



JUDICIAL REFORM INDEX

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Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central European and Eurasian 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 criteria 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. 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: “[j]udges 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 whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the 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 that the JRI is not intended to be a complete 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 description of 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 end users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

Second-round and subsequent implementation of the JRI will be conducted with several purposes in mind. First, it will provide an updated report on the judiciaries of Central and Eastern Europe and Eurasia by highlighting significant legal, judicial, and even political developments and how these developments impact judicial accountability, effectiveness, and independence. It will also identify the extent to which shortcomings identified by first-round JRI assessments have been addressed by state authorities, members of the judiciary, and others. Periodic implementation of the JRI assessment process will record those areas where there has been backsliding in the area of judicial independence, note where efforts to reform the judiciary have stalled and have had little or no impact, and distinguish success stories and improvements in the area of judicial reform. Finally, by conducting JRI assessments on a regular basis, ABA/CEELI will continue to serve as a source of timely information and analysis on the state of judicial independence and reform in emerging democracies and transitioning states.

The overall report structure of second-round and subsequent JRI reports as well as methodology will remain unchanged to allow for accurate historical analysis and reliable comparisons over time. However, lessons learned have led to refinements in the assessment inquiry which are designed to enhance uniformity and detail in data collection. Part of this refinement includes the development of a more structured and detailed assessment inquiry that will guide the collection and reporting of information and data.

Second-round and subsequent JRI reports will evaluate all 30 JRI factors. This process will involve the examination of all laws, normative acts and provisions, and other sources of authority that pertain to the organization and operation of the judiciary and will again use the key informant interview process, relying on the perspectives of several dozen or more judges, lawyers, law professors, NGO leaders, and journalists who have expertise and insight into the functioning of the judiciary. When conducting the second-round and subsequent assessments, particular attention will be given to those factors which received negative values in the prior JRI assessment.

Each factor will again be assigned a correlation value of positive, neutral, or negative as part of the second-round and subsequent JRI implementation. In addition, reports for second and all subsequent rounds will also identify the nature of the change in the correlation or the trend since the previous assessment. This trend will be indicated in the Table of Factor Correlations that appears in the JRI report’s front-matter and will also be noted in the conclusion box for each factor in the standardized JRI report template. The following symbols will be used: ↑ (upward trend; improvement); ↓ (downward trend; backsliding); and ↔ (no change; little or no impact).

Social scientists could argue that some of the assessment 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 JRI assessment process is to help ABA/CEELI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (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: 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 constructive step in this direction and welcomes constructive feedback.

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Assessment Team

The Armenia JRI 2004 analysis assessment team was led by Anthony H. Barash and benefited in substantial part from the efforts of ABA/CEELI Yerevan and Washington staff members, including Eduard Mkrtychyan, Arayik Ghazaryan, Karen Kendrick, Julie Garuccio, Sonya Smith, Robert Van Norman and Khachatour Adumyan. The conclusions and analysis are based on interviews that were conducted in Armenia during November 2004 and relevant documents that were reviewed at that time. ABA/CEELI Judicial Reform Focal Area Deputy Coordinator Olga Ruda served as editor and prepared the report for publication. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI and are kept confidential.

Armenia Background

Legal Context

The foundation of Armenia's legal system is the 1995 Constitution of the Republic of Armenia, which establishes executive, legislative, and judicial branches of government. Despite its provisions for the separation of powers, the Constitution grants extensive powers to the President in both the legislative and judicial spheres. The Constitution states that the President is the guarantor of the independence of the judicial system. Armenia's Law on Status of Judges and the applicable procedural codes mandate judicial independence in the administration of justice. On paper, judges are subordinated only to law and are not accountable to any state body or official, but in practice, there are several issues, such as the executive branch's powers in judicial appointment, discipline, and dismissal procedures, that infringe on the independence of the judiciary.

The legal system of Armenia follows civil law conventions and has four main codes: the Civil Procedure Code, the Civil Code, and the Criminal Procedure Code, which were passed in 1998; and a new Criminal Code that became effective in August 2003, which satisfied Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), concerning the abolition of the death penalty.

Since its accession to the Council of Europe in January 2001, Armenia has been under pressure to amend the 1995 Constitution. A Constitutional Referendum was held in May 2003 but failed; fifty-four percent of voters rejected the proposed package of constitutional amendments. In order to comply with its commitments to the Council of Europe, Armenia must conduct a second constitutional referendum before July 2005. Three packages of proposed amendments were submitted to the Council of Europe's Commission for Democracy through Law (conventionally known as the Venice Commission) in Fall 2004: one from the majority coalition in the National Assembly, one proposed by the United Labor Party, and one proposed by the head of the National Democratic Alliance. The drafts were sent to the Venice Commission for expert examination, and at its Plenary Session in December 2004, the Commission adopted the Interim Opinion No. 313/2004, On Constitutional Reforms in the Republic of Armenia, where it concluded that "the 2001 draft Constitution should be taken as a basis for the reform, with some further discussion and refinement of the amendments before their adoption." The Commission called the Armenian authorities' attention to a number of issues. Among others, the Constitution should guarantee independence of the prosecutor from the executive and should clearly define the composition of the Council of Justice and the appointment of its members, which has considerable significance in terms of ensuring the independence of the Council.

Even while the government is preparing for a constitutional referendum that will benefit judicial independence, it is contemplating the pending amendments to the Law on the Judicial System that will also affect the Law on the Council of Justice and the Law on Status of Judges. A Law on Magistrates, which provides for mandatory education for judicial candidates, has been drafted by the Ministry of Justice. There is also a proposal to establish an Administrative Court in 2005, and a new Administrative Procedure Code has been drafted.

There will be no further references to these drafts, either constitutional or legislative, in this JRI, as they are prospective and do not yet impact the judiciary.

Another factor to bear in mind when assessing judicial reform in Armenia is its communist past. Although new codes have been adopted to replace most of those inherited from the Soviet era, in a number of notable instances, codes – such as the Code on Administrative Violations – still contain provisions that pre-date Armenian independence. The new codes often conflict with one another and with the older codes, and amendments are regularly adopted to correct the 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 professions persist and hamper 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 limits the country's economic development, and according to media reports, the annual loss to the country exceeds US\$ 500 million. The situation is further exacerbated by tension on the Georgian/Russian border that has periodically interrupted trade bound for Armenia. The dire state of the economy and the resulting negative emigration process are inextricably associated with the slow development of the rule of law in Armenia.

History of the Judiciary

Armenia was the first country that declared independence from the Soviet Union in 1991, resulting in the formation of a national judicial system. The 1995 Constitution introduced a 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 exclusive 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 Appeal, began functioning in January 1999. The Law on Status of Judges and the Law on the Judicial System, which implement the constitutional judicial structure, went into effect in the same month. Finally, the 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 the defense bar similarly underwent reorganization. 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.¹ The courts of general jurisdiction in Armenia are the Courts of First Instance, the Courts of Appeal, and the Court of Cassation. 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.² The Economic Court was established in 2001. No military or other specialized courts exist in the Armenian court system. As of December 2004, there were 170 active judges in Armenia.

The Constitution envisions jury trials in cases prescribed by law,³ although this provision has not yet been invoked, and there is no indication that it will be invoked in the near future due to political, financial, and logistical constraints.

The **Constitutional Court** has exclusive jurisdiction over matters related to the constitutionality of laws and resolutions passed by the 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 to resolve constitutional matters. The Constitutional Court also rules on referenda and national election disputes. Standing to petition the Court is extremely limited and has been used very infrequently,

¹ CONSTITUTION OF THE REPUBLIC OF ARMENIA, art. 91.

² *Id.* art. 92.

³ *Id.* art. 91.

with only 550 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.⁴

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 a group of communities). Each court is seated in its corresponding *marz* or community. As of December 2004, there were 110 judges in the Courts of First Instance. Each Court of First Instance has a chairman who supervises personnel and other administrative matters in that particular court.⁵ Courts of First Instance consider all civil, criminal, military, and administrative cases; resolve issues related to detentions; issue search warrants; and can restrict the right to secrecy of communication.⁶ Cases in the Courts of First Instance are heard by one judge.⁷

The **Economic Court**, which is located in Yerevan, has jurisdiction over business-related disputes (referred to as economic disputes in the Civil Procedure Code) among commercial organizations and individual entrepreneurs. There are 21 appointed judges on the Economic Court, including the 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 tried *de novo* by a panel of judges from the Economic Court.⁸

There are two **Courts of Appeal** in Armenia, one of which has jurisdiction over civil appeals, and the other over criminal and military appeals. Both are located in Yerevan. The Court of Appeal for civil cases has a chairman and nine judges; the Court of Appeal for criminal and military cases has a chairman and 15 judges.⁹ Cases before the Courts of Appeal are heard by three-judge panels, with decisions rendered by majority vote.¹⁰ The chairman of each Court of Appeal is responsible for ensuring proper operation of the court, among other responsibilities.¹¹

The **Court of Cassation** is the highest court of appeal 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.¹² Cases in the Court of Cassation are heard jointly by the majority of judges and the chairman of the respective Chamber.¹³

The **Council of Justice** has significant powers over the judiciary, including recommending to the President the appointment and removal of judges.¹⁴ The President of Armenia heads the Council, and the Minister of Justice and the Prosecutor General serve as the Council's Vice-Chairmen. The Council's 14 members include two legal scholars, nine judges, and three prosecutors, who are appointed by the President for five-year terms. Of the nine judicial members of the Council, three are appointed from each of the three general jurisdiction court levels, i.e., Courts of First Instance, Courts of Appeal, and the Court of Cassation. The general assembly of judges nominates three candidates by secret ballot for each of the nine judicial seats on the Council. The Prosecutor General nominates the candidates for the prosecutors' seats on

⁴ *Id.* arts. 100-102.

⁵ LAW ON THE JUDICIAL SYSTEM, arts. 13-16.

⁶ *Id.* art. 13.

⁷ *Id.* art. 7.

⁸ *Id.* art. 20.1.

⁹ *Id.* art. 18.

¹⁰ *Id.* art. 7.

¹¹ *Id.* art. 19.

¹² *Id.* art. 21.

¹³ *Id.* art. 7.

¹⁴ CONSTITUTION OF THE REPUBLIC OF ARMENIA, art. 95.

the Council.¹⁵ The Council of Justice was first convened in late 1995 and holds meetings as needed,¹⁶ generally convening at least monthly. The Council's members do not suspend work on their primary jobs (i.e., judge, prosecutor) while serving on the Council, nor do they receive additional compensation.

The **Council of Court Chairmen (CCC)** consists of the Chairman of the Court of Cassation, Chairmen of the Chambers of the Court of Cassation, and Chairmen of the Courts of Appeal, the Economic Court, and the Courts of First Instance. The Chairman of the Court of Cassation is the *ex officio* Chairman of the CCC. A special unit was created among the staff of the Court of Cassation for the purpose of assisting in the operation of the CCC.¹⁷ The CCC has a number of administrative functions, including budget development and court administration, as well as non-administrative functions such as summarizing judicial practice, providing consultative guidance on application of the law, and drafting and promulgating the Code of Judicial Conduct.¹⁸ The CCC holds its meetings as 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 in the meeting.¹⁹

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 "able to work as a judge," and be at least 25 years old.²⁰ There is no legal requirement that new judges have practiced before a tribunal or that they take any mandatory 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 through their work in the government or academic institutions, be of high moral character, and have command of the Armenian language.²¹

Appointment and Tenure

At the recommendation of the Minister of Justice and the Council of Justice, the President of Armenia appoints all judges.²² The Council of Justice, upon the recommendation of the Minister of Justice, annually drafts and submits for the approval of the President of Armenia the List of Fitness for Office.²³ The President also appoints four of the nine members of the Constitutional Court; the National Assembly appoints the remaining five members.²⁴ The Chairman of the Constitutional Court is designated by members of the National Assembly on the basis of a proposal made by the Assembly President.²⁵ Once appointed, all judges have tenure until the age of 65,²⁶ and members of the Constitutional Court have tenure until the age of 70.²⁷ This

¹⁵ *Id.* art. 94.

¹⁶ LAW ON THE COUNCIL OF JUSTICE, art. 23.

¹⁷ LAW ON THE JUDICIAL SYSTEM, art. 26.

¹⁸ *Id.* art. 27.

¹⁹ *Id.* art. 28.

²⁰ LAW ON THE COUNCIL OF JUSTICE, art. 13.

²¹ LAW ON THE CONSTITUTIONAL COURT, art. 3.

²² CONSTITUTION OF THE REPUBLIC OF ARMENIA, arts. 95(1), 55(11).

²³ LAW ON THE COUNCIL OF JUSTICE, art. 13.

²⁴ LAW ON THE CONSTITUTIONAL COURT, art. 1.

²⁵ *Id.* art. 2.

²⁶ LAW ON STATUS OF JUDGES, art. 10.

²⁷ LAW ON THE CONSTITUTIONAL COURT, art. 11.

tenure is subject to the President's power to remove judges from the office on one of the grounds specified in the Constitution and the applicable laws.

Training

The CCC is charged with overseeing the continuing legal education of judges.²⁸ There is no formal, comprehensive judicial training program for newly appointed judges, and no legal requirement that sitting judges participate in continuing legal education courses. A number of judicial training courses are offered on an ad-hoc basis. 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. However, judicial training does not appear to be a priority area for the government. Although a modest budget has been allocated for the JTC in the 2004 state budget, no funding has actually been disbursed.

²⁸ LAW ON THE JUDICIAL SYSTEM, art. 27(11).

Armenia JRI 2004 Analysis

The Armenia JRI 2004 analysis shows some areas of progress in judicial reform since 2002, and anticipated Constitutional amendments bode well for increased judicial independence. Judicial discipline, court infrastructure and facilities, increased judicial salaries and improved judicial transparency by way of publication of and internet access to judicial decisions are noteworthy achievements. However, as the factor correlations demonstrate, fundamental progress in judicial ethics, independence, and overcoming the effects of corruption, bribery and external influence remains elusive. The factor correlations and conclusions in the Armenia JRI 2004 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Armenia JRI 2002. ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA/CEELI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

Judicial Reform Index Factor		Correlation 2002	Correlation 2004	Trend
I. Quality, Education, and Diversity				
Factor 1	Judicial Qualification and Preparation	Negative	Negative	↔
Factor 2	Selection/Appointment Process	Negative	Negative	↔
Factor 3	Continuing Legal Education	Negative	Negative	↔
Factor 4	Minority and Gender Representation	Neutral	Neutral	↔
II. Judicial Powers				
Factor 5	Judicial Review of Legislation	Neutral	Negative	↓
Factor 6	Judicial Oversight of Administrative Practice	Positive	Neutral	↓
Factor 7	Judicial Jurisdiction over Civil Liberties	Neutral	Neutral	↔
Factor 8	System of Appellate Review	Neutral	Neutral	↔
Factor 9	Contempt/Subpoena/Enforcement	Neutral	Neutral	↔
III. Financial Resources				
Factor 10	Budgetary Input	Negative	Negative	↔
Factor 11	Adequacy of Judicial Salaries	Negative	Negative	↔
Factor 12	Judicial Buildings	Negative	Negative	↔
Factor 13	Judicial Security	Negative	Negative	↔
IV. Structural Safeguards				
Factor 14	Guaranteed Tenure	Positive	Positive	↔
Factor 15	Objective Judicial Advancement Criteria	Negative	Negative	↔
Factor 16	Judicial Immunity for Official Actions	Positive	Neutral	↓
Factor 17	Removal and Discipline of Judges	Negative	Neutral	↑
Factor 18	Case Assignment	Negative	Negative	↔
Factor 19	Judicial Associations	Neutral	Neutral	↔
V. Accountability and Transparency				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Neutral	Negative	↓
Factor 22	Judicial Conduct Complaint Process	Negative	Neutral	↑
Factor 23	Public and Media Access to Proceedings	Positive	Positive	↔
Factor 24	Publication of Judicial Decision	Negative	Neutral	↑
Factor 25	Maintenance of Trial Records	Negative	Neutral	↑
VI. Efficiency				
Factor 26	Court Support Staff	Negative	Neutral	↑
Factor 27	Judicial Positions	Negative	Neutral	↑
Factor 28	Case Filing and Tracking Systems	Neutral	Neutral	↔
Factor 29	Computers and Office Equipment	Negative	Negative	↔
Factor 30	Distribution and Indexing of Current Law	Negative	Neutral	↑

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	Trend: ↔
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 of Armenia in the form of an annual List of Fitness for Office. LAW ON THE COUNCIL OF JUSTICE, art. 13. The List includes both active judges whose professional, practical and moral character makes them fit for office, as well as citizens of Armenia who are 25 years of age or older, have higher legal education, have at least three years of professional experience as a lawyer, and “are able to work as a judge.” *Id.* 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 too loosely interpreted.

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

Although Armenia has begun to accredit its law schools, the accreditation and licensing procedures are inadequate and are applied unevenly. The four state institutions do not need to be accredited by law because of their state status. Among the 42 private law schools, 21 (18 universities and three law departments of private universities) are accredited by the Ministry of Education, and 21 are licensed pending accreditation. Only one school that sought accreditation to teach law has been turned down. See ABA/CEELI, LEGAL PROFESSION REFORM INDEX FOR ARMENIA 2004, Factor 7 at 14 (Nov. 2003). There are universities in Armenia that offer joint programs with the Ministry of Education and foreign universities that offer law degrees. Among those are French University, American University of Armenia (which offers only a graduate-level program), and Russian-Armenian (Slavonic) University.

Virtually all respondents reported that the quality of legal education in Armenia remains problematic, particularly with respect to the training of judicial candidates. Law school curricula are reportedly outdated, with little emphasis placed on modern commercial law and other emerging topics, such as bankruptcy and competition law. *Id.* at 16. While many respondents did agree that law schools provide a good theoretical background in the law, there are few practical and analytical skills courses offered, which means that law school graduates are not prepared to practice law upon graduation. While all law students are required to pass an internship during their fourth year of studies in order to be permitted to attend the final

examination, this requirement has been decreased to as short as two months, depending on the program, with relatively few judicial internships available to interested students.

While the law does not require formal training for newly appointed judges, the Judicial Training Center (JTC), with financial and technical assistance from international organizations, provides new judges with training on an ad-hoc basis. The topics may include review of laws and decisions of the Council of Court Chairmen, the role and place of the judge in the justice system, judicial disqualifications and recusals, overruling verdicts, enforcement of judgments, sentencing, and international law. In 2002, two judges from the newly created Economic Court were sent to the CEELI Institute in Prague to attend a course on “Justice in a Market Economy.”

Many respondents noted the need for specialized graduate-level training for judicial candidates, and there are several proposals based on a variety of international models being discussed by interested parties.

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	Trend: ↔
<p>Although a judicial qualification test is required for judicial candidates to evaluate their legal knowledge, an oral interview process is crucial for successful candidates. The lack of objective criteria and concerns about transparency in the interview process foster doubts about its impartial implementation and hence the independence of the judges that are appointed.</p>		

Analysis/Background:

As in 2002, most respondents expressed concern that the executive branch, using powers granted under the Constitution and legislation, has too much power in the judicial appointment process.

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 Cassation and its Chambers, the Courts of Appeal, the Courts of First Instance, and other courts. See also CONSTITUTION OF THE REPUBLIC OF ARMENIA (CONST.), art. 55(11); LAW ON THE JUDICIAL SYSTEM, art. 11. Upon the recommendation of the Minister of Justice, the Council of Justice drafts the annual List of Fitness for Office, which is supposed to be based on the candidates’ competence, moral character, and professional qualifications. The Council submits this List for the President’s approval in January of each year. CONST., art. 95(1); LAW ON THE COUNCIL OF JUSTICE, art. 13. The Council of Justice is responsible for nominating candidates for the Chairman of the Court of Cassation, the chairmen and judges of its Chambers (civil and criminal), and the chairmen of Courts of Appeal, Courts of First Instance, and other courts, including the Economic Court, to the President. It also recommends other judicial candidates nominated by the Minister of Justice. CONST., art. 95(3). In addition to having the power to appoint and nominate judges, the President and the Minister of Justice, respectively, also have the ability to take part in some Council deliberations and evaluations, except those related to judicial discipline matters. *Id.* art. 95(7).

The President of Armenia heads the Council of Justice, and the Minister of Justice and the Prosecutor General serve as the Council’s vice-presidents. The remaining 14 members of the

Council are all appointed by the President. Of the nine judicial members of the Council, three are nominated from each of the three general jurisdiction court levels, i.e., Courts of First Instance, Courts of Appeal, and the Court of Cassation. The general assemblies of judges of a particular court level submit by secret ballot three candidates for each of the nine judicial seats on the Council. The Prosecutor General submits the names of candidates for the three prosecutors' seats on the Council. CONST., art. 94. According to the Law on the Council of Justice, the Minister of Justice presents judicial candidates to the Council. See 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.* art. 15. The initial registration and selection of judicial candidates are carried out according to the procedures stipulated by the Charter of the Ministry of Justice. LAW ON THE COUNCIL OF JUSTICE, art. 13. In practice, the Minister of Justice employs a two-step evaluation process for potential candidates to the List of Fitness for Office that includes a written test and an interview. In order to take the examination, the Charter requires candidates to register with the Ministry of Justice and provide documents required by the Ministry. Although the list of documents is not set forth in the Charter, they are reportedly not a barrier to becoming a judge in practice. They may include various identification and background documents, such as a copy of the university diploma, copies of certificates of training courses, documents certifying prior employment experience, a list of publications, a reference letter on integrity and moral character, copies of awards, etc.

The Minister of Justice created a five-member Examination Commission to organize the written test, which is held every December. Test questions are confidential. Candidates take a two-day essay exam in which they write a court decision on a civil and a criminal case. Many respondents believe that the written examination, which is graded anonymously, is an adequate measure of legal knowledge and certain technical skills, but suggest that the test serves only as a threshold for the applicants, not as a significant criterion for ultimate appointment to a judicial vacancy. Test results can be appealed to a panel created by the chairman of the Examination Commission, the decisions of which are final. Representatives of the media and invited monitors can be present during the test with the Commission's permission.

The Minister of Justice can invite candidates who have met the threshold requirements of the test to an interview for the purpose of developing the proposed Lists of Fitness for Office and of Professional Advancement of Judges. 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 personal reputation for integrity and moral character, party affiliation, personal or family contacts, experience (especially for the new Economic Court judges), clan affiliation, money/contributions, and legal knowledge as nominally measured by the exam and questions posed during the interview. At the same time, due to the apparent lack of transparency in the process of selecting judicial candidates, there is a widespread public perception that this process is guided by bribery, nepotism, and partisanship. See, e.g., TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS – COUNTRY STUDY REPORT: ARMENIA, at 34 (2003).

After the interviews, the Minister of Justice presents one candidate for each vacant position, along with the description of the professional, practical, and moral characteristics of the candidate. If the Council of Justice does not approve a candidate, the Minister presents a new candidate. If a candidate is approved, his/her name is presented to the President on the List of Fitness for Office for a specific appointment. LAW ON THE COUNCIL OF JUSTICE, art. 16. Once included on the List, a person is retained for the next year's List if not appointed.

Judges in the new judicial structure were appointed in January 1999, while judges on the Court of Cassation were appointed in summer 1998. About half of the judges appointed in 1999 served as judges under the old structure. In the fall of 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 Procedure Code) among commercial organizations and individual entrepreneurs. Twenty-five more judges were appointed to the Court of Appeal in Civil

Matters and to the Courts of First Instance between 2002 and 2004, and seven more judges were appointed to the Economic Court, bringing the total to 170. See Letter from Head of Secretariat the Council of Justice to ABA/CEELI-Yerevan (Nov. 18, 2004).

The Constitutional Court is composed of nine members. The President of Armenia appoints four members, and the National Assembly appoints the remaining five. CONST., art. 99; LAW ON THE CONSTITUTIONAL COURT, art. 1. 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 Chairman of the Constitutional Court is designated by members of the National Assembly on the basis of a proposal made by the Assembly Chairman. *Id.* art. 2. If the National Assembly fails to fill a vacancy for the chairmanship of the Constitutional Court within 30 days, the President of Armenia appoints the Court's Chairman within one month. *Id.* art. 15.

In 2003, a member of Constitutional Court and former President of the Association of Judges of the Republic of Armenia was nominated by the Armenian Government as a judge to the European Court of Human Rights in Strasbourg, and in due course the vacancy on the Constitutional Court was filled by appointment.

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	Trend: ↔
<p>There is no legal requirement that sitting judges participate in continuing legal education (CLE) programs. The Judicial Training Center, which is responsible for CLE, received no funding from the state budget in 2004, which inhibited its ability to offer a comprehensive training program. A limited number of NGOs provide ad hoc trainings, but without sustainable, long-term continuity.</p>		

Analysis/Background:

The law states that a judge must engage in raising the level of his/her professional knowledge and quality of work. LAW ON STATUS OF JUDGES, art. 14. The Rules of Judicial Conduct also state that a judge shall continually upgrade his/her professional knowledge and be cognizant of legislative changes. See Rule 4. The Council of Court Chairmen (CCC) is responsible for organizing professional training for judges. LAW ON THE JUDICIAL SYSTEM, art. 27(11). Despite this advisory language concerning continuing legal education (CLE) for judges, there are no enforceable requirements that judges must participate in 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. There is a seven-member Education Council to oversee the work of the JTC and to approve its annual curriculum. See STATUTES OF THE JUDICIAL TRAINING CENTER OF THE COUNCIL OF COURT CHAIRMEN OF THE REPUBLIC OF ARMENIA, art. 2.4. The JTC is staffed by a director, three assistants, and one attorney, all appointed by the CCC. The staff is funded through the Court of Cassation. Until 2004, there was no specific allocation for the JTC in the judicial budgets. Library resources, books, furniture, and computers were purchased with funding from ABA/CEELI and other international donors.

Lack of adequate financial support for judicial training has long been a frustration for both the judiciary and those concerned with judicial reform. Significantly, the 2004 state budget includes AMD 35,257,200 (US\$ 70,500) for judicial training by the JTC, but as of December 2004, no funds had been disbursed to the JTC despite the budgetary allocation. No compelling reason was given for the failure to disburse these funds.

The CCC noted the importance of continuing education and training for judges. In cooperation with international donors in 2002, the JTC conducted a series of training sessions for judges, with 108 judges attending. 58 judges were from Yerevan and 50 judges were from the *marzes*. A total of 20 sessions were organized over the ten months, including eight criminal law sessions and twelve civil law sessions. Each session also included one hour of ethics training. In 2002-2004, additional courses included such topics as the Status of Judges in Armenia, the Electoral Code, the European Convention for the Protection of Human Rights and Fundamental Freedoms and compliance of Armenian legislation with the European standards, Intellectual Property Rights, Freedom of Information and Access to Information, and Anti-Corruption. In addition, the JTC partnered with the Council of Europe in 2002 and 2004 to organize two study tours of Armenian judges to the European Court of Human Rights. See Correspondence from Judicial Training Center to ABA/CEELI-Yerevan (Dec. 6, 2004). Many respondents noted the lack of sustained continuity and significant practical skills training in CLE for judges, as well as dependence on international donors for CLE courses and materials.

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. The JTC claimed that actual performance exceeded the planned curriculum for 2002 (the reported execution figure is 111%), while 95% of the planned curriculum was executed successfully in 2003 and only 45% in 2004 because of financial problems. See Correspondence from Judicial Training Center to ABA/CEELI-Yerevan (Dec. 6, 2004).

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 US\$ 50 per 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. For non-mandatory courses, court chairmen generally select the participants from their individual courts. 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	Trend: ↔
<p>Women represent about 20% of the judiciary and are present at all levels of the judiciary. There are no identifiable minority judges in Armenia; the ethnic and religious minority population in Armenia is estimated to be less than 5%.</p>		

Analysis/Background:

The Constitution provides equal rights for men and women. As of December 2004, there are 35 women judges (including one court chairwoman), representing 20.6% of the judiciary overall. This includes 7.7% of judges on the Court of Cassation, 30.7% on the Courts of Appeal, 28.6%

on the Economic Court, and 18% on the Courts of First Instance. Although this does not reflect the population as a whole, virtually all respondents, including female judges, did not view gender discrimination as a problem in Armenian courts, and most asserted that the percentage of female judges mirrored the legal profession as a whole, although many more women are now studying for a law degree. However, the most recently available statistics indicate that women represent 30-40% of the legal profession (as indicated by membership of the Union of Advocates of the Republic of Armenia and the International Union of Advocates). See ABA/CEELI, LEGAL PROFESSION REFORM INDEX FOR ARMENIA, Factor 15 at 23 (Nov. 2003). These numbers suggest that women are now underrepresented in the judiciary.

It is notable that respondents did not perceive this numeric under-representation of women in the judiciary as the result of gender discrimination. This may itself be a function of the rigid gender stereotypes and reliance on conservative customs and traditions that characterize Armenian society. According to a recent International Foundation for Election Systems (IFES) survey, the majority of Armenians believe that women should be primarily involved in traditional areas of society, such as family and education (80% and 65% of respondents, respectively). Only 6% of the respondents believe that women's involvement in government should be a priority. Interestingly, there were no gender discrepancies in these responses. This pattern of responses mirrors findings in other studies "that women in Armenian society face societal pressure when trying to expand their roles into influential sectors such as business and government." See IFES, CITIZENS' AWARENESS AND PARTICIPATION IN ARMENIA SURVEY 2004, at 35.

Ethnic and religious minorities make up less than 5% of Armenia's population and include Russians, Jews, Kurds/Yezdis, Assyrians, Georgians, and Greeks. There are no official statistics on minority representation in the judiciary or in law schools. 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: Negative	Trend: ↓
<p>The Constitutional Court has the power to determine the constitutionality of legislation and official acts. However, standing to bring cases to this Court is limited to the President and the deputies of the National Assembly; individuals have no right to challenge the constitutionality of legislation or official acts. The process by which constitutionality can be challenged is cumbersome, rarely used and relatively impotent as related to individual claims, and decisions of the Court are typically perceived as advisory.</p>		

Analysis/Background:

The Constitution has supreme legal force, and its norms are directly applicable. Laws found to contradict the Constitution, as well as other legal acts found to contradict the Constitution and the laws, are invalid. CONST., art. 6. The Constitution mandates that the Constitutional Court has responsibility for deciding whether the laws and resolutions of the National Assembly, orders and decrees of the President, and resolutions of the Government conform to the Constitution. *Id.* art. 100(1); LAW ON THE CONSTITUTIONAL COURT, art. 5(1). In addition, the Constitutional Court is charged with deciding the constitutionality of international treaties prior to their ratification,

adjudicating disputes related to referenda and national parliamentary and presidential elections, and providing opinions on the sufficiency of grounds for impeachment of the President or on the President's inability to perform his duties due to an illness or other extreme circumstances. CONST., art. 100; LAW ON THE CONSTITUTIONAL COURT, art. 5.

Although the Constitution and related laws do not explicitly give exclusive jurisdiction over constitutional matters to the Constitutional Court, 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 Civil Procedure Code even stipulates that courts of general jurisdiction are not to try cases in which the purpose is to determine the constitutionality of a law or another act, as this is the exclusive jurisdiction of the Constitutional Court. See art. 160.1. Respondents asserted 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, they have adjudicated issues related to the facts of a particular case, but have not found statutes unconstitutional as a matter of law.

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 (only for disputes involving election results), and the Government (for cases involving the President's inability to perform his duties). CONST., art. 101; LAW ON THE CONSTITUTIONAL COURT, art. 25. However, the Law on the Constitutional Court further limits petitions on matters of constitutionality of legislation to the President and at least one-third of the National Assembly's deputies. See art. 55. Individuals and the courts of general jurisdiction are not entitled to initiate proceedings before the Constitutional Court. The Constitutional Court will not review a case if the issue raised is not within its jurisdiction, if the petitioner does not have standing to petition the Court, or if the issue raised has been adjudicated in a prior decision of the Constitutional Court. *Id.* art. 32.

Decisions of the Constitutional Court are final, cannot be revised, and come into force from the time of publication. *Id.* art. 64. Findings concerning the constitutionality of laws must be made by a majority of Court's members. *Id.* art. 66. Decisions are to be based on the literal meaning of the act in question and the existing legal practice. *Id.* art. 67.

Although courts of general jurisdiction do not have standing to file petitions directly with the Constitutional Court, there are procedures for them to appeal constitutional issues indirectly. If a court in civil or criminal proceedings 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. CIVIL PROCEDURE CODE [hereinafter CIV. PROC. CODE], art. 106.2; CRIMINAL PROCEDURE CODE [hereinafter CRIM. PROC. CODE], art. 31.2. The CCC may then petition the Armenian President for mediation in appealing to the Constitutional Court concerning compliance with the Constitution of a law or legal act in question. LAW ON THE JUDICIAL SYSTEM, art. 27. A case will remain suspended until one of the following three events occurs: the CCC rejects the request to petition the President; the President does not appeal to the Constitutional Court within a month after the receipt of the petition from the CCC; or the Constitutional Court makes a decision based on the application of the President. CIV. PROC. CODE, art. 107.2; CRIM. PROC. CODE, art. 31.6.

In practice, most respondents see this as a convoluted process not worth pursuing and would prefer to have standing to go to the Constitutional Court directly. Consequently, these procedures are rarely invoked. Since 1999, only three cases have been suspended and forwarded to the CCC under these provisions, and none of them have been heard by the Constitutional Court. The CCC rejected one of the motions as unfounded and instructed the applying court to resume the proceedings. The remaining two petitions were forwarded to the

President, who declined to pass them on to the Constitutional Court. See Council of Court Chairmen, Decision No. 49 and Decision No. 55.

Since the Constitutional Court’s inception in 1996, it has decided 550 cases. 510 of them concerned the constitutionality of international treaties, and 31 dealt with disputed election results. The Court reviewed the constitutionality of domestic laws and of Government decisions only in seven cases and two cases, respectively. No case thus far has involved the constitutionality of a presidential decree. See Website of the Constitutional Court of the Republic of Armenia (www.concourt.am). According to the Freedom House Nations in Transit report on Armenia for 2003, the Constitutional Court “has never been perceived as independent of the executive [and] ... had never handed down rulings that threatened the power held by [President] Kocharian or his predecessor, Levon Ter-Petrossian.” See p. 92.

Several respondents mentioned the dispute related to 2003 Presidential election as an example of the substantive work of the Constitutional Court. This case underscores the relative weakness of the Constitutional Court in deciding high-profile cases. In its April 16, 2003 Decision No. 412 in that case, the Court, while refusing to overrule the legal validity of the vote, found a significant number of election-related violations that may have tainted the outcome. The Court suggested that the newly-elected National Assembly and the President, within one year, organize a referendum of confidence as an effective measure to overcome social resistance observed during the campaign. Subsequently, the Constitutional Court issued a statement that the incumbent President was elected in accordance with the Constitution and the Electoral Code. The Constitutional Court’s decision on holding a referendum of confidence was a non-compulsory proposal and, as such, was rejected by implication, resulting from the government’s inaction for at least one year. In fact, the President publicly refused to comply with this decision, calling it “unconstitutional” and “incomprehensible.” See *Armenian President Rejects Proposed ‘Referendum of Confidence’*, RADIO FREE EUROPE/RADIO LIBERTY NEWSLINE, April 23, 2003. By the same token, the Prosecutor General’s office rejected another recommendation found in the same decision, which called for criminal investigation of allegations of ballot-box stuffing and other election-day irregularities. The recommendation was deemed to be beyond the Court’s constitutional jurisdiction, and the entire decision was labeled as “declarative” and “propaganda.” See *Armenian Prosecutor-General’s Office Queries Constitutional Court Ruling*, RADIO FREE EUROPE/RADIO LIBERTY NEWSLINE, April 18, 2003.

Respondents also noted that typically the actions of the Constitutional Court were advisory and not binding, underscoring the relatively limited circumstances within which the Court functions, the very limited circle of parties who have standing to initiate cases before the Court, and the practical problems of implementing or enforcing its decisions.

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: Neutral	Trend: ↓
<p>The courts are authorized by law to review administrative acts and to compel government action where rights or laws have been violated. Nevertheless, many respondents reported a persistent bias in the courts in favor of governmental parties in administrative matters.</p>		

Analysis/Background:

In Armenia, justice is administered only by courts, which are empowered to examine and resolve cases of administrative offenses by individuals and to review administrative acts issued by government bodies and officials. LAW ON THE JUDICIAL SYSTEM, arts. 2-3. There is no separate court to review administrative cases, but creation of a new Administrative Court is anticipated in 2005.

Any person subjected to administrative liability for administrative violations (i.e., petty offenses similar to infractions or misdemeanors) is entitled to challenge in court the decision to impose a penalty for the violation. CIV. PROC. CODE, art. 156.1. Civil and economic courts can hear appeals on penalties if filed within 10 days of their imposition. *Id.* art. 156.2. The court accepting the appeal makes an immediate decision about the suspension of the decision to impose the administrative penalty. *Id.* art. 156.4. Procedures for this review are set forth in Chapter 25 of the Civil Procedure Code.

Most concerns from respondent lawyers in this area stem from alleged violations of the Soviet-era Code on Administrative Violations, which is a catalog of petty offenses punishable by a fine or an imprisonment of up to 15 days and handled by public bodies. In 2003 and 2004, the application of this outdated Code by both the executive branch bodies and the courts violated the civil liberties of individuals protesting the alleged falsification of presidential and parliamentary elections. See Factors 7 and 20 below for further discussion.

Courts can also declare the invalidity of acts issued by state or local self-government bodies or their officials, as well as review actions or failure to act by such bodies or officials, when the acts, actions or inaction in question contradict a law or constitute a breach of rights or freedoms guaranteed by the Constitution or by law. CIV. PROC. CODE, art. 159. The courts can compel the appropriate government body or official to adopt an act that restores the legally guaranteed rights or freedoms that were breached by an invalid act. *Id.* art. 163. Procedures for this review are set forth in Chapter 26 of the Civil Procedure Code.

Finally, the courts can hear suits brought by individuals and legal entities for compensation of monetary damages caused by the government agencies. In 2004, 55 such suits were brought in the Armenian courts, including ten suits brought by individuals. The courts found for plaintiffs in 16 of these cases. See *Avoiding a Precedent*, HETQ ONLINE: NEWSPAPER OF THE ASSOCIATION OF INVESTIGATIVE JOURNALISTS OF ARMENIA, Feb. 9, 2005. However, even when judgments are entered against government agencies, enforcement is often problematic. See also discussion in Factor 9 below.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
The judiciary has exclusive jurisdiction over cases concerning civil rights and liberties, although such cases are not frequently initiated.		

Analysis/Background:

Articles 15 to 38 of the Constitution enumerate the rights and liberties to which an individual is entitled, including the right to life, the right to liberty, the right to be secure in one's 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. See arts. 3-4.

Courts of First Instance consider all civil, criminal, military, and administrative cases, resolve issues connected with detentions, issue search warrants, and can restrict the right to secrecy of communication. LAW ON THE JUDICIAL SYSTEM, art. 13. The Civil Procedure Code explicitly states that competent persons can apply to a court in order to protect one’s own or another person’s rights, freedoms, and legal interests envisioned by the Constitution, laws, and other legal acts. See art. 2. 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. See art. 9.1. The court is permitted to temporarily limit those freedoms, but only where necessary and supported with legal grounds. *Id.* art. 9.2. Everyone has the right to defend his/her rights and freedoms by any means not prohibited by law. *Id.* art. 9.5.

Although these constitutional and legal provisions establish the courts’ jurisdiction in civil liberties matters, the Armenian judiciary does not independently exercise this jurisdiction and falls far short of fulfilling its role as a protector of civil liberties. A recent example of this shortcoming is the judiciary’s participation in the detentions of hundreds of opposition activists arrested in Yerevan and in other regions of the country during the February-March 2003 and April 2004 protests against alleged irregularities in the presidential and parliamentary elections. While accurate statistics on the number of detained individuals were not available, according to estimates by international organizations and human rights groups (such as the Council of Europe, the Organization for Security and Cooperation in Europe, Human Rights Watch, and Freedom House), anywhere between 160 and over 400 demonstrators were arrested in 2003. During the 2004 protests, over 300 opposition activists were reportedly detained, including approximately 100 individuals arrested during the continuous rally on April 9-13. See Human Right Watch, Briefing Paper, *Cycle of Repression: Human Rights Violations in Armenia* at 7 (May 2004). Most of them were fined or subjected to administrative detention for periods ranging up to 15 days.

These detentions allegedly exploited a number of legal deficiencies, including provisions that permit the police to hold persons in “administrative custody” as opposed to custody under the criminal laws, since the detention requirements under this structure are more lax. Thus, while the Code on Administrative Violations requires that all administrative detentions be sanctioned by the Courts of First Instance, the police may detain individuals charged with alleged public order misdemeanors for “as long as necessary before their case is investigated by a judge or police chief.” See Human Rights Watch, Briefing Paper, *An Imitation of Justice: The Use of Administrative Detention in the 2003 Armenian Presidential Election* at 4 (May 2003) (citing CODE ON ADMINISTRATIVE VIOLATIONS, arts. 261-262). In addition, the police and the courts, reportedly, arbitrarily applied the provisions of the Code on Administrative Violations related to participation in unauthorized rallies, petty hooliganism, and disobeying a police officer.

International organizations and human rights institutions alleged numerous due process violations in court proceedings that resulted in administrative detentions of opposition activists. These included cursory trials that were closed to the public and resulted in summary sentencing; conducting hearings in the absence of defense counsel, and sometimes even in a defendant’s absence; issuing decisions on the basis of police evidence alone, while denying defendants an opportunity to present evidence or call witnesses; and effective denial of the right to appeal the detention due to contradictory interpretation of applicable laws or the courts’ refusal to issue written judgments in administrative cases, which must be filed with the appellate court. See generally, e.g., Human Rights Watch, Briefing Paper, *An Imitation of Justice: The Use of*

Administrative Detention in the 2003 Armenian Presidential Election (May 2003); Human Rights Watch, Briefing Paper, *Cycle of Repression: Human Rights Violations in Armenia* (May 2004); UNITED STATES DEPARTMENT OF STATE, *Armenia, in 2003 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES* (Feb. 2004). See also Factor 20 below.

The Armenian Constitutional Court, in its April 2003 Decision No. 412 on the validity of election results, also found violations of individual rights by the courts, holding that the practice of administrative detentions interfered with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and rule of law principles. Consequently, it recommended that the Council of Court Chairmen and the Council of Justice review the form and the content of judicial decisions on administrative detention and bring to responsibility those judges who issued such decisions. This recommendation, however, was left unanswered, as the addressees criticized the Court for overstepping its authority.

Government legal aid is only provided in criminal cases. Expenditures for legal aid amounted to approximately AMD 6 million in 2001 (US\$ 11,000), AMD 10 million in 2002 (US\$ 18,000), AMD 16.5 million in 2003 (US\$ 33,000), and AMD 18.4 million in 2004 (US\$ 36,800). In 2002, 81 advocates were assigned to provide public defense in a total of 492 cases involving 790 defendants. In 2003, 106 advocates were assigned to provide public defense in a total of 1,354 cases involving 1,508 defendants. As of October 2004, 110 advocates were assigned to provide public defense in a total of 1,171 cases involving 1,263 defendants.

Armenia became a member of the Council of Europe in January 2001. On April 26, 2002, the National Assembly ratified the ECHR after review by the Constitutional Court. The Convention's provisions are now a constituent part of Armenia's legal system, and its terms theoretically prevail in case of conflict with domestic law. See CONST., art. 6. Judges have begun to familiarize themselves with relevant international standards, primarily through the Judicial Training Center's continuing legal education courses. Although some judges now refer to the ECHR case law in making decisions, many respondents noted both an inconsistency in the application of international conventions and standards and a general lack of knowledge concerning international standards among the judiciary.

Many respondents also stated that, in practice, issues of civil rights and liberties are not generally raised in court cases in Armenia. This is due to the inexperience of judges and advocates with these issues, the lack of public confidence in the judiciary and its corollary, the presumption of judicial corruption, and the relatively high cost of litigation. Further, according to an International Foundation for Election Systems (IFES) survey, the citizenry is generally not aware of their rights, and a significant majority of Armenians have very low confidence in the ability of the judicial system to afford them fair treatment. Thus, an overwhelming 71% of Armenians do not believe that the judiciary would protect them from unjust treatment, and 67% do not think that it would acquit them if they were wrongfully charged with a crime. See IFES, *CITIZENS' AWARENESS AND PARTICIPATION IN ARMENIA SURVEY 2004*, at 31. Significantly, the public confidence in the fairness of the judiciary has decreased since 2003.

Factor 8: System of Appellate Review

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>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. Many respondents consider the system of <i>de novo</i> appellate review cumbersome, redundant, inefficient, expensive, and unnecessary.</p>		

Analysis/Background:

Every person convicted of a criminal act is entitled to have his/her conviction reviewed by a higher court in a manner prescribed by law. CRIM. PROC. CODE, art. 103.7. Similarly, parties to the case or any third parties whose rights and obligations are affected by a civil decision have the right to appeal that decision. CIV. PROC. CODE, art. 205. The Courts of Appeal examine appeals against judgments of the Courts of First Instance that have not come into effect. *Id.* art. 206; CRIM. PROC. CODE, art. 45. Appeals from Courts of First Instance must be brought within 15 days after the announcement of the decision. CIV. PROC. CODE, art. 207; CRIM. PROC. CODE, art. 379. Courts of Appeal are not constrained by the arguments of the appeal for rehearing and consider cases appealed to them from the Courts of First Instance *de novo*. LAW ON THE JUDICIAL SYSTEM, art. 18; CIV. PROC. CODE, art. 217.1; CRIM. PROC. CODE, art. 385. Additional evidence may also be submitted in certain instances, for example if circumstances beyond a party's control prevented presentation of such evidence during the first instance civil trial. CIV. PROC. CODE, art. 217.2; *see also* CRIM. PROC. CODE, arts. 385, 391.5.

The Court of Appeal for civil cases has a chairman and nine judges; the Court of Appeal for criminal and military cases has a chairman and 15 judges. LAW ON THE JUDICIAL SYSTEM, art. 18. Cases before the Courts of Appeal are considered by three-judge panels, with decisions rendered by majority vote. *Id.* art. 7; CIV. PROC. CODE, arts. 19.2, 20.1; CRIM. PROC. CODE, arts. 387, 393.7. The Courts of Appeal can affirm the decisions of the Courts of First Instance or reverse such decisions, both in part and in full, and adopt a new verdict. CRIM. PROC. CODE, art. 394. The judgments of Courts of Appeal come into effect 10 days after their announcement for criminal cases, and 15 days for civil cases. CRIM. PROC. CODE, art. 402; CIV. PROC. CODE, art. 219.

A verdict of the Economic Court comes into legal force 15 days after the Court renders its decision. CIV. PROC. CODE, art. 221-4. It can only be appealed to the Court of Cassation. *Id.* art. 221-6; LAW ON THE JUDICIAL SYSTEM, art. 20.1.

The Court of Cassation is composed of the Chairman, the Chamber on Civil and Economic Cases, and the Chamber on Criminal and Military Cases. LAW ON THE JUDICIAL SYSTEM, art. 21. Each Chamber is composed of its chairman and five judges. *Id.* Cases in the Court of Cassation are considered by a panel consisting of the majority of judges and the chairman of the respective Chamber. *Id.* art. 7; CIV. PROC. CODE, arts. 19.3, 237; CRIM. PROC. CODE, art. 416. The Court can review the resolutions, judgments, and decisions of the Courts of First Instance that have entered into legal force. LAW ON THE JUDICIAL SYSTEM, art. 21. It can also hear appeals against the resolutions, verdicts, and decisions of the Economic Court and Courts of Appeal. *Id.* Economic Court judgments reversed by the Court of Cassation, except bankruptcy cases and others defined by law, are tried *de novo* by a panel of judges from the Economic Court. *Id.* art. 20.1. Resolutions, judgments, and decisions of the Courts of First Instance and the Courts of Appeal that have entered into legal force (i.e., after the deadline for regular appeals has passed) may be reviewed by the Court of Cassation based on protests filed by the Prosecutor General, his deputies, or specially licensed advocates registered with the Court of Cassation. CONST., art.

93; CIV. PROC. CODE, art. 223; CRIM. PROC. CODE, art. 404. Resolutions, judgments, and decisions of the Courts of Appeal that have not yet come into force may be appealed by the parties involved in the case, third parties whose rights and obligations are affected by a decision, the prosecutor, and each party's legal representative. CRIM. PROC. CODE, art. 404.

In cases of "newly discovered circumstances," an appeal can be made at any time by either an advocate who holds a special license or the prosecutor, within three months after the judgment in question comes into force. CIV. PROC. CODE, arts. 223, 225. In criminal cases, there is no such deadline for appealing judgments and decisions that entered into force, with certain exceptions envisioned in the Criminal Procedure Code. See art. 412(2). This means that, in certain instances, there is no finality of judgment.

The Court of Cassation can:

- affirm the resolution, judgment, or decision, thus leaving the appeal unsatisfied;
- reverse the resolution, judgment, or decision in full or in part and remand the case for a *de novo* trial before a different panel at the Court of Appeal or at the Economic Court that initially tried the case;
- vacate the resolution, judgment, or decision; or
- dismiss the protest without a hearing.

CIV. PROC. CODE, art. 236; CRIM. PROC. CODE, art. 419.

Decisions of the Court of Cassation come into force from the moment they are announced and are not subject to further appeal. CIV. PROC. CODE, art. 239; CRIM. PROC. CODE, art. 424.

Respondents noted that very few judgments are appealed in practice. Court statistics on civil cases compiled by the Council of Court Chairmen (CCC) are set forth in the following table.

APPEALS AND REVERSALS IN CIVIL AND ECONOMIC CASES

Civil Case Event	Year	2001	2002	2003	2004 (Jan.-June only)
Cases heard by Courts of First Instance		21,949	40,447	73,252	41,997
Cases appealed to Court of Appeal		2,184	2,408	2,760	1,948
As a percentage		10%	6%	4%	4.5%
Cases heard by Court of Appeal and Economic Court		2,007	5,154	5,677	3,403
Cases appealed to Court of Cassation		1,089	1,340	1,659	598
As a percentage		54%	26%	29%	17.5%
Reversals in all courts of review		972	1,056	1,266	305
As a percentage of all civil appeals		30%	29%	29%	12%

Source: Letter from Chief of Staff of the Council of Court Chairmen to ABA/CEELI-Yerevan (Dec. 7, 2004).

Respondents link the low number of appeals to several logistical and structural impediments. The Courts of Appeal, the Economic Court, and the Court of Cassation are all located in Yerevan. The appeal deadlines are relatively short (10 and 15 days after the decision is announced), and the parties are often not notified of the decision until after the deadline for filing an appeal has passed. In addition, poverty and poor transportation and communication infrastructure discourage, 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, the appeal must be admitted. See CCC

Decision No. 36 (Dec. 22, 2000). However, this is not a law, and the appeal must be personally approved by the CCC Chairman.

Respondents also note that the Court of Cassation is not entitled to make a final decision on the merits of the case if it detects a violation of substantive or procedural law or if it does not agree with the court ruling below. This is implied from the applicable provisions of the procedural codes. See CIV. PROC. CODE, art. 236; CRIM. PROC. CODE, art. 419. This means that if the Court of Cassation does not affirm the judgment in full, it must remand the case to the Court of Appeal, which must then hold a *de novo* trial. Potentially, these cases could be appealed again to the Court of Cassation. This has occasionally resulted in lengthy cycling of cases between the 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.

Most respondents believe that appeals are influenced by external 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 the case would not be reversed on appeal.

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	Trend: ↔
<p>Judges have adequate contempt and subpoena powers, but they have little role in the enforcement of judgments, which is the responsibility of the Service of Compulsory Enforcement of Judgments (SCEJ) within the Ministry of Justice. Many respondents noted issues concerning inconsistency in the enforcement of judgments due to lack of adequate financial resources and training, as well as perceived corruption within the SCEJ.</p>		

Analysis/Background:

Most respondents felt that Armenian judges have sufficient contempt and subpoena powers to enable them to control their courtrooms. The presiding judge may undertake measures necessary to ensure courtroom order. CIV. PROC. CODE, art. 113.4; see *also* CRIM. PROC. CODE, art. 43.2. Everyone present in a courtroom during a session must follow the orders of a presiding judge. CRIM. PROC. CODE, art. 314.3. If courtroom order is violated during a session, the presiding judge is entitled to warn the person who violated the order and, when necessary, to remove that person from the courtroom. CIV. PROC. CODE, art. 115. Judges will also file a complaint with the advocates' union (the body responsible for disciplining advocates) in cases of contempt.

The Law on Status of Judges additionally provides that insulting a judge, intentional non-compliance with or obstructing the enforcement of a judgment or a court order, as well as disrespectful conduct towards the court by persons participating in a case or present at a court session, in whatever manner displayed, shall result in liability as prescribed by law. See art. 7; see *also* CODE ON ADMINISTRATIVE VIOLATIONS, art. 206.1 (providing for fines and administrative detention of up to 15 days); CRIMINAL CODE [hereinafter CRIM. CODE], art. 343.1 (providing for fines, corrective labor, and imprisonment of one to three months).

In civil cases, the court can summon witnesses as suggested by parties. CIV. PROC. CODE, art. 44.2. In criminal cases, the court can also summon witnesses upon its own initiative. CRIM. PROC. CODE, arts. 86.1, 331.3. The summons must indicate the place and time the witness must appear and the case about which the witness will be interrogated, as well as the consequences of the failure to appear. CIV. PROC. CODE, art. 44.3; CRIM. PROC. CODE, art. 205.2. If summoned, a witness must appear and provide information known to him/her. CIV. PROC. CODE, art. 44.4; CRIM. PROC. CODE, art. 86.3. 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 on forcible appearance is carried out immediately. CIV. PROC. CODE, art. 44.5; CRIM. PROC. CODE, art. 153. In criminal proceedings, failure of a witness to appear and testify may also result in criminal sanctions. CRIM. PROC. CODE, art. 86.4; *see also* CRIM. CODE, art. 339 (providing for fines, corrective labor, and imprisonment of up to two months).

If a civil defendant was duly notified of the time and place of a court session and fails to appear, the court may review case in such defendant's absence. CIV. PROC. CODE, art. 118.2. In criminal cases, the defendant's participation in the court session is mandatory. CRIM. PROC. CODE, art. 302. If a defendant fails to appear without a valid reason, the court can require his/her forcible appearance. *Id.* arts. 153, 303. Force may also be used to bring in victims who fail to appear without a valid reason. *Id.* arts. 153, 307. The body of inquest executes the decision on forcible appearance in court. *Id.* art. 153.

Pursuant to a motion, the court determines whether a case may proceed in the absence of a witness, taking into consideration the circumstances presented in the motion. CIV. PROC. CODE, art. 119; CRIM. PROC. CODE, art. 332. At times, the failure of witnesses to appear prohibits advocates and prosecutors from fully developing their case.

The Ministry of Justice is responsible for arranging and carrying out the compulsory enforcement of court decisions, resolutions, and verdicts. LAW ON THE JUDICIAL SYSTEM, art. 12. With the passage of the Law on Compulsory Enforcement of Judgments in 1998, enforcement of judgments was transferred from the courts to the Service of Compulsory Enforcement of Judgments (SCEJ) within the Ministry of Justice. Because a separate agency is responsible for enforcement of judgments, judges have little involvement in this area.

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 entire territory of Armenia. CIV. PROC. CODE, art. 14. After the adoption of judgment and by petition of the parties, the court takes measures to secure the enforcement of the judgment. *Id.* art. 141.

In criminal matters, a court has the power to send a verdict to be executed and to resolve issues arising with the execution. CRIM. PROC. CODE, art. 41.2. A judge is empowered to implement administrative actions for securing the execution of the court's verdict or other decision. *Id.* art. 42. A court decision in a criminal case that has come into effect is sent for execution by the court that issued the decision within three days after coming into effect or returning from the Court of Appeal or the Court of Cassation. *Id.* art. 427.2. An acquitted defendant must be immediately released in the courtroom after the announcement of the verdict. *Id.* art. 427.3.

The court provides instructions to the bodies charged with enforcing court decisions, including a copy of the decision and any appellate court decisions. *Id.* art. 428. These bodies must immediately inform the court that issued the decision about the enforcement of the decision. Issues concerning the enforcement of court decisions are reviewed by the court at the court session with the participation of the convicted person. *Id.* art. 438.

As long as the Constitutional Court is fulfilling duties within its power, it is mandatory for state bodies, institutions, enterprises, organizations, and citizens to fulfill the Court's orders. LAW ON THE CONSTITUTIONAL COURT, art. 54. Its orders must be complied with within five days after their receipt, unless the Court has specified a different time limit. Refusing or evading compliance,

failure to meet time limits, and failure to adequately comply with the orders and decisions of the Constitutional Courts is punishable by law. *Id.* arts. 54, 70.

In practice, parties must apply to the court to obtain an enforcement letter that must be granted by the court within three days of receipt of the application. The act must be presented for enforcement within one year of the date the judgment in question came into force. LAW ON COMPULSORY ENFORCEMENT OF JUDGMENTS, arts. 18, 23. The courts are not involved in enforcement procedures, unless a party initiates suit against the SCEJ for violation of the law. The SCEJ can apply to the prosecutor for failure to comply with or intentionally obstructing the enforcement of an enforcement officer's orders. *Id.* art. 72. The Law on the Service for Compulsory Enforcement of Judgments provides more detail on the SCEJ, its employees, and its authority.

Notwithstanding the available legal authority for enforcement of judgments, many respondents report that, in practice, the enforcement of judgments is inconsistent and, in many situations, subject to significant delays. The SCEJ has inefficient administrative structures and limited resources, and enforcement officers (known as bailiffs) often must pay their own out-of-pocket expenses. SCEJ is insufficiently staffed, currently employing about 300 people, which includes the central office in Yerevan and regional branches in the *marzes*. Enforcement officers also suffer from a perceived lack of training and experience with complex commercial and civil matters. During the Soviet period, they had very limited experience with enforcing commercial judgments, since most of the judgments simply called for the transfer of assets from the bank account of one state enterprise to the bank account of another. Finally, according to many respondents, bailiffs enforce, or fail to enforce, judgments in response to external influence, bribery, or other forms of corruption.

The World Bank Judicial Reform Project includes a component that envisions modernization and capacity building of the SCEJ. After the functional and structural review, necessary computer equipment has been purchased for the SCEJ, and staff received training on operating this equipment. As of December 2004, a contract with a software developer to design special software for automation of the entire SCEJ was in the final stages of negotiation, and SCEJ website development is also anticipated. See E-mail from the World Bank Mission in Armenia to ABA/CEELI-Yerevan (Dec. 3, 2004).

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.

<i>Conclusion</i>	<i>Correlation: Negative</i>	<i>Trend: ↔</i>
<p>The judiciary has limited ability to influence decisions concerning its funding and lacks meaningful control over how funding is expended once received. Resources provided by the state are inadequate, and judges must cover many expenses, such as paying for supplies, purchasing computers and other equipment, and supplementing their staff salaries, out of their own pocket. Even such limited resources are unevenly distributed among the various courts.</p>		

Analysis/Background:

The law stipulates that the state financially supports the court system. The Law on the Judicial System states that the courts are to be financed from the State Budget. See art. 29. The Council of Court Chairmen (CCC) is responsible for drafting and submitting budgets for all courts of general jurisdiction to the Government of the Republic of Armenia. *Id.* art. 27. In practice, 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 Chairman of the Constitutional Court is responsible for drafting and submitting a budget for the Court to the Government. LAW ON THE CONSTITUTIONAL COURT, art. 7.

After the CCC completes its internal budgeting process, the Council's Chairman presents the consolidated draft to the Ministry of Finance and Economy. Further discussions and negotiations may ensue before the Minister 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 and Economy must approve all re-distributions between 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 do not directly lobby the government concerning the budget, as this is not yet a common practice in Armenia; thus, there is no effective advocate for adequate judicial budgets. In addition, some respondents expressed reservations about the relative efficiency and independence of the CCC.

Due to the country's difficult financial constraints, the judiciary is severely under-funded. The budgets for the judicial system from 2002 were as follows:

ANNUAL BUDGET OF THE COURTS IN ARMENIA

Court level	2002		2003		2004	
	in AMD	in US\$	in AMD	in US\$	in AMD	in US\$
Constitutional	160,697,000	280,449	163,712,700	282,263	203,089,300	380,317
Cassation	91,339,300	159,405	95,406,400	164,494	154,221,600	288,804
Economic	59,882,200	104,506	83,651,200	144,226	141,125,400	264,280
Appeal/Civil	43,770,700	76,389	37,512,700	64,677	68,219,300	127,751
Appeal/Criminal	54,897,800	95,808	57,083,800	98,420	97,977,200	183,478
First Instance	459,170,300	801,344	404,421,756	697,279	807,626,400	1,512,409
TOTAL	869,757,300	1,517,901	746,382,156	1,286,866	1,318,037,600	2,468,235
as % of GDP	.06%		.05%		.07%	

Source: LAW ON THE STATE BUDGET FOR 2002; LAW ON THE STATE BUDGET FOR 2003; LAW ON THE STATE BUDGET FOR 2004.

Once the budget is approved, the chairman of each court is responsible for administering the budget within that court to ensure its normal functioning. LAW ON THE JUDICIAL SYSTEM, arts. 16(7) [Courts of First Instance], 19(7) [Courts of Appeal], 23(10) [Court of Cassation]; LAW ON THE CONSTITUTIONAL COURT, art. 17(8).

Court filing fees are levied in all trial, appellate, and cassation proceedings in civil and economic cases. See CIV. PROC. CODE, art. 70. The amount of court fees and applicable exemptions are set by the Law on the State Duty. Fees are typically based on the subject matter of the dispute or, in property cases, on the amount in controversy (2% in first instance trials, 3% in appellate and cassation proceedings). See *generally* LAW ON THE STATE DUTY, art. 9. Exemptions for payment of court filing fees are available to plaintiffs in certain categories of cases, such as labor or election disputes. *Id.* art. 22. In addition, the court or the presiding judge has the right to grant individual waivers for court fees, taking into consideration financial circumstances of the parties.

Id. art. 31(b). At present, the judiciary does not retain any of the fees, which are transferred to the State Budget in full. See CIV. PROC. CODE, art. 71. The judiciary transferred a total of AMD 641,936,000 (about US\$ 1.1 million) in court fees to the State Budget in 2003, and AMD 473,177,300 (US\$ 846 thousand) in the first half of 2004. See *Judges Fill Budget Gaps at Their Own Expense*, HETQ ONLINE: NEWSPAPER OF THE ASSOCIATION OF INVESTIGATIVE JOURNALISTS OF ARMENIA, Jan. 19, 2005.

In practice, courts draft their budgets not according to their actual expenditures, but within limits set by the Ministry of Finance and Economy. The reported result is that only judicial salaries are budgeted correctly; courts do not have meaningful allocations for maintenance and equipment, and are substantially indebted to the utility companies. In mid-2004, the phones of Court of Cassation and the Court of Appeal were cut off because of non-payment of the telephone fees. This prompted the Government to allocate an additional AMD 5.5 million (about US\$ 11,000) from the government’s reserves, to enable some courts to pay for their communications expenses. See Decision No. 1204-A (Sept. 2, 2004). In another example, one Court of First Instance in Yerevan owes more than AMD 5.7 million (about US\$ 11,500) for electricity and about AMD 2.5 million (approximately US\$ 5,000) for long-distance telephone calls, the debts that have accumulated since 1999. See *Judges Fill Budget Gaps at Their Own Expense*, HETQ ONLINE: NEWSPAPER OF THE ASSOCIATION OF INVESTIGATIVE JOURNALISTS OF ARMENIA, Jan. 19, 2005.

Most judges report having to pay for their own office supplies and some utilities, and to purchase their own computers and other necessary equipment. In addition, judges customarily supplement their staffs’ salaries out of their own funds, in order to retain sufficient staff. Court chairmen do receive their monthly allocations, although most of this amount is dedicated to salaries alone. Reportedly, however, the judicial system’s budget for 2005 was drawn up based on actual expenditures, so that a “satisfactory” amount has been allocated for building maintenance, postal services, and utilities for all courts, and only funding for office maintenance remains insufficient. See *Judges Fill Budget Gaps at Their Own Expense*, HETQ ONLINE: NEWSPAPER OF THE ASSOCIATION OF INVESTIGATIVE JOURNALISTS OF ARMENIA, Jan. 19, 2005 (citing chief accountant of the Court of Cassation).

The inadequate funding of the judiciary is often cited by respondents as one of the biggest impediments to judicial reform in Armenia. It has been estimated that a threefold increase in the budget would be sufficient, yet a tenfold increase would be necessary to include modernizing the equipment as well. Most respondents do not feel that courts are disproportionately under-funded as compared to other governmental agencies, but this issue requires serious attention.

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	Trend: ↔
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. The consequence is reported endemic corruption.		

Analysis/Background:

Although specific amounts are not stated, the law prescribes judicial salary levels based on which court a judge sits on and the judge’s position on the court. LAW ON STATUS OF JUDGES, art. 16.

Specifically, the Law requires all judges and court chairmen belonging to a particular instance of courts to be remunerated equally, and specifies that the salaries of judges and chairmen of the Courts of Appeal exceed the salaries of their counterparts on Courts of First Instance by 10%, and that the salaries of judges and chairmen of the Court of Cassation exceed the salaries of their counterparts on Courts of First Instance by 20%. *Id.* The salaries of court chairmen at each level of courts exceed the salaries of judges at that level of courts by 25%, and the salaries of chairmen of Chambers in the Court of Cassation are 15% above the salaries of the judges on the Court of Cassation. *Id.* art. 16(4).

Judges received a significant salary increase in 2004. However, the salaries are still too low to support a respectable livelihood. Monthly salaries of judges for 2002-2004 are listed in the following table.

MONTHLY JUDICIAL SALARIES IN ARMENIA

Year	Courts of First Instance		Courts of Appeal and Economic Court		Court of Cassation	
	AMD	US\$	AMD	US\$	AMD	US\$
2002	104,100	182	114,500	200	126,000	220
2003	104,100	179	114,500	197	126,000	217
2004	220,000	412	242,000	453	264,000	494

Source: Letter from Chief of Staff of the Council of Court Chairmen to ABA/CEELI-Yerevan (Dec. 7, 2004).

Additional remuneration is provided on top of a judge's salary based on duration of judicial tenure. Judges in their first five years of service receive a salary increase of 2% each year. In their sixth and subsequent years, judges receive a 5% salary increase each year. LAW ON STATUS OF JUDGES, art. 16(5). Judges receive no other benefits in addition to their basic salary and additional tenure-based remuneration.

The Law on the Constitutional Court mandates that the state provide the Court members with adequate living and working conditions. LAW ON THE CONSTITUTIONAL COURT, art. 13. The salaries of Constitutional Court members are determined by law. In practice, the current salary of Constitutional Court judges is AMD 300,000 (approximately US\$ 650) per month, while the Chairman of the Constitutional Court makes AMD 340,000 (approximately US\$ 740) per month.

Although now paid in a timely manner, judicial salaries are not deemed adequate by virtually all respondents, even though they compare favorably to the salaries of similar-ranking governmental officials. Low salaries are one of the major reasons cited for the presence of bribery in the judicial system. Virtually all respondents felt that most, if not all, judges take bribes, citing the poor economic situation as the main reason for this state of affairs. One judge's eloquent analysis of the current situation was that "A judge's salary should be sufficient so that the public has the moral right to demand honesty." The apparent willingness of judges to discuss perceived causes of bribery is, of course, an important precursor to the mitigation of corruption.

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	Trend: ↔
<p>Although judicial buildings are easy for most to find, the vast majority are in substandard condition and do not provide a respectable environment for the dispensation of justice. The World Bank Judicial Reform Project is funding limited new and renovated facilities that comply with international standards.</p>		

Analysis/Background:

Although at least one Court of First Instance is located in each of Armenia's 10 *marzes* (provinces), the Courts of Appeal, the Economic Court, and the Court of Cassation are all located in Yerevan. While courthouses in Armenia are not generally well marked inside or out, for the most part, people know where the courthouses are located.

The government is required by law to provide the Constitutional Court with its own building and with the equipment necessary to ensure its normal functioning. LAW ON THE CONSTITUTIONAL COURT, art. 7. However, aside from the Constitutional Court building and three new court buildings renovated under the World Bank Judicial Reform Project, which are the best maintained and equipped courthouses in the country, respondents noted that virtually all courthouses lack a respectable environment for the dispensation of justice. This was confirmed by the assessment team's site visits to selected court facilities in November 2004. Most courthouses 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.

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 or libraries. In addition, although the Law on Status of Judges provides that each judge is entitled to a separate office space (see art. 21), in practice many judges are required to share offices with their assistants and secretaries due to lack of space in the courthouses.

A significant portion of a World Bank's US\$ 11.2 million Judicial Reform Project is dedicated to improving court infrastructure. The Project is funding limited new and renovated facilities that comply with international standards. At the request of the Government, the project's closing date was extended from December 31, 2004 to June 30, 2006. Some reallocation of funds from various project components and categories was also done to complete the rehabilitation of the courthouses. Due to delays in implementation, the number of court facilities slated for construction or renovation has been significantly reduced. In total, the rehabilitation of about six courthouses will be completed by the end of 2004, and seven more will be completed by the end of the project. See E-mail from the World Bank Mission in Armenia to ABA/CEELI-Yerevan (Dec. 3, 2004). Facilities completed or under construction funded by this Project were inspected in November 2004 and are good when compared to other court facilities. However, no provision has been made in the program for ongoing maintenance of the new facilities, which will be dependent on future state budgetary allocations.

Factor 13: Judicial Security

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

Conclusion	Correlation: Negative	Trend: ↔
Threats and assaults against judges do occur, although rarely. Court security is minimal. New and renovated facilities funded by the World Bank Judicial Reform Project have appropriate accommodations for judicial security, but issues concerning security personnel remain.		

Analysis/Background:

Threatening a judge or his/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 also* CRIM. CODE, art. 347.1 (providing for fines and imprisonment of up to three years). A judge and members of his/her family are under the special protection of the state. Upon a judge's request, competent state bodies (i.e., the police) must undertake all necessary measures to ensure their security. LAW ON STATUS OF JUDGES, art. 24. Judges, however, seldom invoke this provision in practice. The security of the Constitutional Court and its members is ensured in a manner prescribed by law. LAW ON THE CONSTITUTIONAL COURT, art. 12(5).

A judge has the right to carry a weapon and "special means of defense." LAW ON STATUS OF JUDGES, art. 25. The Rules of Judicial Conduct further elaborate that a judge can carry a weapon, but s/he can only use it in cases of self-defense and cannot give it to other people. The weapon cannot be displayed or used in the courthouse or other public places, except for self-defense or protection of other peoples' lives. *See* Rule 7. Many respondents reported that many judges do, in fact, carry guns. There have been several instances in which judges were threatened or assaulted, and judges do not feel secure.

Courthouse security is not specifically allocated in the judicial budget. There is no special court police force, although the police under the authority of the Ministry of Internal Affairs are present in limited numbers at the courthouses. Many judges have monitors in their offices, although generally they do not have waiting rooms in their offices or separate entrances to the courtroom. Except for the Court of Cassation and Constitutional Court buildings, there are no metal detectors in the courthouses, nor is there typically any type of entrant screening. This has been addressed at the facilities financed under the World Bank Judicial Reform Project, although issues concerning security personnel remain. There appear to be neither resources nor plans to address these issues in facilities not funded by this Project.

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	Trend: ↔
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 members of the Constitutional Court may do so until the age of 70. CONST., art. 96. Prior to that age, judges may be removed from office only on grounds specified in the Constitution and the laws. *Id.*; LAW ON STATUS OF JUDGES, art. 10; LAW ON THE CONSTITUTIONAL COURT, art. 11.

Upon retirement, judges and Constitutional Court members may be entitled to pension equal to 75% of the base salary they received in their most recent position. To qualify for this pension, a person must have served as a judge for ten years and must retire at the age of 65 (or earlier, if retirement is due to disability). See LAW ON STATUS OF JUDGES, art. 18; LAW ON THE CONSTITUTIONAL COURT, art. 13. This provision does not apply to those persons removed from office by the President under certain circumstances. LAW ON STATUS OF JUDGES, art. 18. All judges are eligible for a state pension as defined by the Law on State Pensions.

Although the life tenure provisions provide welcomed job security to judges, some respondents expressed concerns 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	Trend: ↔
The criteria for judicial advancement are not delineated in the law. The promotion process is not transparent, and personal or political influence of certain officials is perceived as significant to judicial promotions.		

Analysis/Background:

The President, at the recommendation of the Council of Justice and the Minister of Justice, has the authority to promote all judges and court chairmen. LAW ON THE COUNCIL OF JUSTICE, art. 13. This is done through submission of a List of Professional Advancement to the President in January of each year. The List includes those persons on the List of Fitness for Office (discussed in Factor 2 above) who deserve promotion by virtue of their professional, business, and moral character. These terms are not defined in the law, and there is a feeling among many respondents that they are applied subjectively by the Minister of Justice.

The five-member Commission created by the Minister of Justice to administer the judicial qualification examination (see Factor 2 above) is responsible for organizing tests for those judges who wish to be considered for promotion. CHARTER OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF ARMENIA, art. 21. The test for promotion is held in January of each year, and the results are not subject to appeal. *Id.* art. 28. Those meeting the "requirements of the test results" are included on the List of Professional Advancement, and if a candidate appears on the List one year, s/he will be retained on the next year's List. *Id.* arts. 31, 32.

The promotion criteria are not specified anywhere in the law, which raised concerns among many respondents. For instance, it is not known whether judicial statistics play any role in the compilation of the List of Professional Advancement. The Ministry of Justice, through its Audit Department, is responsible for summarizing judicial statistics, and each court submits periodic

statistical reports to the Council of Court Chairmen, which then compiles an annual report. See LAW ON THE JUDICIAL SYSTEM, art. 12. Most respondents said that in a country where everyone knows everyone else, the candidate’s personal reputation and relationships are taken into consideration during the promotion process. Some respondents think that the extensive role of the Minister of Justice in the promotion process hampers the separation of powers between the judicial and executive branches.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Neutral	Trend: ↓
Judges have immunity for their official and non-official acts, but they are reportedly perceived to abuse this status.		

Analysis/Background:

The Law on Status of Judges states that “[a] judge shall be immune.” See art. 11. This immunity is not limited to actions taken by judges in their official capacity. The Law specifies that 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. *Id.*; see also CONST., arts. 55(11), 95(6) This overwhelming power of the President has rarely been used. Only the Prosecutor General may commence criminal prosecution against a judge, with the investigation overseen by the Prosecutor General himself. When a judge is arrested, detained, or subjected to search, the arresting body must immediately notify the President, the Council of Justice, and the Chairman of the Council of Court Chairmen. LAW ON STATUS OF JUDGES, art. 11.

Members of the Constitutional Court enjoy similar immunity and may not be taken into custody or subjected to administrative or criminal responsibility in a judicial proceeding without the consent of both the body that appointed him/her and the Constitutional Court. When a member of the Constitutional Court is arrested or searched, the President of the Constitutional Court and the body that appointed him/her must be immediately informed. A member of the Constitutional Court may be arrested or searched only on the basis of a warrant issued by the Prosecutor General. CONST., art. 100(8); LAW ON THE CONSTITUTIONAL COURT, art. 12.

Once the judicial immunity is lifted, judges may be prosecuted for a variety of official offenses specified in the Criminal Code. These include, *inter alia*, forcing a witness to provide false testimony (CRIM. CODE, art. 341) or issuing a knowingly illegal verdict or judgment (*id.* art. 352), as well as general offenses against public office, such as abuse of office or power, bribery, and fraud. See *generally* CRIM. CODE, Ch. 29 (Crimes Against Civil Service), Ch. 31 (Crimes Against Justice).

Unlike in 2002, many respondents noted concerns regarding selective prosecution of judges for alleged acts of corruption, and conversely, perceived relatively common abuse by judges of their immune status to engage, directly or indirectly, in illegal activities to supplement their admittedly inadequate salaries.

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: Neutral	Trend: ↑
<p>Although subjective criteria can be used to remove or discipline a judge, and the process can be initiated only by the Minister of Justice, in practice those alleged acts of judicial misconduct that are reported to the relevant authorities are investigated properly and fairly.</p>		

Analysis/Background:

The President of the Republic of Armenia has the power to remove any judge from office, to sanction the arrest of a judge, and to authorize the initiation of judicial proceedings to subject a judge to administrative or criminal responsibility. CONST., art. 55(11). The President typically exercises these powers based upon the recommendation of the Council of Justice. *Id.* 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 Status of Judges lists 12 grounds for the President to terminate a judge's powers upon recommendation of the Council of Justice. See art. 30. Most of the removal criteria are objective (e.g., resignation, reaching the age of 65 years, transfer to a different position upon a judge's written consent, failure to report to the office for more than one year due to temporary work disability, mental incompetence declared by a court, criminal conviction, involvement in political or paid activity incompatible with the judicial office, etc.). However, the grounds also include somewhat subjective factors, such as committing an act in violation of the Code of Judicial Conduct that is "inconsistent with a judge's calling" and committing a gross violation of law in the course of the administration of justice (these terms are not defined). The law also provides for the removal of a judge who has been disciplined three or more times within one year. *Id.*

The Minister of Justice must bring a motion to the Council of Justice recommending removal of a judge on one of the above grounds. LAW ON STATUS OF JUDGES, art. 30; LAW ON THE COUNCIL OF JUSTICE, art 19. When recommending a removal on the ground that a judge has violated the Code of Judicial Conduct, the Minister of Justice must first obtain a conclusion from the Council of Court Chairmen (CCC). LAW ON STATUS OF JUDGES, art. 30. Under the Rules of Judicial Conduct, a representative of the Association of Judges of the Republic of Armenia participates in CCC meetings on matters of judicial conduct in order to defend the interests of the judge in question. See DISCIPLINARY ACTIONS AGAINST JUDGES. CCC hearings on removal and disciplinary issues are not open to the public. Proposals for removal cannot be made to the Council of Justice twice on the same grounds. When considering early removal, the Council of Justice invites the judge to testify. If a judge does not appear after the second summons by the Council without a valid reason, the Council can review the case in a judge's absence. LAW ON THE COUNCIL OF JUSTICE, art. 19. There is no appeal from the President's decision to remove a judge from office. Removal decisions are published as Presidential decrees in the Official Bulletin of the Republic of Armenia.

Removal provisions 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 Court member. CONST., arts. 100(8), 102. The law provides for automatic removal on the grounds that include reaching the age of 70, death, loss of citizenship, resignation, mental incompetence declared by a court, or criminal conviction. There is also non-automatic removal, which is possible on such grounds as

failure to attend the Court's plenary sessions three times in a row, failure to perform official functions for at least four months due to temporary disability or other valid reason, and committing an act that discredits a Court member's honor or dignity. LAW ON THE CONSTITUTIONAL COURT, art. 14. In the instance of automatic removal from the Constitutional Court, the Chairman of the Constitutional Court must apply to the President of Armenia or the National Assembly within two days of the triggering event to request appointment of a new member. For non-automatic removal, a member's status may be discussed by the body that appointed him/her on the basis of a conclusion issued by the Constitutional Court. No Constitutional Court member has been removed since the Court's inception in 1996, although one judge resigned after being nominated by the Government of Armenia as a judge to the European Court of Human Rights in Strasbourg.

The Council of Justice is responsible for dispensing disciplinary action against judges, although only the Minister of Justice has the explicit right to commence disciplinary proceedings. LAW ON STATUS OF JUDGES, art. 31. Disciplinary proceedings against judges of the Court of Cassation are an exception, because it is the Chairman of the Court of Cassation that has the right to initiate disciplinary proceedings in those instances. LAW ON THE COUNCIL OF JUSTICE, art. 20. The Chairman of the Court of Cassation presides over the meetings of the Council of Justice when the Council is considering a disciplinary action against a judge. The President of Armenia, the Minister of Justice, and the Prosecutor General do not take part in these sessions. *Id.*; see also CONST., art. 95(7).

Statutory grounds for disciplining a judge include:

- violation of law in the course of the administration of justice;
- failure to administer justice;
- failure to recuse oneself in cases provided by law or ungrounded recusal;
- disclosure of judges' private deliberations or votes, as well as other secrets protected by law;
- interference with another judge's administration of justice;
- involvement in public conduct that jeopardizes the reputation of the judiciary;
- rendering legal advice to the parties on a case pending before the court;
- failure to report to the office for more than three days without a valid reason;
- impoliteness to people in carrying out judicial duties.

See LAW ON STATUS OF JUDGES, art. 31.

Notably, reversing or altering a judicial act rendered by a judge does not, in and of itself, give rise to a judge's disciplinary liability, unless in the course of the administration of justice, the judge intentionally violated the law or acted in bad faith, which led to substantial consequences. *Id.* In addition, several grounds listed in the Law on Status of Judges are subjective and not further defined in the law, which raises concerns about the subjective nature of the judicial disciplinary process. In addition, violation of the Rules of Judicial Conduct, which is explicitly listed as grounds for removal from office, is excluded from the list of grounds for judicial discipline, although the list contains a number of provisions that parallel provisions in the Rules. To date, the Rules adopted in December 2001 have not reportedly been invoked for discipline or removal of any judge.

A judge may be subjected to sanctions no more than three months after the act of misconduct was discovered, not counting the period for disciplinary proceedings or the time a judge is absent from office for valid reasons, but in any event no later than one year from the date of discovery. Before the disciplinary case is submitted to the Council of Justice, the judge has a right to review the case file, to present additional explanations, and to bring motions to make additional inquiries. *Id.*

If a judge is found guilty of misconduct, the Council of Justice may impose a warning, a reprimand, or a severe reprimand as a form of discipline. *Id.* art. 32. Even if the proceedings were based on several facts of misconduct, only one sanction can be imposed. The Council may decide not to impose a disciplinary sanction following an investigation. If, within two years from the date of imposition of a disciplinary sanction, a judge is not subjected to any new disciplinary sanction, his/her record on the disciplinary matter will be expunged. *Id.*

Between 2002 and 2004, 13 disciplinary actions were filed against judges of Courts of First Instance and Courts of Appeal for violations of substantive and procedural law in the course of the administration of justice. As a result of proceedings, the Council of Justice imposed severe reprimands against three judges and reprimands against five judges. Disciplinary actions filed against four judges were dismissed following investigation. The Council sent a recommendation on the removal of one judge to the President of Armenia. See Letter from Head of Secretariat of the Council of Justice to ABA/CEELI-Yerevan (Nov. 18, 2004).

Most respondents were not aware of specific disciplinary actions against judges, in part because the actions of the Council of Justice are not publicized, except in the event of judicial removal, which receives media coverage.

Investing the Minister of Justice, an executive branch officer, with exclusive authority to initiate removal and disciplinary proceedings against judges arguably infringes on the principles of separation of powers and is seen by some respondents as an intimidation factor and a source of pressure on judges in their work. Although only one judge was removed between 2002 and 2004, some respondents noted that the fear of the executive branch’s powers to discipline and remove judges presumably has impacted the development of judicial independence.

Respondents also observed that disciplinary and removal proceedings can be initiated against a judicial member of the Council of Justice, and that the judge under investigation cannot take part in Council voting. Since the Minister of Justice has the sole authority to initiate such proceedings, this is a further indicator of how he could influence the outcome of a disciplinary or removal matter. However, many respondents noted that complaints are investigated properly, judges subjected to disciplinary or removal proceedings received due process in the course of the investigation, and confidentiality is maintained, unless a judge is removed from office.

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.

<i>Conclusion</i>	<i>Correlation: Negative</i>	<i>Trend: ↔</i>
<p>The Council of Court Chairmen has directed the chairmen of the Courts of First Instance in Armenia to assign civil cases by territorial jurisdiction, and criminal and administrative cases randomly and equally. However, respondents expressed concern that court chairmen do not consistently follow this directive. In all other courts, court chairmen control case assignment.</p>		

Analysis/Background:

The Council of Court Chairmen (CCC) is responsible for developing and approving rules for case assignment in the Courts of First Instance. LAW ON THE JUDICIAL SYSTEM, art. 27. Assignment of cases within a particular court is controlled by that court’s chairman. In June 2004, the CCC issued Decision No. 54, developing case assignment rules for the Courts of First Instance. In

particular, the new rules stipulate that case assignment in civil cases is done by territorial jurisdiction. That is, a court's territorial jurisdiction is divided among judges of that court, and this division has to be randomly reassigned among judges each year. A judge hears all cases in which the plaintiffs are from his/her assigned jurisdiction. Criminal and administrative cases have to be assigned equally and on a random basis. In some instances, depending on the complexity and scope of the case or the workload of a judge, court chairmen have to reassign a case to another judge to ensure timely consideration of it. There are no set time limits for case assignment, but there are reportedly few problems with untimely processing of complaints. There are no formal rules to regulate the assignment of cases in the courts at other levels of the judiciary, and case assignment is controlled exclusively by respective court chairmen.

Some respondents voiced concern that case assignment is a way for court chairmen to influence or control the judges (i.e., by assigning to a judge more or less "lucrative" cases). The absence of a random, objective method of case assignment is perceived as enabling the possibility of favoritism in the assignment of cases.

Parties in both civil and criminal cases are entitled to file a motion for a recusal of a judge assigned to the case, if circumstances exist giving rise to doubts about the judge's impartiality. CIV. PROC. CODE, art. 21.1; CRIM. PROC. CODE, art. 88.3. The judge must also recuse him/herself at any time if s/he becomes aware of grounds for recusal. CIV. PROC. CODE, art. 22; CRIM. PROC. CODE, arts. 88.2, 90.6. In criminal proceedings, the grounds for recusal are detailed in the law and include not being a "proper judge" for the case in question (not defined); being a party to the case, a representative of a party, a relative of a party, or a representative of a relative; participation in the proceedings as a witness or in any other capacity; or the existence of other circumstances giving grounds to believe that a judge has a direct or indirect interest in the case. CRIM. PROC. CODE, art. 90.1. Additionally, a judge who participated in pretrial proceedings cannot hear the same case at subsequent stages, both in a Court of First Instance or the Court of Appeal. *Id.* art. 90.2. For example, if a judge issued an arrest warrant, s/he cannot later adjudicate this case in a main trial. In a civil case, a motion for recusal must be made in writing, stating the grounds for recusal, and repeated motions for recusal against the same judge can only be considered if the motion lists new circumstances giving rise to the judge's partiality. CIV. PROC. CODE, arts. 21.2-21.3.

When a motion for recusal is submitted, the trial is suspended until the issue is resolved by the presiding judge or the trial panel (with the judge subject to recusal excluded from deliberations). *Id.* art. 25; CRIM. PROC. CODE, art. 90.4. A judge in question is entitled to provide an explanation of the circumstances. If an equal number of votes is cast for and against granting the recusal, the motion is granted. The decision on motion for recusal, including the grounds for the decision, is announced immediately. Recusal decisions are not subject to appeal. CIV. PROC. CODE, art. 25. If a motion for recusal is granted, the case is reassigned to a different judge on the same court, unless all judges on that court are subject to recusal; in that event, the case is transferred to another Court of First Instance (or to any Court of First Instance or a Court of Appeal, in case of recusals on the Economic Court). *Id.* art. 26.

In practice, procedural provisions on recusal of judges are not frequently utilized, and motions for recusal filed by the parties' attorneys are rarely granted.

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	Trend: ↔
<p>The Association of Judges of the Republic of Armenia (AJRA) exists to promote the interests of the judiciary. However, the AJRA is relatively inactive, has an insignificant budget, and lacks the resources and staff to be an effective and independent advocate for the judiciary.</p>		

Analysis/Background:

According to the Law on Status of Judges, judges may establish and become members of associations that represent their interests, raise their professional level, and protect their status. See art. 13. The Association of Judges of the Republic of Armenia (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 stated goals of assisting in judicial reform, participating in drafting laws related to judicial independence, and protecting the rights of its members. In December 2004, the Association had 180 members, a 21-member Board of Directors, and an Executive Director. In addition to the Board members and the Executive Director, an estimated 12 additional members are very active. The Association charges its members AMD 1,000 (US\$ 2) in monthly dues; however, it has not been successful in collecting these fees in the past.

In 2003, the AJRA convened a working group to develop recommendations for a new Code of Judicial Conduct, as described in Factor 21 below. In addition to its work on the Code of Conduct, the AJRA has made some progress in terms of sustainability. A new Board of Directors and Executive Director were elected June 2003. New office space for the Association was secured and furnished. Subject to the availability of third-party funding, the AJRA publishes JUDICIAL POWER (formerly ORINATERT), a monthly newsletter that was the first journal to publish cases of the Court of Cassation in Armenia. After ABA/CEELI suspended its financial support for the AJRA in April 2003, it was able to continue publication of the newsletter for several months. Thereafter, the AJRA solicited additional funds from other sources and continued publication of the newsletter, issuing 400 copies per month until the funding ran out after the January 2004 issue. Continued publication of the newsletter will depend on AJRA's ability to secure funding. To date, the newsletter has been distributed free of charge to all judges, as well as to lawyers' associations, government officials, and academic institutions. In 2003, the AJRA drafted a series of 10 family law manuals for use by the general public, and organized trainings to introduce these manuals in Vanadzor, Gyumri and Yerevan. The target audience for these trainings included law clinics, NGOs, and local self-government officials.

The AJRA received mixed reviews from respondents; some found it to be an effective organization that represents the interests of judges, while most were either unaware of its activities or dismissive of its influence. In mid-November 2004, the AJRA Board of Directors discussed the issue of relationship between the procuracy and the judiciary, in light of the statement released by the Prosecutor General on October 1 that alleged illegality of some civil judgments on land and property issues. As a result of the discussion, the AJRA Board of Directors issued a counter-statement expressing concern about phenomena which endanger the independence of the judiciary. The statement asserted that unbalanced actions of certain government bodies are inconsistent with the Constitution, hinder the process of establishment of the rule of law, and can seriously jeopardize Armenia's international reputation. Nineteen judges signed this statement. Contemporaneous press reports considered this step a positive indicator of the judiciary asserting its ability to protect itself from infringement by other branches of

government. Nevertheless, lack of sustainability continues to impair the potential effectiveness of the AJRA.

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	Trend: ↔
<p>Undue influence on judicial decisions is a pervasive problem and includes bribery, requests for specific outcomes from government officials or interested parties, <i>ex parte</i> communications, and political pressure.</p>		

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. The Armenian Constitution stipulates that the courts are to administer justice independently and solely in accordance with the Constitution and the laws. CONST., art. 91; *see also* LAW ON STATUS OF JUDGES, art. 5; LAW ON THE CONSTITUTIONAL COURT, art. 10; CIV. PROC. CODE, art. 4.1; CRIM. PROC. CODE, arts. 7.1, 17.1, 40.1. Justice must be administered in conditions that exclude any external influence on the judges. CRIM. PROC. CODE, art. 40.3. The Law on Status of Judges mandates a judge to avoid all actions that may harm the reputation of the court and the judge or that raise doubts about the judge's impartiality. *See* art. 14. Furthermore, a judge shall not be guided by assumptions or emotions, and shall not be influenced by the parties or other external forces. RULES OF JUDICIAL CONDUCT, Rule 9.

In the course of 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-government bodies and their officials, political parties, public associations, and mass media in the activity of a judge while administering justice, as well as obstructing the administration of justice, is impermissible and results in criminal responsibility. *Id.* art. 6; CRIM. PROC. CODE, art. 40.4; *see also* CRIM. CODE, arts. 332.1 (providing for fines or imprisonment of up to two years), 332.3 (providing for fines or imprisonment of up to four years, with mandatory debarment of a convicted public official for up to three years). The Rules of Judicial Conduct expand the list of those who are not permitted to interfere in the administration justice to non-governmental organizations and the judge's family and friends. While a judge is allowed to have contacts with representatives of the executive branch or the legislature, their officials, or mass media, those contacts are prohibited if they give rise to doubts about the judge's impartiality. *See* Rule 8.

Despite all of these legal provisions, respondents reported that external influence on judicial decisions is pervasive and comes in many forms, although quantifying any of them is difficult. While no official statistics are compiled regarding the level of corruption among judges, the Parliamentary Assembly of the Council of Europe cited NGO estimates that 90 percent of judges are corrupt. *See* Parliamentary Assembly of the Council of Europe, Working Document No. 9542, *Honoring of Obligations and Commitments by Armenia*, Para. 110 (Sept. 13, 2002).

Bribery is a common problem which, according to many respondents, is caused by low judicial salaries, mistrust of the judicial system, and historical practice. Some respondents feel that increasing judicial salaries would alleviate, but not eliminate, this form of influence. However,

most noted that there seems to be no real progress, and perhaps even regression, in mitigating corruption.

Respondents also indicated that judges often get telephone calls from members of the National Assembly, government officials, parties, or "intermediaries" in an attempt to influence their decisions. While facts to prove the influence of "telephone justice" are hard to elicit, the prevalence of this claim is significant and acknowledged by some judges, as well as by many other interviewees, including government officials and lawyers. Further, *ex parte* communications, which are not prohibited by law, are commonplace. Except in the new facilities funded by the World Bank Judicial Reform Project, which are designed to insulate and secure judicial offices from public access, it is very easy for attorneys, litigants, and the public to gain entrance to the judges' chambers.

In addition, the judiciary is susceptible to influence from the executive branch officials and politicians. Judicial decisions against the wishes of the government or law enforcement bodies are rare in practice. As a result, the judiciary is, reportedly, sometimes used as an instrument of political revenge against opponents, and trials in sensitive political cases are not perceived to be fair. See FREEDOM HOUSE, *Armenia, in COUNTRIES AT CROSSROADS 2004: A SURVEY OF DEMOCRATIC GOVERNANCE* (April 2004); UNITED STATES DEPARTMENT OF STATE, *Armenia, in 2003 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES* (Feb. 2004). In addition, while there have been instances of former being convicted on corruption charges soon after their dismissal, the judiciary rarely exercises its authority to convict sitting government officials for corruption. See FREEDOM HOUSE, *Armenia, in COUNTRIES AT CROSSROADS 2004: A SURVEY OF DEMOCRATIC GOVERNANCE* at 7 (April 2004).

The judiciary's role in alleged irregularities surrounding the presidential and parliamentary elections in 2003 and 2004, which is discussed in greater detail in Factor 7 above, also suggests influence by other branches of government over the courts. The use of administrative detentions by Armenian authorities was strongly condemned by the international community and led it to conclude that, in the application of administrative detentions, the judiciary played the role of a "pocket court" for police. See, e.g., HUMAN RIGHTS WATCH, *Armenia, in WORLD REPORT 2003*, at 305. In its Resolution 1361 of January 2004 and Resolution 1374 of June 2004, the Parliamentary Assembly of Council of Europe criticized the Armenian government for failure to honor the obligations and commitments it undertook as a member state of the Council of Europe. The Assembly called on Armenia to make a number of changes, including putting an end to judicial impunity for those involved in perpetrating electoral fraud in 2003, and making constitutional and legislative changes to increase judicial independence.

Most respondents characterized such outside influences as systemic and historical practices carried over from the Soviet justice system, and noted their contribution to the public's general mistrust of the justice system and a belief that connections and other influences are needed to get the desired outcome in a court case. The fact that there are almost no prosecutions of judges for their involvement in corruption further undermines confidence in the justice system. According to different surveys, an overwhelming majority of Armenians perceive the courts, along with prosecutors' offices and tax agencies, to be among the three most corrupt government entities. Thus, 36% of respondents in a 2000 survey funded by the Japan Policy and Human Resources Development Fund indicated that, even in emergency situations, they would turn to private individuals or local officials rather than to the judiciary to settle their legal disputes. Another recent survey disclosed that 70% of Armenians believe that the judiciary is influenced by political leaders when making decisions. See IFES, *CITIZENS' AWARENESS AND PARTICIPATION IN ARMENIA SURVEY 2004*, at 31.

In 2004, the Council of Court Chairmen adopted a 2004-2005 Anti-Corruption Action Plan for the Judicial System of the Republic of Armenia, which focuses on the following key components:

- Studying and summarizing judicial opinions on corruption-related crimes;

- Training of new and sitting judges on trying corruption-related crimes;
- Utilizing the official website of the Republic of Armenia judicial system (www.armenian-judiciary.am) in order to ensure transparency of the judicial system and predictability of judicial opinions;
- Creating key staff positions in the courts, such as public relations officers;
- Establishing the National Judicial Archive of the Republic of Armenia;
- Revising the Code of Judicial Conduct, particularly as it relates to judicial discipline provisions;
- Developing certain court rules and revising guidelines with respect to the status, rights, and responsibilities of court staff;
- Developing and promulgating objective methods for assignment of cases to judges and registration of cases.

These components of the Anti-Corruption Action Plan are currently in various stages of implementation, but most are in the planning or early implementation stages; none of the components have been completed.

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: Negative	Trend: ↓
Although the Council of Court Chairmen adopted Rules of Judicial Conduct in December 2001, their impact on judicial behavior has been negligible.		

Analysis/Background:

Pursuant to the Law on the Judicial System, one of the tasks of the Council of Court Chairmen (CCC) is promulgating the Code of Judicial Conduct. LAW ON THE JUDICIAL SYSTEM, art. 27. The CCC adopted the Rules of Judicial Conduct [hereinafter the Rules] in December 2001. The goal of the Rules is to “ensure fair and impartial administration of justice, as well as independence of a judge.” See General Provisions. The Rules are mandatory for all judges, and any violation that is “inconsistent with the high title of a judge” is considered grounds for judicial removal. *Id.* at DISCIPLINARY ACTION AGAINST JUDGES; LAW ON STATUS OF JUDGES, art. 30. In addition, the Law on Status of Judges states that a judge shall strictly follow “norms of ethics and morals,” although this duty is not further defined. A judge is prohibited from publicly expressing any disrespectful attitude towards the law or Armenia’s constitutional order, or committing any action that may harm the reputation of the state and the court. See art. 15.

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, and the Prosecutor General) that ultimately makes a recommendation to the President on whether to remove a judge for violating the Rules. LAW ON STATUS OF JUDGES, art. 30; LAW ON THE COUNCIL OF JUSTICE, art. 20. It should be noted that violation of the Rules of Judicial Conduct is only explicitly grounds for removal, not discipline, although “public conduct that jeopardizes the reputation of the judiciary” is grounds for discipline and would arguably include violations of the Rules. See LAW ON STATUS OF JUDGES, art. 31.

The Rules are brief and very general, and do not provide practical guidance to judges. They cover the general principles of conduct (e.g., independence, professionalism, honor, dignity,

fairness, training, and integrity); official conduct (e.g., independence from outside influence and prohibition on public comments regarding cases before the judge); and extra-judicial activities (e.g., personal relations, reputation, business relations, cohabitation, and duty to respect the national and religious customs and to promote public confidence in the judiciary). Many of these provisions are repetitive of the standards declared by the Law on Status of Judges and other legal acts. At the same time, because many terms are not defined in either the Rules or the applicable laws, judges are given little guidance in assessing their behavior.

Concerning conflict of interest, Rule 12 states that a judge shall avoid personal relations that may adversely affect his/her reputation. Rule 14 prohibits a judge from serving as a trustee, guardian, or proxy, except in certain instances and only if such service does not interfere with proper performance of his/her judicial duties. This Rule also prohibits a judge from entering into business or financial relations that may affect his/her fairness or harm his/her reputation. The Rules do not address conflict situations that arise during a particular case, although the provisions in both the Civil Procedure and the Criminal Procedure Codes related to recusals do address this issue. See Factor 18 above for a discussion of these provisions.

Neither the applicable law nor the Rules prohibit *ex parte* communications with respect to a pending case. *Ex parte* communications are reportedly commonplace, and most respondents indicated that such a prohibition would be next to impossible to enforce in such a small country.

A judge may have contacts with government and legislative bodies, their representatives, or the mass media, unless those contacts give rise to doubts about his/her impartiality. RULES OF JUDICIAL CONDUCT, Rule 8. Beyond this, the Rules do not address inappropriate political activity, although this issue is addressed in the Constitution and the Law on Status of Judges. Specifically, judges and members of the Constitutional Court may not hold any other public office, become members of any political party, participate in election campaign, and engage in any political activity or any other paid occupation, except for research, educational, and creative work. CONST., art. 98; LAW ON STATUS OF JUDGES, arts. 8, 9; LAW ON THE CONSTITUTIONAL COURT, art. 3. No instances of failure to comply with these principles have been reported.

The Association of Judges of the Republic of Armenia (AJRA) took an active role in developing the Rules of Judicial Conduct, approving a draft for consideration by the CCC. In addition, the AJRA publishes ethics articles in its newsletter, JUDICIAL POWER (formerly ORINATERT), providing judges with some additional guidance on judicial ethics and informing them on the internationally accepted standards of judicial conduct.

In 2003, the AJRA convened a working group to revise the Rules of Judicial Conduct. The working group consisted of seven experts including representatives from the Ministry of Justice, the Government, the CCC, and ABA/CEELI. Issues addressed by the working group included clarifying the grounds for judicial discipline and for removing a judge from the bench, and creating a more transparent, objective, and effective disciplinary procedure. The AJRA is receiving support from the Minister of Justice and the CCC, both of whom believe the revision of the Rules is essential to furthering judicial independence.

The AJRA also convened several working group meetings in the spring of 2004 to discuss the conceptual approaches advocated by the AJRA in drafting new Rules of Judicial Conduct, as well as the proposed amendments to the Law on Status of Judges and the Law on the Council of Justice. The Ministry of Justice participated in the working group.

In April 2004, the AJRA developed a Concept Paper on Amending the Rules of Judicial Conduct, which reflected the international standards for judicial ethics and conduct. In October, the AJRA in cooperation with ABA/CEELI organized a series of seminars for approximately 100 judges on the Concept Paper, which were led by an international expert on judicial ethics.

As of December 2004, the status of revisions to the Rules of Judicial Conduct was uncertain.

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: Neutral	Trend: ↑
There is no formal procedure or other meaningful process under which complaints against judges can be lodged, but valid complaints are perceived to be investigated and, where appropriate, sanctions imposed.		

Analysis/Background:

The only legal guidance for those wishing to complain about alleged judicial misconduct can be found in the provisions related to discipline and removal procedures, which are discussed in Factor 17 above. Since the Minister of Justice is the only person who can initiate these proceedings, it is evident that complaints to him are the only ones that could produce results. These referrals are made after the Ministry of Justice Audit Department evaluates and investigates the complaint. No statistics were available on the number of complaints received by the Minister of Justice, although some respondents stated that many cases of misconduct, which should be reported, are not.

The Association of Judges of the Republic of Armenia (AJRA) has received a number of complaints about judges, but all of them related to the merits of cases and were not subject to AJRA review.

Most non-judges interviewed stated that they and the population at large do not know of any formal procedures for filing complaints against judicial misconduct. Nevertheless, respondents generally felt that complaints to the relevant authorities were investigated, that judges were accorded due process in the review of complaints, and that the complaining parties were treated with respect and, where appropriate, made aware of the outcome of the investigation.

Factor 23: Public and Media Access to Proceedings

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

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

Analysis/Background:

Court sessions are held openly, except as provided by the law. LAW ON THE JUDICIAL SYSTEM, art. 9; CIV. PROC. CODE, art. 8; CRIM. PROC. CODE, art. 16. However, individuals under the age of 16 may not be present in a courtroom during a criminal trial unless they are parties or witnesses in a case. CRIM. PROC. CODE, art. 314.4. Closed court hearings are allowed only pursuant to a court's decision where it is necessary to protect public morals, public order, state security, individual privacy of the parties, or is otherwise required in the interests of justice. LAW ON THE JUDICIAL SYSTEM, art. 9; CRIM. PROC. CODE, art. 16.2. In criminal cases, closed trials may also be allowed where a case may reveal intimate information about private and family life, state secrets,

and official or commercial secrets. CRIM. PROC. CODE, arts. 170-172. In civil cases, additional grounds for closed trials include the need for protecting the secrecy of adoption, individual and family privacy of the parties, and commercial or other secrets. CIV. PROC. CODE, art. 8.2. Only parties, their representatives and, where necessary, witnesses, expert witnesses, and interpreters may be present in the courtroom during a non-public trial. *Id.* art. 8.4. In all cases, however, court verdicts and other final judgments on the merits of the case must be read in an open session. LAW ON THE JUDICIAL SYSTEM, art. 9; CIV. PROC. CODE, art. 8.5; CRIM. PROC. CODE, art. 16.2.

Parties and other individuals present in a courtroom during the trial are entitled to take notes, create their own verbatim trial records, and audio-record the trial. Filming and photography, as well as TV and radio broadcasting during the court session require the consent of the parties and the presiding judge. CIV. PROC. CODE, art. 114. Filming in criminal cases is, reportedly, permitted only with the permission of the judge, although no article in the Criminal Procedure Code expressly establishes such requirement.

The sessions of the Constitutional Court must be held in public, and the Court may allow the sessions to be photographed, video- and audio-recorded, or broadcast. A vote of the majority of the Court members is necessary to hold a session, or a part thereof, in a closed court, where this is required in the interests of public morals, public order, state security, the privacy of the parties, and the case. In any event, however, the decisions of the Constitutional Court must be announced publicly in an open session. LAW ON THE CONSTITUTIONAL COURT, art. 20.

No respondents were aware of instances of public or media exclusion from a case except in a few high-profile cases, when not all media representatives were able to enter the courtroom, due to limited space. These cases include, for example, the “October 27” trial of gunmen responsible for a 1999 terrorist attack in Armenia’s parliament, which killed eight top Armenian officials, and the trial of individuals responsible for attacks on demonstrators during the March 2004 protests.

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: Neutral	Trend: ↑
<p>Judicial opinions are announced publicly. However, judgments of the Courts of First Instance are not typically published or readily available to the public. With the availability of additional resources from international donors, publication in hard copy or electronically of Constitutional Court, Court of Cassation, and Economic Court decisions is improving, although sustainability of this effort in the absence of state budgetary support is problematic.</p>		

Analysis/Background:

In civil cases, the law requires courts to make decisions available to the parties within three days after the announcement in a court session of the decisions of the Courts of First Instance and the Court of Appeal, and within seven days for the decisions of the Economic Court and Court of Cassation. CIV. PROC. CODE, arts. 138-139, 220, 241. In criminal cases, the verdict of a Court of First Instance must be made available to the parties within five days following its announcement in a court session, and within three days for the verdicts of the Court of Appeal and the Court of Cassation. CRIM. PROC. CODE, arts. 375, 402, 423. In practice, these deadlines are not always met. Dissenting opinions are allowed in both civil and criminal cases, but they are not announced in a court session and are not published. CIV. PROC. CODE, art. 20.2; CRIM. PROC. CODE, art. 369.

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 copies of the court decisions.

In addition to being made available to the parties, all decisions and other acts of the Constitutional Court must be published in the Official Bulletin. LAW ON THE CONSTITUTIONAL COURT, art. 69. All of the Constitutional Court’s decisions are also published in Armenian and in English on the Court’s website (www.concourt.am).

In 2004, the Council of Court Chairmen (CCC) adopted the Anti-Corruption Action Plan for the Judicial System of the Republic of Armenia, which includes, *inter alia*, a commitment to transparency. This commitment provides for full utilization of the website of the judicial system of the Republic of Armenia (www.armenian-judiciary.am) for posting of all decisions from the Courts of First Instance, Courts of Appeal, Economic Court, and the Court of Cassation in a timely manner. See Decision No. 53, § 3.1. As of December 2004, over 8,500 decisions had been posted to the website. This includes all decisions by the Chamber on Civil and Economic Cases of the Court of Cassation through July 2004, decisions of the Civil Court of Appeal through the end of 2002, and decisions of Chamber on Criminal and Military Cases of the Court of Cassation and the Economic Court through the end of 2001. The decisions are searchable in the Armenian language. However, the website is completely dependent on international funding.

Hard copy publication of judicial decisions has lagged, due to lack of continuity in funding.

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: Neutral	Trend: ↑
<p>Courts do not record verbatim transcripts of proceedings, although longhand summary transcripts (known as protocols) are compiled and are available for review and comment by the parties. The protocols are usually not available to the public.</p>		

Analysis/Background:

In criminal trials, the course of all court sessions before the Courts of First Instance and the Court of Appeal must be recorded in a summary transcript of the proceedings (known as a protocol). CRIM. PROC. CODE, art. 315. The Civil Procedure Code states more generally that compiling a protocol of a court session is mandatory. See art. 146. The protocol is compiled by the court session secretary and must contain, *inter alia*, information regarding the oral statements and motions made by the parties, summaries of witness and expert witness testimonies, overview of other evidence presented to the court, and court rulings adopted by the court during the session without recessing into the deliberation room. CIV. PROC. CODE, arts. 146-148; CRIM. PROC. CODE, arts. 82, 315.3. The protocol may be handwritten, typewritten, or word processed (see CRIM. PROC. CODE, art. 315), but as a practical matter, it is generally handwritten.

Verbatim transcripts are not recorded, although parties are entitled to demand that additional information essential for the trial be recorded in a protocol. CIV. PROC. CODE, art. 148.2; CRIM. PROC. CODE, art. 315.3. Before the verdict comes into force, the parties are entitled to review the protocol and file objections to its completeness or accuracy. CIV. PROC. CODE, art. 149.1; CRIM. PROC. CODE, art. 316. A protocol of a criminal trial must be produced on a numbered letterhead bearing the state insignia. CRIM. PROC. CODE, art. 30.3. However, according to respondents, this rule is not always followed in practice.

The protocols of the Constitutional Court’s sessions are compiled by the Secretariat of the Court. Parties are permitted to review the protocol of the session and file objections, which are to be attached to the protocol. LAW ON THE CONSTITUTIONAL COURT, art. 46.

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

In addition to having access to trial protocols, parties, as well as their representatives, other case participants, and victims are permitted to review case files upon presentation of an identification document, a power of attorney, or a certificate of representation, as appropriate. The staff of the Court of Cassation, the Courts of Appeal, and the Ministry of Justice can also access the case files. However, other non-parties can only review case files with the permission of the court chairman for completed cases, and with the permission of the presiding judge for active cases. See DIRECTIVE ON CASE MANAGEMENT IN THE COURTS OF FIRST INSTANCE OF THE REPUBLIC OF ARMENIA (approved by CCC Decision No. 37, 2000), art. 14. While files for active cases are, reportedly, generally accessible to the parties, some respondents report having difficulties obtaining case files for completed cases and for purposes of appealing a decision. Non-parties, including journalists and human rights defenders, report considerable difficulty in gaining access to case files.

The World Bank Judicial Reform Project includes a component to design and implement an electronic court reporting system, consisting of 60 digital court recording systems with computers and printers. Protocols to assure the admissibility of the electronic record in appellate proceedings have not yet been developed. Respondents familiar with the project anticipate implementation to begin in early 2005 and believe that electronic recording of court proceedings will enable the creation of and access to accurate and useful transcripts.

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: Neutral	Trend: ↑
<p>The number and quality of court support staff is reportedly inconsistent from judge to judge and from court to court. Frequently, support staff are well-trained attorneys, but this is not always the case. This, coupled with a lack of adequate compensation, results in otherwise avoidable inefficiencies.</p>		

Analysis/Background:

The chairman of each court is responsible for appointing and dismissing court employees, in compliance with the staffing and salary schedules set by the Government. S/he is also in charge of carrying out the general management of the personnel. LAW ON THE JUDICIAL SYSTEM, arts. 16, 19, 23. The court chairman also appoints the staff allocated by law to each judge, upon nomination from the judge. LAW ON STATUS OF JUDGES, art. 23. Similarly, the Chairman of the Constitutional Court is responsible for general management of the staff of the Court, for

appointing and dismissing the chief of staff, and for approving the rules of procedure and the list of staff positions. LAW ON THE CONSTITUTIONAL COURT, art. 17(7).

As of December 2004, each judge on the Courts of First Instance and the Economic Court is by law allocated a court session secretary and an assistant. LAW ON THE JUDICIAL SYSTEM, art. 17. Each of these courts is also allocated a chief of staff, an accountant, an archivist, and other support staff, per the numbers set in a staffing schedule approved by the Government. *Id.*

Each judge on the Courts of Appeal is allocated an assistant, and a court session secretary is allocated for every three judges. *Id.* art. 20. Each Court of Appeal is also allocated a chief of staff, an accountant, an archivist, and other support staff, per the numbers set in a staffing schedule approved by the Government. *Id.*

Each judge on the Court of Cassation is allocated an assistant. *Id.* art. 25. Two court session secretaries and an office clerk are allocated to each of the Court's Chambers. In addition, the Court of Cassation is allocated a chief of staff, an accountant, an archivist, and other support staff, per the numbers set in a staffing schedule approved by the Government. *Id.* Staff of the Judicial Training Center and the Council of Court Chairmen (CCC) also reportedly fall under the jurisdiction of the Court of Cassation. A special unit was created among the staff of the Court of Cassation with the purpose of assisting the operation of the CCC pursuant to article 26 of the Law on the Judicial System.

Court clerical staff receive a salary between AMD 24,000 (approximately US\$ 52) and AMD 28,000 (approximately US\$ 61) per month. Managers and other professionals are paid between AMD 25,000 (approximately US\$ 54) and AMD 70,000 (approximately US\$ 152) per month.

Respondent judges report that they personally select their assistants and secretaries. Assistants usually hold a law degree (although are not required by law to do so). The law does not state the responsibilities and duties of assistants. Many judges reported being under-staffed and indicated their staffs are underpaid. Some respondents suggest that low staff salaries afford some opportunity for petty corruption at the sub-judicial level.

Factor 27: Judicial Positions

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

Conclusion	Correlation: Neutral	Trend: ↑
There are no legal criteria for determining whether new judicial positions are needed. In practice, however, the number of judges is reportedly adequate, and new positions and specialized courts are created when needed.		

Analysis/Background:

The Law on the Judicial System dictates the number of courts and judges in Armenia. See arts. 14, 15, 18, 21. This means that the National Assembly must amend the law in order to add new positions. Twenty-five new judicial positions were created between April 2002 and December 2004. See Letter from Head of Secretariat of the Council of Justice to ABA/CEELI-Yerevan (Nov. 18, 2004). New judges are selected from the List of Fitness for Office, as described in detail in Factor 2 above.

As of December 2004, there were 170 active judges in Armenia. This includes 110 judges on the Courts of First Instance, 21 judges on the Economic Court, 26 judges on the Courts of Appeal,

and 13 judges on the Court of Cassation. According to respondents, this number is adequate given the current caseload of the courts.

FIRST INSTANCE AND ECONOMIC COURT CASELOAD IN ARMENIA

	2001	2002	2003	2004 (Jan.-June only)
Courts of First Instance – Total filings	33,464	51,956	87,671	58,199
Criminal cases filed	5,811	5,632	4,765	2,533
Civil cases filed	27,653	46,324	82,906	55,666
Cases per judge	304	472	797	529
Economic Court – Total filings	2,329	6,484	6,886	5,265
Cases per judge	111	309	328	251

Source: Letter from Chief of Staff of the Council of Court Chairmen to ABA/CEELI-Yerevan (Dec. 7, 2004).

A judge cannot be transferred to work in other courts without his/her consent. However, a judge may be temporarily assigned to another court of the same level with his/her consent. LAW ON STATUS OF JUDGES, art. 10. In practice, respondents noted that 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	Trend: ↔
The current system of case filing and tracking is basic and not computerized, although this 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 THE JUDICIAL SYSTEM, art. 27. Pursuant to this Law, in 2000 the CCC adopted Decision No. 37, approving the Directive on Case Management in the Courts of First Instance of the Republic of Armenia [hereinafter CASE MANAGEMENT DIRECTIVE]. As of December 2004, no similar rules have been established for other courts.

The Case Management Directive includes rules for registration, recording, and processing of court cases; preparation of court documents; information searches; submitting judicial acts for execution; and archiving of cases and documents for further use. See art. 1. The court chairman and chief of staff of each court are responsible for supervising case management. *Id.* art. 2.

New cases are first registered on statistical record cards and on alphabetical cards bearing the parties' names. *Id.* art. 8(2). Each case is assigned a number according to a model indexing system. Cases remanded after the reversal of judgments by a higher-level court are registered in the same manner as new cases and receive a new number. Currently this process is performed manually in almost all courts.

All registered filings are passed to the court chairman on the day they are registered. *Id.* art. 9. The chairman then assigns cases to judges pursuant to the procedures described in Factor 18

above. While there are no set time limits for case assignment, most respondents reported few problems with lost files or untimely processing of complaints.

Archiving rules are elaborate and require that court administrative and 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 Judicial Reform Project involves computerizing the courts and establishing the new case management software for the judiciary, although the exact technology and timing have not been determined. See E-mail from the World Bank Mission in Armenia to ABA/CEELI-Yerevan (Dec. 3, 2004).

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	Trend: ↔
<p>Most courts and judges do not have adequate equipment (i.e., computers, photocopiers, fax machines) to enable them to manage their work efficiently.</p>		

Analysis/Background:

According to the Law on Status of Judges, each judge is entitled to have a separate office space, which must be equipped with a telephone. See art. 21. For communications within Armenia, judges have the right to use any means of communication available at the disposal of state and local self-government bodies. *Id.* art. 27. The Council of Court Chairmen (CCC) is charged with resolving all issues related to ensuring normal operation of the courts of general jurisdiction. LAW ON THE JUDICIAL SYSTEM, art. 27. For the Constitutional Court, the Government of the Republic of Armenia must provide the Court with the equipment necessary to ensure its normal operation. LAW ON THE CONSTITUTIONAL COURT, art. 7.

In practice, however, except for the Constitutional Court and the Economic Court, courts and judges are not generally equipped with state-supplied computers. Lack of adequate equipment is a significant impediment to the efficient operation of the courts in Armenia. As of the time of this JRI, no money has been allocated in the judicial system's budget for the purchase of any equipment or computers. Although fax machines were purchased for 21 courthouses in the *marzes* to improve communications with the CCC in Yerevan, impediments to telephone communications in the remote regions inhibit their effectiveness. Court secretaries handwrite session records since there are no computers in the courtrooms. Some judges use their own computers. Often, court personnel must accompany parties to off-site copy facilities to make photocopies of case files and trial records, since the courts typically do not have the necessary equipment.

Under of the Southern Caucasus Anti-Drug Program funded by the European Union and the United Nations Development Program, a limited number of computers were provided to the Criminal Chamber of the Court of Cassation, several regional Courts of First Instance, the Court of First Instance of Achapnyak and Davitashen communities of Yerevan, and the Court of Appeal for criminal and military cases.

Under the World Bank Judicial Reform Project, additional computers will be purchased for the courts, although the exact number and timing have not been determined. Computer training is also envisioned as part of this project.

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 organizing changes in the law.

Conclusion	Correlation: Neutral	Trend: ↑
<p>While the Judicial Training Center attempts to inform judges of recent legal developments, the lack of funding impedes this function, as does the lack of any national system for identifying and referencing changes in the law. Electronic alternatives are available but expensive, although lower cost options are anticipated in the foreseeable future.</p>		

Analysis/Background:

New laws and amendments to existing laws are officially published in the Government's Official Bulletin, which is issued every Wednesday. LAW ON THE LEGAL ACTS, art. 62(5). Its cost ranges from AMD 500 to AMD 4,000 (approximately US\$ 1 to US\$ 8) per issue, depending on the size, and it can be purchased at most kiosks and bookstores. The Judicial Training Center (JTC) attempts to inform judges of changes in the law; however, its ability to do so often depends on its ability to secure outside funding. International donors have provided such funding in the past on an ad-hoc basis. Respondent judges typically purchase their own copies of the Official Bulletin. Access to decisions of the European Court of Human Rights (ECHR) is even more tenuous. Although some ECHR decisions have been published in Armenia, judges generally must seek out these decisions on their own. The only real law libraries in the court system exist at the JTC 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 electronic database of laws, IRTEK, which is owned and distributed by a private company, is not readily available to most judges due to lack of computers and budgetary resources. Interestingly, most of the lawyers working for the government agencies do have IRTEK installed, which underscores the apparent disparity in the government's treatment of the executive branch and the judiciary.

According to information received from the World Bank in November 2004, the World Bank is working with the Ministry of Justice to develop an alternative to the IRTEK database for government officials and the judiciary. The new database, called ARLEX, will be put into operation in mid-2005. It will be accessible over the Internet and through a CD-ROM, and free of charge to everyone. See E-mail from the World Bank Mission in Armenia to ABA/CEELI-Yerevan (Dec. 3, 2004).