judge, and the process can be initiated only by the minister of justice.	

Analysis/Background:

Removal

The president of the Republic of Armenia has the power to remove any judge from office, to sanction the arrest of a judge, and, through the judicial process, to authorize the initiation of administrative or criminal proceedings against a judge. CONSTITUTION, art. 55(11). The Council of Justice makes recommendations [to the president] regarding the removal from office of a judge, the arrest of a judge, and initiation of administrative or criminal proceedings through the judicial process against a judge. CONSTITUTION, art. 95(6). However the Constitution does not require the president to adhere to the Council of Justice recommendation or prohibit him from acting on his own initiative. To date, the president has not acted in this regard except on the recommendation of the Council.

The Law on the Status of Judges lists 12 grounds for the president to terminate a judge's powers upon recommendation of the Council of Justice. This includes somewhat subjective factors under the "Code of Judicial Conduct" (this can only be proposed by the minister of justice to the Council of Justice after receiving the findings of the CCC) and committing a "gross violation of law" (not defined) during the administration of justice. LAW ON STATUS OF JUDGES, art. 30

The minister of justice must apply to the Council of Justice by bringing a motion on the issue of termination on one of these grounds. LAW ON STATUS OF JUDGES, art. 30. See Also, LAW ON COUNCIL OF JUSTICE, art 19. The Law on the Council of Justice states that the minister of justice can move to terminate a judge if the judge has committed a gross legal violation or has committed an action incompatible with the title of a judge. Proposals cannot be made to the Council of Justice twice on the same grounds. When considering early termination, the Council of Justice invites the judge to testify. If a judge does not appear after the second call by the Council due to an "unreasonable excuse" (not defined), the Council can consider the case in the judge's absence. *Id.* There is no appeals process from the decision to terminate a judge.

Under the new Rules of Judicial Conduct, an AJRA representative participates in CCC meetings on matters of judicial conduct in order to defend the interests of the judge in question. Council hearings on termination and disciplinary issues are not open to the public.

Three judges have been terminated since the new judicial system began in 1999 (all in 2000). One of these judges was ultimately sentenced in a bribery case. CORRESPONDENCE FROM THE COUNCIL OF JUSTICE TO CEELI, 3/26/02. Decisions to terminate are published as presidential decrees in the Official Bulletin of the Republic of Armenia.



Provisions for termination also apply to members of the Constitutional Court. LAW ON THE CONSTITUTIONAL COURT, art. 14. The Constitutional Court, with a vote of two thirds of its members, determines whether there are grounds for the removal of a member, his or her arrest, or initiation of administrative or criminal proceedings through the judicial process. CONSTITUTION, art. 100(8). In the instance of automatic terminations from the Constitutional Court, the president of the Constitutional Court must apply to the president of Armenia within two days of the triggering event to request appointment of a new member. *Id.* at (3). For non-automatic termination, the member's status may be discussed by the body that appointed him/her on the basis of a ruling of the Constitutional Court in accordance with the law. *Id.* at (5). No Constitutional Court member has been terminated since its inception in 1996.

The minister of justice is the only person who can initiate termination and disciplinary proceedings against judges of Courts of General Jurisdiction. LAW ON STATUS OF JUDGES, art. 30. *See Also*, LAW ON COUNCIL OF JUSTICE, art 19. This involvement of the executive branch arguably infringes on the principles of separation of powers and is seen by respondents as an intimidation factor and source of pressure for judges in their work. Although only three judges have been removed between 1999 and April 2002, fear of the executive branch's powers to discipline and terminate judges has impacted the development of the judiciary's independence as noted by respondents.

Another issue raised by respondents was that if disciplinary proceedings have been initiated against a judicial member of the Council of Justice, then that judge cannot take part in Council voting. Since the minister of justice has the sole authority to initiate such proceedings, this is further evidence of how she or he could influence the outcome of a disciplinary or removal matter. Although this has never been invoked, the possibility exists.

Discipline

The Council of Justice is responsible for dispensing disciplinary action, although only the minister of justice has the right to commence disciplinary proceedings against a judge. LAW ON STATUS OF JUDGES, art. 31. However, the chairman of the Court of Cassation has the right to initiate disciplinary proceedings against a judge on the Court of Cassation. LAW ON THE COUNCIL OF JUSTICE, art. 20. The president of the Court of Cassation chairs the meetings of the Council of Justice when the Council is considering disciplinary action against a judge. The president, the minister of justice, and the prosecutor general do not take part in these meetings. CONSTITUTION, art. 95(7). *See Also*, LAW ON STATUS OF JUDGES, art. 31, LAW ON COUNCIL OF JUSTICE, art. 20.

Statutory grounds for disciplining a judge include:

- violation of law during administration of justice;
- violation of an employment law;
- performing an action dishonorable for a judge; and
- violation of Article 14 (Duties of a Judge, including requirements for being impartial, unbiased, and confidentiality), and Article 15 (Judge and Society, includes requiring a judge to be ethical, moral, and respectful of the constitutional order). LAW ON STATUS OF JUDGES, ART. 31.

Notably, overruling or altering a judicial act rendered by a judge does not, in and of itself, give rise to a judge's liability, unless during administration of justice, the judge intentionally violated the law or acted in bad faith, which led to substantial consequences. *Id.* The last two grounds listed above are subjective and not further defined in the law, which raises concerns about the subjective nature of the discipline process imposed on judges. Also excluded is a violation of the Rules of Judicial Conduct, which is explicitly listed as grounds for termination. As the Rules were only adopted in December 2001, it is too soon to determine whether this will be invoked for discipline, as well as termination.



A judge may be subject to sanctions no more than 3 months after the date of the revelation of a violation, not counting the period for disciplinary proceedings or the time a judge is absent from office for valid reasons, but no later than one year from the date of revelation. *Id.* Before materials are submitted to the Council in a disciplinary proceeding, the judge has a right to familiarize himself/herself with them. In addition, the judge has a right to present additional explanations or bring motions to make additional inquiries. *Id.*

The Council of Justice may impose either a “reprimand” or a “severe reprimand” as a form of discipline. LAW ON STATUS OF JUDGES, art. 32. The Law on the Council of Justice also allows for a rebuke (not defined). LAW ON COUNCIL OF JUSTICE, art. 20. If the proceedings were based on several facts, only one sanction can be imposed. The Council may decide not to discipline after an inquiry into the issues. If after two years from the date of imposition of discipline, a judge is not subjected to any new disciplinary sanction, his or her record on the disciplinary matter will be expunged. LAW ON STATUS OF JUDGES, art. 32. Statistics on discipline since 1999 are as follows:

Year	Complaints to the Council of Justice	Severe Reprimand	Reprimand	Suspension of Complaint	Dismissal of Complaint
1999	4	0	1	1	2
2000	7	1	0	0	6
2001	3	1	2	0	0
2002	1*	0	0	0	0

* Case still under consideration.

STATISTICS PROVIDED BY COUNCIL OF JUSTICE, March 26, 2002.

Most respondents were not aware of specific disciplinary actions against judges, in part because the actions of the Council of Justice are not published.

Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

Conclusion	Correlation: Negative
<p>There are no formal rules for case assignment in Armenia. Each court chairman controls case assignment for his court. In civil cases, this is traditionally done by territorial jurisdiction. In criminal cases, assignments are typically made by workload, expertise, or other method as determined by the chairman.</p>	

Analysis/Background:

The Council of Court Chairmen (CCC) is responsible for working out and approving rules for case distribution in cases in Courts of First Instance. LAW ON THE JUDICIAL SYSTEM, art. 27. However, to date, the CCC has not developed any assignment rules. In practice, case assignment in civil cases in the Courts of First Instance is generally done by traditional "territorial" jurisdiction (i.e., a court's territorial jurisdiction is divided among judges of that court). A judge hears all cases in which the plaintiffs are from his or her assigned jurisdiction. In some instances, especially in the Yerevan courts, chairmen reported they may alter this method and assign cases by expertise or experience of the judge. Criminal cases are distributed by court chairmen, based mostly on the



workload of the judges, but also on the complexity of the cases and the judges' experience. Some courts meet weekly for case assignments, but as the law does not regulate this area, the chairman is in complete control of this process. Some judge respondents voiced concern that this is a way for a chairman to control them (i.e., by giving a judge more or less "lucrative" cases). Parties in both civil and criminal cases are entitled to "challenge" a judge who considers the case based on facts and considerations giving rise to doubts about the judge's impartiality (including being a relative). CODE OF CIVIL PROCEDURE, art. 21, for civil cases, and CRIMINAL PROCEDURE CODE, art. 88, for criminal cases. In a civil case, a petition for recusal, or a challenge/self-challenge (in Armenian), to a judge's impartiality, must be made in writing, stating the grounds for the challenge. Repeated petitions for recusal against the same judge can become a subject of discussion if the petition lists new facts and considerations giving rise to the judge's impartiality. CODE OF CIVIL PROCEDURE, art. 21. Parties can also petition for a court secretary's recusal. CODE OF CIVIL PROCEDURE, art. 23. A judge can enter a written petition with the reasons listed to have him/herself recused from a case prior to the beginning, or during the trial – if the judge becomes aware of the grounds for recusal after the trial begins. CODE OF CIVIL PROCEDURE, art. 22. This provision applies to court secretaries as well. CODE OF CIVIL PROCEDURE, art. 24.

When a petition for recusal is submitted, the trial is suspended until the issue is resolved by the court chairman or by another judge, if the chairman is the judge in question. CODE OF CIVIL PROCEDURE, art. 25(1) and (2). If a panel of judges hears a case, a recusal petition is resolved by the panel of judges, with the judge in question excluded from the proceeding. *Id.* at 3. A court trying a case also resolves recusals of a court secretary. *Id.* at 4. A person who is the subject of a petition for recusal is entitled to express her/himself. Once a decision is reached on a recusal request, it is announced immediately, and the grounds for granting or rejecting the request are listed. Recusal decisions are not subject to appeal. *Id.* at (5)-(7).

If there are an equal number of pros and cons, the petition for recusal is upheld, and the case is tried in the same court but with a different judge(s). CODE OF CIVIL PROCEDURE, art. 25(3) and 26(1). In a Court of First Instance, the case is forwarded to another Court of First Instance. If the recusal is upheld in the Economic Court, and it is impossible to form a new court panel to hear the case, the chairman of the Court of Cassation forwards the case to a Court of First Instance or to a Court of Review. *Id.* at (3).

At the start of a criminal case, the chairman announces the court composition and explains to the parties their right to request a recusal of individual judges participating in the court and the grounds for doing so, which are then resolved according to Article 90 of the Criminal Procedure Code. CRIMINAL PROCEDURE CODE, art. 322. The petition is submitted by motion, and the court (the judge himself if in the Court of First Instance or the remainder of the panel) determines whether to accept or reject the petition. CRIMINAL PROCEDURE CODE, art. 88. A judge can be recused if she or he is not a "proper judge" (not defined); if she or he is a party to the case, a representative of a party, a relative of a party, or a representative of a relative; if she or he participated in the proceedings of this case as a witness or otherwise participated in the case in another capacity; if she or he could be summoned as a witness; or if other circumstances could give ground to believe that she or he is interested directly or indirectly in the case. CRIMINAL PROCEDURE CODE, art. 90(1). When a judge determines that grounds exist for recusal in the case before him/her as stated in Article 90, she or he should issue a petition thus transferring the case to the Cassation Court. CRIMINAL PROCEDURE CODE, art. 299.

Judges who participate in a pre-trial session cannot participate further in a case before the Court of First Instance or the Court of Review. CRIMINAL PROCEDURE CODE, art. 90(2). The matter is resolved by the judge hearing the case or the remainder of the panel in a full court hearing. *Id.* at (4). A court secretary can be challenged if he/she is related to the judge. CRIMINAL PROCEDURE CODE, art. 94.



In practice, respondents indicated that parties requesting a judge be recused from a case are rare in Armenia, and instances in which judges have recused themselves from a case are rarer still. Some lawyers report that recusals are seldom granted and that they are wary of petitioning for a recusal for fear of antagonizing the judge.

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

Conclusion	Correlation: Neutral
The Association of Judges of the Republic of Armenia (AJRA) exists to promote the interests of the judiciary. However, the AJRA is only beginning to be active and involve its members in activities.	

Analysis/Background:

According to the Law on the Status of Judges, Judges may establish and become members of associations that represent their interests, raise their professional level, and protect their status. LAW ON STATUS OF JUDGES, art. 13. The AJRA was formed in 1997 (registered as a non-governmental association with the Ministry of Justice in 1997 and re-registered in 2000) with the state goals of assisting in judicial reform, participating in drafting laws related to judicial independence, and protecting the rights of its members. In April 2002, the Association had 95 members (55 percent of the judiciary), a 15-member board of directors, and an executive director (as of September 2001). In addition to the board members and the executive director, an estimated 12 additional members are very active. AJRA does not have its own office space. The Association charges its members 1,000 AMD in monthly dues; however, it has not been successful in collecting these fees in the past.

AJRA has commenced several projects in recent years, including publication of a monthly newsletter, *Orinatert*, which in 2001 was the first journal to publish cases of the Court of Cassation in Armenia. The newsletter is distributed free of charge to all judges and to lawyers' associations, government officials, and academic institutions. AJRA is currently drafting a series of 10 family law manuals for use by the general public, which will be followed by trainings in the *marzes*. Some of AJRA's past accomplishments include training for the first judicial qualification exam in 1998 and adopting a code of ethics. Although the code has no enforcement mechanism, the Council of Court Chairmen used it as a basis for drafting the recently adopted Rules of Judicial Conduct. The AJRA does not actively advocate on behalf of its members. The Association received mixed reviews from respondent judges; some find it to be an effective organization that represents their interests, while others are unaware of its activities.



V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

Conclusion	Correlation: Negative
Undue influence on judicial decisions is a pervasive problem and includes bribery; requests for specific outcome from government officials, friends, etc; <i>ex parte</i> communication; and political pressure.	

Analysis/Background:

There are a number of existing laws and regulations that are designed to stem external influence and to ensure the impartiality of judges. These include the following provisions:

- The Armenian Constitution stipulates that the courts are to administer justice solely in accordance with the Constitution and the laws. CONSTITUTION, art. 91. See Also, CIVIL PROCEDURE CODE, art. 24(1). The Law On Status Of Judges mandates a judge avoid all actions that may harm the reputation of the court and the high vocation of a judge or that raise doubts about being unbiased or impartial while carrying out his or her duties in court or in any non-official capacity. LAW ON STATUS OF JUDGES, art. 14. Furthermore, a judge shall not be led by assumptions or emotions and shall not be influenced by attitude or behavior of the parties and other external forces. RULES OF JUDICIAL CONDUCT, Rule 9.
- Judges and members of the Constitutional Court may not hold any other public office, become members of any political party or any state authority, participate in pre-election campaign, nor engage in any political activity or any other paid occupation, except for scientific, educational, and creative work. Constitution, art. 98. See Also, LAW ON THE CONSTITUTIONAL COURT, art. 3(2) and LAW ON STATUS OF JUDGES, art. 8 and 9. No cases have been initiated for violation of these principles.
- During the administration of justice, judges are not accountable to any state body or official. LAW ON STATUS OF JUDGES, art. 5. Any interference by state bodies, local self-governing bodies and their officials, political parties, public associations, and mass media in the activity of a judge while administering justice is impermissible and results in responsibility as prescribed by law. LAW ON STATUS OF JUDGES, art 6. See, CRIMINAL CODE, art. 191.1. A member of the Constitutional Court must be independent and subject only to the law. LAW ON THE CONSTITUTIONAL COURT, art. 10.
- Judges are not required to give explanations regarding the substance of a case or materials pertaining to a case assigned to them or to make them known to others in any way, other than as prescribed by law. LAW ON STATUS OF JUDGES, art 6. The Rules of Judicial Conduct expand this list to prohibit influence from legislative and executive authorities, political and non-governmental organizations, government officials, and the judge's family and friends. RULES OF JUDICIAL CONDUCT, Rule 8. A judge can have contacts with representatives of the government or legislature, their officials or representatives, or mass media, unless those contacts give rise to doubts about the judge's impartiality. *Id.*
- Parties in both civil and criminal cases are entitled to petition for a judge's recusal from a case if, based on facts and considerations, there are doubts about the judge's impartiality (see Factor 18 for details). CODE OF CIVIL PROCEDURE, art.21, for civil cases, and CRIMINAL



PROCEDURE CODE, art. 88, for criminal cases. In practice, respondents noted that these provisions are seldom used, partly because the court seldom grants them.

- The Criminal Procedure Code requires a court trying a case to uphold the principles of objectivity and impartiality. CRIMINAL PROCEDURE CODE, art. 23(4). The court is not bound by the opinions of the parties and is entitled to undertake, upon its own initiative, all necessary measures to reveal the truth in a criminal case. *Id.* The verdict of the court may only be based upon the evidence presented. *Id.* at (5), and art. 25(1). The Code likewise requires the parties to be independent of the court or any other bodies or persons. CRIMINAL PROCEDURE CODE, art. 23(4). Justice should be administered in conditions excluding any external influence on the judges. CRIMINAL PROCEDURE CODE, art. 40(3). Parties guilty of unlawful influence on judges or any other interference with the administration of justice by the court shall bear responsibility prescribed by law. CRIMINAL PROCEDURE CODE, art. 40(4).

Despite all of these legal provisions, respondents reported external influence on judicial decisions are pervasive and come in many forms, although quantifying any of them is difficult. Bribery (see Factor 11) is a common problem, caused, many respondents say, by low judicial salaries, mistrust of the judicial system, and historical practice. One respondent lawyer reported that cases are often stalled by judges who are waiting for a sufficient bribe to be proposed. Many respondents feel that increasing judicial salaries would alleviate, but not eliminate, this form of influence. Many respondents did claim, however, that just because a bribe is transferred does not mean an illegal decision was made, implying that the judge evaluates the case, and then solicits the bribe from the party he thinks, by law, will win.

Ex parte communications are not prohibited by law in Armenia. Most respondents indicated that such a prohibition would be next to impossible to enforce in such a small country. Respondents indicated that judges often get telephone calls from officials, parties, or "intermediaries" in an attempt to influence their decision. Judges continue the practice of having "open days," in which the public, including parties to pending cases, can discuss matters directly with the judge and court staff. While a handwritten sign generally states that the judge will not give legal advice, this procedure lends itself to potential abuse. Finally, one lawyer respondent described "perceived potential government interests" as another factor influencing judicial decisions. The powers of the executive branch to remove and to discipline judges supports this comment. One lawyer stated that an appellate judge told him directly that he could not resist the opposing pressure to decide a certain way for fear of jeopardizing his professional future. Respondents noted it is also common for lower court judges to consult with courts of higher instance on a particular matter, a procedure seen by some lawyers as eliminating the right to a fair trial.

Most respondents characterized the above influences as systemic and historical practices carried over from the Soviet justice system and claimed that general mistrust of the judicial system adds to the overall attitude that contacts and other influences are needed to get the desired outcome in a court case.



Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues, such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

Conclusion	Correlation: Neutral
Although the Council of Court Chairmen adopted Rules of Judicial Conduct in December 2001, it is too early to determine its impact on judicial behavior.	

Analysis/Background:

According to the Law on the Judicial System, the Council of Court Chairmen (CCC) is responsible for adopting rules of judicial conduct, LAW ON THE JUDICIAL SYSTEM, art. 27, which it finally did December 27, 2001. The Rules of Judicial Conduct are to "ensure fair and impartial administration of justice, as well as independence of a judge." RULES OF JUDICIAL CONDUCT, General Provisions. The Rules are mandatory for all judges, and any violation "inconsistent with the high title of a judge or that impairs the judiciary and the reputation of a judge" is considered grounds for termination. RULES OF JUDICIAL CONDUCT, Disciplinary Action. The CCC is the body charged with evaluating a judge's actions, although it is the Council of Justice (without the participation of the president, the minister of justice or the prosecutor general) that actually has authority to terminate a judge for violations of these rules. It should be noted that violation of the Rules of Judicial Conduct is only explicitly grounds for termination, not discipline, although "performing an action dishonorable for a judge" is grounds for discipline and would arguably include violations of the Rules. See, LAW ON STATUS OF JUDGES, art. 31(3).

Within the current structure only the minister of justice has the right to initiate a termination or disciplinary proceeding, except for a disciplinary proceeding against a judge of the Court of Cassation; in such cases the chairman of the Court of Cassation holds this right to initiate a disciplinary proceeding. One respondent judge on the CCC expressed doubt that the rules will have any real impact on judicial conduct. Moreover, most respondent lawyers and some respondent judges are not familiar with the rules. Since the rules are not law, but merely an act of the CCC, they are not published in the "Official Bulletin of the Republic of Armenia." Therefore, they are generally inaccessible to the legal community at large or the general public. Even though the CCC publishes its decisions periodically, these are generally only provided to judicial authorities.

The rules are brief and very general and do not provide practical guidance to judges. They cover the general principles of conduct (i.e., independence, professionalism, honor, dignity, fairness, training, and integrity); official conduct (i.e., independence from outside influence and public comment); and extra-judicial activities (i.e., personal relations, reputation, business relations, cohabitation, respect for customs, and promoting public confidence in the judiciary). Since they were adopted only recently, it is too early to determine how these rules will affect the actual practice of judges.

Concerning conflict of interest, Rule 12 states that a judge shall avoid personal relations that may adversely affect his or her reputation. Rule 14 prohibits a judge from serving as trustee, guardian, or proxy, except in certain instances and only if such service does not interfere with proper performance of his judicial duties. This rule also prohibits a judge from entering into business or financial relations that may affect his or her fairness and may impair his or her reputation. The rules do not address conflict situations that arise during a particular case, although the provisions in both the Civil and Criminal Procedure Codes related to challenges and



self-challenges do address this issue. CIVIL PROCEDURE CODE, Chapter 4 and CRIMINAL PROCEDURE CODE, CHAPTER 11. (see also Factor 18).

The Rules of Judicial Conduct do not explicitly address *ex parte* communications with respect to a pending case. Rule 10, however, prohibits a judge from making public declarations and comments or opining on a pending case in his court. A judge may have contacts with government and legislative bodies or representatives or the mass media unless those contacts give rise to doubts about the judge's impartiality. RULE 8. Beyond this, the Rules of Judicial Conduct do not address inappropriate political activity, although this is addressed in the Constitution and the Law on the Status of Judges (see response to Factor 20).

In addition to the mandatory rules, the Law on the Status of Judges also states that a judge shall strictly follow "norms or ethics and morals" (not defined). LAW ON STATUS OF JUDGES, art. 14. A judge is prohibited from publicly expressing a disrespectful attitude, in any manner, toward a law or Armenia's constitutional order or doing anything that will harm the reputation of the state and the court. LAW ON STATUS OF JUDGES, art. 14.

Many terms are not defined either in the Rules of Judicial Conduct or the Law on the Status of Judges, giving little guidance to the judge in assessing his behavior.

The AJRA adopted its own Code of Ethics in 2000; however, it is legally unenforceable. The AJRA's Ethics Code provides for expulsion of judges from the association for violations; however, this has never been implemented. AJRA does publish ethics articles in its publication, *Orinartert*, providing judges with some additional guidance on judicial ethics.

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

Conclusion	Correlation: Negative
There is no formal procedure or other meaningful process under which complaints against judges can be lodged.	

Analysis/Background:

The only legal provisions that provide guidance for those wishing to complain about judicial misconduct are those related to discipline and termination procedures (see Factor 17). Since the minister of justice is the only person who can initiate these procedures, it is evident that complaints to him are the only ones that could produce results. No statistics were available on the number of complaints received by the minister of justice, although only 15 complaints have been forwarded to the Council of Justice from the Minister for review since 1999 until March 2002. CORRESPONDENCE FROM THE COUNCIL OF JUSTICE TO CEELI, 3/26/02.

These referrals would be made after the Ministry of Justice Audit Department evaluates and investigates the complaint. The AJRA has received a number of complaints about judges, yet all of the complaints submitted related to the merits of cases and were not subject to AJRA review under its Code of Ethics.

Most non-judges interviewed stated that they and the population at large do not know of any formal procedures for filing conduct-based complaints against judges. Some respondents



reported attempting to complain to the minister of justice, but have received no response. Respondents also noted a fear of backlash from judges if a complaint is lodged, a reason some lawyers would not consider filing a complaint.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to and can accommodate the public and the media.

Conclusion	Correlation: Positive
Courtroom proceedings are generally open to the public and the media. Only in exceptional, high profile cases are accommodations insufficient.	

Analysis/Background:

Court cases are considered open sessions except as provided by the law. LAW ON THE JUDICIAL SYSTEM, art. 9. See *Also*, CIVIL PROCEDURE CODE, art. (8) concerning civil cases, and CRIMINAL PROCEDURE CODE, art. 16(1) concerning criminal cases. Court consideration behind closed doors shall be conducted only by court decision in cases and in the order stipulated by law to protect the interests of “social morals, social order, state security, personal life of opponents, or the interests of justice” (none of these terms are defined in the law). LAW ON THE JUDICIAL SYSTEM, art. 9. In all cases, court resolutions, sentences, and other final decisions must be read in an open session. *Id.*

In civil cases, closed-door trials are allowed when envisaged by law and when the court approves a motion concerning the secrecy of adoption, privacy of citizens or their families, and protection of commercial or other secrets. CIVIL PROCEDURE CODE, art. 8(2). If a decision is made to conduct a closed trial session, the persons participating in the case, their representatives, and, when necessary, witnesses, experts, and interpreters are allowed to be present. The case still follows the regulations of civil procedure, and the ruling of the court is announced in open session. *Id.*

In criminal cases, *in camera* hearings are held in a manner prescribed by law and only when a court decides that the protection of public morals, public order, state security, the private life of the parties, or the interests of justice are at stake. Nevertheless, court verdicts and final decisions in all cases are announced publicly. CRIMINAL PROCEDURE CODE, art.16(2). See *Also*, CRIMINAL PROCEDURE CODE, art. 373.

Participants and those present at a court session are entitled to take notes, shorthand, and audio-recording. Filming and photography of the court session, as well as video filming and broadcasting by radio and television are performed by consent of the parties and by permission of the court considering the case. CODE OF CIVIL PROCEDURE, art. 114(3). Filming in criminal cases is permitted only with the permission of the judge.

The sessions of the Constitutional Court must be held in public, and the Court may allow the sessions to be photographed, taped, video-recorded, or broadcast. LAW ON THE CONSTITUTIONAL COURT, art. 20(1) and (4). A vote of the majority of members is necessary to hold a session or part of a session in private in the interests of community morals, public order, state security, and the privacy of the parties and the case. *Id.* at 20(2). The decisions of the Constitutional Court shall be announced publicly during the sessions of the court. *Id.* at 20(3).

The Constitutional Court must make public all documents related to a case. LAW ON THE CONSTITUTIONAL COURT, art. 21(1). Except in election disputes, cases are reviewed orally by the



Court. *Id.* Cases are heard without interruption, except for Court designated rests and breaks. LAW ON THE CONSTITUTIONAL COURT, art. 21. Findings and conclusions of the Court are made in public during the court session and are attached to the case file. LAW ON THE CONSTITUTIONAL COURT, art. 67.

No respondents were aware of media exclusion from a case (except in a few high-profile cases where seating was limited), although videotaping has been prohibited. In the high-profile *October 27 Trial* (in which the accused were charged with assassinating the prime minister and seven deputies in the National Assembly in 1999) the minister of justice did try to limit media coverage of the trial for the stated reason of prohibiting press influence on the witnesses. Amidst public outcry and international pressure, the Minister withdrew this proposal. Some respondent lawyers reported hearings being held in chambers or in jail cells, but overall these were exceptional occurrences. Notices of hearing schedules are generally posted at the courthouse, but they are no longer published in the newspaper.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

Conclusion	Correlation: Negative
Judicial opinions are rarely published and are not readily available to the public.	

Analysis/Background:

In civil cases, the law requires courts to make decisions available to the parties within three days after official publication of the decision of First Instance Courts and the Court of Appeal and within seven days in the Court of Cassation. In criminal cases, the judgment or the decision of the Court of Review and Cassation is required to be sent to the parties of the case within three days after official publication of judgment or the decision and within five days in the First Instance Courts. Verdicts in an economic dispute must be sent to parties within seven days of the official publication of the verdict CIVIL PROCEDURE CODE, art. 145, 220, 241 and 221.5, and CRIMINAL PROCEDURE CODE, art 375, 402 and 423. However, these deadlines are not always met. In civil cases, a judge who dissents with the majority is entitled to write his or her special opinion that is attached to the case, but it is not publicized. CODE OF CIVIL PROCEDURE, art. 20(2). *See Also*, CRIMINAL PROCEDURE CODE, art. 369, allowing judges in criminal proceedings to issue special verdicts. Non-parties to a case are generally not entitled to a copy of the decision. In rare circumstances, scholars can appeal to the court chairman to obtain access to court proceedings. Judges report that they can access other judges' opinions by contacting the judge or the court chairman directly.

The findings and conclusions of the Constitutional Court must be published in the Official Bulletin. LAW ON THE CONSTITUTIONAL COURT, art. 69(2). Some Constitutional Court findings are published in English and in Armenian on its web site (www.concourt.am) at the discretion of the judges.

The AJRA monthly newsletter has been publishing a few Cassation Court and Court of Appeals decisions in each issue since summer 2000. It also plans to publish significant Economic Court decisions. These are the first publications of cases in Armenia, although they are published in limited quantity (initially 200 copies, now 400). With assistance from Chemonics International and ABA/CEELI, the Cassation Court and the Council of Court Chairmen initiated plans in winter 2001



to make the decisions of the Cassation Court and Court of Appeals publicly available in hardcopy and on an Internet website. Hard copies of Cassation Court decisions starting from 1999 are expected to be available in 2002.

Some respondents cited concern over privacy issues related to general publication of case decisions as well as to the utility of such publication in a civil law system. The majority of respondents, however, welcome the prospect of case publication to increase legal awareness, accountability, and transparency in the judicial system.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

Conclusion	Correlation: Negative
Courts do not compile verbatim transcripts of proceedings, although handwritten notes are compiled. Transcripts are not available to the public.	

Analysis/Background:

In civil cases, a court session record compiled by the court session secretary must contain information regarding the court session (date, place); identity of the court; the title of the case; the presence of the participants; the explanation of procedural rights and duties; rulings adopted by the court; oral statements and motions made; testimonies of witnesses and oral clarifications of experts; and the date the record was compiled. CODE OF CIVIL PROCEDURE, art. 146-148. As a practical matter, the court secretary generally compiles the record by hand. Verbatim testimony is not taken. Participants are entitled to demand the entry into the record of data about circumstances essential for the trial. *Id.* The chairperson signs the court session record not later than on the next day after the session. *Id.* Before the verdict comes into legal force, the participants are entitled to familiarize themselves with the record of the court session and file objections to the completeness or correctness of the record. CODE OF CIVIL PROCEDURE, art. 149. The chairperson then adopts a ruling on the acceptance or rejection of the objections to the record. *Id.*

In criminal proceedings, the course of a trial and the results of procedural actions, including evidence, photographs, films, etc., must be reflected in the record. CRIMINAL PROCEDURE CODE, art. 29(1). The court is responsible for compiling the record, which can be handwritten or typed with a mechanical or electronic device. *Id.* at (2) and (3). Records must be composed and formatted in a way that will ensure normal perception of their content. *Id.* at (4). In a criminal case, all materials must be filed. CRIMINAL PROCEDURE CODE, art. 30(1). Every page of each document must be numbered chronologically immediately upon its filing. *Id.* at (2). Each procedural decision or protocol of a court session should be produced on a numbered letterhead bearing the state insignia, as a document of strict accounts. *Id.* at (3). This, according to respondents, is not always done. Documents in a criminal case must be stitched in one or several files with respective inscriptions on the cover of each and the list of materials contained therein. *Id.* at (4). Copies can be made on paper or electronically and must be verified by the court. *Id.* at (5).

In a criminal trial, the court secretary is obliged to compile the record fully and correctly, including the actions and decisions of the court, motions, objections, testimonies, and explanations of all persons participating in the court session. CRIMINAL PROCEDURE CODE, art. 82. Documents



containing information relevant to a case are part of the record of proceedings (including examinations, investigations, identifications, confiscations, searches, and seizures) and are attached to the materials of a case by the court. CRIMINAL PROCEDURE CODE, art. 121 to 123. Originals of the documents are returned to the owners, with a copy retained by the court, six months after either the sentence of the court has come into legal force or the dismissal of the case. CRIMINAL PROCEDURE CODE, art. 123.

All sessions of Courts of First Instance and Appellate Courts must have a record, which can be handwritten, typewritten, or computer typed. As a practical matter this record is handwritten and is not verbatim. CRIMINAL PROCEDURE CODE, art. 315. The record must contain the following: time of session; case identification; parties; representatives; method of securing appearance; actions of the court; statements and appeals made; court decrees; explanation of rights and duties of parties; content of testimonies; expert testimony; record of court examinations and other actions performed by the court regarding proof; facts that participants asked to be made part of the record; court deliberations and the defendant's last word briefly outlined; note on the declaration of verdict; deadlines for appeal; and indication of facts of disorder in the courtroom and disrespectful behavior toward the court, about the offender, and the punitive measures taken by the court. CRIMINAL PROCEDURE CODE, art. 315. A session record must be written at the court session, and it must be prepared and signed by the chairman and the court session secretary no later than five days after the end of the session. *Id.* Parties must be given the opportunity to review the record and are entitled to appeal to change the record within five days of it being signed. CRIMINAL PROCEDURE CODE, art. 316.

Records of the Constitutional Court's sessions are kept by the Secretariat of the Court after being signed by the president of the Court and the secretary making the record. LAW ON THE CONSTITUTIONAL COURT, art. 46. Parties are permitted to look through the record of the session and introduce their remarks, which are to be attached to the record. *Id.*

Most lawyers interviewed expressed that, in most cases, it is futile to recommend changes to the record/transcript, since they believe the same judge who ruled on the case determines whether an amendment will be approved (although, the law says that the chairman makes this determination), and generally all such requests are denied. Some respondents indicated that lawyers tape record proceedings and offer transcribed tapes as an attachment to a pleading in order to make it part of the record.

Parties can always review the record, although respondents reported that the transcript is not usually made available until after the trial, and photocopying is permissible. Not all courthouses have photocopy machines, in which case a court employee will escort an attorney/party to copy these documents at a nearby copy center.



VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

Conclusion	Correlation: Negative
The law and the government dictate the number of court support staff, which many believe to be insufficient.	

Analysis/Background:

The chairman of each court is responsible for appointing and dismissing court employees within the limits of staff size and salary fund established by the government and for carrying out general administration of personnel. LAW ON THE JUDICIAL SYSTEM, art. 16 (Court of First Instance), art. 19 (Court of Appeals), and art. 23 (Court of Cassation). The appointment of staff positions provided by law for each judge is made by the chairman of the pertinent court upon nomination from the judge. LAW ON STATUS OF JUDGES, art. 23.

As of April 2002, each judge on the Court of First Instance and the Economic Court is by law allocated a session secretary and one assistant. Each of these courts has a personnel chief, an accountant, an archivist and other employees, the number of which is supposed to correspond to the staff size approved by the government. LAW ON THE JUDICIAL SYSTEM, art. 17 and 20.3. Each Court of First Instance has a chairman who carries out general administration of personnel in that particular Court, among other responsibilities. LAW ON THE JUDICIAL SYSTEM, art. 16.

Each judge on the Court of Review is provided one assistant, and a session secretary is allocated for every three judges. A Court of Review is allowed a personnel chief, accountant, archivist, and other employees, the number of which is supposed to correspond to the staff size approved by the government. LAW ON THE JUDICIAL SYSTEM, art. 20.

Each judge on the Court of Cassation is allocated one assistant. Two secretaries and one clerk are allotted to each chamber of the Court of Cassation. The Court of Cassation is allowed a personnel chief, an accountant, an archivist, and other employees, the number of which is supposed to correspond to the staff size approved by the government. LAW ON THE JUDICIAL SYSTEM, art. 25. Staffs of the Judicial Training Center and Council of Court Chairmen fall under the purview of the Cassation Court staffing.

The president of the Constitutional Court is responsible for general management of the staff of this court, for appointing and dismissing the chief of staff, and approving the rules of procedure and the list of positions of the staff. LAW ON THE CONSTITUTIONAL COURT, art. 17(7).

Respondent judges report that they personally select their own aides and secretaries. Aides are a new addition to the judicial support staff since 1999 and usually possess a legal education (although not required by law to do so). The law does not state the responsibilities and duties of aides. Many judge respondents reported being under-staffed and indicated their staffs are underpaid. Respondents indicated that on limited occasions since 1999 the JTC has offered training for court personnel (funded by Chemonics), although this has not been a priority for the JTC.



A special structural body was created among the personnel of the Court of Cassation with the purpose of assisting the operation of the Council of Court Chairmen. LAW ON THE JUDICIAL SYSTEM, art. 26. The CCC has a number of administrative functions, including budget development and court administration, as well as non-administrative functions including summarizing judicial practice, making consultative explanations of law application, and developing as well as adopting a Code of Judicial Conduct. LAW ON THE JUDICIAL SYSTEM, art. 27. The meetings of the Council of Court Chairmen are called when necessary, but not less than once a quarter. CCC meetings are required to have a two-thirds quorum in order to effect decisions. Decisions are adopted with the majority of votes of members participating at the meeting. LAW ON THE JUDICIAL SYSTEM, art. 28.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

Conclusion	Correlation: Negative
There are no legal criteria for determining whether new judicial positions are needed.	

Analysis/Background:

The Law on the Judicial System dictates the number of courts and judges in Armenia. LAW ON THE JUDICIAL SYSTEM, art. 14, 15, AND 19. This means that the government must amend the law in order to add new positions. Thirty-five new judicial positions were added between 1999 and April 2002 (29 of them in October 2001), partially due to the addition of the Economic Court and partially, respondents say, based on the Ministry of Justice's assessment of judges' workload. New judges are selected from the List of Official Fitness (see Factor 2). The CCC has stated that it has input into creation of judicial positions, although the CCC is not required by law to be consulted.

A judge cannot be transferred to work in other courts without his or her consent. LAW ON STATUS OF JUDGES, art. 10. A judge may be temporarily assigned to another court of the same level with his or her consent. LAW ON STATUS OF JUDGES, art. 10. In practice, respondents note transfers are not common and do not seem to be a concern among judges.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion	Correlation: Neutral
The current system of case filing and tracking is basic and not computerized, although it does not seem to be the cause of delays in proceedings.	



Analysis/Background:

The Council of Court Chairmen (CCC) is charged with ensuring the regular operation of the courts. LAW ON JUDICIAL SYSTEM, art. 27. Pursuant to this law, the CCC adopted, on January 1, 2001, Decision 37 on approving the "Directive on the Case Management of First Instance Courts of the Republic of Armenia." As of April 2002, no such rules have been established for other courts.

The First Instance Courts case management rules include rules for registration, recording, and processing of court cases; preparation of court documents; information searches; submitting judicial acts for execution; and the archiving of cases and documents for further use. *Id.* at art. 1. The Court chairman and Chief of Staff are responsible for directing case management. *Id.* at art. 2.

New cases are first registered on statistical record cards and on alphabetical cards bearing the parties' names. *Id.* at art. 8(2). Each case is assigned a number according to a model indexing system. Cases returned after the annulment of sentences, verdicts, or decisions for another hearing are registered in the same manner as new cases and receive another number. *Id.* Currently this process is performed manually in almost all courts.

All registered proposals, applicants, and applications are passed to the court chairman on the day they are registered. *Id.* at art 9. Case assignment is then done by the court chairman (see Factor 18). While there are no set time limits for case assignment, most respondents reported few problems with lost files or untimely processing of complaints.

Non-parties can only review case files with the permission of the court chairman for completed cases and with the permission of the examining judge for active cases. *Id.* at art. 14. Only parties, their representatives, other case participants, and victims are eligible to review cases upon submission of identification documents, power of attorney, or certificate of representation, as appropriate. The staff of the Cassation Court, the Court of Appeals, and the Ministry of Justice can also obtain case files.

Archiving rules are elaborate and require that court administrative management documents be kept for up to 15 years. These rules envision computerization of the record keeping, although most courts do not have adequate equipment to do this. The World Bank Capital Improvement Project involves computerizing the courts, although the exact number and timing has not been determined.

Some respondent lawyers report having difficulties obtaining case files for closed cases and for purposes of appealing a decision. Files for current cases are reported to be generally accessible to the parties.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	Correlation: Negative
Most courts and judges do not have adequate equipment (i.e., computers, photocopiers, fax machines) to enable them to efficiently manage their work.	



Analysis/Background:

Except for the Constitutional and Economic Courts, courts and judges are not generally equipped with computers. Fax machines were purchased for 21 courthouses in the *marzes* to improve communication with the Council of Court Chairmen in Yerevan, although impediments to telephone communications in the remote regions inhibits their effectiveness. Court secretaries handwrite session records since there are no computers in the courtroom.

A judge is entitled to have separate office space in accordance with a model-furnishing list prescribed by the government and be equipped with telephone communication devices. LAW ON STATUS OF JUDGES, art. 21. For communication within Armenia, a judge has the right to use means of communication under the disposal of state and local self-governing bodies. LAW ON STATUS OF JUDGES, art. 27. The Government must provide the Constitutional Court with the equipment necessary to ensure its normal operation. LAW ON THE CONSTITUTIONAL COURT, art. 7(3).

In practice, many judges are required to share office space with their aides and secretaries due to lack of office space in the courthouses. Under the World Bank Capital Improvement Project, computers will be purchased for the courts, although the exact number and timing has not been determined. Computer training is also envisioned as part of this project. Currently, no money has been allocated in the courts' budgets for any equipment or computers. Often, court personnel must accompany parties to outside copy facilities to make photocopies of official documents/records since the courts typically do not have the necessary equipment. Lack of adequate equipment is seen as a major shortfall by the JRI respondents of the efficient operation of the courts in Armenia.

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally-recognized system for identifying and referencing changes in the law.

Conclusion	Correlation: Negative
While the JTC attempts to inform judges of recent legal developments, its lack of funding impedes this function, as does the lack of any national system for identifying and referencing changes in the law.	

Analysis/Background:

New laws and amendments to existing laws can only be officially published in the Government's Official Bulletin, which is produced every Wednesday. LAW ON THE LEGAL ACTS, art. 62 (5). Its cost ranges from 500 AMD to 4,000 AMD, depending on its size, and it can be purchased at most kiosks and bookstores. The JTC attempts to inform judges of changes in the law; however, its ability to do so often relies on its ability to secure outside funding. Chemonics and ABA/CEELI have provided such funding in the past on an ad-hoc basis. Oftentimes, respondent judges purchase their own copies of the Official Bulletin. The only real legal libraries in the court system are at the JTC (funded by ABA/CEELI) and at the Constitutional Court, both of which are located in Yerevan. Most courthouses do not have separate rooms for a library, nor do they have a librarian on staff.



There is no widely used system in place for identifying and organizing changes in the law. The computer database of laws, IRTEK, which is owned and distributed by a private company, is not available to most judges due to lack of computers and the budget to pay for it. Recently, a private company began to compile a publication of code amendments. ABA/CEELI is providing funding to the JTC to purchase this publication. Even with this update, judges will have to cut out the amendment and physically secure it into their codebooks or Official Bulletins. According to information received from the World Bank in April 2002, the World Bank is working with the Ministry of Justice to build an alternative to the IRTEK system for government officials and the courts. Again, no timeframe or details have been finalized.

In 2001, ABA/CEELI put the finishing touches on its Judicial Reform Index (JRI), an assessment tool designed to examine a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, ABA/CEELI believes the JRI will prove to be a valuable tool for legal professionals working on judicial reform throughout the globe.

ABA/CEELI designed the JRI around fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary*; *Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"*; and the *Council of Europe's European Charter on the Statute for Judges*. Drawing on these norms, ABA/CEELI compiled a series of thirty statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary.

With each JRI, the thirty statements are evaluated to determine whether they correlate with the local conditions, and the results of the thirty separate evaluations are collected in a standardized format. For each factor, there is a description of the basis for this conclusion and an in-depth analysis, detailing the various issues involved. Cataloguing the data in this way permits users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated within a given country—over time. ABA/CEELI intends to capitalize on this feature with the development of a proprietary database that will house the entire collection of information.

In developing the JRI, ABA/CEELI drew upon a diverse range of experts, and ABA/CEELI acknowledges that this finished product owes an incredible debt to a long list of professionals. Many hours of pro bono time were devoted to this project over the course of the last several years, and ABA/CEELI thanks all of those who took part in this process. In addition, ABA/CEELI would like to recognize the United States Agency for International Development (USAID) for its support, which has been two-fold. From the very beginning of this project, USAID has provided intellectual support for the JRI concept, and, most recently, the USAID Missions in the field have been forthcoming with financial support for the completion of the country-specific reports. Without the support of all involved, the JRI would not have been possible. In the months and years to come, ABA/CEELI hopes to build upon these contributions seeking constructive feedback from these original supporters—and those who will use the JRI—to make this an even better tool in the future.



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