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Introduction

The Judicial Reform Index (JRI) is an assessment tool implemented by the American Bar Association's (ABA) Rule of Law Initiative (ABA ROLI). It was developed in 2001 by the ABA's Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with the other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. 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 ROLI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA ROLI 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 ROLI 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 ROLI 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 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES and Freedom House's NATIONS IN TRANSIT. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

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

Methodology

In designing the JRI methodology, ABA ROLI 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* and the *Bangalore Principles on Judicial Conduct*. In addition, these criteria also rely upon norms elaborated in regional documents, such as the *Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”*; the *European Charter on the Statute for Judges*; the *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*; the *Arab Justice Conferences’ Beirut and Cairo Declarations on Judicial Independence*; and the *Caracas Declarations of the Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts*. 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 ROLI 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 ROLI 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 other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or a 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 ROLI Initiative 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 ROLI 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 ROLI debated internally whether it should include one at all. During the 1999-2001 time period, ABA ROLI tested various scoring mechanisms. Following a spirited discussion with members of ABA/CEELI’s Executive and Advisory Boards, as well as outside experts, ABA ROLI 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 ROLI 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 ROLI has decided not to provide a cumulative or overall score because, consistent with Larkins' criticisms, ABA ROLI 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.

The follow-on rounds of implementation of the JRI will be conducted with several purposes in mind. First, it will provide an updated report on the judiciaries of emerging and transitioning democracies 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 assessments 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 judicial reform efforts. Finally, by conducting JRI assessments on a regular basis, ABA ROLI 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 follow-on 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.

Follow-on 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 follow-on 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 follow-on JRI implementations. In addition, all follow-on assessment reports 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 ROLI 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 ROLI – 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 ROLI 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 ROLI offers this product as a constructive step in this direction and welcomes constructive feedback.

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Assessment Team

The Armenia JRI 2008 Analysis assessment team was led by Thomas F. Cope, a former ABA/CEELI liaison and legal specialist in Moldova. Other members of the team were Legal Specialist Bruce Herr and Staff Attorneys Arayik Ghazaryan and Narine Gasparyan, both in ABA ROLI's Yerevan office. The team received strong support from ABA ROLI staff in Yerevan, including Armenia former and current Country Directors Sonya Smith and Kregg Halstead, Legal Specialist Kristina Ross, Staff Attorneys Gayane Hovhannisyan and Sarah Shirazyan, Field Financial Manager Sofya Mkhitarian, Administrative Coordinator Zara Soghomonyan, and Administrative Assistant Zaruhi Gasparyan; and in Washington, including Europe and Eurasia



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Executive Summary

Brief Overview of the Results

The 2008 Judicial Reform Index (JRI) for Armenia analyzes a number of important developments that occurred in the country's judicial system during the past three years. Of the 30 factors analyzed in the assessment, the correlations assigned for eight factors improved from Negative to Neutral since 2004, while one factor correlation (guaranteed judicial tenure) declined from Positive to Neutral. The most notable improvements occurred in the preparation and education of both judicial candidates and sitting judges, as well as in the increased availability of financial resources to support the needs of the judiciary. Overall, a total of five factors (relating to judicial selection, appointment, and career advancement; inadequate judicial salaries; case assignment; and, most significantly, improper influence in judicial decision-making) were assigned Negative correlations, down from 13 factors in the 2004 Armenia JRI, while the number of Neutral correlations increased from 15 to 24. Although only one factor (relating to public access to court proceedings) received a positive correlation in 2008, it is important to note that analysis for some factors reveals certain positive changes. However, these changes were either insufficient or too recent to justify departing from the correlations assigned in 2004.

Many of the changes analyzed in this JRI stem from the amendment of the Constitution by a referendum in November 2005, which marked the beginning of the second phase of judicial reform in Armenia. Among other things, the amendments were intended to reduce the dominant role of the presidency and increase the independence of the judiciary. To implement these changes, the National Assembly in February 2007 adopted the Judicial Code, which consolidated and amended prior laws on the judiciary and applies to all courts except the Constitutional Court. A new structure of the judiciary started operating effective January 1, 2008, consisting of the Court of Cassation as the highest judicial instance (except for constitutional justice matters); two courts of appeal – Criminal and Civil; and first instance courts (which include courts of general jurisdiction and specialized criminal and civil courts, as well as the new Administrative Court). Although some of these developments have already had a significant impact, the effects of others are only beginning to be felt. Thus, it was not possible to analyze the impact of some improvements because they had been made so recently that interviewees could not assess their effects or because they either had not been fully implemented or had not even come into effect when the JRI interviews were conducted in September 2007.

Positive Developments Relating to Organization of the Courts

- As a result of the 2005 constitutional amendments, **the Council of Justice (COJ)**, which is charged with nominating judicial candidates for appointment, as well as promoting and disciplining judges, **became more independent**. While the President had previously appointed all COJ members and chaired its meetings, the majority of its members are now elected by the General Meeting of Judges. The Judicial Code specified **detailed and more objective qualification requirements for judges of various court levels and grounds for judicial discipline and removal**. Disciplinary proceedings are conducted more like a trial, and the Minister of Justice no longer has monopoly on initiating such proceedings.
- Beginning in July 2006, **the Court of Cassation's jurisdiction became discretionary**, limited to review of appellate court judgments that involve uniform application of the law or a prima facie judicial error. In addition, **a doctrine analogous to precedent in common law systems was introduced**, whereby final judgments of the Court of Cassation or of the European Court of Human Rights became binding in other cases with identical or similar factual circumstances. Thus, the Court's role is increasingly shifting towards primarily facilitating the development of the law.

- The 2005 amendments to the Constitution **expanded access to the Constitutional Court**, including **granting individuals the right to bring constitutionality challenges directly to the Constitutional Court**. Since then, many individuals have availed themselves of the opportunity to do so. In addition, the Human Rights Defender may commence such a proceeding, which he did most notably in the Northern Avenue case. Finally, the cumbersome procedures for courts to raise constitutional issues were simplified by allowing them direct access to the Constitutional Court, although such petitions have remained rare in practice.

Improvements Relating to Judicial Qualification and Training

- With few exceptions, **most candidates for judicial appointment** to courts of general jurisdiction and specialized courts, as well as prosecutors, advocates and investigators who have less than five years of experience and are seeking appointment to a court of appeal, **are now required to complete a six-month training program in the Judicial School**. The School's curriculum consists of formal academic training, which emphasizes practical skills, and concludes with internships in courts of different instances. The Judicial School's first class began its studies in January 2008.
- Beginning January 1, 2008, **continuing legal education (CLE) became mandatory for all judges and those on the List of Judicial Candidates**. Although the law permits between 80 and 120 academic hours of CLE annually, the current CLE requirement for all judges is 80 academic hours. While most CLE courses are devoted to substantive areas of the law, with few trainings focusing on skills, there is a near-universal agreement that **the quality of CLE has generally improved** since the Judicial School took over judicial trainings from the old Judicial Training Center.
- Since 2007, **the Judicial School has been offering ethics training to judges**, focusing on the Rules of Judicial Conduct that are included in the Judicial Code and on the new Code of Judicial Conduct adopted by the Association of Judges of the Republic of Armenia in 2005. Reportedly, **all judges in Armenia have participated in these trainings**. Ethics training is also included in the mandatory training curriculum for judicial candidates.

Improvements Relating to Increased Financial Resources

- The new **budgeting process allows individual courts to influence the amount of funding allocated to them** through submitting their written input on a proposed budget drafted by the Judicial Department and finalized by the Council of Court Chairman. By law, a budgetary proposal must include funding to cover all expenditures necessary for safeguarding the normal functioning of courts. As a result, **funding for the courts has increased dramatically each year from 2005 to 2008**. With the total court budget for 2008 nearly 2.5 times that of 2005, judges are no longer expected to pay themselves for basic court operations, as has been the case in the past.
- Of the 49 courthouses existing in Armenia, **12 courthouses for 14 courts, located primarily in Yerevan, were renovated to meet international standards or constructed** under the World Bank's Judicial Reform Project. It is anticipated that renovation or construction of buildings for the remaining courts will be completed by 2012. **The improvements brought about by the World Bank's efforts have been dramatic**. Many of the newer courthouses are more secure, with separate fenced parking areas and entrances for judges, as well as separate public areas and restricted areas for judges. Although some courthouses still have insufficient numbers of courtrooms, the former practice of holding hearings in judges' offices has become much less common.

- As part of the World Bank's Judicial Reform Project, **manual record keeping and case management systems are gradually being replaced with more sophisticated technologies**. Over 100 **courtrooms were equipped with digital court reporting equipment**, which produces a trial report consisting of an audio recording of the events of a trial and an event log that facilitates locating specific portions of the trial. Verbatim audio recording has reportedly led to a number of improvements in the conduct of trials, including enabling parties to easily obtain an inexpensive CD copy of the trial report. Additionally, **the Case Automation and Skills Transfer (CAST) system was pilot tested** in seven courts in 2007. It was anticipated that the CAST system will be installed in all courts during 2008, with each court having its own server connected to a central server in the Court of Cassation.

Major Outstanding Concerns Identified in the JRI

- **Influence on judges and judicial corruption continue to be one of the most serious problems facing Armenia's judiciary**. Many believe that corruption in the judiciary is widespread, although direct evidence is hard to come by. It is widely believed that the President and the Government influence judges in cases with political implications or when a business associated with Government officials is involved. Influence from regional governors is also believed to threaten judicial independence in the regions. Attempts to influence judges are not limited to other branches of state power, however, but may take the form of a request from a friend or relative for a favor. In an attempt to curb corruption in the judiciary, **the Judicial Code imposes a number of restrictions on judicial conduct**; however, **it remains to be seen whether these changes will be effective in reducing influence or corruption**.
- Although some of the requirements and procedures for judicial appointment, promotion, discipline specified in the Judicial Code are based on objective criteria, such as passing a qualification examination, other criteria are still subjective or at least difficult to apply in a consistent and objective manner. With minor exceptions, **the President of Armenia still has discretion to accept or reject nominations for judicial appointment or advancement** without specifying any reason for doing so. Similarly, **the new disciplinary procedures still lack transparency and can appear unfair and arbitrary** insofar as some judges have been disciplined for behavior that did not result in disciplinary action against other judges. Despite the improvements in the process, suspicions linger among some interviewees that discipline or the threat of discipline is used as a means of influencing judges.
- Beginning January 1, 2008, **salaries of all judges except those in courts of general jurisdiction and the Constitutional Court were increased**, having been unchanged since the last increase in 2004. **Nonetheless, judicial salaries are still regarded as insufficient** to provide judges with a reasonable standard of living, nor do they adequately reflect the status of judges. Judicial salaries in Armenia are **among the lowest in the former Soviet Union**, and many interviewees believe that substantial increases are still needed. Low salaries contribute to, or at least provide a justification for, corruption.



Armenia Background

Armenia is a republic located in the south Caucasus region, surrounded by Georgia to the north, Azerbaijan to the east and south, Iran to the south, and Turkey to the west. It has approximately three million people, nearly 98% of whom are ethnic Armenians who are at least nominally affiliated with the Armenian Apostolic Church.

The first Armenian state was founded in 190 BC, and within a century its borders included virtually the entire Caucasus and extended from the Caspian to the Mediterranean Seas. It became part of the Roman Empire in 55 BC, and adopted Christianity as a state religion in the early 4th century AD. Over the next 17 centuries, Armenia was conquered and governed by various empires, including Persians, Turks and Russians. In the 16th century, Ottoman Turkey seized western Armenia, and a century later Persia took control of eastern Armenia. In the 19th century, eastern Armenia became part of Russia. Before and during World War I, the Ottoman Turks forcibly evicted ethnic Armenians from western Armenia, leading to the deaths of more than one million Armenian civilians. Eastern Armenia, what is now Armenia, declared its independence in 1918, but was conquered by Soviet forces in 1920 and incorporated into the Trans-Caucasian Soviet Socialist Republic. In 1936, Armenia became the Armenian Soviet Socialist Republic. When the Soviet Union collapsed in 1991, Armenia held a referendum in which its citizens voted overwhelmingly for independence. It officially declared its independence on September 21, 1991, and has been a republic ever since.

Armenia and its neighbor, Azerbaijan, have long contested control of the predominantly Armenian-occupied region of Nagorno-Karabakh, which the Soviet Union assigned to Azerbaijan in the 1920s. The dispute escalated after independence, leading to a war that lasted until a cease fire was agreed to in 1994, with Armenia in control of the region. Despite the cease fire, tensions continue to exist and skirmishes occasionally break out between the two warring parties. Armenia's borders with Azerbaijan and Turkey remain closed as a result of the conflict, while its relations with its other neighbors are less than ideal. With its dependence on outside sources for energy supplies and many of its raw materials, Armenia's geographic isolation has seriously hampered its economic progress. The cost and consequences of this conflict, coupled with the loss of markets following the breakup of the Soviet Union and the devastating 1988 earthquake the evidence of which remains visible today, make Armenia one of the poorest countries in the region. The widespread poverty and lack of government resources that result from these circumstances, as well as the legacy of seven decades of communist domination, contribute greatly to the challenges facing Armenia's judiciary and judicial reform.

Legal Context

In the Republic of Armenia, state authority is allocated among the legislative, executive, and judicial powers, and is exercised in accordance with the principles of the separation and balance of powers.

The legislative power is vested in a unicameral **National Assembly**, consisting of 131 deputies elected for five-year terms. CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 63 (*adopted* July 5, 1995, *as amended* November 27, 2005 through a national referendum) [hereinafter CONST.]. The National Assembly adopts most laws and resolutions, including those which had been vetoed by the President of Armenia, by a simple majority vote, provided that more than half of the total number of deputies voted. *Id.* art. 71. A majority of the total number of deputies is required, however, to adopt a resolution of no confidence in the Government, which must be introduced by the President or at least one third of the total number of deputies. *Id.* art. 84. The National Assembly must vote on the program of a newly formed Government within five days after its submission. If it fails to approve the program twice in two months, the President must dissolve the National Assembly. The President may also dissolve the National Assembly on the recommendation of its chairman or of the Prime Minister if it fails to pass a law deemed urgent by

a Government decision within three months, or if it fails either to meet or to adopt a resolution on issues under debate for more than three months during a regular session. *Id.* art. 74. In addition to adopting laws, the National Assembly has authority, on the recommendation of the President, to ratify, suspend, or denounce international treaties; declare war and proclaim peace; and declare amnesty. *Id.* art. 81. It also appoints five of the nine members of the Constitutional Court, on the recommendation of the chairman of the National Assembly. The National Assembly also elects two legal scholars to the Council of Justice [hereinafter COJ]. *Id.* art. 83.

The **President of Armenia** is the head of state (*id.* art. 49), and shares executive power with the Government. The President is elected by popular vote for a five-year term, and is limited to two consecutive terms. *Id.* art. 50. By a vote of two thirds of the total number of deputies, the National Assembly may impeach the President for “state treason or other grave crimes,” based on the conclusion of the Constitutional Court that grounds for impeachment exist. *Id.* art. 57. By a similar vote, also supported by a conclusion of the Constitutional Court, the National Assembly, on the recommendation of the Government, may determine that the President is incapable of discharging his/her responsibilities due to serious illness or “other insurmountable obstacles.” *Id.* art. 59. The President may issue orders and decrees consistent with the Constitution and laws of Armenia. *Id.* art. 56. Within 21 days after receiving a law passed by the National Assembly, the President must either sign and promulgate the law or return it with objections and recommendations. If the National Assembly passes a law again after the President returns it, the President must sign and promulgate the law within five days. The President appoints the Prime Minister and, on the Prime Minister’s recommendation, appoints and dismisses members of the Government. The President’s powers with respect to the judiciary include appointing and dismissing judges of the courts of general jurisdiction, specialized courts, courts of appeal, and the Court of Cassation, as well as four members of the Constitutional Court. *Id.* art. 55.

The **Government** consists of the Prime Minister, Deputy Prime Minister, and other ministers. *Id.* art. 85. Within 20 days after appointment of its members, the Government must submit its program for approval to the National Assembly. *Id.* arts. 89, 74. The Government has authority over all matters of public administration not entrusted to other state or local self-government bodies. In addition, the Government is responsible for developing and implementing the domestic policy of Armenia and, jointly with the President, its foreign policy. The Government may adopt decisions to ensure implementation of the Constitution, international treaties, laws, or presidential decrees. *Id.* art. 89. The President may suspend a Government decision for up to one month and request that the Constitutional Court determine whether it complies with the Constitution and laws. *Id.* art. 86.

Armenia’s administrative subdivisions consist of 11 regions (*marzes*), including Yerevan, and 931 communities, including 12 in Yerevan. Because of Yerevan’s unique position as the capital and home to more than one-third of Armenia’s population, its governmental institutions are different from those of the other 10 regions, where the Government appoints regional governors with the approval of the President. Councils of elders and heads of communities, who are elected for four-year terms, exercise local self-government in the communities.

Armenia’s legal system is based on the civil law tradition. The hierarchy of domestic legal sources is as follows: the Constitution, whose norms apply directly; laws, which must conform to the Constitution and come into force after publication in the OFFICIAL BULLETIN; and other normative legal acts, which must conform to the Constitution and the laws and which come into force when officially published as prescribed by law. Once ratified or approved, international treaties become part of Armenia’s legal system. No treaty can be ratified unless it complies with the Constitution. Once a treaty comes into force, its provisions take precedence over conflicting provisions of domestic laws. In 2002, Armenia ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter EUROPEAN CONVENTION ON HUMAN RIGHTS], and the judgments of the European Court of Human Rights [hereinafter ECHR] have begun to play an increasing role in the Armenian system of justice.

History of the Judiciary

Armenia declared its independence from the Soviet Union on September 21, 1991, which led to the formation of a national judicial system in what is regarded as the first phase of judicial reform. Its 1995 Constitution introduced a three-tiered structure of courts of general jurisdiction, as well as a separate court with exclusive jurisdiction over determining the constitutionality of laws. The Constitutional Court was the first court to begin functioning, in 1996. The Court of Cassation began functioning in 1998, followed by the first instance courts and two courts of appeal a year later. In October 2001, the National Assembly amended the Civil Procedure Code to specify the activity of the Economic Court, with jurisdiction over business-related disputes between commercial enterprises and individual entrepreneurs. The Economic Court ceased functioning effective January 1, 2008.

The second phase of judicial reform began with amendment of the Constitution by a national referendum on November 27, 2005. Among other things, the amendments were intended to reduce the dominant role of the presidency and increase the independence of the judiciary. To implement these changes, in February 2007 the National Assembly passed the Judicial Code, which applies to all courts in Armenia, except the Constitutional Court. The Code, which became fully effective on January 1, 2008, consolidated and amended prior laws on the judiciary and reorganized the structure of the courts. In addition, the Judicial Code introduced a doctrine analogous to precedent in common law systems. The doctrine has two aspects. First, it recognizes the right of parties to argue that the reasoning in a final judgment of an Armenian court in an earlier case with “identical/similar factual circumstances” applies to a later case. JUDICIAL CODE OF THE REPUBLIC OF ARMENIA art. 15(3) (*adopted* Feb. 21, 2007) [hereinafter JUDICIAL CODE]. Second, it makes the reasoning in a judgment of the Court of Cassation or the ECHR binding in other cases with “identical/similar factual circumstances,” unless the court can demonstrate that the reasoning does not in fact apply to the factual circumstances at hand. *Id.* art. 15(4).

Structure of the Courts

Effective January 1, 2008, Armenia’s judicial system is comprised of the courts of general jurisdiction (which were previously called first instance courts), three kinds of specialized courts (civil courts, criminal courts, and a single Administrative Court), civil and criminal courts of appeal, the Court of Cassation, and the Constitutional Court.

Courts of general jurisdiction have first instance jurisdiction over all cases not assigned to the specialized courts, including cases on verification of voters’ lists. They also hear cases on minor and medium gravity crimes for which the maximum sentence does not exceed five years of imprisonment. They hear other criminal cases specified by law and supervise the pre-trial stage in criminal cases. There are 7 courts of general jurisdiction in Yerevan, ranging in size from 4 to 9 judges (including a chairman), and 9 courts of general jurisdiction in the *marzes*, ranging in size from 5 to 12 judges (including a chairman). Cases in the courts of general jurisdiction are heard by a single judge.

Civil courts have first instance jurisdiction in civil cases involving claims of more than 5,000 times the minimum monthly salary,¹ other non-property disputes specified by procedural law, and bankruptcy cases. There are three civil courts in Armenia, the Civil Court of Yerevan, Northern Civil Court in Dilijan, and Southern Civil Court in Yeghegnadzor, with a total of 30 judges (including chairmen). All cases, including bankruptcy cases, are heard by a single judge. Six

¹ In September 2007, the minimum salary was AMD 15,000 (approximately USD 44.12). In this report, Armenian drams [hereinafter AMD] are converted to United States dollars [hereinafter USD] at the average rate of conversion at the time when the JRI interviews were conducted (AMD 340 = USD 1).

judges of the Civil Court of Yerevan are designated to hear bankruptcy cases, as are two judges in each of the other civil courts.

Criminal courts have first instance jurisdiction over grave and particularly grave crimes, as well as other cases specified by law. There are three criminal courts in Armenia corresponding to the civil courts, the Criminal Court of Yerevan, Northern Criminal Court in Dilijan, and Southern Criminal Court in Yeghegnadzor, with a total of 13 judges (including chairmen). Cases involving crimes that may be punishable by life imprisonment are heard by a three-judge panel, while all other cases are heard by a single judge.

The **Administrative Court** has first instance jurisdiction over cases specified in the Administrative Procedure Code, including disputes concerning administrative and normative acts, actions, and failures to act by state bodies, local self-governmental bodies, and their respective officials. Although based in Yerevan, the Court has other seats in the *marzes*. It consists of 16 judges (including a chairman), 6 of which are based in the *marzes*. Cases when the Court's ruling is not subject to appeal, when the Court of Cassation has reversed an Administrative Court ruling, or when otherwise provided by law are heard by a three-judge panel, while other administrative cases are heard by a single judge.

Armenia has two courts of appeal, the **Criminal Court of Appeal** and the **Civil Court of Appeal**, which hear appeals from courts of general jurisdiction, civil courts, and criminal courts. Located in Yerevan, each court of appeal has 16 judges, including a chairman. Appeals against a judgment on the merits are heard by a three-judge panel, but appeals against other decisions are heard by a single judge. The Civil Court of Appeal must decide appeals based on the evidence presented in the first instance courts and cannot admit new evidence. JUDICIAL CODE art. 47(1)-(3). These restrictions do not apply to the Criminal Court of Appeal, which may consider new evidence. *Id.* art. 47(4); see also CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA art. 381(6) (*adopted July 1, 1998, as amended*) [hereinafter CRIM. PROC. CODE].

The **Court of Cassation** is the highest court instance in Armenia, except for matters of constitutional justice. CONST. art. 92. It is responsible for ensuring the uniform implementation of the law and facilitating the development of the law. The Court of Cassation reviews judgments of the courts of appeal and the Administrative Court if it concludes that its decision would be of material significance in the uniform application of the law; the lower court's judgment conflicts with earlier decisions of the Court of Cassation; or the lower court made a *prima facie* judicial error that resulted or may result in grave consequences. The Court of Cassation is divided into two Chambers, the Civil and Administrative Chamber and the Criminal Chamber. Located in Yerevan, the Court consists of a Chairman, two Chamber Chairmen, and two judges in each Chamber. A panel composed of the Chairman and judges of the relevant Chamber determines the admissibility of cassation complaints, and the entire Court *en banc* examines all cassation complaints determined to be admissible. Judgments of the Court of Cassation are final and not subject to appeal.

The **Constitutional Court** is responsible for the administration of constitutional justice. Located in Yerevan, it has nine judges who are referred to as "members." The Court's authority extends beyond merely determining the constitutionality of legislation and includes functions with important political implications. These additional functions include, *inter alia*, determining whether international treaties comply with the Constitution before they are ratified; resolving disputes relating to referenda or presidential and parliamentary elections; declaring whether there are insurmountable obstacles to the election of a presidential candidate; concluding whether there are grounds for impeaching the President or whether the President is incapable of performing his/her duties; concluding whether there are grounds for dismissing a community head; and deciding whether to suspend or prohibit the activities of a political party, as prescribed by law.

Cases regarding activities of political parties must be decided by at least two thirds of the Constitutional Court's members; other cases require only a simple majority of the voting

members. All decisions or conclusions of the Constitutional Court are final and come into force when published or at a later date specified by the Court. Access to the Constitutional Court had been limited in the past, but the 2005 constitutional amendments extended access to individuals, legal entities, courts, the Human Rights Defender; and the Prosecutor General. In addition, the President, the National Assembly, at least one fifth of the total number of National Assembly's deputies, the Government, and bodies of the local self-government may file applications with the Constitutional Court in circumstances prescribed by the law. CONST. art. 101.

Judicial Administration

Armenia has two self-governing judicial bodies, the General Meeting of Judges of the Republic of Armenia [hereinafter General Meeting of Judges] and the Council of Court Chairmen [hereinafter CCC]. In addition, the COJ and the Judicial Department play important roles in judicial administration.

The ***General Meeting of Judges***, established in 2005, consists of all the judges in Armenia. It is the highest self-governing body of the judiciary that meets at least annually and can discuss any matter relating to the functioning of the judiciary. It also elects those members of the COJ who are judges.

Established in 1998, the ***CCC*** consists of the chairmen of the courts of general jurisdiction, civil courts, criminal courts, administrative courts, and courts of appeal, as well as the Chairman and Chamber Chairmen of the Court of Cassation. Chaired by the Chairman of the Court of Cassation, the CCC meets at least quarterly. It has an Ethics Committee, a Training Committee, and such other committees as the CCC may establish. The CCC has authority over any matter relating to the functioning of the judiciary except for those matters assigned to its committees. Among other things, the CCC has authority to: approve the proposed budget drafted by the COJ; approve rules for training of judges and court staff, for examination of judges, for distribution of cases in the first instance courts, and for case management; draft and approve rules concerning relations between the courts and the media; make decisions to be carried out by the Judicial Department and, on the recommendation of the Chairman of the Court of Cassation, appoint or dismiss the head of the Judicial Department; approve the organization, number of positions, and job descriptions for court staff; and, on the recommendation of the head of the Judicial Department, approve the organization and number of positions of the Service of Judicial Bailiffs.

The ***COJ*** consists of 13 voting members: nine judges elected by secret ballot for five-year terms by the General Meeting of Judges; two legal scholars appointed by the President of Armenia; and two legal scholars appointed by the National Assembly. The Chairman of the Court of Cassation has management authority over the COJ and chairs its meetings, but without the right to vote. The COJ is responsible for: preparing the List of Judicial Candidates and the Official Promotion List and presenting them to the President for approval; nominating candidates for judicial appointment and for the positions of Chairman and Chamber Chairmen of the Court of Cassation and chairmen of other courts; giving opinions on pardons, at the President's request; imposing disciplinary sanctions on judges; and submitting recommendations to the President on detaining or dismissing judges, or consenting to criminal prosecutions or administrative infraction cases against judges.

The ***Judicial Department*** plays an important role in day-to-day judicial administration, by providing material and technical support for the courts. Among other functions, it carries out decisions of the CCC, prepares budgetary proposals for the courts and submits them to the CCC, and administers the judiciary's official website, <http://www.court.am>. Court personnel, including the Service of Judicial Bailiffs, are employees of the Judicial Department.



Conditions of Service

Qualifications

Candidates for appointment to the courts of general jurisdiction must have a higher legal education degree, pass the qualification examination, and complete a six-month training program at the Judicial School, unless they are current or former judges. To take the qualification examination, applicants must be Armenian citizens between 22 and 60 years of age with a law degree, have a command of the Armenian language, not have been expelled from the Judicial School, and not be otherwise disqualified for appointment. Such disqualification can result from being a defendant in a criminal prosecution, having been convicted of a crime, having had a criminal prosecution terminated without acquittal, having a physical handicap or illness preventing judicial appointment, or not having satisfied or been excused from mandatory military service. Current prosecutors, investigators, and advocates who worked in that capacity for at least two of the last three years, and certain former judges who served for two of the past ten years, may qualify for judicial appointment without having to take the qualification examination.

Candidates for appointment to other courts must generally be current or former judges, or other legal professionals who complete the Judicial School's training course. Experienced prosecutors, advocates, and investigators, as well as certain legal scholars can qualify for appointment to the Court of Cassation without completing the Judicial School's training course.

Appointment and Tenure

On the recommendation of the COJ, the President of Armenia appoints and dismisses judges and chairmen of the courts of general jurisdiction, specialized courts, courts of appeal, and the Court of Cassation (including the Chairman and Chamber Chairmen of the Court of Cassation). These judges have guaranteed tenure and serve until the retirement age of 65, subject to dismissal for a grave disciplinary offense or repeated offenses incompatible with a judicial position.

The President of Armenia appoints four members of the Constitutional Court, and the National Assembly, on the recommendation of its Chairman, appoints the other five members. They serve until the age of 65, subject to removal only as prescribed by the Constitution and the law. Also on the recommendation of its Chairman, the National Assembly appoints the Chairman of the Constitutional Court from among the members of the Court, within 30 days after the position becomes vacant. If the National Assembly fails to do so, the President may appoint the Chairman from among the Court's members.

Training

In the past, no formal training beyond a higher legal education was required for judicial appointment. With the establishment of the Judicial School, candidates for appointment to courts of general jurisdiction and specialized courts who are not already judges must complete a six-month training program. The same requirement applies to prosecutors, advocates, or investigators who seek appointment to a court of appeal and have less than five years of experience in the last eight years. The program consists of formal academic training and internships in courts of different instances, beginning in January and ending not later than July 31. The Judicial School's first class commenced its studies in January 2008.

No continuing legal education [hereinafter CLE] for judges was required in the past. With the adoption of the Judicial Code, CLE became mandatory as of January 1, 2008 for all judges and individuals placed on the List of Judicial Candidates. Each year, the Governing Board of the Judicial School (whose members are also members of the CCC's Training Committee) approves general guidelines for CLE developed by the CCC's Training Committee, including the number of academic hours (each equal to 45 minutes of instruction) of CLE required each year. Although the Governing Board can require between 80 and 120 hours annually, the current requirement is 80 hours.

Armenia JRI 2008 Analysis

While the correlations drawn in this assessment may serve to give a sense of the relative status of certain issues present, ABA ROLI would underscore that these factor correlations and conclusions in the Armenia JRI 2008 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Armenia JRI 2004. ABA ROLI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA ROLI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA ROLI 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 2004	Correlation 2008	Trend
I. Quality, Education, and Diversity				
Factor 1	Judicial Qualification and Preparation	Negative	Neutral	↑
Factor 2	Selection/Appointment Process	Negative	Negative	↔
Factor 3	Continuing Legal Education	Negative	Neutral	↑
Factor 4	Minority and Gender Representation	Neutral	Neutral	↔
II. Judicial Powers				
Factor 5	Judicial Review of Legislation	Negative	Neutral	↑
Factor 6	Judicial Oversight of Administrative Practice	Neutral	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	Neutral	↑
Factor 11	Adequacy of Judicial Salaries	Negative	Negative	↔
Factor 12	Judicial Buildings	Negative	Neutral	↑
Factor 13	Judicial Security	Negative	Neutral	↑
IV. Structural Safeguards				
Factor 14	Guaranteed Tenure	Positive	Neutral	↓
Factor 15	Objective Judicial Advancement Criteria	Negative	Negative	↔
Factor 16	Judicial Immunity for Official Actions	Neutral	Neutral	↔
Factor 17	Removal and Discipline of Judges	Neutral	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	Negative	Neutral	↑
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Positive	Positive	↔
Factor 24	Publication of Judicial Decisions	Neutral	Neutral	↔
Factor 25	Maintenance of Trial Records	Neutral	Neutral	↔
VI. Efficiency				
Factor 26	Court Support Staff	Neutral	Neutral	↔
Factor 27	Judicial Positions	Neutral	Neutral	↔
Factor 28	Case Filing and Tracking Systems	Neutral	Neutral	↔
Factor 29	Computers and Office Equipment	Negative	Neutral	↑
Factor 30	Distribution and Indexing of Current Law	Neutral	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: Neutral	Trend: ↑
<p>Candidates for appointment to the courts of general jurisdiction must have a higher legal education degree, pass the qualification examination, and complete a six-month training program at the Judicial School, unless they are current or former judges. Candidates for appointment to other courts must generally be current or former judges, or other legal professionals who complete the Judicial School's training course. Experienced prosecutors, advocates, and investigators, as well as certain legal scholars can qualify for appointment to the Court of Cassation without completing the Judicial School's training course. Legal education and work experience are now required for appointment to the Constitutional Court.</p>		

Analysis/Background:

The Judicial Code contains detailed qualification requirements and procedures for appointment to the various courts. These procedures give preference to certain sitting judges, reserve judges (whose court, or Chamber in the Court of Cassation, was eliminated), and redundant judges (who are no longer sitting because of a reduction in the number of judicial positions). To simplify this summary of judicial qualifications, those preferences are not discussed in this JRI, because they will likely apply only in unusual circumstances.

To qualify for appointment to a court of general jurisdiction, candidates must normally be placed on the List of Judicial Candidates. See Factor 2 below. There are two categories of applicants who may be included in the list, depending on their experience as legal professionals. The first category consists of those who score well on the qualification examination. To take the exam, applicants must be Armenian citizens between 22 and 60 years of age; have a Bachelor of Law [hereinafter LL.B.] degree or Specialist with Diploma degree from an Armenian university (or a similar foreign degree officially determined to be equivalent in terms of adequacy)²; have a command of the Armenian language; not have been expelled from the Judicial School; and not be otherwise disqualified for appointment. JUDICIAL CODE arts. 115(4), 185(2). Such disqualification can result from being a defendant in a criminal prosecution, having been convicted of a crime, having had a criminal prosecution terminated without acquittal, having a physical handicap or illness preventing judicial appointment (as defined by the Government), or not having satisfied or been excused from mandatory military service. *Id.* art. 119. The second category of applicants for the List of Judicial Candidates consists of current prosecutors, investigators, and advocates who have worked in that capacity for at least two of the last three years, and certain former judges who have served for two of the last ten years. *Id.* art. 118(1)-(3).

² The LL.B. degree is awarded to individuals who have successfully completed a higher education program in law of at least four years, while the Specialist with Diploma degree is awarded to individuals who have successfully completed a higher education program in law of at least five years. In addition, Armenian law schools may award a Master of Law degree to individuals with either an LL.B. or a Specialist's degree, who have successfully completed an additional two-year higher education program in law.

The Judicial School provides required professional preparation for all those placed on the List of Judicial Candidates, except for former judges. *Id.* art. 182(1). Prosecutors, investigators, and advocates included in the List of Judicial Candidates must complete the required training course within two years. *Id.* art. 120(2)(2).

The Judicial School is funded from the state budget and governed by the Judicial School Director and a five-person Governing Board chaired by the Chairman of the CCC's Training Committee. The other four members of the Governing Board are the remaining two members of the CCC's Training Committee plus one person appointed by the Minister of Justice and one person appointed by the Chairman of the Court of Cassation. *Id.* arts. 173(1), 176, 177(1)-(3). The Governing Board's responsibilities include approving the School's curriculum and budget, selecting the School Director through a competitive process, dismissing the Director, appointing faculty, approving procedures for examinations, and disciplining students on the recommendation of the Director. *Id.* arts. 178(1)(1)-(2), 178(1)(4)-(5), 178(1)(15)-(17), 181(3)(8).

While attending the Judicial School, students receive a stipend equal to the salary of a judge's assistant in a court of general jurisdiction. *Id.* art. 182(2). The six-month training program, which begins in January and ends not later than July 31, consists of formal academic training and a series of internships. *Id.* art. 187. At the end of each course, students must take an examination to test their theoretical knowledge and practical skills. *Id.* art. 189(1). Failure to achieve a passing score can result in dismissal from the Judicial School. *Id.* art. 185(1)(2). Students with passing grades in each of their courses serve as interns in courts of different instances, under the supervision of judges who act as mentors. *Id.* arts. 190, 191(2)-(3). At the end of each internship, the supervising judge evaluates the intern's "practical and moral characteristics" and provides an overall evaluation. *Id.* art. 191(4). If an intern receives a negative evaluation, he/she can undertake the internship a second time, but without receiving a stipend. *Id.* art. 190(4). Students do not take a final examination. Instead, the Governing Board totals the scores received by students in their courses and declares those with positive evaluations for each internship to be graduates. *Id.* art. 192. Until they are appointed as judges, Judicial School graduates work in the Judicial Department or, if they prefer, as judges' assistants. *Id.* art. 183.

Because the Judicial School did not begin teaching judicial candidates until 2008, interviewees were unable to evaluate its effectiveness. The curriculum, which had not been formally approved when the JRI interviews were conducted, was anticipated to emphasize procedural issues, such as scheduling hearings, assessing evidence, and writing opinions, and to cover judicial ethics and case law, including the ECHR's case law. One interviewee questioned whether six months of training would be insufficient. Some concern was also expressed because EUR 1.5 million of the EUR 4 million in European Union funding for the Judicial School had been set aside for outside experts.

The following individuals qualify for appointment to a specialized court: judges who served in courts of general jurisdiction for at least one year and are not subject to a disciplinary warning or severe reprimand (see Factor 17 below); specialized court judges with a specialization different from that of the vacancy; former specialized court, court of appeal, or Court of Cassation judges who either are on the List of Judicial Candidates or who were on the Official Promotion List in the past; former court of general jurisdiction judges on the List of Judicial Candidates who had at least three years of judicial experience in the last five years; and prosecutors, advocates, and investigators on the List of Judicial Candidates who had at least three years of experience in the last five years and had completed the Judicial School's training program. *Id.* art. 129(4).

Individuals listed in the appropriate section (criminal or civil) of the Official Promotion List of Specialized Court Judges qualify for appointment to a court of appeal. *Id.* art. 144(1); see also Factor 15 below. That list includes judges who served in specialized courts for at least three years and are not subject to a disciplinary warning or severe reprimand; former judges who had at least five years of judicial service in the last eight years; and prosecutors, advocates, and investigators who had at least five years of experience in the last eight years. *Id.* art. 137(1). In



certain circumstances, ex-judges included in the Official Promotion List of Appellate Court Judges, as well as prosecutors, advocates, and investigators who have completed the Judicial School's training program, may seek appointment to a court of appeal. *Id.* art. 142(4); *see also* Factor 15 below.

Individuals listed in the Official Promotion List of Appellate Court Judges qualify for appointment to the Court of Cassation. *Id.* art. 149(1); *see also* Factor 15 below. That list includes judges who served in a court of appeal for at least five years and are not subject to a disciplinary warning or severe reprimand; former judges with at least 10 years of judicial service in the last 15 years; prosecutors, advocates, and investigators with at least 10 years of experience in the last 15 years; and legal scholars (sometimes referred to as "law academics") who are Armenian citizens with a Ph.D. degree in law and who taught in a higher education institution or worked in a scientific institution for the last five years. *Id.* arts. 138(1), 139(1), 139(4).

A candidate for appointment to the Constitutional Court must be at least 35 years of age, not be a citizen of any other country, have the right to vote in Armenia, have a command of the Armenian language, have completed a higher legal education or have an academic degree in constitutional law, and have 10 years of legal work experience. LAW OF THE REPUBLIC OF ARMENIA ON THE CONSTITUTIONAL COURT art. 3(1) (*adopted* June 1, 2006) [hereinafter LCC].

Some interviewees believed that a minority of judges, perhaps only one-third, were unqualified, though others were more pessimistic. Some said that the problem was particularly acute in the first instance courts. One interviewee expressed the opinion that 70-80% of judges in Yerevan were well qualified and would be good judges if they were not subject to improper influence. Most interviewees attributed the lack of qualifications of some judges to the generally poor quality of undergraduate legal education in Armenia. Since the end of the Soviet system, Armenia experienced a proliferation of law schools, with their number increasing from just one (at Yerevan State University [hereinafter YSU]) to an estimated 70 by 2002, many of which provided education of dubious quality.³ Even at YSU, the quality of legal education has reportedly declined, as the number of students entering each year rose from 50 before independence to 200 in 2007.

The Armenian government has taken a number of steps in recent years designed to improve the quality of legal education. Among others, these efforts reduced the number of law schools to less than 50 – although 13 private universities still continue to operate without having state accreditation for their law programs.⁴ Nonetheless, numerous shortcomings still remain, including: a focus on theoretical knowledge and rote memorization at the expense of teaching practical knowledge and problem solving skills; a lack of instruction in case law; administration of oral exams which contribute to bribery; and a lack of adequate qualifications and/or practical experience among some law professors. In addition, legal education continues to suffer from the shortage of funding; a lack of updated curricula, materials and teaching methodologies; perceived pervasive corruption; weak quality assurance standards and oversight; and a decline in the overall quality of education provided to students. *See generally* ABA ROLI, LEGAL EDUCATION REFORM INDEX FOR ARMENIA (Aug. 2007) [hereinafter ARMENIA LERI 2007]. These problems certainly affect the quality of legal professionals, including judges, who are vital to the success of rule of law reforms that Armenia is undertaking.

³ It should be noted that the majority of current judges in Armenia are graduates of YSU.

⁴ Presently, legal education in Armenia is offered at 4 out of 18 state universities and 43 licensed private universities (including 13 that do not have state accreditation). In addition, three foreign-affiliated universities operating in Armenia (American University of Armenia, French University, and Russian-Armenian (Slavonic) University) have law faculties.

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>Judges are nominated on the basis of both objective criteria (such as passing a qualification examination) and subjective and unspecified criteria relating to interviews of candidates. The President retains the right to accept or reject nominees without specifying any reason for doing so.</p>		

Analysis/Background:

The President appoints judges to the courts of general jurisdiction, specialized courts, courts of appeal, and the Court of Cassation upon the recommendation of the COJ, as well as four members of the Constitutional Court. CONST. arts. 55(10), 55(11)(a). This Factor discusses appointment to the first instance courts (that is, courts of general jurisdiction, civil courts, criminal courts, and the Administrative Court) and the Constitutional Court, while Factor 15 below (concerning judicial advancement) discusses appointment to the courts of appeal and the Court of Cassation.

The COJ has 13 voting members: nine judges elected by secret ballot for five-year terms by the General Meeting of Judges; two legal scholars appointed by the President; and two legal scholars elected by the National Assembly. *Id.* arts. 55(11)(1), 83(4), 94.1; JUDICIAL CODE art. 71(3). Members of the COJ who are judges must have at least five years of judicial experience and not have been subject to discipline within the last five years. JUDICIAL CODE art. 98(1). Two judges are elected from the Court of Cassation and one each from the courts of general jurisdiction in Yerevan, the courts of general jurisdiction in other *marzes*, the criminal courts, the civil courts, the Administrative Court, the Criminal Court of Appeal, and the Civil Court of Appeal. *Id.* art. 99(1). The Chairman of the Court of Cassation chairs the meetings of the COJ, but does not have the right to vote. CONST. art. 94(1); JUDICIAL CODE art. 61(8).

If in any year the number of Judicial School graduates and students is less than 12 as of September 1, the Chairman of the Court of Cassation will announce a written qualification examination, which is administered by the Judicial School. JUDICIAL CODE art. 115(1)-(3). After the exam, but not later than November 20, the Judicial School's Governing Board must submit information on the 16 highest scoring applicants to the COJ and publish information about them in the media and on the judiciary's official website, <http://www.court.am>. *Id.* arts. 116(1), 175(1). State bodies and officials must provide the COJ with any information they have about the candidates, including confidential information. *Id.* art. 116(2). The COJ then compiles and submits to the President of Armenia a proposed List of Judicial Candidates, based on their scores on the qualification examination, information available about them, and interviews with them conducted by the COJ members. *Id.* arts. 114, 117(1). The President must then issue a decree approving those candidates he deems acceptable not later than December 25. *Id.* art. 117(4).

Current prosecutors, investigators, and advocates, who worked in that capacity for at least two of the last three years, and certain former judges who served for two of the past ten years, may apply for inclusion in the List of Judicial Candidates, without having to take the qualification examination. *Id.* art. 118(1)-(3). The COJ decides, by a majority vote, which of such applicants to submit to the President, who must add their names to the List of Judicial Candidates within two weeks after receiving the submission, or their candidacy is deemed rejected. *Id.* art. 118(5).

To fill a vacancy in a court of general jurisdiction, the Chairman of the Court of Cassation normally proposes a candidate to the COJ in the following order of priority:⁵ (1) a court of general jurisdiction chairman, specialized court judge, court of appeal judge or chairman, or the Court of Cassation judge or Chamber Chairman who had requested such appointment; (2) the oldest reserve judge; (3) the oldest redundant court of general jurisdiction judge, then the oldest redundant court of appeal judge, then the oldest redundant Court of Cassation judge; (4) a prosecutor, investigator, or advocate who completed the Judicial School training program and is on the List of Judicial Candidates, or a former judge on the List of Judicial Candidates; and (5) graduates of the Judicial School, based on their total credits at graduation. *Id.* arts. 122, 123(1). If the required procedures were followed, the COJ must recommend to the President of Armenia a candidate proposed by the Chairman of the Court of Cassation. *Id.* art. 123(9). If the President does not appoint the nominee within two weeks after receiving the nomination, the nomination is deemed rejected, and the process begins again. *Id.* art. 123(10).

To fill a vacancy in a specialized court, the Chairman of the Court of Cassation normally proposes a candidate to the COJ in the following order of priority:⁶ (1) a specialized court chairman, court of appeal judge or chairman, or Court of Cassation judge or Chamber Chairman who had requested such appointment; (2) the oldest reserve judge of a specialized court, court of appeal, or the Court of Cassation; (3) the oldest redundant specialized court judge, then the oldest redundant court of appeal judge, then the oldest redundant Court of Cassation judge; and (4) a redundant specialized court judge who is serving in a court of general jurisdiction. *Id.* arts. 129(1), 130(1). If the required procedures were followed, the COJ must present the candidate to the President of Armenia. *Id.* art. 130(7). If no such person exists or is willing to accept nomination, other judges and legal professionals with the prescribed qualifications may seek nomination. The COJ will review their personnel files, may interview them, and then select one by secret ballot. *Id.* art. 131(1)-(4). If the President does not appoint the nominee within two weeks after receiving the nomination, it is deemed rejected and the process begins again. *Id.* art. 131(5).

In practice, the qualification examination involves writing judgments in two hypothetical cases, civil and criminal, over the course of two days.⁷ Although interviewees appreciated the objective criteria for selecting judicial nominees, several suggested that interviewing applicants opened the door for subjective considerations to influence the COJ's nominations. Because the President no longer appoints the members of the COJ or chairs its meetings, some interviewees believed that it was more independent now. See ABA/CEELI, JUDICIAL REFORM INDEX FOR ARMENIA at 9-10 (Dec. 2004) [hereinafter ARMENIA JRI 2004]. On the other hand, several respondents doubted that the process would work much differently than it had in the past, despite superficial changes. Noting that the appointment procedures still gave the President considerable influence, one interviewee observed somewhat stoically that moving from a very bad system to one that is merely bad is progress after all. Another commented that the only part of the process that was unchanged is the right of the President to reject a candidate, which, reportedly, has happened only once in 10 years. That may, however, be more of an indication of the President's ability to influence selection of nominees.

Procedures for appointing members of the Constitutional Court are much less detailed than those for appointing judges to other courts. The President appoints four of the nine members of the

⁵ In exceptional circumstances, the Chairman of the Court of Cassation may nominate a court of general jurisdiction judge without regard to the specified priorities if the Chairman justifies the transfer and the COJ agrees. *Id.* art. 126.

⁶ Also in exceptional circumstances, the Chairman of the Court of Cassation may nominate a specialized court judge of the same specialization without regard to the specified priorities if the Chairman justifies the transfer and the COJ agrees. *Id.* art. 133.

⁷ Reportedly, the Judicial School is now starting to consider adding multiple-choice questions to the qualification examination.

Court, and the National Assembly, on the recommendation of its Chairman, appoints the other five members. CONST. arts. 55(10), 83(1).

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: Neutral	Trend: ↑
<p>CLE became mandatory for judges on January 1, 2008. The quality of CLE has generally improved following the establishment of the Judicial School. The Judicial School’s training courses are offered without cost to the judges, and the subjects are based on judges’ suggestions.</p>		

Analysis/Background:

The CCC has overall responsibility for training judges and court staff, and the Judicial School plans, schedules, and conducts the training. JUDICIAL CODE arts. 72(12), 175, 193; see also Factor 1 above. Under the Judicial Code, CLE became mandatory for all judges and those on the List of Judicial Candidates effective January 1, 2008. *Id.* art. 193(1). Each year, the Governing Board of the Judicial School (whose members are also members of the CCC’s Training Committee) approves general guidelines for CLE developed by the CCC’s Training Committee, including the number of academic hours⁸ to be required, which may be different for judges of different instances, specialized court judges, and those on the List of Judicial Candidates or the Official Promotion List. *Id.* art. 193(2). Although the Governing Board can require between 80 and 120 hours of CLE, the current requirement for all judges is 80 CLE hours annually. By November 1, the Judicial School’s Governing Board develops training courses to be offered, consistent with those guidelines. *Id.* arts. 193(2), 178(1)(4). Judges and those on the List of Judicial Candidates or the Official Promotion List are free to select training courses to satisfy the applicable requirements. *Id.* art. 193(3). Judges, including those on the Official Promotion List, who fail to satisfy the CLE requirement for two consecutive years may be dismissed. *Id.* art. 167(1)(8). Similarly, those on the List of Judicial Candidates who, without satisfactory justification, fail to satisfy the annual CLE requirement may be removed from that list. *Id.* art. 120(1)(6).

The Judicial School’s annual CLE program is divided into two semesters, and twice a year judges receive a schedule of CLE trainings offered during the upcoming semester. Most are devoted to substantive areas of the law, with few trainings focusing on skills. Courses are usually two days long, and approximately 95% of them are offered in Yerevan. For 2008, the Judicial School planned to offer 14 training sessions totaling 168 academic hours in civil law; 6 sessions totaling 168 academic hours in administrative law; and 21 sessions totaling 168 academic hours in criminal law. Typically, 15-20 judges attend a given session. Although attendance is recorded, no examination is given. At the time of drafting of this JRI report, the Judicial School was working to improve its curricula so that they would meet internationally recognized standards and will include pre- and post-evaluation procedures. There are no formally established criteria for selecting CLE instructors, although informal criteria are followed.

⁸ One academic hour is 45 minutes of instruction.

Most interviewees viewed establishment of the Judicial School as an important step in improving the quality of CLE. The Judicial Training Center, which previously provided CLE, was described as ineffective, because it offered CLE on an ad hoc basis, and trainings were of uneven quality. The Judicial School's practice has been to develop training programs based on judges' suggestions, even though the Judicial Code does not require consulting them.⁹ In 2007, for example, judges requested training in inheritance law, unlawful constructions, state expropriation of property, bail, and different aspects of detention. Some judges, but not many, requested training in ethics. Several interviewees commented that the CLE trainings are useful not only for the material they cover, but also for the opportunity to exchange ideas and experiences with other judges. Other interviewees pointed out, however, that CLE does not eliminate the adverse effects of influence and corruption on the quality of judging.

In addition to mandatory CLE, judges have the right to participate in other educational programs and professional conferences. *Id.* art. 77(1). A court chairman can authorize absences for up to five days per year to participate in such events, but the CCC's Training Committee must authorize longer absences. *Id.* art. 77(2). Every year, German Agency for Technical Cooperation [hereinafter GTZ] holds a 3- or 4-day workshop in Germany for 20-25 judges from each country in the Caucasus, including Armenia, and then publishes a volume of the papers presented. In 2005 and 2006, GTZ also organized 5 weeklong workshops for administrative court judges. ABA ROLI has also been active in judicial training. In 2006 and 2007, for example, it sponsored 28 seminars and trainings on subjects including case law, precedent, *ex parte* communications, case law software, civil law, criminal law, election law, and alternative dispute resolution. Some trainings, such as those on case law, case law software, and election law, were attended by virtually all judges in Armenia.

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.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
<p>Although only about 22% of the judges in Armenia are women, this is not seen as evidence of gender-based discrimination. Ethnic and religious minorities comprise only a few percent of the population at large, with no identifiable minority judges.</p>		

Analysis/Background:

The Constitution prohibits discrimination on the basis of “any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances.” CONST. art. 14(1); see also JUDICIAL CODE art. 15(2). Although the Constitution requires the separation of church and state and guarantees freedom of religion, it also recognizes the “exclusive historical mission of the Armenian Apostolic Holy Church as a national church, in the spiritual life, development of the national culture and preservation of the national identity of the people of Armenia.” CONST. art. 8(1).

At the beginning of 2007, women comprised 51.7% of the population. See NATIONAL STATISTICAL SERVICE OF THE REPUBLIC OF ARMENIA, STATISTICAL YEARBOOK OF ARMENIA 2007 at 26, *available at* <http://www.armstat.am> [hereinafter 2007 STATISTICAL YEARBOOK]. However, according to the

⁹ It should be noted, however, that in the past, there have been instances when instructors have not been invited to teach some subjects requested by judges, including administrative law.

COJ, the overall representation of women in the judiciary in 2007 was 22.3%, as shown in the following table. This represents only a slight improvement over 2004, when female judges made up 20.6% of the judiciary. See ARMENIA JRI 2004 at 12.

FEMALE JUDGES IN ARMENIA, 2007

Court	Total Judges	Female Judges		Female Judges, % in 2004
		Number	%	
First Instance	117	23	19.7	18
Economic	19	6	31.5	28.6
Appellate	26	8	30.7	30.7
Cassation	13	2	15.4	7.7
TOTAL	175	39	22.3	20.6

Following the reorganization of the courts effective January 1, 2008, the overall percentage of female judges decreased slightly, to 21.8%, as shown in the following table. The most significant changes, however, were the elimination of all female judges from the Court of Cassation and their reduced percentage in the courts of appeal.

FEMALE JUDGES, 2008

Court	Total Judges	Female Judges	
		Number	Percentage
General Jurisdiction	118	24	20.3
Specialized	59	15	25.4
Appellate	32	8	25
Cassation	7	0	0
TOTAL	216	47	21.8

All nine members of the Constitutional Court are male. The disparity in the percentage of women judges and members of the Constitutional Court compared to the population at large reflects a more fundamental issue in Armenian society. As the U.S. State Department reported, gender discrimination in Armenia was “a continuing problem in the public and private sectors.” UNITED STATES DEPARTMENT OF STATE, *Armenia, in* COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2007 (March 11, 2008) [hereinafter STATE DEPARTMENT HUMAN RIGHTS REPORT]. The percentage of female judges is considerably lower than the percentage of female advocates. According to the Armenian Chamber of Advocates, there were 282 female advocates (37%) and 480 male advocates as of January 1, 2008. To ameliorate the low percentage of female judges, the COJ now takes gender balance into account when compiling the List of Judicial Candidates, and, if the number of judges of either gender is less than 25% of the total number, at least five places on the list must be set aside for nominees of the underrepresented gender. JUDICIAL CODE art. 117(3).

Paradoxically, although a number of interviewees recognized that female judges comprised less than a quarter of the judiciary, none viewed this as a problem. One female judge, for example, said that the number of such judges was adequate, adding that she had never experienced discrimination because of her gender in more than 20 years as a judge.

Armenia is ethnically homogenous, with ethnic Armenians making up the vast majority of the population: close to 97.9%. The largest ethnic minority, Yezidis (Kurds), constitute only 1.3% of the population. The remaining ethnic groups, including Russians, Assyrians, Ukrainians, and Greeks, together represent less than 1% of the population. See NATIONAL STATISTICAL SERVICE OF THE REPUBLIC OF ARMENIA, THE RESULTS OF CENSUS OF THE REPUBLIC OF ARMENIA OF 2001 at Table 5.1, available at <http://www.armstat.am>. Official statistics on religious affiliation are not available, but the vast majority of the population (94.7%) is said to adhere to the Armenian



Apostolic Church, and other Christians make up 4%. See *Armenia*, in CIA WORLD FACTBOOK 2008, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/am.html>.

According to the judiciary's official website, <http://www.court.am>, none of the judges were members of ethnic or religious minorities in 2007 or 2008. Although most interviewees did not know about the presence of ethnic and religious minorities in the judiciary, one said that there were no members of religious minorities and few judges belonging to ethnic minorities. None perceived this situation as evidence of discrimination.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

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

Conclusion	Correlation: Neutral	Trend: ↑
<p>The Constitutional Court has the power to determine the constitutionality of laws and other normative acts, and its decisions are generally implemented. In 2005, the Constitution was amended to expand access to the Constitutional Court, including allowing individuals to bring cases directly to the Constitutional Court, and many have done so. The cumbersome procedures for courts to raise constitutional issues were simplified by allowing them direct access to the Constitutional Court, but few courts have availed themselves of the opportunity to do so.</p>		

Analysis/Background:

The Constitution has “supreme legal force,” and its norms are directly applicable. CONST. art. 6. The Constitutional Court, which consists of nine judges who are referred to as “members,” is responsible for the administration of constitutional justice. *Id.* arts. 93, 99. Its jurisdiction includes determining the constitutionality of laws, resolutions of the National Assembly, decrees and orders of the President, decisions of the Prime Minister, and decisions of local self-government bodies, as well as determining whether international treaties comply with the Constitution before they can be ratified. *Id.* art. 100(1)-(2). The Constitutional Court’s authority is limited to holding that a legal norm is unconstitutional, but not that a constitutional legal norm was applied in an unconstitutional way. Other courts have no authority to hold a law or other normative act unconstitutional. If a judge believes that a law or other normative act is unconstitutional, he/she may suspend the trial and seek a decision from the Constitutional Court on the issue of constitutionality. CIVIL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA art. 106(2) (*adopted* June 17, 1998) [hereinafter CIV. PROC. CODE]. This replaced a cumbersome procedure that required a judge to suspend the trial and ask the CCC to petition the President of Armenia to apply to the Constitutional Court to resolve the issue of constitutionality. See ARMENIA JRI 2004 at 14.

The Constitutional Court may not begin a proceeding on its own initiative, but only on the application of a person or legal entity authorized to do so, and it may decide only those issues raised in the application. CONST. art. 101; LCC art. 63(2). Access to the Constitutional Court has been significantly expanded. Until the 2005 constitutional amendments and the 2006 LCC amendment, only the President or one-third of the deputies of the National Assembly could commence a proceeding in the Constitutional Court to challenge the constitutionality of a law or other normative act. Now, the President, the Government, one-fifth of the deputies of the National Assembly, and the Human Rights Defender may commence such a proceeding. In addition, bodies of local self-government have standing to challenge the constitutionality of any act of a State body violating their constitutional rights, while courts and the Prosecutor General have standing with respect to any normative act whose constitutionality is relevant to a specific case. Perhaps the most important change is that now any individual or legal entity may petition the Constitutional Court within six months after a final judgment in a specific case, provided that all possible appeals have been exhausted. CONST. art. 101; LCC arts. 69(1), 69(5). Interviewees frequently identified the right of ordinary citizens to apply to the Constitutional Court as a significant reform. In the year and a half following these changes, the Constitutional Court received 1,038 applications from individuals, of which it only accepted 47 (4.5%). During that same period, the Court received only one application from the courts, one from the Prosecutor General, and none from bodies of local self-government.

Decisions on the constitutionality of laws or other normative acts, or on the compliance of international treaties with the Constitution, are adopted by a simple majority. These decisions are final, self-executing, and come into force when published in the OFFICIAL BULLETIN or the CONSTITUTIONAL COURT BULLETIN, or on such later date as the Court may specify. Decisions are binding on all state and local self-government bodies and their officials, as well as all individuals and legal entities anywhere in the territory of Armenia. CONST. art. 102; LCC arts. 61(4)-(5), 65(2). Failure to comply fully with a Constitutional Court decision or preventing compliance by others can result in liability as prescribed by law (see LCC art. 66); however, there are no legal provisions to specify such liability. Any member who disagrees with the Court's decision may present a dissenting opinion, which is published together with the majority's decision in the CONSTITUTIONAL COURT BULLETIN. *Id.* art. 62(7). One interviewee noted that about three-quarters of the Constitutional Court's decisions have not been unanimous, which he saw as evidence of the Court's freedom from influence.

Some interviewees criticized the Constitutional Court for lacking independence, pointing to its decisions in the 2007 National Assembly election cases, which some perceived to be politically motivated. Other interviewees, however, praised its recent decision in the Northern Avenue case concerning unconstitutional provisions of the Civil Code and the Land Code used for expropriation of property for development in Yerevan (see CONSTITUTIONAL COURT DECISION NO. SDO-630 of April 18, 2006), and its decision holding unconstitutional several provisions of the Criminal Procedure Code that had allowed courts to remand cases for additional investigation at any stage of the trial (see CONSTITUTIONAL COURT DECISION NO. SDO-710 of July 24, 2007). Both decisions resulted in amendments to the relevant legislation. One interviewee even asserted that the Constitutional Court was the best court in Armenia.

Although some interviewees criticized the Government and National Assembly for inaction in enforcing the Constitutional Court's decisions, others said that they have been quick to respond with amended legislation to implement its decisions, although sometimes the resulting legislation was not fully consistent with the Court's explanation of what was required. For example, questions were raised about whether the revisions to the Civil Code and the Land Code on expropriation of property for development following the Northern Avenue case were, in fact, consistent with the Constitutional Court's decision.

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 judiciary has the power to review administrative acts and to compel the government to act when a legal duty to do so exists. In the past, however, courts had been reluctant to use this power. Establishment of the Administrative Court effective January 1, 2008, with a newly enacted Administrative Procedure Code, may do much to improve judicial oversight of administrative practice. It is, however, too soon to assess the impact of these changes.</p>		

Analysis/Background:

In the past, courts in Armenia were empowered, pursuant to the Civil Procedure Code, to review and invalidate administrative acts issued by state and local self-government bodies and officials, as well as their actions and failure to act, and to compel them to act where a legal duty existed. See *generally* CIV. PROC. CODE arts. 159-163. Nevertheless, according to interviewees, the practice had developed among first instance courts of dismissing applications by individuals or

legal entities seeking rescission of administrative acts that allegedly failed to conform to the law. The courts reasoned that article 160(1)(2) of the Civil Procedure Code deprived them of jurisdiction to hear such cases. In 2006, however, the Constitutional Court rejected this interpretation and held that first instance courts and the Economic Court did indeed have jurisdiction to determine whether administrative acts conformed to the law, but not whether they conformed to the Constitution, which only the Constitutional Court can do. See CONSTITUTIONAL COURT DECISION No. SDO-665 of Nov. 16, 2006. Interviewees pointed out that, at that time, judicial review of administrative acts has been far from satisfactory, with courts favoring the government, especially in cases involving payments of money from state or local self-government bodies. In addition, some interviewees suggested that proceedings made it difficult for individuals and legal entities to make an effective case against the state. In any event, if a plaintiff did manage to obtain a favorable judgment against the state, interviewees reported that enforcement of that judgment often required years.

Effective January 1, 2008, the Administrative Court was established with a chairman and 15 judges. JUDICIAL CODE art. 37. The Court is located in Yerevan, but 6 of its 16 judges hear cases in regional courthouses in the *marzes*. It has jurisdiction to hear cases as specified in the Administrative Procedure Code. *Id.* art. 35(1). These include cases to challenge administrative and normative acts, actions, and failures to act by state and local self-government bodies and their officials that (1) infringe the rights, freedoms, or other lawful interests of an individual or legal entity, (2) illegally impose obligations on an individual or legal entity, or (3) illegally subject an individual or legal entity to administrative liability. ADMINISTRATIVE PROCEDURE CODE OF THE REPUBLIC OF ARMENIA art. 3(1) (*adopted* Nov. 28, 2007) [hereinafter ADMIN. PROC. CODE]. There is no provision requiring that individuals exhaust all administrative remedies prior to filing a complaint with the Administrative Court. A plaintiff can seek relief in the form of invalidation or amendment of an administrative act; requiring the issuance of an administrative act; requiring the performance or withholding of an act other than an administrative act; recognizing the existence or absence of a legal relation; and monetary compensation for damages caused by an administrative act. *Id.* arts. 64-69. A single judge hears administrative cases, except that a three-judge panel hears cases when the Administrative Court's ruling is not subject to appeal, when the Court of Cassation had reversed the Administrative Court's prior ruling in the same case, or as otherwise specified by law. JUDICIAL CODE art. 18(6). The state or local self-government body, or an official whose action or failure to act is challenged, has the burden of proof. ADMIN. PROC. CODE art. 26(3). The Administrative Court plays more of an inquisitorial role than other courts. It is not restricted to arguments or evidence put forward by the parties, but may seek evidence on its own initiative, including obtaining expert opinions, and it is not restricted to the issues raised by the parties. *Id.* arts. 6, 36(3), 43.

Some interim decisions, such as the Administrative Court's refusal to accept a petition, can be appealed to a three-judge panel of the Administrative Court, and then to the Court of Cassation. *Id.* art. 125. Substantive judgments on the merits of the case may be appealed only through a cassation procedure. In cases specified by the Administrative Procedure Code, the Administrative Court also issues final judgments that are not subject to appeal. JUDICIAL CODE art. 35(2). The admissibility of the appeals from Administrative Court judgments is decided by the Civil and Administrative Chamber of the Court of Cassation. CIV. PROC. CODE art. 225.

Interviewees expected that the Administrative Court would help relieve the heavy caseload of the first instance courts and improve the quality of judicial review of administrative acts, both through specialization and the application of a common standard of review. However, because it did not begin functioning until after the JRI interviews were completed, no assessment of the effectiveness of the Administrative Court is possible in this report.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>The judiciary has exclusive jurisdiction over cases involving civil rights and liberties. Although serious human rights violations continue, courts in Armenia are beginning to pay increasing attention to the requirements of the European Convention on Human Rights.</p>		

Analysis/Background:

The Constitution guarantees a wide range of fundamental civil, social, political, and economic rights and freedoms. Many of them are enumerated in Chapter 2 of the Constitution. Among those relevant to the judicial system are equality before the law (CONST. art. 14(1)) and the right to protect one’s rights and freedoms through effective legal remedies (*id.* art. 18). Constitutional rights applicable to criminal cases include the right of a defendant to know the charges against him/her and “a fair public hearing under the equal protection of the law ... by an independent and impartial court within a reasonable time” (*id.* art. 19); the right to legal assistance at state expense, as provided by law (*id.* art. 20); the presumption of innocence (*id.* art. 21); the right not to testify against oneself or one’s spouse or close relatives (*id.* art. 22); the right not to be punished for an act that was not a crime when committed and not to be subject to a greater punishment than that in effect when the act was committed (*id.*); the right not to be subject to double jeopardy (*id.*); the right to liberty (*id.* art. 16); and the right to life (*id.* art. 15).

Everyone has the right to judicial protection of his/her rights and freedoms, and no one may be deprived of “the right to have his case publicly examined by a competent, independent, and impartial court within a reasonable time, under equal conditions, with due respect for all requirements of fairness.” JUDICIAL CODE art. 7(1)-(2). Justice is to be administered solely by the courts in accordance with the Constitution and the laws, and emergency tribunals are prohibited. CONST. arts. 91, 92. Government legal aid is available in criminal cases and some civil cases, including those relating to alimony, compensation for injury, or death of a family’s bread-winner. LAW ON ADVOCACY art. 6 (*adopted* Dec. 14, 2004). According to a report from the Public Defender Office to the Chamber of Advocates, as of September 1, 2007, 662 cases had been completed by advocates in the Public Defender Office; however, the overwhelming number of case files had been compiled “in a negligent way,” and in many instances, it was impossible to determine the outcome by examining the case files.

Although the Constitution’s catalog of human rights and freedoms is impressive, the reality is less so. The U.S. State Department reported that in 2007, “the government’s human rights record remained poor, and serious problems remained.” STATE DEPARTMENT HUMAN RIGHTS REPORT. Interviewees confirmed this observation, one noting that the problem did not result from Armenia’s laws, but from their application. Among the human rights violations reported most frequently are arbitrary arrests and detention without a warrant, and lengthy pretrial detention;¹⁰ politically motivated prosecutions, such as that of Armen Babajanyan, editor of the opposition

¹⁰ An individual may not be arrested or detained for over 72 hours unless a warrant is issued by a competent court. CRIM. PROC. CODE art. 11. Nonetheless, despite reported abuses of pretrial detention, courts reportedly rarely refuse to issue arrest warrants or extend detention terms.

newspaper *Yerevan Zhamanak*, in 2006;¹¹ and frequent beatings and other abuses of detainees, one of the most notorious being that of Levon Gulyan, who died on May 12, 2007, while in custody of the Ministry of Internal Affairs.¹² Unfortunately, according to one interviewee, the courts are not sympathetic to claims of human rights violations. Another noted the need for courts to understand that their role is to protect human rights and to move beyond the Soviet mentality that the role of courts is to punish.

Similarly, the most recent annual reports of the Armenian Human Rights Defender¹³ (also known as the Ombudsman) provide details on human rights abuses in Armenia. See generally ANNUAL REPORT ON ACTIVITIES OF THE REPUBLIC OF ARMENIA'S HUMAN RIGHTS DEFENDER AND VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ARMENIA 2006 [hereinafter HRD REPORT 2006]; 2007 ANNUAL REPORT OF THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA [hereinafter HRD REPORT 2007]. The Human Rights Defender's office received 2,687 complaints from 6,567 people in 2006, and 3,697 complaints from 5,764 people in 2007. HRD REPORT 2007 at 9; HRD REPORT 2007 at 6. Both years, the judiciary ranked first in terms of the number of complaints filed with the Ombudsman, with 159 complaints in 2006 and 149 complaints in 2007. HRD REPORT 2006 at 15; HRD REPORT 2007 at 10. If a complaint is without merit, the office of the Human Rights Defender explains in writing why it lacks merit. If it does have merit, the office asks for an explanation from the appropriate state official. Occasionally, the Human Rights Defender begins litigation, such as the Constitutional Court cases regarding the expropriation of property for the Northern Avenue development and the dissolution of political parties. With respect to complaints against the judiciary, it should be mentioned that the majority of them involved petitioners' dissatisfaction with a final court ruling and therefore had to be dismissed, since the Ombudsman is legislatively prohibited from intervening in trial proceedings by requesting explanations or submitting recommendations to courts on pending cases. See HRD REPORT 2006 at 87-88 (only 7 complaints admitted for review, while 124 were dismissed, 5 forwarded to other bodies, and 21 petitioners advised on available remedies); HRD REPORT 2007 at 80-81 (only 23 complaints admitted for review, while 109 were dismissed, 4 forwarded to other bodies, and 7 petitioners advised on available remedies).

¹¹ Mr. Babajanyan was prosecuted for evading military conscription and sentenced to four years of imprisonment, a term that human rights activists considered excessively long. The case was denounced by journalists and human rights organizations as being discriminatory and motivated by Mr. Babajanyan's professional activities. In January 2007, the sentence was reduced on appeal by six months.

¹² Mr. Gulyan had been called to the police station for questioning as a witness in a criminal investigation and, according to the official version of events, had died purportedly after jumping from a window during one of the interrogations. An autopsy conducted by international forensic experts determined that Mr. Gulyan's death was caused by injuries consistent with a fall from a second-floor window, but that he also bore smaller bruises and abrasions that could have been caused by a punch or blow prior to his fall. A criminal investigation into Mr. Gulyan's death was terminated in March 2008 due to the lack of "components of crime," and no court decision had been issued at the time of writing of this JRI.

¹³ The Human Rights Defender is an independent official responsible for securing protection of human rights and freedoms that state or local self-government bodies, or their respective officials, have violated. A majority of at least three-fifths of all National Assembly deputies is necessary to elect the Human Rights Defender, who serves for a six-year term and may be reelected. He/she is irremovable from office and has the same immunities as a deputy of the National Assembly. CONST. art. 83(1). Among other things, he/she meets with individuals who have complaints about the courts; reviews and comments on draft laws relating to human rights issues; and may commence proceedings in the Constitutional Court to challenge the conformity of laws, resolutions of the National Assembly, decrees and orders of the President, decisions of the Prime Minister, and decisions of local self-government bodies, to the provisions of Chapter 2 of the Constitution. *Id.* art. 101(8); LCC art. 68(1). The Human Rights Defender also has standing to commence proceedings on behalf of individuals before other courts and state bodies.

The Constitution requires “the protection of fundamental human and civil rights in conformity with the principles and norms of the international law.” CONST. art. 3. Among the international human rights treaties that Armenia has ratified are the International Covenant on Civil and Political Rights, including Optional Protocol 1 (ratified Sept. 23, 1993); International Covenant on Economic, Social and Cultural Rights (Dec. 13, 1993); International Convention on the Elimination of All Forms of Racial Discrimination (July 23, 1993); International Convention on the Elimination of All Forms of Discrimination against Women (Oct. 13, 1993); Convention against Torture and Other Cruel, Degrading and Inhuman Treatment or Punishment (Oct. 12, 1993); and Convention on the Rights of the Child (July 23, 1993), including both optional protocols (Sept. 24, 2003). In addition, Armenia joined the Council of Europe in January 2001, and the National Assembly ratified the European Convention on Human Rights. Armenia also ratified the Convention’s Additional Protocols Nos. 1 and 4 (Apr. 26, 2002), No. 6 (Oct. 1, 2003), No. 7 (July 1, 2002), and No. 12 (Apr. 1, 2005). The provisions of these international treaties are a constituent part of the Armenian legal system and prevail in the event of a conflict with domestic legal norms. See CONST. art. 6. Furthermore, the reasoning in a judgment of the ECHR is binding on Armenian courts in cases with “identical/similar factual circumstances,” unless the Armenian court can demonstrate that the reasoning does not, in fact, apply to the factual circumstances at hand. JUDICIAL CODE art. 15(4).

Armenia has taken a number of important steps to familiarize both the judiciary and the public with ECHR case law. Thus, the Ministry of Justice [hereinafter MOJ] has a Department for Relations with ECHR, which is officially responsible for translating ECHR judgments against Armenia, and these judgments are available at the Government’s official website, <http://www.gov.am>. The Association of Judges of the Republic of Armenia [hereinafter AJRA] has also translated and published several volumes of ECHR decisions, including judgments against Armenia and other selected high-profile cases. These volumes have been disseminated among judges, advocates, and other interested authorities. In addition, translations of selected ECHR decisions (involving both Armenia and other countries) are also available at the Legal Guide website, <http://www.legalguide.am>. Many interviewees stated that the publication of ECHR decisions and judgments in Armenian has been invaluable.

Interviewees viewed the ECHR as a potentially significant force for positive change in Armenia, but one that will take some time before it achieves its promise. One interviewee declared pessimistically that the ECHR jurisprudence will not be a significant factor for a long time and that thousands of ECHR judgments against Armenia would be necessary before that happens. Judges are, however, becoming increasingly aware of the ECHR case law. The Court of Cassation was singled out for citing the European Convention on Human Rights and ECHR cases in its decisions, and, to a lesser extent, the Constitutional Court and courts of appeal. Nonetheless, citations to ECHR judgments in decisions of Armenia’s other courts remain rare, which may be an indication that the level of knowledge about the European Convention on Human Rights among judges of courts of general jurisdiction is still generally inadequate.

Any person, nongovernmental organization, or group of individuals whose rights under the European Convention on Human Rights Armenia has violated can apply to the ECHR in Strasbourg, following exhaustion of all domestic remedies. EUROPEAN CONVENTION ON HUMAN RIGHTS arts. 34, 35(1); see also CONST. art. 18. Thus far, there have only been a handful of ECHR judgments involving Armenia, all issued in 2007. As of December 31, 2007, a total of 992 ECHR applications had been allocated to a decision body, 253 had been declared inadmissible, 60 had been referred to the Armenian Government for follow-up, 7 had been declared admissible, 5 had been decided, and 737 cases were pending against Armenia. EUROPEAN COURT OF HUMAN RIGHTS, ANNUAL REPORT 2007 at 135, 140 (2008) [hereinafter ECHR ANNUAL REPORT]. Each of the five judgments involving Armenia found at least one violation, including four instances of violation of the right to a fair trial and two instances of violation of the freedom of assembly and association. *Id.* at 144. Examples of notable judgments include: *Galstyan v. Armenia*, No. 26986/03, Nov. 15, 2007 [hereinafter *Galstyan v. Armenia*] (holding that conviction of applicant for administrative offense of minor hooliganism during lawful demonstration violated his right to

freedom of peaceable assembly and that he had been denied adequate time and facilities to prepare a defense and an opportunity to have his conviction reviewed by a higher tribunal); *Harutyunyan v. Armenia*, No. 36549/03, June 28, 2007 [hereinafter *Harutyunyan v. Armenia*] (holding that use of evidence obtained by torture violated applicant's right to a fair trial); and *Mkrtchyan v. Armenia*, No. 6562/03, Apr. 11, 2007 (holding that fining a leader of an unauthorized procession violated his right to freedom of peaceful assembly). Armenian authorities generally respect these decisions in practice.

Factor 8: System of Appellate Review

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

Conclusion	Correlation: Neutral	Trend: ↔
<p>By law and in practice, judicial decisions are reversed only through the judicial appellate process. The Judicial Code has introduced a number of potentially significant changes, such as limiting access to the Court of Cassation to enable it to ensure the uniform application of the law. It is too soon, however, to assess the impact of these changes.</p>		

Analysis/Background:

Armenia has two courts of appeal, the Criminal Court of Appeal and the Civil Court of Appeal. JUDICIAL CODE arts. 3(5), 41(1). Both are located in Yerevan, and each consists of a chairman and 15 judges. *Id.* art. 41(2)-(4). The courts of appeal have jurisdiction to review judgments of courts of general jurisdiction, civil courts, and criminal courts. *Id.* arts. 39(1), 22(3), 27(3), 31(3). Anyone convicted of a crime has a constitutional right to have the judgment reviewed by a higher instance court. CONST. art. 20; *see also* CRIM. PROC. CODE art. 103(7). An appeal of a judgment must generally be filed before the judgment becomes final, except in bankruptcy cases, when an appeal may be filed within 15 days after the judgment becomes final. JUDICIAL CODE art. 42(1)-(2). In exceptional cases, however, appeal of a final court of general jurisdiction judgment may be allowed if “such fundamental breaches” occurred during trial that the judgment “distorts the very essence of justice.” *Id.* art. 42(5). Any person who participated in the case, including the prosecutor (in cases stipulated by law), may file an appeal. *Id.* art. 43. The ground for an appeal is judicial error, which is “a violation of substantive or procedural law that could influence the outcome of the case.” *Id.* art. 44. In the case of a civil appeal, property valued at more than 50 times the minimum salary (AMD 750,000 or approximately USD 2,206) must be at stake. *Id.* art. 45(2).

In civil cases, a court of appeal must use the evidence admitted in the lower court and cannot admit new evidence. *Id.* art. 47(1). It may, however, reject facts found by the lower court when the facts are challenged on appeal and the appellate court determines that the first instance court made an obvious mistake in finding those facts. *Id.* art. 47(2). These restrictions do not apply to appeals in criminal cases, where a court of appeal may consider new evidence. *Id.* art. 47(4); *see also* CRIM. PROC. CODE art. 381(6). Three-judge panels examine appeals against final judgments; a single judge examine appeals against other decisions. JUDICIAL CODE art. 18(5). Among other things, a court of appeal may decide in a given case to reject an appeal and uphold the lower court’s judgment; reject the appeal but correct the lower court’s reasoning; reverse the judgment in whole or in part and remand the reversed portion to the lower court; or partially reverse and revise the judgment if facts found by the lower court permit such a result. *Id.* art. 48(1).

Located in Yerevan, the Court of Cassation consists of a chairman, two chamber chairmen, and four judges. *Id.* arts. 52(1), 52(4). It is divided into two Chambers, the Civil and Administrative

Chamber and the Criminal Chamber, each with a Chamber Chairman and two judges. *Id.* art. 52(2)-(3). The Court of Cassation has jurisdiction to review decisions of the courts of appeal and the Administrative Court. *Id.* art. 50(2). A cassation complaint seeking review must be filed within three months after final judgment in civil or administrative cases, or within six months after final judgment in criminal cases. *Id.* art. 55(1). Cassation complaints may be filed only by advocates specifically accredited for the Court of Cassation on behalf of persons who participated in the case, or by the Prosecutor General and his/her deputies. *Id.* art. 56.

Amendments to the Civil Procedure and the Criminal Procedure Codes in July 2006 limited the Court of Cassation's review of decisions of the appellate courts and the Administrative Court to cases that involve uniform application of the law. CIV. PROC. CODE art. 222; CRIM. PROC. CODE art. 403; see *also* JUDICIAL CODE art. 50(3). The ground for seeking Court of Cassation review is a violation of substantive or procedural law that could influence the outcome of the case. JUDICIAL CODE art. 57. The Court must accept a cassation complaint if it concludes that: (1) its decision would be "of material significance in the uniform application of the law"; (2) a decision for which review is sought conflicts with earlier decisions of the Court of Cassation; or (3) a lower court made a "prima facie judicial error" that resulted or may result in "grave consequences." *Id.* art. 50(3). A cassation complaint must be based on the same grounds that were the basis for appeal to the court of appeal, unless the decision in question was not subject to review in appellate proceedings. *Id.* art. 58(1). Court of Cassation decisions on whether to accept a cassation complaint (referred to as admissibility decisions) are initially made by a panel consisting of the Chairman and judges of the relevant Chamber. *Id.* art. 18(7). Decisions to accept a case for review must be made unanimously by the appropriate Chamber or, absent such unanimity, by the majority of all judges of the Court. *Id.* art. 53(1). A Constitutional Court decision interpreting the Civil Procedure Code held that the Court of Cassation must substantiate its decisions rejecting a cassation complaint. CONSTITUTIONAL COURT DECISION No. SDO-690 of Apr. 9, 2007. However, the Court of Cassation's rejection of cassation complaints has been criticized as lacking "substantial justification," with the result that neither the parties nor their advocates understand what standards were applied. See Hayk Alumyan, *What Do Court of Cassation Figures Say?*, "PASTABAN" (ADVOCATE), No. 4 (2008), at 5-7.

The entire Cassation Court (the Chairman, both Chamber Chairmen, and the other four judges) examines cassation complaints collectively. JUDICIAL CODE art. 18(8). At least five of the Court of Cassation's seven judges must participate in its sessions. *Id.* art. 54(1). Among other actions, the Court may decide in a given case to reject a cassation complaint and uphold the judgment; reject the cassation complaint but correct the lower court's reasoning; reverse the judgment in whole or in part and remand the reversed portion to the lower instance court; or partially reverse and revise the judgment if facts found by the lower court permit such a result. *Id.* art. 60(1). The Court of Cassation's judgments are not subject to appeal. *Id.* art. 51(1); see *also* CIV. PROC. CODE art. 241(2).

Many interviewees voiced concern about limited access to the Court of Cassation, some arguing that the Court has too much discretion in deciding whether to accept a case, because it can reject a cassation complaint if it subjectively believes that review would not contribute to uniform application of the law. This discretion, one interviewee observed, could provide an opportunity for corruption. Another argued that the Court of Cassation does not really have the discretion to refuse to accept a serious complaint. In any event, as a result of the changes in the Court of Cassation's jurisdiction, review by the Court has become, as one interviewee put it, "a very distant possibility." A number of interviewees pointed out that, because of limited access to the Court of Cassation, the courts of appeal were effectively becoming courts of last resort. Some interviewees felt that the courts of appeal were not yet up to the task, but expressed the hope that they would soon gain more experienced judges.

Several interviewees also noted that the requirement that parties filing cassation complaints be represented by advocates accredited for the Court of Cassation could limit access of poor citizens to the Court. As of the date of this assessment, there were only 55 such advocates, and they

reportedly have a heavy workload. One interviewee pointed out that this requirement creates two hurdles for litigants: first, persuading an accredited advocate to file a cassation complaint; and second, persuading the Court to accept the complaint. Another reported problem was the limited availability of admissibility decisions and the lack of detail in the decisions that are available. One interviewee complained that during a period when the Court of Cassation accepted 19 complaints from prosecutors, it accepted only one from advocates. However, according to the Judicial Department, between July 2006 and January 2008, the Court of Cassation accepted 221 complaints from prosecutors and 707 complaints from advocates.

Armenia JRI 2004 reported that few judgments of first instance courts in civil and economic cases were appealed, and statistics showed a general decline in such appeals from 10% in 2001 to 4.5% in the first half of 2004. ARMENIA JRI 2004 at 20. Similarly, cassation appeals to the Court of Cassation also declined, from 54% in 2001 to 17.5% in the first half of 2004. *Id.* As the table below shows, that trend was reversed after 2004, and an increasing percentage of appeals and cassation complaints are being filed. Overall reversals were relatively constant for 2001-2003, at 29-30%, with a sharp drop to 12% in the first six months of 2004. *Id.* The first three years in the table below also show relatively constant levels of reversals, although at higher rates than in 2001-2003.

APPEALS AND REVERSALS IN CIVIL AND ECONOMIC CASES, 2004-2007

	2004	2005	2006	2007
Cases decided in First Instance Courts	96,104	101,699	43,611	33,790
Cases appealed to Court of Appeal	3,777	3,936	4,574	4,656
as a %	3.9	3.9	10.5	13.8
Cases decided by Court of Appeal	3,053	3,283	3,549	3,554
Reversals	973	963	948	1,134
as a %	31.9	29.3	26.7	31.9
Total cases decided by Court of Appeal and Economic Court	8,312	10,095	7,311	7,197
Cases appealed to Court of Cassation	2,421	2,826	1,805	1,926
as a %	29.1	28.0	24.7	26.8
Cases decided by Court of Cassation	2,055	2,514	1,623	407
Reversals	797	879	662	334
as a %	38.8	35.0	40.8	82.1

Source: Judicial Department.

For the sake of comparison, corresponding statistics for criminal cases (to the extent they are available) are shown in the following table.

APPEALS AND REVERSALS IN CRIMINAL CASES, 2004-2007

	2004	2005	2006	2007
Cases decided in First Instance Courts	4,104	3,520	3,396	2,810
Cases appealed to Court of Appeal	820	729	653	667
as a %	20.0	20.7	19.2	23.7
Cases decided by Court of Appeal	N/A	672	663	619
Reversals	N/A	15	N/A	N/A
as a %	N/A	2.2	N/A	N/A
Cases appealed to Court of Cassation	437	389	352	213
as a %	N/A	57.9	53.1	34.4
Cases decided by Court of Cassation	430	342	328	92
Reversals	77	70	74	52
as a %	17.9	20.5	22.6	56.5

Source: Judicial Department.

An issue related to the limited role of the Court of Cassation is the introduction of a doctrine analogous to precedent in common law systems. This doctrine has two aspects. First, it recognizes the right to argue that the reasoning used in a final judgment of an Armenian court in a prior case applies in a subsequent case with “identical/similar factual circumstances”.¹⁴ JUDICIAL CODE art. 15(3). Second, it makes the reasoning in a judgment of the Court of Cassation or the ECHR binding in other cases with “identical/similar factual circumstances,” unless the court can demonstrate that the reasoning does not, in fact, apply to factual circumstances in the pending case. *Id.* art. 15(4).

Interviewees recognized both the importance of ensuring that judges apply the law consistently and the difficulties of implementing the new doctrine in practice. Judges will need training to become proficient at identifying the reasoning in a prior case for use in a pending case. Another problem is the limited number of cases as potential sources of precedent. Only one volume of Court of Cassation judgments has been published as of the date of this assessment, with a second volume expected in early 2008, and only 19 of its judgments were available on the Armenian Legal Information System [hereinafter ARLIS] database as of June 2008. No court of appeal decisions were available. Furthermore, satisfying the “identical/similar” criterion may be difficult, which could severely limit the applicability of the doctrine in practice.

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 subpoena and contempt powers. However, when parties or witnesses fail to appear in response to a summons, judges often postpone trials, causing delays. Judges have no authority over enforcement of judgments, which is the responsibility of the Department for Compulsory Execution of Judicial Acts [hereinafter DCEJA] in the MOJ. Software developed for managing enforcement of judgments is expected to make the process more efficient, but inconsistencies in enforcing judgments were reported.</p>		

Analysis/Background:

Everyone is required to treat courts respectfully, and contempt of court is punishable as prescribed by law. JUDICIAL CODE art. 6(1)-(2). Judges now have authority to punish contempt of court, abuse of procedural rights, or failure to perform procedural duties by issuing a warning, removing the offender from the courtroom, or imposing a judicial fine of up to AMD 100,000 (approximately USD 294). *Id.* arts. 63(1), 63(5). If an offender does not voluntarily comply with an order to leave the courtroom, members of the Service of Judicial Bailiffs can enforce the order. *Id.* art. 63(4). Other responsibilities of the judicial bailiffs include maintaining order in and around courthouses, controlling entry into courtrooms, and carrying out orders of the court chairman, presiding judge of a session, or individual judge regarding public order and security in court. *Id.* arts. 198(1)(3), 212(1)(4), 213(1)(2), 214(1). If a prosecutor or an advocate displays contempt of court, the judge may file a complaint with the Prosecutor General or the Chamber of Advocates, respectively, which should result in a disciplinary proceeding against the prosecutor or the advocate. *Id.* art. 63(7).

¹⁴ The phrase translated “identical/similar” is a new Armenian phrase (*nou/nanman*) used for the first time in the Judicial Code.

In the event of disorder in a Constitutional Court proceeding, the presiding member may warn the person causing the disorder, fine or exclude him/her from the proceeding, and apply to the authorized state body to hold him/her liable in accordance with the law. LCC art. 50. If the Court imposes a fine and the violator refuses to pay it, the judicial bailiffs will enforce the decision. *Id.* art. 61(7).

Interviewees agreed that judges have adequate powers to maintain order in court. Noting that “we cannot afford the luxury of anger,” however, one stated that, in his experience, problems with contempt arise when judges do not treat advocates as worthy of respect. Another judge agreed that experienced judges can maintain order without resorting to their contempt powers. On the other hand, one judge reported having to use such powers several times a month on average, which suggests that the frequency of contempt varies from court to court. According to another judge, problems with disrespectful behavior are more likely to occur with advocates than prosecutors.

If a defendant in a civil case was properly summoned but fails to appear or if a plaintiff fails to appear, the trial can go forward in the party’s absence. CIV. PROC. CODE art. 118(2). If a party’s presence is necessary, however, the court may postpone the trial and fine the missing party. *Id.* art. 119(1)(1). Either party has the right to request that the court try the case in his/her absence based on the documents and other materials submitted to the court. *Id.* art. 118(1). In an administrative case, non-appearance of a party who was properly notified does not prevent the trial from going forward in the party’s absence. ADMIN. PROC. CODE art. 95(2). By contrast, a criminal defendant must be present in order to be tried, and force may be used to compel his/her appearance, unless the defendant was absent for a good reason, such as illness. CRIM. PROC. CODE arts. 153, 303.

A court can summon witnesses suggested by the parties who, in civil and administrative cases, must explain the relevance of the testimony of the witnesses they propose. CIV. PROC. CODE art. 44; ADMIN. PROC. CODE art. 29. In criminal cases, either the prosecutor or defendant may summon witnesses, or, in exceptional circumstances, a court can also summon witnesses on its own initiative. CRIM. PROC. CODE art. 86. A witness who was summoned must appear and provide testimony. CIV. PROC. CODE art. 44(4); CRIM. PROC. CODE art. 86(3); ADMIN. PROC. CODE art. 31(2). A witness who is summoned but does not appear without a reasonable excuse can be forcibly brought to court. CIV. PROC. CODE art. 44(5); CRIM. PROC. CODE art. 153(1). In administrative cases, the court can require payment of expenses resulting from a witness’s nonappearance; fine a witness who refuses to testify; and initiate a criminal proceeding against a witness who twice refuses to testify. ADMIN PROC. CODE art. 30(6). Courts also have discretion to allow a trial to take place in the absence of a summoned witness. In criminal trials, the criterion is whether the absence of the witness will prevent “the complete, comprehensive and objective examination of circumstances of the case.” CRIM. PROC. CODE art. 332. When a witness does not appear in a civil case, the court has the right to postpone the trial. CIV. PROC. CODE art. 119(1)(1). Refusal to provide testimony is a crime punishable by a fine equal to 50-100 times the minimum salary (AMD 75,000-150,000 or approximately USD 2,206-4,412) or imprisonment for up to two months. CRIMINAL CODE OF THE REPUBLIC OF ARMENIA art. 339 (*adopted* Apr. 18, 2003). [hereinafter CRIM. CODE].

According to one interviewee, judges routinely postpone civil trials when either party does not appear, because they want to give both sides their day in court, and because default judgments can be difficult to defend. Another interviewee reported that witnesses fail to appear more commonly in criminal cases than in civil cases, often ignoring the first summons to see what will happen. Nevertheless, delay is reportedly not a serious problem in Armenian courts.

Civil judgments come into force one month after issuance, except judgments in bankruptcy cases which enter into force immediately after their issuance. CIV. PROC. CODE art. 149(3)(1)-(3). In exceptional circumstances, civil court judgments can be declared legally effective by the court if a failure to do so would inevitably cause grave consequences to a party. *Id.* art. 149(3)(4).

Administrative rulings enter into force immediately after issuance, unless another period is specified in the Administrative Procedure Code. ADMIN. PROC. CODE art. 115. Appellate court judgments enter into force upon the moment of their promulgation. CIV. PROC. CODE art. 221(1). The Court of Cassation's judgments are final when issued in a courtroom and are not subject to appeal. JUDICIAL CODE art. 51(1); see *also* CIV. PROC. CODE art. 241(2).

Other than issuing writs of execution and resolving disputes concerning execution of judgments, courts do not play a significant role in the enforcement of civil and administrative judgments. See CIV. PROC. CODE Chapter 14; art. 141. In 1988, the Law on the Compulsory Enforcement of Judgments (*adopted* May 5, 1998) transferred authority over enforcement of civil judgments from the courts to the DCEJA. As part of its Judicial Reform Project, the World Bank developed and pilot-tested the Automated Enforcement Service Management System [hereinafter AESMS] in three DCEJA offices. During the current phase of its Judicial Reform Project, the World Bank intends to develop additional modules for the software and then implement the AESMS in all DCEJA offices.

In practice, enforcement of judgments continues to be problematic, particularly in administrative and other cases that involve a government interest. In many of such cases, it can take years to have a final court decision enforced. As the table below illustrates, the backlog of judgments pending execution at DCEJA have been steadily increasing over the past several years, while the number of judgments that have been enforced annually has gradually declined.

ENFORCEMENT OF JUDGMENTS BY DCEJA, 2005-2007

	2005	2006	2007	Change from 2005 to 2007, %
Judgments pending from previous years	20,211	26,658	33,818	67.3
New judgments submitted for enforcement	67,110	53,556	44,487	(-33.7)
Number of judgments enforced	60,663	46,396	38,718	(-36.1)
Judgments pending enforcement at year end	26,658	33,818	39,587	48.5

Source: MOJ.

Problems with enforcement arise from the absence of any legal prohibition against fraudulent conveyances (i.e., transfers of property for less than adequate payment), and from the fact that much of the Armenian economy is based on cash. Interviewees alleged that the enforceability of a judgment depends, in part, on the connections of a person or organization against whom it was rendered, with enforcement less likely when a judgment affects an oligarch or an organization under government protection. According to one interviewee, when courts were responsible for supervising enforcement of judgments, judges tried to avoid making decisions that would be difficult to enforce, and therefore the present arrangement is preferable. Corruption is reported in the DCEJA, however. Several interviewees noted that consideration is being given to allowing private companies to enforce judgments.

In criminal cases courts have authority to send verdicts for execution and to resolve issues relating to their execution. CRIM. PROC. CODE arts. 41(2), 437, 438. The court issuing a verdict sends it for execution within three days after it came into effect or was remanded by the Criminal Court of Appeal or the Court of Cassation. *Id.* art. 427. The body charged with executing the verdict must immediately inform the court of the actions taken to carry it out. *Id.* art. 428. According to the MOJ, its Criminal Execution Department enforced a total of 1,455 judgments in 2005, 1,360 judgments in 2006, and 1,415 judgments in 2007. No information was provided regarding the total number of criminal judgments submitted for execution or the backlog of pending cases.

III. Financial Resources

Factor 10: Budgetary Input

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

Conclusion	Correlation: Neutral	Trend: ↑
The budgeting process allows courts to influence the amount of funding allocated to them, and the amounts budgeted for the judiciary have increased dramatically since 2004.		

Analysis/Background:

The Judicial Department is responsible for providing material and technical support for the courts from funds in the state budget. JUDICIAL CODE arts. 69, 64. With written input from the various courts, the Judicial Department prepares a budgetary proposal for the courts and submits it to the CCC for revision and approval. *Id.* arts. 64(2)-(3), 72(13). The Judicial Code explicitly requires that a budgetary proposal must include funding to cover all expenditures “necessary for safeguarding the normal functioning of courts.” *Id.* art. 64(5). The proposal is then submitted to the Government for inclusion in the draft state budget. *Id.* art. 64(3). If the Government disagrees with the budgetary proposal, it will nevertheless present it to the National Assembly, but include its objections for consideration by the National Assembly. *Id.* art. 64(4). In addition, the Head of the Judicial Department is to be invited to the National Assembly’s session to present the CCC’s position regarding the budgetary proposal. *Id.* art. 64(6). The Government must submit the draft state budget to the National Assembly at least 90 days before the beginning of the new fiscal year and may propose a motion of confidence concerning the budget. CONST. arts. 89(2), 90. Unless the National Assembly expresses no confidence in the Government (which requires a majority of the total number of deputies), the budget is deemed adopted with any amendments agreed to by the Government. *Id.* arts. 75, 84, 90. If, on the other hand, the National Assembly expresses no confidence in the Government, a new Government must submit a draft state budget within 10 days after its formation, and the National Assembly must vote on it within 30 days. *Id.* art. 90. If the National Assembly fails to adopt a budget by the beginning of the new fiscal year, expenditures continue at the same level as in the previous year’s budget. *Id.* art. 76. When no motion of confidence is linked to adoption of the budget, the National Assembly may simply adopt the budget. *See id.* art. 76. Beginning in 2008, budgets will also include, as a separate line item, a reserve fund for unplanned expenditures equal to 2% of total judicial expenditures. The CCC has authority over allocating judicial budgets to individual courts, as well as over expenditures from the 2% reserve fund. JUDICIAL CODE. art. 64(7).

Procedures for the Constitutional Court’s budget are similar to those for the other courts, except that the Judicial Department and the CCC are not involved. The Chairman of the Constitutional Court presents an estimate of the Court’s expenditures to the Government for inclusion in the draft state budget. LCC art. 6(2). If the Government agrees with the estimate, it will include it in the state budget; if not, it will present it to the National Assembly separate from the draft budget, together with its objections for consideration by the National Assembly. *Id.* art. 6(4). The Constitutional Court has authority over expenditure of the funds budgeted to it, as well as an additional 2% as a reserve fund. *Id.* art. 6(5)-(6).

The following table presents the amounts budgeted for each level of courts for 2005-2008 and the USD equivalent for 2008. It shows dramatically increased amounts budgeted for the courts during this period: the total court budget for 2008 was nearly 2.5 times the amount for 2005. The total amount budgeted for the courts also increased as a percentage of GDP.

ANNUAL BUDGETS FOR THE COURTS, 2005-2008

Court	2005, AMD	2006, AMD	2007, AMD	2008	
				AMD	USD
Constitutional	204,730,500	235,010,100	333,993,800	351,001,300	1,032,356
Cassation	197,685,700	361,909,300	1,029,270,400	222,127,500	653,316
Economic	155,679,300	211,044,500	228,560,300	N/A	N/A
Appeal/Civil	80,033,900	107,120,600	112,544,400	211,879,900	623,176
Appeal/Criminal	113,128,600	147,561,900	164,006,000	221,495,400	652,588
Administrative	N/A	N/A	N/A	220,375,800	648,164
Criminal	N/A	N/A	N/A	262,033,100	770,686
Civil	N/A	N/A	N/A	437,275,300	1,286,104
General Jurisdiction	893,530,000	1,177,485,100	1,862,075,300	2,198,191,500	6,465,269
Total	1,664,788,000	2,240,131,500	3,730,450,200	4,124,379,800	12,131,659
as % of GDP	0.074	0.084	0.118	0.12	

Source: LAW ON THE STATE BUDGET FOR 2005; LAW ON THE STATE BUDGET FOR 2006; LAW ON THE STATE BUDGET FOR 2007; LAW ON THE STATE BUDGET FOR 2008; National Statistical Service of the Republic of Armenia website, <http://www.armstat.am>.

The Chairman of the Court of Cassation and the Judicial Department are said to have actively lobbied the Government and the National Assembly for increased funding for the courts, and their success is reflected in the table above. Interviewees invariably regarded the recent increases in funding for the courts as a significant improvement. Insufficient funding for office supplies, electricity, and telephone service had required judges to pay for such items themselves in the past. ARMENIA JRI 2004 at 25. Those conditions no longer exist, although several interviewees thought that funding for the courts should be further increased.

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: ↔
<p>Judicial salaries are widely regarded as insufficient to provide judges with a reasonable standard of living, nor do they reflect the status of the judiciary. Significant increases would be required to bring them to a satisfactory level. Low salaries contribute to, or at least provide a justification for, corruption.</p>		

Analysis/Background:

Judges' salaries through the end of 2007 were specified in the Law on Official Rates of Remuneration for Senior Officials in Legislative, Executive and Judicial Branches of Government of the Republic of Armenia (*adopted Dec. 26, 2002*) [hereinafter LAW ON REMUNERATION]. Court chairmen received 25% more than the judges of their court, and Chamber Chairmen of the Court of Cassation received 15% more than Court of Cassation judges. Judges also received a supplement based on their years of judicial experience, equal to a percentage of the applicable official pay rate. For the first five years, the supplement equaled 2% per year, and 5% for the sixth and each subsequent year. ARMENIA JRI 2004 at 26.

Effective January 1, 2008, judges' salaries are composed of an official pay rate and supplements. JUDICIAL CODE art. 75(1). The National Assembly establishes the official pay rates, which are tied to the pay rate of court of general jurisdiction judges. The following table shows the relationships of the official pay rates among the various levels of judges and the monthly amount of their official pay rates in AMD and equivalent in USD for 2008. For comparison, the official pay rates for 2004-2007 in AMD are also listed.

JUDICIAL SALARIES – OFFICIAL MONTHLY PAY RATES, 2004-2008

Courts		2004-2007, AMD	2008		
			Multiplier	AMD	USD
Courts of General Jurisdiction	Judge	220,000	1.0	220,000	647
	Chairman	275,000	1.25	275,000	809
Civil, Criminal, and Administrative Courts	Judge	N/A	1.15	253,000	744
	Chairman	N/A	1.4375	316,250	930
Courts of Appeal	Judge	242,000	1.3	286,000	841
	Chairman	302,500	1.625	357,500	1,051
Court of Cassation	Judge	264,000	1.5	330,000	971
	Chamber Chairman	303,600	1.725	379,500	1,107
	Chairman	330,000	1.875	412,500	1,213
Constitutional Court	Judge	300,000	N/A	300,000	882
	Chairman	340,000	N/A	340,000	1,000

Source: LAW ON REMUNERATION arts. 2, 4; JUDICIAL CODE art. 75(2)(1)-(4).

Judges continue to receive a supplement equal to a percentage of the official pay rate, based on their years of judicial service. For the first five years, the supplement equals 2% per year (up to a total of 10%), and 5% for the sixth and each subsequent year. JUDICIAL CODE art. 75(2)(5). Members of the Constitutional Court receive similar supplements. See LCC art. 12(2).

Judicial salaries were unchanged since 2004, when they had been increased significantly, until January 1, 2008, when salaries for all judges, except those in courts of general jurisdiction and the Constitutional Court, were again increased. Without exception, however, interviewees regarded judicial salaries as insufficient to provide judges with a reasonable standard of living or to save for retirement, and inadequate to reflect the status of judges. Even though judges' salaries may be high compared to salaries of others in Armenia, several interviewees pointed out that judicial salaries in Armenia are among the lowest in the Commonwealth of Independent States. The minimum necessary increase that any interviewee suggested was 50%. Many called for substantial increases – to 3, 5, or even 10 times their current levels. Several argued that the increases should be so dramatic that they would constitute “bribes” from the state to discourage judges from taking bribes from litigants.

Many interviewees noted that judicial corruption and inadequate salaries are related. On the one hand, there is resistance to increasing salaries, because judges supplement their salaries by accepting bribes. On the other hand, there is a common perception that not much can be expected from judges when they are poorly paid. Besides, people would reportedly rather pay bribes (which yield an immediate tangible benefit) than pay judges an adequate salary. Furthermore, interviewees recognized that increasing salaries would not, by itself, eliminate 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: Neutral	Trend: ↑
<p>Courthouses are usually conveniently located and easy to find. Those that were renovated or newly constructed as part of the World Bank’s Judicial Reform Project provide a respectable environment for the dispensation of justice with generally adequate infrastructure. By 2012, courthouses for the remaining courts are expected to be renovated or constructed.</p>		

Analysis/Background:

The Judicial Department is charged with the responsibility for maintenance of court buildings. See JUDICIAL CODE art. 69. Courthouses in Armenia, particularly newer ones, are generally conveniently located and easy for people to find.

The World Bank’s First Judicial Reform Project (2001-2006) began the renovation of existing courthouses to meet international standards or, if renovation was not feasible, the construction of new ones. By the end of 2007, 12 courthouses for 14 courts¹⁵ had been renovated or built, primarily in Yerevan. Under its Second Judicial Reform Project, the World Bank hopes to complete renovation or construction of courthouses for the remaining courts by 2012.¹⁶

The improvements brought about by the World Bank’s First Judicial Reform Project have been dramatic. The older buildings were in a deplorable state – one judge described his old courthouse as “a shack.” Another said that moving into the new courthouse was the happiest day of his life. Although some courthouses still lack sufficient numbers of courtrooms (e.g., the Court of General Jurisdiction of Kentron and Nork-Marash Communities has five courtrooms for nine judges), the former practice of holding hearings in judges’ offices rather than in courtrooms has become uncommon. In addition, many of the newer courthouses are more secure, with separate fenced parking areas and entrances for judges, as well as separate public areas and restricted areas for judges. Access cards are required to enter the restricted areas.

The restructuring of the courts effective January 1, 2008 was expected to create some short-term problems, with the new specialized civil and criminal courts housed in temporary accommodations for a few years until new courthouses could be provided. The situation of the new Administrative Court is better, because it is located in the space previously occupied by the Economic Court.

¹⁵ The Civil Court of Appeal, Criminal Court of Appeal, and Economic Court were located in the same building.

¹⁶ There are currently a total of 49 courthouses in Armenia, including 36 *marz* courthouses, 7 community courthouses, 2 specialized courthouses, 1 courthouse for the Administrative Court, 2 courthouses for appellate courts, and 1 courthouse for the Court of Cassation.

Factor 13: Judicial Security

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

Conclusion	Correlation: Neutral	Trend: ↑
<p>Judicial security is not a significant problem, and the resources allocated for security appear sufficient. The newer courthouses are generally more secure than the older, unrenovated ones. Metal detectors are uncommon, however, and infrequently used.</p>		

Analysis/Background:

Before January 1, 2008, police under the Ministry of Internal Affairs provided 24-hour security for courthouses. Thereafter, the Service of Judicial Bailiffs within the Judicial Department became responsible for maintaining security in courthouses and protecting the “life, health, dignity, rights, and freedoms” of judges, parties, and others present in courts. JUDICIAL CODE art. 213(1)(1). In addition, the state must provide necessary security upon request by a judge or his/her court, following a threat against a judge or his/her family, residence, or office. *Id.* art. 84(2). The state must also provide necessary security upon the request of the Constitutional Court, following a threat against a member of the Court or his/her family, residence, or office. LCC art. 6(9). Judges are entitled to carry firearms and “special protective devices” provided by the Government. JUDICIAL CODE art. 84(1). In addition, threats or violent actions against judges in connection with the administration of justice constitute a crime punishable by fines or imprisonment of up to three years. CRIM. CODE art. 347(1).

According to interviewees, judicial security is not a serious problem in Armenia. Threats against judges are reported to be rare, and when they do occur, police protection is provided. Only a few courts, such as the Criminal Court of Appeal, the Court of Cassation, and the Constitutional Court, have metal detectors. They are, however, routinely ignored. In addition to separate fenced parking areas and entrances for judges, many of the newer courthouses are more secure with separate public areas, restricted areas for judges’ chambers, and access cards required for entry into the latter. Video surveillance cameras are common. Establishment of the Service of Judicial Bailiffs is seen as a positive step, because it transfers responsibility for judicial security from the executive to the judiciary.

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: Neutral	Trend: ↓
Judges of courts and members of the Constitutional Court have guaranteed tenure until retirement age, and such tenure is said to be respected in practice. It appears, however, that the disciplinary process is used to dismiss judges arbitrarily, thereby undermining judicial tenure in practice.		

Analysis/Background:

Judges have guaranteed tenure and serve until the retirement age of 65, subject to dismissal for a grave disciplinary offense or repeated offenses incompatible with a judicial position. JUDICIAL CODE arts. 14(1)-(2), 157(1)(4), (3). In addition to dismissing a judge as a disciplinary sanction (see Factor 17 below), the President of Armenia, at the request of the COJ, may terminate a judge's tenure based on the following grounds: resignation; reaching retirement age; loss of Armenian citizenship; inability to perform official duties for more than four consecutive months or for six months in a calendar year; development of a physical handicap or illness that would have prevented the judge's appointment; a final judgment that the judge's appointment violated legal requirements; a final judgment that the judge has limited or no legal capacity or is presumed missing or dead; a final verdict convicting the judge of a crime; termination of a criminal prosecution other than by acquittal; and failure to satisfy the annual CLE requirement for two consecutive years. *Id.* art. 167(1).

Members of the Constitutional Court serve until they reach the age of 65 and are subject to removal only on the grounds and in the manner specified by law.¹⁷ CONST. art. 96; LCC art. 10; see *also* Factor 17 below. Some grounds automatically result in dismissal of a member of the Constitutional Court, such as resignation, loss of Armenian citizenship, reaching the age of retirement, being judicially determined as incapable of working, or being convicted of a crime. LCC art. 14(1). Other grounds for dismissal are not automatic: absence from the Court's sessions three times in a year without an excuse; inability to perform functions as a member for six months due to temporary disability; disease preventing the performance of professional duties; violation of the rules on incompatibility; actions raising doubts about the member's impartiality; revealing information about the Court's deliberations; or violating the member's oath of office. *Id.* art. 14(3). The Constitutional Court determines whether such circumstances constitute grounds for removal of a member by a two-thirds majority vote. CONST. arts. 100(7), 102. On the basis of a conclusion that grounds for removal exist, the President of Armenia may dismiss any member he/she appointed, and a majority of the total number of deputies of the National Assembly may dismiss any member it appointed. *Id.* arts. 55(10), 83(3).

Guaranteed tenure until retirement age is said to be respected in practice. Several interviewees noted that, if anything, tenure makes it difficult to replace poor judges with better ones. As discussed in Factor 17 below, however, there are some concerns that the disciplinary process could be used to dismiss judges arbitrarily, or that the threat of discipline could be used to obtain

¹⁷ Members of the Constitutional Court who were in office when the 2005 amendments to the Constitution were adopted continue to serve until the age of 70. CONST. art. 117(13).

their resignations. The Royal Armenia case is an example of apparently arbitrary dismissal of a judge. See Factor 20 below.

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: ↔
<p>Judicial advancement is now based on both specific criteria, which are, however, difficult to apply in an objective manner, and unspecified criteria resulting from the process of interviewing candidates. The President’s right to accept or reject nominees without specifying any reasons for the decision continues unchanged.</p>		

Analysis/Background:

Judicial advancement may take the form of either appointment to a higher court or appointment as a court chairman or Court of Cassation Chamber Chairman. When selecting candidates for inclusion in the Official Promotion Lists or for appointment as a chairman or Chamber Chairman, the COJ is required to consider the following criteria:

- professional reputation;
- professional knowledge, including post-university education, professional activities, and participation in training programs stipulated by the Judicial Code;
- work skills;
- oral and written communication skills;
- organizational skills;
- quality of judicial decisions;
- compliance with the Code of Judicial Conduct and the judge’s respect for the judiciary’s reputation;
- attitude toward colleagues while performing judicial duties;
- participation in judicial self-governance; and
- participation in law reform projects.

JUDICIAL CODE arts. 135, 137(6), 138(5). Although some level of subjectivity is inevitable when assessing professionals, many of these criteria are largely subjective.

The COJ is responsible for preparing for the President of Armenia’s approval two lists of judges for advancement to higher courts, the Official Promotion List of Specialized Court Judges and the Official Promotion List of Appellate Court Judges. CONST. art. 95(1); JUDICIAL CODE art. 136. When the Official Promotion List of Specialized Court Judges expires (which has not occurred in practice thus far) or when fewer than six judges remain on the list for either specialization (criminal or civil) by November 1 of any year, the Chairman of the Court of Cassation will solicit applications for the appropriate section or sections of the List through the judiciary’s official website, <http://www.court.am>. JUDICIAL CODE art. 137(3). Likewise, when the Official Promotion List of Appellate Court Judges expires or when fewer than three judges remain on the list by November 1 of any year, the Chairman of the Court of Cassation will solicit applications for that List. *Id.* art. 138(2). Following either such announcement, candidates who meet the criteria for inclusion in the lists may submit an application to the COJ, which will review the applicants’ personnel files and may also interview them. *Id.* arts. 137(4)-(5), 138(3)-(4); see also Factor 1 above. The COJ then selects candidates by secret ballot and submits a list of them to the President, who must issue a decree within 10 days supplementing the appropriate Official



Promotion List with the acceptable candidates. Candidates not placed on the list are deemed rejected. *Id.* arts. 137(9), 138(8).

Each year, not later than November 20, certain former judges who served for two of the past ten years may apply to be included in either of the Official Promotion Lists, and law academics may apply for inclusion in the Official Promotion List of Appellate Court Judges. *Id.* arts. 118(1), 118(3), 139(2), 139(4); see also Factor 1 above. The COJ will meet to review the documentation submitted by the applicants and may also interview them. *Id.* arts. 118(4), 139(3). The COJ then votes on the applicants by secret ballot. *Id.* arts. 118(5), 139(4). Those applicants who received at least half of the votes of those COJ members who voted are then submitted to the President, who must add them to the Official Promotion List within two weeks or they are deemed rejected. *Id.*

A candidate is removed from the Official Promotion List when appointed to an appropriate judicial position; determined by a final judgment to have been included in the list in violation of law; a disciplinary sanction of warning or severe reprimand is imposed on the candidate; the candidate has been included in the list for the last five years without having been appointed; or the candidate has been removed from the List of Judicial Candidates. *Id.* art. 140(1).

To fill a court of appeal vacancy, the Chairman of the Cassation Court proposes a candidate in the following order of priority: (1) a court of appeal chairman, or Cassation Court judge, or Chamber Chairman who had requested such appointment; (2) the oldest reserve judge of a court of appeal or the Court of Cassation; (3) the oldest redundant court of appeal judge, then the oldest redundant Court of Cassation judge; and (4) a redundant specialized court judge who is serving in a court of general jurisdiction. *Id.* arts. 142(1), 143(1). If the required procedures were followed, the COJ must present the candidate to the President. *Id.* art. 143(7). If, however, no such person exists or is willing to accept the nomination, the COJ will review the personnel files of those on the Official Promotion List of Specialized Court Judges, any former judges on the Official Promotion List of Appellate Court Judges, as well as prosecutors, advocates, and investigators who have completed the Judicial School's training program and who applied for the vacancy. *Id.* arts. 142(3)-(4), 144(1); see Factor 1 above for work experience requirements.

To fill a Court of Cassation vacancy, the Court of Cassation Chairman proposes a candidate in the following order of priority (unless the Chairman wishes the position): (1) a Court of Cassation Chamber Chairman who had requested such appointment; (2) the oldest reserve judge or Chamber Chairman of the Court of Cassation; and (3) the oldest reserve or redundant judge or Chamber Chairman of the Court of Cassation with a judicial position in another court. *Id.* arts. 146(2), 147(1), 148(1). If the required procedures were followed, the COJ must present the candidate to the President. *Id.* art. 143(7). If, however, no such person exists or is willing to accept the nomination, the COJ will review the personnel files of those on the Official Promotion List. *Id.* arts. 147(2), 149(1).

In both instances, the COJ may interview the candidates and will nominate one of them by secret ballot. *Id.* arts. 144(1)-(3), 149(1)-(3). The President will remove the nominee from the Official Promotion List (except for any former judges, prosecutors, advocates, and investigators who applied for the vacancy) and, within two weeks, either appoint or reject the nominee. *Id.* arts. 144(5), 149(5). If the President rejects the nominee, the COJ must consider the remaining persons on the Official Promotion List and, if there are none, the Court of Cassation Chairman will issue a notice soliciting applications for the Official Promotion List. *Id.*

The COJ nominates candidates for chairmen of the courts of general jurisdiction, specialized courts, courts of appeal, and the Court of Cassation, including Chairmen of its Chambers. CONST. art. 95(3). For all courts except the Court of Cassation, the COJ selects a nominee from among applicants who responded to the Chairman of the Court of Cassation's announcement of the vacancy on the judiciary's official website, <http://www.court.am>. JUDICIAL CODE arts. 125(1)-(2), 132, 145. No applications are solicited for Chamber Chairman or the Chairman of the Court

of Cassation. *Id.* arts. 150(3), 151(1). Unless the Court of Cassation Chairman wishes the position, the COJ nominates a Chamber Chairman from those on the Official Promotion List of Appellate Court Judges or from the chamber judges of the Court of Cassation. *Id.* arts. 150(1), 150(3). The COJ nominates the Chairman of the Court of Cassation from among those on the Official Promotion List of Appellate Court Judges, the chairmen of the courts of appeal, and the Chamber Chairmen and chamber judges of the Court of Cassation. *Id.* art. 151(1). In addition, each COJ member can propose another person as a candidate for Chairman of the Court of Cassation. *Id.* art. 151(2).

The procedures for nominating court chairmen are similar to those for nominating candidates to judicial vacancies. The COJ reviews the personnel files of eligible candidates, may interview them, and then votes by secret ballot to select a nominee. *Id.* arts. 125(3)-(5), 132, 145, 150(4), 151(3). The candidate receiving the highest number of votes is then presented to the President for appointment. *Id.* arts. 125(5), 132, 145. If the President does not appoint the nominee within two weeks, the nomination is deemed rejected, and the process begins again. *Id.* arts. 125(7), 132, 145, 150(4), 151(3).

As with the changes in appointment of first instance judges (see Factor 2 above), interviewees considered the introduction of specific criteria to be an improvement, even though some of them are subjective. Nevertheless, interviewees were skeptical that these changes would make a significant difference in the selection of candidates for judicial advancement, because the procedures still give the President considerable opportunities for influence and because the President still retains the right to reject candidates for the Official Promotion List or for judicial vacancies (except for the appointment of certain sitting judges, which is likely to be a rare occurrence), without giving any reasons. One interviewee noted that when the Case Automation and Skills Transfer [hereinafter CAST] system is fully implemented, it would be possible to develop truly objective criteria relating to matters such as judges' productivity and efficiency. See Factor 28 below.

These detailed procedures do not apply to the appointment of the Chairman of the Constitutional Court. Instead, the National Assembly, on the recommendation of its Chairman, appoints the Chairman of the Constitutional Court from among the members of the Court, within 30 days after the position becomes vacant. CONST. art. 83(2). If the National Assembly fails to appoint a Chairman within that period, the President of Armenia may do so. *Id.* art. 55(10).

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 actions taken in their official capacity, as well as considerable immunity for actions unrelated to the performance of their official duties. Such immunity is generally respected in practice.		

Analysis/Background:

Judges and members of the Constitutional Court have considerable immunity. Judges are not subject to civil liability for damages resulting from improper performance of official duties, unless the act was intentional. JUDICIAL CODE art. 13(8). They are subject to criminal prosecution only for a manifestly unfair judgment, decision, or other judicial act due to pecuniary or other personal motives, and only if the judicial act was reversed by a higher instance court. *Id.* art. 13(6). Judges are also immune from being questioned as witnesses about any case they tried. *Id.* art.

11(5). Members of the Constitutional Court may not be prosecuted or held liable for actions arising from their status. LCC art. 11(7).

Judges and members of the Constitutional Court may be arrested only when caught in the act of committing a crime or immediately thereafter, in which case the President of Armenia must be notified immediately, in addition to the Chairman of the Court of Cassation (when a judge is arrested) or the Constitutional Court (when a member of that Court is arrested). CONST. art. 97; JUDICIAL CODE arts. 13(2), 13(5); LCC art. 11(3). Furthermore, a judge or a member of the Constitutional Court may not be detained, prosecuted for a crime, or subjected to liability for an administrative infraction, except with the consent of the COJ or the Constitutional Court, respectively, and either the President of Armenia or the National Assembly, in the case of a member of the Constitutional Court that it appointed. CONST. arts. 55(10), 55(11)(c), 83(3), 95(5), 97, 100(7); JUDICIAL CODE arts. 13(3), 168-170; LCC art. 11(2).

A judge whose immunity is lifted may be prosecuted for a variety of offenses relating to the performance of official duties. These include forcing a witness to give false testimony or knowingly issuing an illegal judgment. CRIM. CODE arts. 341, 352. Other offenses include abuse of office or power, bribery, and fraud. *Id.* arts. 308-315. The Prosecutor General must conduct all criminal prosecutions of a judge or a member of the Constitutional Court. JUDICIAL CODE art. 13(4); LCC art. 11(6).

According to interviewees, judicial immunity is respected in practice, and its extent is generally adequate. One even suggested that immunity is too extensive and should be limited to actions taken in official capacity, in order to eliminate immunity for administrative infractions such as traffic offenses. A number of interviewees commented on the discipline imposed on a first instance court judge following the ECHR’s judgment in *Harutyunyan v. Armenia*, concerning the use of evidence obtained by torture. See Factor 17 below for a summary of the case. Although punishing the judge for justifying torture “for the purpose of ensuring disclosure of the truth” could be viewed as denying him immunity for actions taken in his official capacity, most interviewees were more troubled by the fact that it required an ECHR judgment before the authorities took any action at all and, when they did, they acted in a seemingly arbitrary manner by not also disciplining the higher instance judges who should have reversed the conviction. Punishing the first instance court judge was proper, one interviewee contended, because he had committed an obvious and grave violation of procedural law. While the judge in question was not subject to criminal prosecution or formal lifting of his immunity, the fact remains that he was punished for a statement in a judgment; for an action taken in his official capacity, and thus, it can be seen as violation of his judicial immunity.

According to the COJ, one judge’s immunity was lifted in 2005, and no judges had their immunity lifted in 2006 and 2007. No information was provided regarding the reasons for the 2005 lifting of a judge’s immunity or whether it resulted in prosecution.

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: ↔
Despite numerous criticisms of some aspects of the disciplinary process under the Judicial Code, including the extent to which it may infringe on the independence of judges, the grounds for discipline are more objective and the process holds the promise of effecting improvements as it is implemented.		

Analysis/Background:

The grounds for discipline applicable to all judges are:

- An obvious and grave violation of substantive or procedural law in the administration of justice;¹⁸
- Regular violations or a grave violation of work discipline;
- Regular violations or a grave violation of the norms of conduct included in Chapter 12 of the Judicial Code;
- Engaging in activities prohibited by the Constitution and the Judicial Code (see Factor 21 below for additional details);
- Failure to comply with the CCC's decisions, participate as a member of the COJ, provide explanations in disciplinary proceedings, act as a mentor for Judicial School internships, submit to a medical examination if a physical handicap or illness interferes with performing judicial duties, or participate in mandatory CLE; and
- Failure to advise the Ethics Committee of any interference with judicial activities or other unlawful influence.

JUDICIAL CODE art. 153(2). Court chairmen and Chamber Chairmen may also be disciplined for improper performance of their duties as chairman or Chamber Chairmen. *Id.* art. 165. Depending on the alleged violation, a disciplinary proceeding can only be commenced within a specified period, ranging from one month to one year, after the violation. The COJ and its Disciplinary Committee are responsible for administering judicial disciplinary proceedings.

The Disciplinary Committee consists of three members of the COJ: two judges and one legal scholar. *Id.* art. 106(1). It has authority to begin disciplinary proceedings against court of general jurisdiction, specialized court, and court of appeal judges and, on request from the Ethics Committee of the CCC, against judges of the Court of Cassation, including its Chairman and Chamber Chairmen. *Id.* arts. 106(2), 155(1)(2), 155(2)(2), 155(3). In addition, the Minister of Justice can begin disciplinary proceedings against all judges except Court of Cassation judges, and the Chairman of the Court of Cassation can begin proceedings against the judges and Chamber Chairmen of his/her Court. *Id.* arts. 155(1)(2), 61(7), 155(2)(1).

The first stage of a disciplinary proceeding is a preliminary investigation for up to six weeks (subject to extension if the judge is absent), during which the party that commenced the proceeding can require courts, judges, witnesses, government bodies and officials, and the judge against whom the proceeding was instituted, to furnish information about the alleged violation. *Id.* art. 156(1)-(2). If the party concludes that there is a basis for subjecting the judge to discipline, it prepares an opinion stating the specific basis for discipline and affords the judge an opportunity to respond. *Id.* art. 156(6)-(7). Unless the judge's response persuades the party that discipline is unjustified, the party then submits the opinion to the COJ with a request that it impose a disciplinary sanction. *Id.* art. 156(8). A copy of these materials must be sent to the judge, who may file a response with the COJ. *Id.* art. 156(8)-(9). These proceedings are confidential. *Id.* art. 156(10).

The COJ must examine the request for disciplinary sanction within a reasonable time. Disciplinary sessions must be conducted in the same way as court hearings, subject to the Administrative Procedure Code (to the extent that it is applicable and not inconsistent with the Judicial Code). *Id.* arts. 158(1), 158(4). The session is closed unless the judge requests that it be open to the public. *Id.* art. 109(2). Minutes of the session can be published only at the judge's initiative. *Id.* art. 108(6). The COJ may summon witnesses and compel their attendance. *Id.* art.

¹⁸ The mere reversal or revision of a judicial act is not by itself, however, a basis for discipline. JUDICIAL CODE art. 153(3). A Court of Cassation decision confirming that such a violation occurred can be a basis for discipline. *Id.* art. 155(5)(1).

159(5). Both the party that commenced the proceeding and the judge are given an opportunity to present their case. *Id.* arts. 159(1), 159(3). The party requesting discipline has the burden of proof, and all doubts are resolved in favor of the judge. *Id.* art. 158(3). The judge has the right to be represented by an advocate, to participate fully in the session, and to have the benefit of all due process rights accorded by article 19 of the Constitution and article 6(1) of European Convention on Human Rights. *Id.* art. 160(1).

At the close of the session, the members of the COJ, except for members of the Disciplinary Committee if they began the proceeding, deliberate in private and then decide, by open vote, whether to impose a disciplinary sanction or to terminate the case. If the COJ believes that there is no basis for discipline or that it would be inappropriate to discipline the judge despite there being a basis for discipline, they may terminate the case. *Id.* art. 161. The COJ may impose one of three disciplinary sanctions on the judge: (1) warning; (2) reprimand, which results in a 25% reduction in salary for six months; or (3) severe reprimand, which results in a 25% reduction in salary for 12 months. *Id.* art. 157(1)(1)-(3). The sanction should be proportionate to the offense and take into account “the consequences of the offense, the personal characteristics of the judge, the degree of guilt, any pending sanctions, and other noteworthy circumstances characterizing the judge.” *Id.* art. 157(4). The decision must include a discussion of the evidence on which it was based. *Id.* art. 163(1)(10). Disciplinary decisions are final and not subject to appeal; however, the COJ may review decisions based on newly emerged circumstances. *Id.* arts. 111(6), 164. Decisions in disciplinary proceedings are published in the OFFICIAL BULLETIN and on the judiciary’s official website, <http://www.court.am>. *Id.* arts. 111(6), 163(4). If a judge is not subject to further discipline within one year after a warning or two years after a reprimand or severe reprimand, the disciplinary sanction expires. *Id.* art. 157(5).

If a judge commits a grave disciplinary offense or repeated offenses rendering the judge incompatible with a judicial position, the COJ must request that the President dismiss the judge. *Id.* arts. 157(1)(4), 157(3). The COJ’s decision is final and not subject to appeal, but is subject to review based on newly emerged circumstances. *Id.* arts. 111(6), 164. The President may dismiss the judge on the basis of the COJ’s motion. CONST. art. 55(11)(b). If the President fails to do so within two weeks, the motion is deemed rejected, and the judge subject to a severe reprimand. JUDICIAL CODE art. 166.

The law does not provide for disciplining members of the Constitutional Court, but only for dismissing them. See Factor 14 above. Among the grounds for dismissing a member of the Constitutional Court that relate to disciplinary matters are absence from the Court’s sessions three times in a year without an excuse, violation of the rules on incompatibility (see Factor 21 below), actions raising doubts about the member’s impartiality, revealing information about the Court’s deliberations, or violating the member’s oath of office. LCC art. 14(3). By a two-thirds majority, the Constitutional Court can conclude that grounds for removal of a member exist. CONST. arts. 100(7), 102. On the basis of such a conclusion, the President of Armenia may dismiss any member he/she appointed, and a majority of the National Assembly may dismiss any member it appointed. *Id.* arts. 55(10), 83(3). In the Constitutional Court’s history, no member has ever been dismissed.

The following table presents a summary of disciplinary proceedings undertaken against judges in 2005-2007.

DISCIPLINARY PROCEEDINGS AGAINST JUDGES, 2005-2007

	2005	2006	2007
No. of disciplinary proceedings	6	19	16
Warning	1	11	5
Reprimand	2	1	1
Severe reprimand	2	1	2
Removal	1	0	2

Proceedings dismissed	1	8	6
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Source: COJ.

Interviewees praised the new disciplinary procedures, whose improvements include COJ proceedings that are more like those of a court, and elimination of the Minister of Justice’s former monopoly on commencing disciplinary proceedings. Others said that the Court of Cassation Chairman appears committed to holding judges accountable for disciplinary violations; however, it was also noted that the entire disciplinary process is vulnerable because one party, the Chairman of the Court of Cassation, exerts significant control. Although interviewees viewed the disciplinary process under the Judicial Code as a significant advance over the prior system, many voiced concerns about the new procedures.¹⁹ Interviewees criticized them as lacking transparency and being unfair and seemingly arbitrary. Reportedly, some judges were not disciplined for committing the same offenses as others who were disciplined. Some expressed suspicion that judges are punished only pursuant to an “order from above.” One interviewee argued that disciplining a judge for a mistake in carrying out his/her official duties limited judicial independence, and that it would be better to impose discipline for improper behavior rather than wrong decisions. Noting that judges are rarely disciplined, an interviewee suggested that the purpose of the procedures was more to provide a mechanism to influence judges than to punish them for violations. According to some interviewees, the normal disciplinary process is a last resort against recalcitrant judges, who are often asked to resign or request transfer to a lower court to avoid discipline. For example, a former Chairman of the Court of Cassation requested transfer to a court of appeal in 2007, reportedly in lieu of facing discipline for an unpopular decision, and a court of appeal judge became Chamber Chairman of the Court of Cassation in his place.

The COJ’s response to the ECHR’s judgment in *Harutyunyan v. Armenia*, holding that the use of evidence obtained by torture violated the applicant’s right to a fair trial, also raises serious questions about the fairness of the disciplinary process described above. Judge Lernik Atanyan of the Syunik Regional Court had justified the use of torture, saying that “in reality the coercion was applied by [the police officers] at the military police station for the purpose of ensuring disclosure of the truth.” *Id.* § 27. Both the Criminal Court of Appeal and the Court of Cassation referred to evidence obtained by torture and upheld Harutyunyan’s conviction. *Id.* § 56. Despite requests by Harutyunyan’s lawyer in all three courts to have the statements in question held inadmissible, none of them explicitly did so. *Id.* § 58. The ECHR therefore concluded that the Armenian courts used statements obtained by torture of Harutyunyan and two witnesses as part of the evidence on which his conviction was based. *Id.* § 59. After the ECHR’s judgment, the Minister of Justice asked the COJ to begin disciplinary proceedings against Judge Atanyan and the Criminal Court of Appeal judges who had affirmed the conviction, but not against the Court of Cassation judges. The COJ denied the petition as to the Criminal Court of Appeal judges and punished Atanyan with a severe reprimand and 25% salary reduction for one year. Harutyunyan’s lawyer concluded that this result “signifies that they want to single out the weakest and most vulnerable amongst them and punish him for a remark they basically all co-sponsored.” See Sara Petrosyan, *They Picked the “Weakest” Judge to Punish*, HETQ ONLINE, Aug. 6, 2007, available at http://archive.hetq.am/eng/court/0708-h_alumyan.html.

¹⁹ In a review of the publicly available information on the dozen or so requests for disciplinary sanctions that the COJ considered through mid-September of 2007, a journalist concluded, “no matter how hard you try to change the law, if its enforcers do not change, the situation will not change for the better.” Vahagn Hovakimyan, *Shouldn’t Be So Strict*, THE ARMENIAN TIMES, Sept. 13, 2007.

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>
Although cases are often assigned on a territorial or other random basis, court chairmen reportedly assign important cases with a view to securing the desired result.		

Analysis/Background:

The CCC has authority to approve rules for assignment of cases in the first instance courts and reassignment of cases in the event of recusal, leave, or illness of judges. JUDICIAL CODE art. 72(19). In June 2004, the CCC issued Decision No. 54, establishing rules for assignment of cases in first instance courts by the court chairmen. In civil cases, including bankruptcy cases, assignment is based on the territorial principle, by which a court’s territorial jurisdiction is randomly divided among the court’s judges annually, and each judge examines cases filed by plaintiffs within his/her territorial division. CCC DECISION NO. 54 paras. 4, 8 (*adopted* June 14, 2004, *as amended by* DECISION NO. 112 (Jan. 21, 2008)). Criminal and administrative cases are assigned to judges successively. *Id.* para. 1.

Many interviewees reported that, in practice, civil cases are often assigned on a territorial basis. In the courts of appeal, however, cases are assigned based primarily on the judges’ workloads and their expertise. Some interviewees voiced suspicion about the motives for nonrandom assignment of cases. For example, one asserted that more “profitable” cases are assigned to judges who will share the profits with their chairman. Another asserted that decisions on the assignment of cases of interest to the executive power are made “above” and carried out by the court chairmen, who assign such cases to judges popular with the executive or judges who otherwise know the desired outcome. The CAST software has a module for random assignment of cases, but it is seldom used. See Factor 28 below.

Chairmen of courts of general jurisdiction, civil courts, criminal courts, the Administrative Court, and courts of appeal have authority to reassign cases in the event of a judge’s leave or other temporary absence. JUDICIAL CODE arts. 25(8), 30, 34, 38, 49(2). They may also have to reassign a case if the judge to whom it was initially assigned recuses him/herself. A judge must withdraw from the examination of a case if he/she knows of facts or circumstances that may reasonably cast doubt on his/her impartiality. *Id.* art. 91(1). A judge may recuse him/herself both on his/her own initiative and following a motion by one of the parties, which ordinarily needs to be filed prior to the beginning of the trial (unless the party was not aware of grounds for recusal at that time). See CIV. PROC. CODE art. 21; CRIM. PROC. CODE arts. 88, 90. Grounds for recusal include prejudice against a party, a party’s representative or advocate, or other participants; having been a witness to disputed facts; having been a party or potential party to the case (or having a spouse or relative within the third degree of kinship with the judge or the judge’s spouse who is); having taken part in the examination of the case at a lower instance; or knowing that the judge, the judge’s spouse, or a relative within the third degree of kinship with the judge or the judge’s spouse has economic interests in the substance of the dispute or with any of the parties. JUDICIAL CODE art. 91(1); CRIM. PROC. CODE art. 90. According to interviewees, lawyers rarely request recusal of a judge, but when they do, such requests are routinely denied.

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.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
<p>The AJRA exists to protect and promote the interests of judges, but some interviewees criticized it for doing little to increase judicial independence or protect the rights of judges. Because it relies heavily on international donors for support, the organization's independence and sustainability are in doubt.</p>		

Analysis/Background:

The Constitution guarantees freedom of association, including the right to join trade unions, subject to such restrictions as may be prescribed by law for judges and members of the Constitutional Court. CONST. art. 28; see Factor 21 below regarding such restrictions.

The AJRA is an independent non-governmental organization established in April 1997. Its stated goals include supporting judicial reform and developing an independent and authoritative judiciary; improving the status of judges; promoting democracy, rule of law, and human rights; protecting the rights and interests of its members (including providing them with financial assistance upon necessity); securing compliance with judicial ethics; improving the knowledge and skills of judges and judicial candidates; and cooperating with foreign and international judiciaries and associations. See CHARTER OF THE ASSOCIATION OF JUDGES OF THE REPUBLIC OF ARMENIA art. 2(1) (*adopted* April 1997; *amended* April 2004) [hereinafter AJRA CHARTER]. To implement these goals, the AJRA may, among others, disseminate information about its activities in the media, organize conferences and seminars, represent the rights and interests of its members before courts and government bodies, and carry out other activities in accordance with its Charter. *Id.* art. 2(2). The AJRA is prohibited from interfering with the professional activities of judges. *Id.* art. 2(3).

Membership in the AJRA is voluntary and is open to all judges, members of the Constitutional Court, and retired judges. *Id.* art. 4. At least once per year, the AJRA convenes a General Meeting of all of its members, which, among others, elects its leadership, votes on proposed amendments to the Charter, and approves the Rules of Conduct. *Id.* arts. 6(1), 6(5). The AJRA's governing structure includes the Council, the President and Vice-Presidents, as well as the Audit Committee, all elected by the AJRA General Meeting to three-year terms. The 11-member AJRA Council is charged with submitting matters to the consideration of the General Meeting, admitting and terminating memberships, drafting the Rules of Conduct, and electing the Vice-Presidents, among other matters. *Id.* arts. 6(8), 6(13). The President leads the Council, convenes its sessions, and coordinates its work in addition to convening the General Meetings and organizing the AJRA's activities. *Id.* art. 6(11). The Auditing Committee has five members, who may not be the President, Vice-Presidents, or members of the AJRA Council. It controls all economic and financial activities of the AJRA and ensures compliance with the requirements of the Charter. *Id.* art. 6(16)-(17).

Although it is a voluntary association, the AJRA had 181 members in September 2007, comprising virtually all the judges and all members of the Constitutional Court. Membership dues are AMD 2,000 per month, payable annually (approximately USD 70 per year), which one interviewee characterized as "symbolic." As a result, the AJRA depends heavily on support from international donors, including the United Nations Development Program [hereinafter UNDP], United States Agency for International Development [hereinafter USAID], and ABA ROLI, to conduct its activities.



The AJRA has been active in supplying its members with legal literature. For example, it publishes *JUDICIAL POWER*, a monthly journal. In addition to articles about legal issues, *JUDICIAL POWER* includes texts of significant decisions of the CCC and judgments of the Court of Cassation. The AJRA also translates and publishes selected ECHR decisions and judgments. In the past, it published a compilation of awards and rulings of the Economic Court. The AJRA played an important role in revising the 2001 Rules of Judicial Conduct, which the AJRA and the CCC adopted in 2005 as the Code of Judicial Conduct. See Factor 21 below. In 2007, the AJRA and the CCC's Ethics Committee adopted and published an extensive commentary on the Code, with expertise and funding from ABA ROLI. The AJRA provides interpretations of the norms of the Code of Judicial Conduct, and is involved in projects to raise public awareness about the judiciary and promote judicial professionalism. In 2005, the AJRA became a member of the International Association of Judges and, at the time of writing of this JRI assessment, was in the process of preparing to host the latter's 2008 Annual Meeting, with expected participation of more than 350 judges from around the world, following which the AJRA were to disseminate materials and information about the meeting.

Interviewees expressed conflicting views about the AJRA. Some praised the organization, but a greater number criticized it for having become very passive and accomplishing little to increase judicial independence or protect the rights of judges. As recently as January 2006, however, the AJRA defended the judiciary in the media after criticism from the Collegium of the General Prosecutor's Office, apparently a result of growing numbers of acquittals and denials of pre-trial detention.

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>Even if some interviewees are correct that improper influence and corruption in the judiciary have become less pervasive, both unquestionably still persist. It remains to be seen whether the changes made by the constitutional amendments in 2005 and the 2007 Judicial Code will be effective in reducing such influence or corruption.</p>		

Analysis/Background:

“When administering justice, judges and members of the Constitutional Court shall be independent and shall only be subject to the Constitution and the law.” CONST. art. 97; *see also* JUDICIAL CODE art. 11(1); LCC arts. 1(2), 9(1). The Rules of Judicial Conduct admonish judges not to “allow vested interests, public dissatisfaction, or fear of being criticized” to influence them. JUDICIAL CODE art. 90(3)(3); *see also* Factor 21 below. Furthermore, if circumstances may reasonably cast doubt on a judge’s impartiality in a case, he/she must withdraw from the case. *Id.* art. 91(1).

Any attempt to influence a judge is punishable as a crime, and judges must inform the CCC’s Ethics Committee of any attempts to influence them. *Id.* art. 11(3)-(4). Thus, interfering with the activities of a court for the purpose of hindering the administration of justice is punishable by a fine of 200 to 400 times the minimum salary (AMD 3-6 million or approximately USD 8,824-17,647), detention for one to three months, or imprisonment for up to two years. CRIM. CODE art. 332(1). If the crime was committed by abuse of an official position, it is punishable by a fine of 300 to 500 times the minimum salary (AMD 4.5-7.5 million or approximately USD 13,235-22,059) or imprisonment for up to four years, with deprivation of the right to hold certain posts or practice certain activities for up to three years. *Id.* art. 332(3). Accepting a bribe as a judge is also a crime, punishable by a fine of 300 to 500 times the minimum salary (AMD 4.5-7.5 million or approximately USD 13,235-22,059) or imprisonment for up to five years, with deprivation of the right to hold certain posts or practice certain activities for up to three years. *Id.* art. 311(1). When a judge accepts a bribe for carrying out “obviously illegal actions,” imprisonment of three to seven years may be imposed. *Id.* art. 311(2). Furthermore, failing to report “any interference with his/her activities of administering justice or exercising other powers stipulated by law, or of other influence not prescribed by law” is a basis for disciplining a judge. JUDICIAL CODE art. 153(2)(6). Consequently, a judge who resists an attempt to influence him/her runs the risk of incurring the displeasure of the person seeking to influence him/her or, if the judge acquiesces, he/she is vulnerable to discipline for doing so any time within the following year.

According to the U.S. State Department, “despite structural changes initiated in 2006 that still continue and have resulted in a somewhat greater independence, courts remained subject to political pressure from the executive branch, and judicial corruption was a serious problem.” *See* STATE DEPARTMENT HUMAN RIGHTS REPORT. To put the issue of corruption into perspective, Armenia ranked 99th out of 179 countries in Transparency International’s 2007 Corruption Perceptions Index, with a score of 3.0 (on a scale from 0, highly corrupt, to 10, highly clean). TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2007, *available at* http://www.transparency.org/policy_research/surveys_indices/cpi/2007. Little, if any, progress has been made in fighting corruption. Indeed, almost two-thirds of the respondents surveyed in August 2006 believed that the level of corruption had either increased (30.5%) or significantly

increased (33.5%) since 2002. CENTER FOR REGIONAL DEVELOPMENT/TRANSPARENCY INTERNATIONAL ARMENIA, 2006 CORRUPTION PERCEPTION IN ARMENIA at 10 (2006) [hereinafter 2006 ARMENIA CORRUPTION PERCEPTION]. Armenia's rating for corruption in Freedom House's Nations in Transit reports has remained unchanged at 5.75 (on a scale of 1 to 7, with 1 representing the highest and 7 the lowest level of democratic progress) from 1999 through 2007. FREEDOM HOUSE, *Armenia, in* NATIONS IN TRANSIT 2007: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA at 74 (2007).

Although some judges denied that they had ever experienced an attempt to influence their decisions, many interviewees asserted that the judiciary is not independent. One interviewee related a judge's telling remark that judges are dependent on everything except the law. This lack of independence, one interviewee argued, would become worse when the Administrative Court is called upon to determine the legality of decisions of the President, since the President has the power to appoint and dismiss judges. Interviewees said that influence by the executive is common, particularly in cases against the state. While it may be becoming less common than in the past, "telephone justice" reportedly still exists, and because it was deeply rooted in the legal culture, it will be difficult to eradicate. Influence need not be overt, however. Sometimes judges know how to decide a case without being told, such as when the state has an interest in the outcome or when a business associated with government officials is involved. One interviewee even asserted that judicial salaries are kept intentionally low, to encourage judges to take bribes and thereby render them vulnerable to the threat of discipline and therefore subject to influence. Influence from regional governors is said to be a serious problem in the *marzes*. Although not immune from criticism, the Constitutional Court was thought to be more independent than other courts. See Factor 5 above.

When a judge is uncertain about how to decide a case, he/she may reportedly ask the court chairman or even an appellate court judge for advice, in order to avoid issuing a "wrong" decision. An example of the perils of making such a decision was the dismissal in October 2007 of Judge Pargev Ohanian, a Yerevan first instance court judge, allegedly for serious errors in some 20 cases. His dismissal came, however, after he had acquitted an owner and a senior executive of the Royal Armenia Company of criminal charges including tax evasion, fraud, and smuggling. Those charges had been filed after the two businessmen had accused senior customs officials of corruption. Although several interviewees pointed to the acquittals as evidence of increasing judicial independence, the consequences suffered by Judge Ohanian may well deter other judges from acting independently. In November 2007, the Criminal Court of Appeal reversed the businessmen's acquittals and convicted both of them.

Attempts to influence judges are not limited to other branches of state power. Armenia, it is frequently said, is a small country, where many people know, or are even related to, each other. Influence can reportedly take the form of a telephone call, simply asking the judge for a favor. According to interviewees, bribery is widespread in civil cases and less common in criminal cases, where bribes are not paid for acquittals, but for reduced sentences.²⁰ Interviewees also reported corruption in the enforcement of judgments, one calling the DCEJA one of the most corrupt state agencies. Some interviewees asserted that it is rare for a judge to ask for a bribe. Very often people are not forced to pay a bribe, but do so because they believe that this is how the system works. Another interviewee reported that commonly a payment is made after the fact as a "thank you" to a judge for making a right decision. There is also said to be a utilitarian aspect to corruption: people do not want an independent judiciary because they prefer to be able to influence results in a given case by paying a bribe. As another interviewee explained, people would rather pay bribes than give judges adequate salaries.

²⁰ In fact, acquittals in criminal cases resolved by the Armenian courts are practically nonexistent. According to statistics provided by the Judicial Department, first instance courts issued acquittal verdicts in only six cases each year in both 2004 and 2005, three cases in 2006, and four cases in 2007. Courts of appeal issued two additional acquittals in 2005, eight acquittals in 2006, and two acquittals in 2007. No acquittal verdicts were issued by the Court of Cassation since 2004.

All interviewees agreed that corruption exists in the judiciary, and most believed that it is widespread. This is consistent with the results of a 2006 corruption perception survey. Asked about the level of corruption in state institutions, the following percentages of Armenians responded that different courts were either corrupt or very corrupt: Constitutional Court – 51.9%; Economic Court – 59.5%; Court of Cassation – 64.2%; courts of appeal – 66.4%; and first instance courts – 69.4%. See 2006 ARMENIA CORRUPTION PERCEPTION at 13. In part, such perceptions result from newspapers publishing photographs of judges’ lavish houses and expensive cars. Interviewees also pointed to other indirect evidence of bribery, such as judges intentionally delaying trials in the hope of receiving a bribe or issuing judgments devoid of logic. Yet, despite these perceptions, the assessment team was unable to obtain any official information regarding the scope of prosecutions or disciplinary proceedings against judges accused of corruption or persons accused of improperly influencing or attempting to influence judges.

In an attempt to curb corruption in the judiciary, the Rules of Judicial Conduct prohibit judges from accepting or agreeing to accept gifts, except for specified gifts unlikely to influence them. JUDICIAL CODE art. 95(1)-(2). In addition, judges must report to the CCC’s Ethics Committee accepting of permitted gifts in any calendar year totaling more than AMD 1 million (approximately USD 2,941), or AMD 250,000 (approximately USD 735) from any one person. *Id.* art 95(3). Judges and their relatives must also file annual declarations of their income and assets, with copies sent to the Ethics Committee. *Id.* art. 96. These declarations are kept in the judges’ personnel files. *Id.* art. 78(8). Furthermore, in 2004, the CCC adopted an Anti-Corruption Action Plan for the Judicial System for 2004-05. ARMENIA JRI 2004 at 37-38. Its only accomplishment, according to one interviewee, was the passage of several pieces of legislation; anti-corruption is a slogan, but very little has been done.

There was no consensus among interviewees about whether the problems of influence and corruption have gotten better or worse in the recent years. The solution to the problem of influence and corruption, several interviewees contended, would require strong political will. One interviewee pointedly said that ending corruption would require political will at the highest level. Because some lawyers are reported to act as intermediaries in the payment of bribes, any solution to the problem of corruption would also need to address their role.

Factor 21: Code of Ethics

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

Conclusion	Correlation: Neutral	Trend: ↑
<p>The Judicial Code includes a chapter on Rules of Judicial Conduct, and the AJRA and the CCC have adopted a Code of Judicial Conduct. These, together with other legal norms, address major issues such as conflicts of interest, <i>ex parte</i> communications, and political activity by judges. It is unclear, however, to what extent these ethical rules actually affect the conduct of judges.</p>		

Analysis/Background:

The Rules of Judicial Conduct included in Chapter 12 of the Judicial Code (arts. 87-96) apply to all judges, and many of them also apply to individuals included in the List of Judicial Candidates. JUDICIAL CODE art. 87(2)-(3); see also Factor 2 above. For example, students can be dismissed from the Judicial School for a violation that would be a basis for dismissal of a judge. *Id.* art. 185(1)(3). The overall goal of the Rules of Judicial Conduct is to ensure the impartiality and independence of the courts and to contribute to respect for and confidence in them. *Id.* art. 88(1).



To that end, judges must act impartially and not allow family, social, or other relationships to influence them. *Id.* arts. 89(3), 90(3)(6). If circumstances exist that may reasonably raise doubts about a judge’s impartiality in a case, the judge must recuse him/herself. *Id.* 91(1). The Rules of Judicial Conduct also prohibit *ex parte* communications. *Id.* art. 90(6). In addition, judges may not accept or agree to accept gifts, except for specified gifts that would be unlikely to influence them. *Id.* art. 95(1)-(3); see also Factor 20 above for additional details. Some of the Rules of Judicial Conduct are vague and subjective, such as the requirement that, when examining and deciding cases, judges should “ensure a proper level of professionalism.” *Id.* art. 90(3)(2). Another example is the requirement to “manage the court’s funds efficiently, avoiding unnecessary costs.” *Id.* art. 90(3)(9). Although the Rules of Judicial Conduct do not directly address political activity, both the Constitution and the Judicial Code prohibit judges from belonging to a political party or engaging in any political activity. Other prohibited activities include engaging in entrepreneurial activity or any paid occupation, except for scientific, pedagogical, or creative work; and holding office in any state or local self-government body or in any commercial organization not connected with their duties. CONST. art. 98; JUDICIAL CODE arts. 10(1)-(2), 12.

Other ethical norms are included in the amended Code of Judicial Conduct, which was adopted by the AJRA and the CCC in 2005 and is based largely on the Bangalore Principles of Judicial Conduct. See generally AJRA, CODE OF JUDICIAL CONDUCT OF THE REPUBLIC OF ARMENIA (2006). The Code of Judicial Conduct is believed to be binding on judges, presumably because it was adopted by the CCC. Many of the rules in the Code of Judicial Conduct are brief and provide little guidance to judges about what is expected of them. To address this concern, the AJRA and the CCC Ethics Committee prepared an extensive commentary on the Code with funding from ABA ROLI. See generally CCC ETHICS COMMITTEE & AJRA, COMMENTARIES TO THE CODE OF JUDICIAL CONDUCT OF THE REPUBLIC OF ARMENIA (2007) [hereinafter CODE WITH COMMENTARY]. Before drafting the commentary, a working group consisting of six judges met with European judges in Prague in late 2006 to discuss enforcement of the Code of Judicial Conduct. ABA ROLI and the Academy for Educational Development sponsored this study tour, with funding from USAID. The commentary discusses the rationale for the various rules, explains them in detail, and provides examples of conduct that violates them. Among other things, the Code of Judicial Conduct prohibits *ex parte* communications (see Rule 11) and requires a judge to recuse him/herself when it would appear to a reasonable observer that the judge is unable to decide a matter impartially (see Rule 15). Although the Code does not explicitly prohibit political activity by judges, the commentary does. CODE WITH COMMENTARY at 48.

Regular violations or a grave violation of the Rules of Judicial Conduct, as well as engagement in prohibited activities enumerated in the Constitution and the Judicial Code, constitute grounds for disciplining a judge. As part of its duties, the CCC Ethics Committee considers alleged violations of the Rules of Judicial Conduct and, upon finding a violation, must file a motion requesting the COJ’s Disciplinary Committee to initiate disciplinary proceedings. See JUDICIAL CODE art. 154; see also Factor 17 above for additional details. .

In 2007, the Judicial School started offering training to judges on the Code of Judicial Conduct and on the Rules of Judicial Conduct. All judges have been provided with copies of the Code with Commentary. The AJRA offered additional trainings on the Code of Judicial Conduct at the end of 2007. Reportedly, all judges in Armenia participated in these trainings. Interviewees were, however, generally skeptical about whether judges were familiar with applicable ethical rules or complied with them, except for unimportant rules, one interviewee suggested, like wearing a robe. *Ex parte* communications are believed to be common. In October 2006, ABA ROLI presented a seminar to 116 judges on the differences between *ex parte* communications and permitted communications. One interviewee scoffed at the notion that a seminar could change judges’ behavior, asserting, “All of it is fiction.” No incidents of inappropriate political activity were reported, but interviewees recounted instances of conduct that, if not clearly unethical, was at least unprofessional.

Few ethical rules apply to members of the Constitutional Court. For example, neither the Rules of Judicial Conduct nor the Code of Judicial Conduct are applicable. See JUDICIAL CODE art. 2. The Constitution and the LCC do, however, prohibit members of the Constitutional Court from engaging in entrepreneurial activity or any paid occupation, except for scientific, pedagogical, or creative work; holding office in any state or local self-government body or in any commercial organization not connected with their duties; or belonging to any political party, or engaging in any political activity. CONST. art. 98; LCC art. 3(3)-(4).

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: ↔
Provisions in the Judicial Code resolve some of the uncertainty that had surrounded procedures for filing complaints of judicial misconduct. It is too soon to assess how effective those procedures will be.		

Analysis/Background:

Before enactment of the Judicial Code in 2007, there was no formal procedure for filing and investigating complaints against judges. See ARMENIA JRI 2004 at 40. Although the situation has improved, the Judicial Code still does not provide clear guidance for those outside the judiciary who wish to file a complaint. It states who may file complaints – individuals and state or local self-government bodies or officials – but not where they should file them. JUDICIAL CODE art. 155(5)(2)-(3). For such complaints to be effective, they should presumably be filed with those having the right to initiate disciplinary proceedings: the COJ Disciplinary Committee (or perhaps the CCC Ethics Committee, in the case of judges, Chamber Chairmen, or the Chairman of the Court of Cassation); the Minister of Justice, in the case of all judges except Court of Cassation judges; and the Chairman of the Court of Cassation, in the case of judges and Chamber Chairmen of that Court. *Id.* art. 155(1)-(3).

Procedures for filing complaints within the judiciary are more certain. Chairmen of courts of general jurisdiction, specialized courts, and courts of appeal must notify the CCC’s Ethics Committee of failures to comply with case examination deadlines and violations of the Code of Judicial Conduct by their judges. *Id.* arts. 25(3)-(4), 30, 34, 38, 49(2). When the Chairman of the Court of Cassation becomes aware of violations of the Code of Judicial Conduct, he must report them to the CCC Ethics Committee or the COJ’s Disciplinary Committee. *Id.* art. 73(6). It is unclear whether such reporting is limited to violations by judges of the Court of Cassation.

After receiving a report of a violation of rules concerning work discipline or ethics, or otherwise becoming aware of such a violation, the Ethics Committee must meet with the judge in question to discuss the matter. If the violations are neither grave nor regular, the Ethics Committee will drop the matter. *Id.* art. 154(1). Otherwise, the Ethics Committee must request that the Disciplinary Committee begin a disciplinary proceeding. *Id.* Similarly, if information in a judge’s report of gifts received or his/her financial disclosure declaration is “incomplete or doubtful,” the Ethics Committee may meet with the judge and then either drop the matter or request that the Disciplinary Committee begin a disciplinary proceeding. *Id.* art. 154(2).

Several interviewees were confident that most people know that they have the right to file a complaint and know where to do so, with, as one explained, “cc’s to everyone.” Many complaints are filed with the Minister of Justice, the Human Rights Defender, and some directly with the



Chairman of the Court of Cassation, because he is the ex officio Chairman of the COJ. Although many complaints are reportedly groundless, those that do have merit usually relate to unprofessional conduct by judges at trial, such as shouting, talking on their mobile phones, or reading newspapers.

In 2006 and 2007, the COJ received 188 complaints against judges from citizens, NGOs, and advocates. The COJ considered these complaints and provided a written response. As reported in Factor 17 above, there were 19 disciplinary proceedings against judges in 2006, and 16 disciplinary proceedings in 2007. It is not clear whether these proceedings resulted from public complaints. Interviewees mentioned three factors limiting the number of complaints filed: a reticence by many Armenians to make formal complaints; a disdain for whistleblowers carried over from the Soviet era; and a lack of faith in the system.

There are no legal provisions on filing complaints against members of the Constitutional Court.

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.		

Analysis/Background:

Court proceedings are generally open to the public and the media; however, they can be closed for all or part of a trial “in the interests of morals, public order, national security, protection of the private life of the participants, or if the administration of justice so require[s].” CONST. art. 19; see also JUDICIAL CODE art. 20(1)-(2); CIV. PROC. CODE art. 8(1)-(2); CRIM. PROC. CODE art. 16(1)-(2); ADMIN. PROC. CODE arts. 13(1), 13(3); LCC arts. 22(1), 22(3). Judgments must be announced publicly, except that adoption decisions may be made public only with the adopting party’s consent. JUDICIAL CODE art. 20(3); CIV. PROC. CODE art. 8(5); CRIM. PROC. CODE art. 16(5); ADMIN. PROC. CODE art. 13(3). Decisions and resolutions of the Constitutional Court must also be announced publicly. LCC art. 63(4). Members of the public and media are allowed to make audio recordings of court proceedings, if they obtain the judge’s permission. CIV. PROC. CODE art. 114(3).

In practice, court proceedings are generally open. Although journalists usually have few problems with access, ordinary citizens are reportedly sometimes deterred from attending a trial because they do not know their rights. For example, police may intimidate citizens with their questions, without formally preventing them from attending a trial. Sometimes judges avoid media coverage of political or other high-profile cases by providing reporters with incorrect information about the date for a trial. In addition, although an instruction by the Head of the Judicial Department required judges to post their dockets in a public place, sometimes they post them inside their offices, which makes it more difficult for the public or media to consult.

Thanks to the courthouse renovations and constructions completed as part of the World Bank’s Judicial Reform Project, there are a number of large courtrooms in Yerevan that can accommodate high-profile trials. For example, the courthouse of the Court of General Jurisdiction in Shengavit Community has a courtroom divided by a glass partition to separate participants from observers for reasons of security. Occasionally, trials are held in judges’ offices, which limits public and media attendance; however, such instances are becoming increasingly less common.

Relations between the judiciary and the media are reported to be often unsatisfactory. The only two public affairs officers in the judiciary are the spokespersons for the Chairman of the Court of Cassation and for the Judicial Department. Between February and July 2006, the Civil Court of Appeal had a public affairs officer who was responsible for making the activities of the Court more transparent. The experiment proved short-lived, reportedly because of opposition from judges of the Court and from the President of Armenia, whose office complained that the public affairs officer worked for an opposition newspaper. Furthermore, judges are rarely willing to give interviews or hold press conferences. Interviewees asserted that there is a general need to increase the quality of reporting on the courts. To address this need, the Judicial Department began a program to improve relations between courts and the media in late 2007 and conducted a workshop in Tsaghkadzor for this purpose. A common complaint regarding media coverage is that many journalists are irresponsible and report on cases from a politically biased standpoint, sometimes going to excessive lengths in their criticism of the courts. More fundamentally, media coverage of trials may simply be factually inaccurate, according to interviewees.

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>Court of Cassation judgments are published and some can be found on the judiciary's official website, although most admissibility decisions are unpublished. Constitutional Court decisions are also published. Judgments of other courts are not yet published and have been difficult for non-parties to obtain.</p>		

Analysis/Background:

Judgments must be announced publicly, except in adoption cases. JUDICIAL CODE art. 20(3); CIV. PROC. CODE art. 8(5); CRIM. PROC. CODE art. 16(5); ADMIN. PROC. CODE art. 13(3). A first instance court judgment in a civil case and a Civil Court of Appeal judgment must be sent to the participants within three days after it was issued. CIV. PROC. CODE arts. 139, 145, 220. A first instance court judgment in a criminal case must be delivered to the defendant, his/her advocate, the prosecutor, and other participants in the case who request a copy within five days after announcement; a Criminal Court of Appeal judgment must be delivered within three days after announcement; and a Court of Cassation judgment must be delivered within a reasonable time.²¹ CRIM. PROC. CODE arts. 375, 402, 423. In practice, these deadlines are not always met, according to interviewees. In the past, non-parties were frequently denied copies of judgments. The Judicial Code may change this practice, because it provides that, except for *in camera* portions of adoption proceedings, the public has the right to examine case files after entry of judgment. JUDICIAL CODE art. 20(4); see Factor 25 for additional details. Decisions and opinions of the Constitutional Court must also be announced publicly, and, within three days after their adoption, they must be sent to the parties and certain government officials. LCC arts. 63(4), 65(1).

Court decisions had been posted online, at <http://www.judicialsystem.am>, between 2002 and 2005, but this project was discontinued when funding from ABA ROLI and UNDP ran out. Currently, most judgments are unpublished. The judiciary has its own official website, <http://www.court.am>, administered by the Judicial Department, with its content determined by the CCC. JUDICIAL CODE art. 67. Among other things, the website includes judgments of the Court of

²¹ There are no fees associated with obtaining the first copy of a judicial decision.

Cassation, which are also published in the OFFICIAL BULLETIN OF GOVERNMENTAL AGENCY NORMATIVE ACTS. JUDICIAL CODE arts. 51(2), 68(1). Interviewees complained, however, about the limited availability of Court of Cassation admissibility decisions. See Factor 8 above. One even asserted that the parties themselves rarely receive such decisions. The Constitutional Court's decisions and resolutions are published in both the OFFICIAL BULLETIN and the CONSTITUTIONAL COURT BULLETIN. LCC art. 65(2). Although the CCC is required to develop procedures for posting judgments of lower courts on the official website (see JUDICIAL CODE art. 68(2)), it had not done so as of the date of this report. Decisions of courts of general jurisdiction, specialized courts, and courts of appeal are not posted on the official website, but may be in the future, if funding becomes available. As an interviewee pointed out, publishing first instance judgments on the judiciary's official website could serve as a powerful anti-corruption tool, by exposing such judgments to public scrutiny.

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>Court secretaries do not prepare verbatim transcripts of court proceedings, but written summaries usually referred to as protocols, which the parties may review. Digital audio recording equipment has been introduced in some courts, making it possible for parties to purchase inexpensive CD copies of trial reports. Initial experience with the system has been favorable, and additional courtrooms will be provided with the equipment.</p>		

Analysis/Background:

In the past, handwritten paper-based summaries of all civil and criminal court sessions in courts of general jurisdiction and the Criminal Court of Appeal were the norm. See ARMENIA JRI 2004 at 42. Such summaries, which are referred to as protocols, are included in the case file. They contain information regarding oral statements and motions of parties, summaries of testimony of witnesses and expert witnesses, other information presented to the court, and rulings of the court. CIV. PROC. CODE art. 147; CRIM. PROC. CODE art. 315(3). Protocols must be prepared during the session in which the court hears the case. CIV. PROC. CODE art. 146. Following written request, participants at a hearing are entitled to a copy of the protocol, which must be provided to them not later than the following day. *Id.* art. 148(3); CRIM. PROC. CODE art. 315(10). They are also entitled to file objections regarding the accuracy and completeness of a protocol (see CIV. PROC. CODE art. 149), although filing such objections is not a common practice. The World Bank was reportedly considering financial assistance to enable court personnel to scan protocols in archived cases to create a digital database.

One interviewee reported an incident in which the protocol incorrectly stated that certain evidence had not been presented to the court, an error he believed was intentional. Whether that incident was unique or represents a more widespread problem is unclear; however, an ECHR judgment suggests that such incidents may not be uncommon. In *Galstyan v. Armenia*, the ECHR reported that applicant alleged, and the government of Armenia did not dispute, that the record of a court hearing in 2003 “was a fake and was drafted at some point after the hearing in order to create an appearance of lawfulness. In reality there was no clerk and the hearing was not recorded.” See § 21.

In 2005, the World Bank Judicial Reform Project installed SRS Femida digital court reporting equipment in 60 courtrooms, and in an additional 52 courtrooms in 2007. The equipment

produces a trial report consisting of an audio recording of the events of a trial, together with an event log containing the name of the event, the time it began, the participants, and short notes. The event log makes it possible to locate individual events. The trial report also identifies the presiding judge or judges and the serial number of the CD on which the report is recorded. The equipment allows up to four microphones to be used, with each recorded on a separate channel for improved intelligibility. Any party may obtain a copy of the court's CD for AMD 1,000 (approximately USD 3). Both the Civil Procedure Code and Criminal Procedure Code have been amended to allow such reports to be the official records of trials and, in fact, require audio recording (together with a summary typed into a computer), if such equipment has been installed. CIV. PROC. CODE art. 146(2); CRIM. PROC. CODE art. 315(2). The provisions of the Civil Procedure Code apply to trial records in administrative proceedings. ADMIN. PROC. CODE art. 117. All relevant court personnel have reportedly been trained on the usage of the new system.

According to interviewees, verbatim audio recording of trials has resulted in a number of positive changes. Parties and judges are said to be more polite, and lawyers more careful in preparing their speeches, since they can no longer claim that the protocol omits important arguments. On the other hand, some interviewees reported that judges have sometimes had the recording equipment paused when they wanted to say something off the record. If this is true, however, it should be possible to demonstrate that the equipment was stopped, because the event log would reveal the pause. Overall, the new system is said to have increased the efficiency of court proceedings.

A more general issue concerns access to the entire case file. Parties have the right to review it and make copies. CIV. PROC. CODE art. 55(1); CRIM. PROC. CODE arts. 59, 61, 63, 65; ADMIN. PROC. CODE art. 117(1). In the past, access to case files by third parties has been unclear. The Judicial Code should help to dispel this uncertainty. It provides that, after a final judgment, the public has the right to examine the case file, except in adoption cases, when the *in camera* portion of the proceedings is available only with court approval. JUDICIAL CODE art. 20(4). In practice, this right is exercised by writing a letter to the court to obtain permission to examine the case file.

While some interviewees contended that anyone can review a case file, others disagreed, saying that only parties are allowed to do so. In any event, it is reportedly possible to obtain court documents through the Freedom of Information Law. See *generally* LAW OF THE REPUBLIC OF ARMENIA ON FREEDOM OF INFORMATION (*adopted* Sept. 23, 2003). The court must either provide the requested documents within five days after receiving a written request or advise the requesting party that additional time, up to a total of 30 days, will be required to provide the documents.²² *Id.* art. 9(7)(1)-(3). According to an interviewee, it is usually possible to obtain the requested documents, although persistence may sometimes be necessary.

Handwritten minutes of Constitutional Court proceedings are prepared and signed by the presiding member and the court secretary. LCC art. 58(1)-(2). The parties may review them and submit comments. *Id.* art. 58(3). According to an interviewee, however, the Court denied a party access to the protocol on at least one occasion.

²² There is a nominal fee associated with obtaining copies of case files (see LAW ON STATE FEES art. 9 (*adopted* Dec. 27, 1997)); in practice, however, court staff reportedly often make copies for advocates at no charge.

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>Judges generally have adequate support staff to enable them to perform their jobs effectively, although some have suggested that all judges should have a second assistant. Some court personnel are reported to have sufficient skills already, and the courses offered by the Judicial School should help to improve the skills of all personnel.</p>		

Analysis/Background:

Court personnel, referred to as judicial servants, are employees of the Judicial Department and report to the court's chief of staff. The CCC has authority to approve the organization, number of positions, and job descriptions for court personnel. JUDICIAL CODE art. 72(9)-(10); *see also* LAW OF THE REPUBLIC OF ARMENIA ON JUDICIAL SERVICE art. 11 (*adopted* July 7, 2006) [hereinafter LAW ON JUDICIAL SERVICE]. Chairmen of courts have authority to supervise the activities of personnel in their courts. JUDICIAL CODE arts. 25(8), 30, 34, 38, 49(2), 61(2), 61(5). Each judge in a court of general jurisdiction or court of appeal has one assistant and one secretary, and each Court of Cassation judge (including the Chairman and Chamber Chairmen) has two assistants. *Id.* art. 79(1)-(2).

Judicial servants have the following ranks (with a further subdivision into first category and second category for each rank): junior judicial servant; leading judicial servant; chief judicial servant; and higher judicial servant. The Law on Judicial Service sets forth the minimum qualification requirements for different ranks of judicial servants, which serve as a basis for specific requirements for each position that are determined by the CCC. *See* art. 10(1)-(3). At a minimum, leading, chief, and higher judicial servants must typically have a law degree (or other professional degree, if the nature of their work is not law-related), while junior judicial servants must have at least secondary education. *Id.* art. 10(4)-(6). In addition, they must have a prescribed number of years of experience in general civil service, judicial service, or other professional work experience, or have recently held a political or discretionary appointment. *Id.* All court personnel are required to participate in training every three years. CCC DECISION No. 6-N para. 5 (*adopted* Aug. 25, 2006); *see also* LAW ON JUDICIAL SERVICE arts. 27(1), 27(4). The Judicial School is responsible for training judicial servants. JUDICIAL CODE art. 175(4).

According to the Judicial Department, as of January 1, 2008, there were a total of 1,019 judicial servant positions in Armenian courts, for an average judicial servant to judge ratio of approximately 5.7:1. Interviewees agreed that court personnel were generally well qualified. Many judges' assistants are law graduates. Some interviewees thought that more support staff could improve judges' efficiency. One suggested, for example, that each judge should have two assistants and one secretary.

According to interviewees, salaries for court personnel are said to be inadequate and should be increased; however, it is generally not perceived that inadequate salaries lead to corruption among court personnel. The following table provides information on the salaries of judicial servants in the various levels of courts, as of January 2008.

MONTHLY SALARIES OF JUDICIAL SERVANTS²³

Judicial Servants' Rank	Monthly Salary, in AMD	Monthly Salary, in USD
Higher, First Category	175,200	515
Higher, Second Category	151,200	445
Chief, First Category	130,400	384
Chief, Second Category	112,400	331
Leading, First Category	83,600	246
Leading, Second Category	72,400	213
Junior, First Category	53,600	158
Junior, Second Category	46,400	136

Source: MOJ.

The Judicial Code created the Service of Judicial Bailiffs²⁴ within the Judicial Department, generally with a separate unit for each court. JUDICIAL CODE arts. 196, 200(1). The CCC determines the organization of separate units and the number of positions within the Service of Judicial Bailiffs. *Id.* arts. 200(2)-(3), 72(20)-(21). Bailiffs are responsible for maintaining the security of courthouses, protecting judges and others within the courts, and maintaining order during court proceedings. *Id.* art. 198(1).

The president of the Constitutional Court has authority to approve the list of personnel of the Court and to supervise court staff. LCC art. 17(7). The Court's structure includes multiple departments to provide support to the Court members, such as legal and advisory department, expert and analytical division, accounting and financial department, registration department, separate divisions for receipt and for analysis of individual complaints, division of international treaties, protocol department, division of international relations, general division, information and computer services division, group of typing and technical services, publishing group, and a library. Each member of the Constitutional Court has one assistant, and there are also two staff advisors to support all members of the Court. There are reportedly a total of 44 judicial servants on the Constitutional Court, for a ratio of approximately 4.9 staff per Court member.

Factor 27: Judicial Positions

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

Conclusion	Correlation: Neutral	Trend: ↔
Because the number of judicial positions is established by law, the number can be only changed by amending the law. No recognized, objective criteria exist, however, for determining how many judges are needed in a given court. Clearance ratios for the courts suggest the need for additional judges, but there was no agreement among interviewees about whether additional judges were, in fact, necessary.		

²³ Salaries of judicial servants are calculated taking into account the base pay rate for civil servants, which in 2008 fiscal year was set at AMD 40,000 (approximately USD 117). See LAW ON JUDICIAL SERVICE art. 33; LAW ON STATE BUDGET FOR 2008 art. 9. This base rate is differentiated for different ranks of judicial servants, as well as an individual judicial servant's length of general professional and judicial service experience.

²⁴ A new Armenian word, *kargadrichner*, was coined for the service.

Analysis/Background:

The number of judicial positions in Armenia is established by law: the Law on the Judicial System specified the number of authorized positions before January 1, 2008; and the Judicial Code specified the number effective January 1, 2008. There are currently 216 authorized judicial positions (including court chairmen) in Armenia, comprised of 118 positions in courts of general jurisdiction, 30 in civil courts, 13 in criminal courts, 16 each in the Administrative Court, the Civil Court of Appeal, and the Criminal Court of Appeal, and 7 in the Court of Cassation. JUDICIAL CODE arts. 24(1)-(2), 29(1), 33(1), 37(1), 41(2)-(3), 52(1). As of the date of this JRI, all judicial positions were filled, except for one vacancy in the Court of Cassation.²⁵ In 2007, as well as on January 1, 2008, all nine positions on the Constitutional Court were filled.

Efficiency of the judicial system is, to a large extent, predetermined by the number of sitting judges. One way to measure the adequacy of the number of judges is to calculate the average number of cases assigned annually to each judge. See ARMENIA JRI 2004 at 45. The following table updates the corresponding table in the Armenia JRI 2004.

COURT CASELOADS²⁶

Court		2004	2005	2006	2007
First Instance Courts	Total cases filed	106,354	108,113	42,639	39,346
	Cases per judge	967	983	361	333
Economic Court	Total cases filed	8,353	9,468	3,780	4,399
	Cases per judge	398	451	172	200
Courts of Appeal	Total cases filed	4,597	4,665	5,227	5,323
	Cases per judge	177	179	201	205
Court of Cassation	Total cases filed	2,858	3,251	2,157	2,139
	Cases per judge	220	250	166	165

Source: Judicial Department.

In both the first instance courts and the Economic Court, there was a sharp rise in the number of cases filed per judge in 2004 and 2005, followed by a precipitous drop back to levels approaching those in 2001. Although the situation reportedly varies from court to court, the number of sitting judges appears to be generally adequate by this measure.

The clearance ratio, which is the number of cases resolved as a percentage of the number of cases filed during the same period, is another measure of the adequacy of the number of judges, as well as of their efficiency. A clearance ratio of less than 100% means that the judges of a court are falling behind in their work. The clearance ratios in the following table demonstrate a chronic inability of judges to resolve cases at a rate equal to or greater than the rate at which new cases are filed, inevitably resulting in growing backlogs. Nevertheless, while some judges reported having a heavy caseload, other interviewees thought that the number of judges was generally adequate. This lack of consensus about the need for additional judges may reflect that the growing backlog has not reached the point where it is perceived as a problem, despite what the statistics seem to suggest. A more fundamental issue, one interviewee pointed out, is the lack of objective criteria for determining how many judges are necessary in a given court.

²⁵ According to the Judicial Department, in 2007, prior to the reorganization of courts that took effect on January 1, 2008, there were 179 authorized judicial positions (including court chairmen), comprised of 118 positions in first instance courts, 22 in the Economic Court, 26 in courts of appeal, and 13 in the Court of Cassation.

²⁶ In the following table, cases per judge ratios for 2004 and 2005 are based on the number of judicial positions as of December 2004, while ratios for 2006 and 2007 are based on the number of judicial positions as of December 2007.

CASE CLEARANCE RATIOS FOR COURTS

Court		2004	2005	2006	2007 ²⁷
First Instance Courts – Criminal cases	Filed	4,651	4,095	3,421	N/A
	Resolved	4,104	3,520	3,396	2,810
	Clearance ratio, %	88	86	99	N/A
First Instance Courts – Civil cases	Filed	101,703	104,018	39,218	N/A
	Resolved	96,104	101,699	43,611	33,790
	Clearance ratio, %	94	98	111	N/A
Economic Court	Filed	8,353	9,468	3,780	4,399
	Resolved	5,259	6,812	3,762	3,643
	Clearance ratio, %	63	72	99.5	83
Courts of Appeal – Criminal cases	Filed	820	729	653	667
	Resolved	N/A	672	663	619
	Clearance ratio, %	N/A	92	102	93
Courts of Appeal – Civil cases	Filed	3,777	3,936	4,574	4,656
	Resolved	3,053	3,283	3,549	3,554
	Clearance ratio, %	81	83	78	76
Court of Cassation – Criminal cases	Filed	437	389	352	213
	Resolved	430	342	328	92
	Clearance ratio, %	98	88	93	43
Court of Cassation – Civil cases	Filed	2,421	2,826	1,805	1,926
	Resolved	2,055	2,514	1,623	407
	Clearance ratio, %	85	89	90	21

Source: Judicial Department.

Although these clearance ratios suggest the need for additional judges to keep pace with new case filings, other developments may reduce the need for additional judges. The first is the reorganization of the judiciary effective January 1, 2008, with new specialized first instance courts, including the Administrative Court. The second development is the limitation of the Court of Cassation's jurisdiction to review lower court judgments, which has the effect of reducing the Court's caseload. The third development is the potential for increased efficiency as judges and their assistants are provided with computers (see Factor 29 below), and as the CAST case management system is installed throughout the courts.

If an insufficient number of judges in a court or in a chamber of the Court of Cassation prevents examination of a case, the Chairman of the Court of Cassation may temporarily assign a judge from the same instance court, the other chamber of the Court of Cassation, or a reserve judge.²⁸ JUDICIAL CODE arts. 14(3)-(4), 14(7). Similarly, if the volume of cases in a court is too small for the number of judges in a court, the Chairman of the Court of Cassation may temporarily assign a judge to another court. *Id.* art. 14(5). No temporary assignment may exceed six months, and at least one year must elapse before a judge can be temporarily assigned again. *Id.* art. 14(3)-(5). Judges must consent to being temporarily assigned to another court. Such temporary assignments are uncommon, but have occurred in a number of first instance courts with heavier caseloads.

²⁷ The assessment team did not receive disaggregated information on the number of criminal and civil cases filed with first instance courts in 2007. However, according to the Judicial Department, a total of 39,346 cases were filed with these courts in 2007, and 36,600 of those cases were resolved, resulting in a clearance ratio of 93%.

²⁸ Reserve judges, whose court or whose chamber in the Court of Cassation was eliminated, continue to receive salary and bonuses and may be included in the Official Promotion List until the age of retirement. JUDICIAL CODE art. 14(7).

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: ↔
<p>The existing manual case filing and tracking system is being replaced by a comprehensive automated system that includes modules for case management, financial management, and human resources management. When fully implemented, the system is expected to significantly increase the judicial system's efficiency.</p>		

Analysis/Background:

The CCC has authority to approve case management rules for the courts. JUDICIAL CODE art. 72(5). In 2004, almost all first instance courts used a manual case management system prescribed by CCC Decision No. 37 of 2000, approving the Directive on Case Management in the Courts of First Instance of the Republic of Armenia. ARMENIA JRI 2004 at 45. Under the manual system, new cases are registered on statistical record cards and on alphabetical record cards with the parties' names. Each case is assigned a number in accordance with a model indexing system. When a higher instance court reverses a judgment, the remanded case is assigned a new number. After documents are filed, they are registered and sent to the court's chairman and then to the judge examining the case. *Id.* As of January, 2008, similar directives had not been adopted for other courts.

This manual case filing and tracking system is being replaced with an automated system. When the JRI interviews were conducted in September 2007, the World Bank Judicial Reform Project was pilot testing the CAST system in seven courts, with installation in all the courts anticipated by January 2008. Each court will have its own server, which will be connected to a central server in the Court of Cassation. Case file documents and other information for each court will therefore be accessible in that court by appropriate personnel and on the central server by the Judicial Department. When notification of an appeal is received, the central server will transfer access to the electronic case file to the higher instance court. Case management functions include processing a case from initial filing through appeal and archiving, attaching scanned documents to the case file, and notifying parties by regular mail of scheduled hearings. Court chairmen will be able to monitor the work of their judges. The CAST system also has financial management and budgeting, human resources management, and other functions, such as inter-judiciary email, user calendars, and notifications of tasks and deadlines.

The system is perceived as quite user-friendly, as court staff reportedly encountered few problems in making the transition to the CAST system during pilot testing, because it replicates what they did under the manual system. One judge stated that he had not received CAST training, but the court staff had. Nonetheless, he had sufficient computer skills to be able use the system reasonably effectively. It is too soon to assess the impact that full implementation of the CAST system will have, but it is widely anticipated to improve judicial administration and significantly increase the judicial system's efficiency.

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: Neutral	Trend: ↑
<p>About half the judges and their assistants have computers with Internet access. It is anticipated that the remaining judges and their assistants will be given computers in coming years. In addition, all courthouses now have photocopiers.</p>		

Analysis/Background:

The Judicial Department is charged with providing computers and other equipment to judges. JUDICIAL CODE art. 69.

Since 2004, the situation with regard to computers has improved due to the World Bank Judicial Reform Project. In September 2007, about half the judges and their assistants had computers with Internet access, usually in the courthouses that had been renovated or newly constructed. The Judicial Department offered computer training to judges and their assistants, and maintains a centralized help desk. Because most of the renovated or newly constructed courthouses are located in Yerevan, judges in the *marzes* usually do not have computers, unless they use their own. As described in Factor 12 above, during the second phase of the Judicial Reform Project, the remaining courthouses are expected to be renovated, and judges and their assistants in those courthouses will be provided with computers.

In another positive development, since 2004, all courts have also been equipped with photocopiers, thereby obviating the need for court personnel and parties to go to off-site copy facilities, as was the case previously. See ARMENIA JRI 2004 at 46.

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>Important progress has been made in making laws and judicial acts available to judges, such as through the ARLIS and IRTEK legal databases. Although the judiciary's official website includes only a handful of Court of Cassation judgments, it is hoped that both the number of judgments and the levels of courts whose judgments are included will be increased in the future.</p>		

Analysis/Background:

Laws, amendments to existing laws, and judgments and decisions of the Court of Cassation are published in the OFFICIAL BULLETIN OF GOVERNMENTAL AGENCY NORMATIVE ACTS, which is issued on the first and fifteenth days of each month. LAW OF THE REPUBLIC OF ARMENIA ON LEGAL ACTS art. 62(5) (*adopted* Apr. 3, 2002) [hereinafter LAW ON LEGAL ACTS]; JUDICIAL CODE arts. 51(2), 68(1). Decisions and resolutions of the Constitutional Court are published in both the OFFICIAL BULLETIN and the CONSTITUTIONAL COURT BULLETIN. LAW ON LEGAL ACTS art. 64(3); LCC art.



65(2). Since each court receives only one copy of the OFFICIAL BULLETIN and the OFFICIAL BULLETIN OF GOVERNMENTAL AGENCY NORMATIVE ACTS, some judges purchase their own copies (which are inexpensive and also available by subscription), while others depend on their court's chief of staff to circulate copies of relevant portions of the OFFICIAL BULLETIN and the OFFICIAL BULLETIN OF GOVERNMENTAL AGENCY NORMATIVE ACTS. The Judicial Department frequently supplies judges with free copies of new codes, commentaries, monographs, and compilations of cases, including the ECHR judgments, as well as the AJRA's monthly journal, JUDICIAL POWER, which includes selected Court of Cassation decisions.

Armenian judges now have access to the ECHR caselaw. The MOJ's Department for Relations with ECHR is officially responsible for translating ECHR judgments against Armenia, and these judgments are available at the Government's official website, <http://www.gov.am>. The AJRA has also translated and published several volumes of ECHR decisions, including judgments against Armenia and other selected high-profile cases. These volumes have been disseminated among judges, advocates, and other interested authorities. In addition, translations of selected ECHR decisions (involving both Armenia and other countries) are also available at the Legal Guide website, <http://www.legalguide.am>. See also Factor 7 above.

Armenia has two legal databases that can assist judges in identifying changes in the law and locating relevant legal authority. The first database is ARLIS, available at <http://www.arlis.am>, which is a free Internet-based database of legislation and Government decisions developed by the MOJ with World Bank financing. It includes laws, CCC decisions, and a few dozen Court of Cassation judgments. Online performance can be a bit slow, particularly with dial-up access. However, ARLIS is also available for subscription on CD-ROMs, updated monthly, for AMD 24,000 (approximately USD 70) per year, which interviewees characterized as more or less affordable. The second is the IRTEK Legal Information Center's database, available at <http://www.irtek.am>, which is a commercial Internet-based database that includes the Constitution, bilateral international agreements, laws and codes, normative decrees and orders of the President, decisions of the Government and the Prime Minister, orders and regulations of ministries and state agencies, and decisions of the Constitutional Court. IRTEK is described as more comprehensive and more regularly updated than ARLIS, and problems with slow online performance are reportedly more rare. However, interviewees characterized it as expensive, with an initial installation cost of AMD 21,000 (approximately USD 60) and each update priced at AMD 15,000 (approximately USD 44). As the World Bank's Judicial Reform Project had thus far provided computers to only about half the judges, many judges are unable to access these databases; however, it was anticipated that the remaining judges will be given computers in the second Judicial Reform Project. See Factor 29 above.

List of Acronyms

ABA/CEELI	American Bar Association's Central European and Eurasian Law Initiative
ABA ROLI	American Bar Association's Rule of Law Initiative
AESMS	Automated Enforcement Service Management System
AJRA	Association of Judges of the Republic of Armenia
AMD	Armenian drams
ARLIS	Armenian Legal Information System
CAST	Case Automation and Skills Transfer system
CCC	Council of Court Chairmen
CLE	continuing legal education
COJ	Council of Justice
DCEJA	Department for Compulsory Execution of Judicial Acts
ECHR	European Court of Human Rights
GTZ	German Agency for Technical Cooperation
JRI	Judicial Reform Index
LCC	Law on the Constitutional Court
LERI	Legal Education Reform Index
LL.B.	Bachelor of Law
MOJ	Ministry of Justice
UNDP	United Nations Development Program
USAID	United States Agency for International Development
USD	United States dollars
YSU	Yerevan State University