CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE
OFFICE OF RULE OF LAW RESEARCH

ANALYSIS OF THE DRAFT LAW ON THE
DEPARTMENT OF JUDICIAL ADMINISTRATION FOR
THE REPUBLIC OF MOLDOVA

CEELI Legal Assessment Series
April 2nd, 2004

Central European and Eurasian Law Initiative (CEELI)
740 15th St., N.W., Washington, D.C. 20005-1022
<http://www.abanet.org/ceeli>
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Analysis of the Draft Law on the Department of Judicial Administration for the Republic of Moldova

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I. Introduction

With the drafting of this Law on the Department of Judicial Administration (Law), the Republic of Moldova has taken a significant step forward in its effort to establish the rule of law and an independent judiciary. Among the emerging democracies of Central and Eastern Europe, few have progressed to the point at which they have begun to consider the importance of establishing the institutional independence of their judicial systems. These few have recognized that achieving the rule of law entails structuring the core powers of government in a manner that provides for a judiciary that is largely self-administered and self-managed. The continental European tradition of subjecting the judicial power of government to the administrative and management oversight of a justice ministry is deeply rooted in governments throughout the entire European community- West, Central, and East. Breaking with that tradition by exercising the legislative initiative to transfer those administrative and management responsibilities from a justice ministry to the judicial power reflects a commitment to establish a strong and independent judicial function. The Government of the Republic of Moldova is to be commended for having taken the first step toward that commitment by drafting this Law.

It is important to point out that, although transferring these functions to the judicial branch is an essential condition of establishing the rule of law, all branches of the government ultimately are accountable to the people in a democratic society. To the extent that judges and other officials of the Judicial Branch are not directly accountable to the people, that is, not subject to periodic popular elections, judicial branch accountability to the people is exercised through controls exerted by representatives of the legislative branch who are subject to popular elections. Such controls include determining funding levels for the judicial branch and enacting legislation such as this law.

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Mr. Zimmer has worked with CEELI since 1992 and has served as a legal/judicial administration specialist for CEELI in numerous countries. He was involved in the 1993 Russian Jury Trial Project, served on the faculty of the 1995 Workshop for the Justices of the Constitutional Court of Bosnia and Herzegovina, and was a member of the CEELI Institute Curriculum Development Task Force and faculty. He has been a contributing expert and consultant on a number of draft laws, concept papers, administrative regulations and ethics codes prepared for judiciaries throughout Central and East Europe and Central Asia.
II. Judicial Administration in Central and Eastern Europe

The first country in Central Europe to transfer administrative and management responsibility for the judicial branch from its Ministry of Justice to its judiciary was Hungary. It did so through the creation of a Judicial Council or National Council of Justice in 1997. The new Council is responsible for the supervision of all judges and courts in Hungary, except for the Constitutional Court. The Council is also tasked with responsibility for managing all aspects of the court system, including the centralized supervision of court administration and supervision of the administrative functions performed by presiding judges of the lower courts. The Council is also responsible for the preparation and presentation to the government of the proposed annual budget for the court system. Because the government, particularly in more recent years, has exercised its initiative to reduce the budget proposed by the Council for the court system, the government at the urging of the Council submitted to the Parliament a new law in August 2002 that would empower the Council to submit its annual budget proposal directly to Parliament.

The broad administrative responsibilities entailed by assigning these various functions to the Council are performed largely by the Bureau of the Judicial Council, an independently financed state organization under the supervision of the Judicial Council. The Bureau is tasked with preparing the sessions of the Council and supervising the enforcement of its resolutions. Professional staff of this Bureau, among other duties, prepare the annual statement of budgetary requirements for the court system for review and approval by the Council.

The Council and its Bureau were delegated virtually all of the judicial system management and administrative oversight functions formerly carried out by Hungary's Ministry of Justice. To minimize the costs of creating this new Council and Bureau and to take advantage of the experienced professional and clerical staff at the Justice Ministry whose positions were being eliminated, the Council provided for the transfer of numerous positions, such as professional economists, statisticians, and human resources officers, from the Ministry to staff the new Bureau. This transfer process was effected in a smooth and efficient manner. Now that the Bureau has been in place for approximately six years, it is characterized as a successful effort to transfer management and governance of the judicial system from the Justice Ministry to the judicial system. The new system functions efficiently and the result has been significantly greater institutional independence on the part of the judiciary. Some judges have complained that the Bureau, staffed as it is with former Ministry officials, has adopted some of the same centralized bureaucracy tendencies that were characteristic of the Justice Ministry.

Although the Hungarians, with the creation of their Judicial Council and Bureau in 1997, have made the greatest strides in moving toward a self-governing judiciary, similar efforts on a smaller scale have been undertaken in other countries in Central and Eastern Europe.

- The Bulgarian Constitution provides in Art. 117 Sec. 3 for the judicial branch to have an independent budget, a concept that is elaborated in the Law on the Judiciary in the section entitled "The court budget and the court funds."

- In Albania, in the summer of 1997, legislators were presented with a "Draft Law on the Establishment of the Center of Administration of the Budget of the Judiciary for the Republic of Albania."
• In 1998, the Macedonian Judiciary formed an Independent Court Budget Committee. In August
1998, two members of the committee, Professor Ljupco Arnaudovski, a member of the
Republic Judicial Council, and Justice Dragan Tumanivski of the Macedonian Supreme Court
and former high-level official in the Ministry of Justice, drafted a position paper entitled "Report
on the Independent Court Budget and the Financing of the Judiciary in the Republic of
Macedonia" that outlined the justification for and the benefits of transferring budgetary
authority for the Macedonian court system from the Ministry of Justice to the judicial
branch. Subsequently, a Court Budget Law was drafted and passed in September 2003. In
addition to transferring budget formulation and management responsibilities from the Ministry of
Justice to the judicial system, the new law creates a system of independent court administration for
the first time in Macedonia.

• In Poland, at a September 1999 conference sponsored by the National Judicial Council and
attended by the President of Poland, leaders of Parliament, and judicial branch officials,
participants debated competing proposals on the budgetary and administrative independence
of the judiciary.

• At a Conference of Court Presidents for the Slovak Republic attended by the author in February
2004, several of the presiding judges publicly stated that the time has come for the Slovak
judiciary to develop and manage its own budget. Although the new Minister of Justice does not
concur, he does favor strengthening the judiciary. However, he is also very concerned about
the perception of corruption within the government in general and the judiciary in particular.
In his judgment, an independent judiciary must also be an accountable and transparent
judiciary. In pursuit of their agenda for greater independence of the judiciary, a delegation of
Slovakian judges recently traveled to Hungary for discussions with their counterparts on the role
and functions of the Bureau of the Judicial Council.

The European Union has generally stipulated that the governments of prospective new members of
the EU promote the independence of their judiciaries and the rule of law as a condition of
membership. These governments recognize that the willingness of Western European and
international investors to contribute to the growth of the economic infrastructure of their countries
will depend on factors such as functionally independent judicial systems that enforce the legality of
contractual agreements and resolve disputes according to the objective application of the law.
Although the specific requirements imposed by the EU vary from one country to another, based on the
relative sophistication and developmental status of each government, the general impetus is to
promote strong and independent judicial systems.

The notion of an independent judiciary from an institutional perspective is conceived as one in
which the judicial power of the government has the following characteristics:

• It is substantially self-governing;

• Its authority includes policy-making for the entire judicial system; It effectively regulates
the professional conduct of judges and staff; It's practices and processes are transparent;

• It is not beholden to influence exerted by the other branches of government in decision
making;
• It develops and presents its budgetary requirements directly to the legislative power, and, once the budget has been approved, is responsible for managing that budget according to general government guidelines and regulations; and

• It recognizes that it is accountable for government funds and has in place a system whereby all accounting, finance, and budgetary operations are regularly audited by trained professionals who report to executive-level management.

These general EU requirements are prompting governments throughout Central and Eastern Europe to re-examine the manner in which their court systems are managed and funded. Many are pursuing changes that promote the values of an independent judiciary and the rule of law. These are encouraging trends.

III. Specific Analysis and Comments

A. Chapter 1: General Provisions

Article 1: The Department of Judicial Administration – Executive Body of the Superior Council of Magistracy

Subsection (1): It is unclear - and it may be a problem of translation - why under this subsection the text singles out the "court of appeals and the Appellate Court" as requiring special attention. Where an organization establishes a new department to provide administrative support to a variety of organizational components - in this instance the various categories of courts in the Moldovan system - an important rule of thumb is that the department as much as possible seek to provide a uniformly high level of service to all of those organizational components, without distinguishing some as deserving of a greater standard of support than others. Where the standard of support varies, those that are subject to the lower standard may grow to resent those that enjoy the higher standard as measured in terms of better and more sophisticated equipment, improved facilities, a higher judge/staff ratio, better libraries, more favorable working conditions, greater employment benefits, etc. Although some differences will evolve, given the manner in which court hierarchies normally develop, including such direct language in the law is likely to aggravate sensitivities.

Recommendation: Delete the selective language as unnecessary.

Subsection (2): Consider adding additional descriptors that flesh-out the full range of functions this Department of Judicial Administration will perform. Such lists will never be exhaustive, given the dynamic evolution of court systems, but the more comprehensive such lists are, the smaller the likelihood that some other government organization, such as the Ministry of Justice, will seize on a particular function that is not mentioned in the Law and assume responsibility for it.

Recommendation: Include additional terms that define the Department's work such as court statistical data, information technology, procurement, facilities design and construction, applied research, Information resource services, judicial education and training, security, communications, budget administration, etc. Some of these are described in more detail later in this analysis.

Recommendation: If Subsection (2) of Article 1 is broadened to include these additional functions, then it may be necessary to add additional Articles to Chapter 1 that provide for and generally define the
performance of these functions as Article 4 does for the financial/budget functions. These additional functions should also be set forth in Article 5 in terms of specific performance requirements of the new Department, in Article 6 in terms of how they are integrated into the overall organization of the Department, and in Article 8 in terms of the management responsibilities of the Director.

**Article 4: Financing**

**Subsection (2):** This subsection indicates that the Superior Council of Magistracy (Council) will review the proposed annual budget that is prepared by the Department of Judicial Administration. It also provides that the proposed annual budget must include the budget of each individual court and the non-court agencies within the judicial system. The resulting document is likely to be a thick compilation of spreadsheets, ledgers, and other financial/budget statements. The members of the Council are high-level officials, who presumably are very busy, may not have the time that would be required to carefully review a complete budget document for the entire Moldovan judicial system. Council members also may not have the background or expertise in financial matters to comprehend financial spreadsheets that lay out proposed expenses in a variety of budget object classes or funding categories.

**Recommendation:** That Subsection (2) be modified to provide that the Department of Judicial Administration prepare for the Council's review and approval an annual budget summary that (i) provides a succinct but general overview of the important funding categories and (ii) provides a summary statement of the funding requirements of the individual courts and agencies. If the Council members wish to see the full budget document that breaks out in detail all expenditure levels, they should be entitled to do so, but they should not be required to do so.

**Subsection (3):** This subsection requires the Department to request that the courts and agencies of the judicial system submit their proposed budget requirements. If this process is not organized in some fashion, the Department will receive proposals that vary greatly in terms of funding amounts requested, reporting format, funding categories, justifications for the funding, and supplementary materials in support of the request. Some courts and agencies will spend much more time and effort than others in preparing their budgets because the level of skill in doing so is likely to vary between courts and between agencies. It would be a mistake for the Department to rely exclusively on such submissions.

**Recommendation:** This subsection should direct the Department to develop a standard budget request format for transmission to the courts and agencies for use in preparing their budget requests. Ideally, this format will consist either of a standard series of paper forms or a standard series of computer-based templates that each court and agency will be required to complete and submit. This format should cover all of the essential budget categories for which the courts and agencies require funding. The forms would include a number of fill-in-the-blank spaces for estimated funding requirements at a relatively detailed level. The format should provide for the courts and agencies to specify special funding requirements with appropriate restrictions as to what is and what is not permitted under government regulation regarding expenditures of official funds. In essence, each court and agency would receive the same set of standard forms, thus simplifying the task of the Department in sorting, reviewing, and analyzing them. The long-term goal should be to automate this process so court and agency staff can simply complete the forms on a computer screen and transmit them electronically to the Department.
**Recommendation:** Once the budget request format has been developed and tested to ensure that the instructions for its use are clear, the Department should organize a training session to which at least one finance/budget person from each court should be invited. The training session might require two or three days, depending on how complex the format is and whether it is automated. If, for example, the format is computer-generated, requiring courts and agencies to complete various templates on the screen, the training should provide hands-on instruction that permits the participants to sit down at a computer and learn how to operate the system with the assistance of staff from the Department.

**Recommendation:** If the budget preparation and submission process is to be automated, the Department should carefully consider purchasing an off-the-shelf computer spreadsheet application such as Microsoft EXCEL or, if available, a locally developed program that can easily be configured to accommodate the Department's finance and budget system requirements and funding categories. This is likely to be less-costly than hiring a programmer/analyst to develop a program just for the court system. Once a court receives its budget from the Department, after the Council and the Parliament have approved it, finance staff can make any modifications to the numbers originally submitted, then use the automated application to track expenditures and budget status.

In the federal courts of the United States, the budget process at one time was very similar to that set forth in the Draft Law. The process of reviewing and integrating the budgets of all the separate courts and agencies was a very time-consuming and labor-intensive. In the mid-1990s, the Finance and Budget Office of the Administrative Office of the United States Courts worked with a group of high-level court administrators to develop a formula-driven system that now has been in use for about five years. This working group developed a method for allocating funding approved by the Congress (Parliament) for the court system based on formulas for each type of court. These formulas are based on court workloads and related factors that take into account what functions courts perform and what it costs to perform those functions. Each year, for each type of court, the formula takes into account information such as numbers of cases filed, numbers of positions allocated, number of judgeships, etc. These data are entered into the computer-based formula by staff of the Administrative Office, and the formula then calculates, given available levels of funding for that year's budget, the level of funding to which that court is entitled. The basic elements of these formulas are applied equally for every type of court, and funding is allocated accordingly. Of course, courts are given the option of submitting special budget requests for unusual needs, such as building projects whose cost is above a certain threshold.

Although the formulas have had to be occasionally adjusted and recalculated over the past five years, they have been readily and enthusiastically accepted by most officials in the courts. Use of the formulas has dramatically reduced the amount of time and effort court officials used to invest in the budget preparation process. They also have reduced the time and effort originally invested by officials at the Administrative Office of the U.S. Courts in reviewing budget requests from each court. The formulas are administered centrally and reviewed for adjustments each year by the working group. And because they are applied uniformly to all the courts, the perception among both judges and administrators is that the resulting funding levels are fair and equitable.

**Recommendation:** The Draft Law might include some provisions that direct the Department to develop a formula-based budgeting system over a specified time frame, for example five years. Officials at the Administrative Office of the U.S. Courts would be happy to (i) accommodate a visit by officials from Moldova's Department of Judicial Administration, once it is up and running, to
demonstrate how formula-based budgeting works in the court system environment, and (ii) provide guidance on how to develop their own formula-based system.

Article 4 includes no provisions for an in-house auditing function. The drafters may have presumed that auditing is contemplated under the general financial functions that the Draft Law contemplates or that auditors from the Ministry of Finance will audit court system accounts and records. Those presumptions notwithstanding, it will be very important for the new Department to build a strong in-house auditing function. In all likelihood, there are officials in Moldova's Ministry of Justice and Parliament who are opposed to the creation of this new Department and to the transfer of budgeting authority from the Justice Ministry to the judicial system. If the Department does not establish a strong auditing and accounting function from the very beginning, irregularities with how officials government funds are handled will be used by those who are opposed to the Department to argue that its budgetary authority be retracted by the Parliament and returned to the Ministry of Justice.

**Recommendation:** That a new subsection be added to Article 4 to provide for a strong and independent audit function within the Department to conduct regular as well as unannounced audits of financial operations with the Department and within the courts and agencies of the judicial system. Article 9, which deals with the Department's employees, should include provisions for appointing several highly qualified professionals in the fields of financial management and auditing who would organize a strong office of audit, the director of which should report directly to the chairman of the Council.

**B. Chapter II: The Department’s Duties, Structure, and Organization of Activities**

**Article 5**

Article 5 contains a lengthy list of Department functions. The list does not appear to follow any kind of subject-matter order or organization by function. To that extent, it is difficult to gain a useful understanding of the general areas of the Department's roles and responsibilities without reviewing this lengthy list several times.

**Recommendation:** For purposes of ease of reference for the reader of the Draft Law, the drafters should consider organizing this list of functions into four or five more general subject areas and grouping the individual functions accordingly. Attachments 1, 2 and 3 to this report are examples of laws providing for the establishment of judicial administration agencies in the United States and may offer some guidance in this regard.

The organization of this article differs from the organization of the other articles with subsections. In Article 4, for example, the subsections are numbered, but in Article 5, the subsections are alphabetized. The identification scheme should be consistent.

Although many of the tasks assigned to the Department involve administrative functions, others involve more legal and judicial as opposed to administrative functions. For example, Subsection (f) calls for the execution of decrees issued by the President of the Republic with regard to judicial appointments, transfer, and removal, not generally a function that administrative officials are required to perform. Subsection (i) calls for the drafting of procedural laws with advisory notes that will govern court process; this is a function that should involve primarily (i) experienced trial and appellate court judges
who adjudicate cases on a daily basis, and (ii) experienced and highly regarded trial and appellate attorneys, not administrative personnel or detached judges. Subsection (r) calls for the establishment and maintenance of relations with state bodies, organizations, institutions, including those abroad. To the extent that doing so is a function of diplomacy to promote the interests of the judicial system, this function might better be handled by judges rather than administrators or subject-matter experts. Subsection (u) calls for the convening of judicial conferences on issues related to judicial activity, again, a judicial as opposed to an administrative function.

The drafters of this Law might consider reserving some of those more judicial functions for special committees of court presidents that would report and present relevant proposals to the Council. In the federal courts of the United States, administrative oversight of and support for the courts rests with the Administrative Office of the U.S. Courts, but matters relating to the governance of the courts, rules of procedure, etc., are handled by a variety of judges committees, each of which is responsible for a discrete area. For example, all proposals for new procedural rules or amendments to existing procedural rules have their origin in special judges committees. One committee handles matters relating to the civil rules of procedure. Another handles matters relating to the criminal rules of procedure. The respective chairs of these committees submit the proposed changes to the Judicial Conference, similar in some ways to the Superior Council of Magistracy for its review and approval.

Article 5(p) provides that the Department shall provide security for judges and their families. The scope of this responsibility should be expanded to include providing security for all court officials and personnel. It also should include overseeing the security of court facilities to ensure that persons who enter courthouses are screened for possible weapons, bombs, or other devices that could conceivably be utilized to threaten or to harm judges, court officers, employees, or courthouse visitors.

Article 5 also should include the responsibility for overseeing the construction, repair, maintenance, and renovation of courthouse facilities and for coordinating closely with the ministry or other agency of the government that is responsible for construction, repair, maintenance, and renovation of government facilities. This will entail that the Department staff include professional architects, project managers, and facilities experts who will work with individual courts to oversee the design and construction of new facilities as well as the repair and renovation of existing facilities. Increasingly, new court facilities are being designed with separate and secure circulation capacity for judges and with special holding cells and secured corridors for persons charged with criminal acts who must appear in court. The facilities design process should include as active participants these Department specialists who not only have the required educational qualifications but understand how courts function, how court buildings should be designed, and what security issues must be taken into consideration in the design process.

Article 5 includes a Subsection (2) but no Subsection (1)

Subsection 2(b) and (c) provide that the Department will exercise considerable control over the courts as to organization problems and financial and budget matters. For purposes of maintaining and promoting the independence of the judiciary, the Department should not be delegated unlimited centralized control over problem-solving functions in the courts. Court presidents and chief court administrators should be empowered to deal with problems that arise in the organization and operation of their courts, unless there is evidence that they are (i) abusing their positions, their judicial colleagues, or court support staff, or (ii) engaged in criminal or other kinds of activities that do not comport with holding judicial
office or exercising judicial authority in the name of the Republic of Moldova. Where audits of court practices or financial management reveal discrepancies and failure to abide by government and/or court system rules, regulations, and procedures, there the Department should be empowered to intervene and take the necessary corrective action if the court president and chief court administrator, after having been appropriately notified, has failed to follow through.

The intent in preserving local authority and independence is to avoid having the Department begin to function like the Ministry of Justice in a new disguise. To the extent that Ministry of Justice officials and employees are transferred to the Department, there will be a natural tendency on the part of these former Ministry personnel to continue to function as they did when employed in the Ministry as a judicial oversight and control organization. That should not be permitted to occur. One of the important elements in achieving an independent judiciary is that there should be no centralized oppressive power — whether under the mantle of the Executive power or the Judicial power of the government - that has the authority to constantly oversee and dominate the manner in which the courts are managed and administered. Courts should be able to manage and administer themselves within general government guidelines and policies and within the specific guidelines and policies issued by the Council and the new Department. Courts also should be able to draft and implement local rules of court that, within the guidelines set by the Council, prescribe formats for documents filed with the court, regulate and discipline attorney misconduct, prohibit certain behaviors such as bringing weapons into the courthouse, etc.

Article 6: The Department's Structure

Article (6) sets forth the general organizational structure of the Department. The drafters might want to include the following organizational functions in addition to those already listed:

- The Office of Information Technology, which would employ computer programmers, systems analysts, network engineers, software engineers, trainers, and other technical staff who would develop, test, install, and maintain computer applications for the court system; provide end-user training for persons employed in the courts; procure hardware, software, data communications, and other computer-related equipment and services for the court system.

- The Office of Court Security, which would employ security and law enforcement specialists who would oversee the security of judges, court officers, court staff, and court facilities. This office would work closely with the judicial police; indeed, the Council may wish to have the judicial police report to such an Office of Court Security.

- The Office of Facilities would employ architects, project managers, and other experts in the field of courthouse construction and renovation. Its functions would include regular inspections of courthouse facilities throughout the country to ensure the safety and security judges, court officials, court staff, and visitors to the courts.

- The Office of Information Resource Services would be responsible for ensuring that all judges receive regular updates of decisions of the higher courts, that new judges are provided training in how to conduct legal research, that copies and/or summaries of all new statutes, laws, regulations, or amendments thereto are transmitted to all judges in a prompt and timely fashion to ensure that their understanding of the law is current and well informed. Where
funding is available, this office would be responsible for setting up libraries of legal reference materials for use by judges. Much of this information could be made available electronically via a website that would permit judges and court staff to access the materials remotely in courts throughout the country. The technical specialists in the Office of Information Technology could work with the staff of the Office of Information Resource Services to create a Department of Judicial Administration website that would include an electronic database of opinions and decisions from the higher courts that judges in the lower courts could access via the internet at their offices. This database could be updated daily.

The costs of setting up the website are relatively modest. If the courts are already equipped with computers, the costs for Internet access would be modest and consist primarily of locating a reliable Internet services provider for each court location. If the courts are not equipped with computers, Ministry of Justice officials might contact representatives from the Council of Europe or other organizations who might be willing to help fund the purchase of at least one computer for each court.

- The Office of Information Resource Services also might prepare monthly newsletter containing news of importance to the judges, officers, and employees of the judicial system. Such newsletters often help to unite and keep informed the various members of the judicial system "family."

- The Office of Legislative Liaison would be a small office that would track all of the legislative activity of the Parliament dealing with laws and other legislation that has the potential to affect the operations of the judiciary. The purpose of the office would be two-fold. First, to ensure that the Council is promptly and fully informed of any activity, such as draft legislation undertaken by the legislative power to add to or detract from the authority and responsibility of the judiciary. Being so informed will permit the Council to undertake appropriate action to amend the draft legislation by informing the Parliament of the potentially negative consequences for the judiciary or for the rule of law. Second, to alert officials in the Department and judges in the courts of pending changes in the law so they can be properly trained and prepared to apply the changes once they are in effect. This information could be loaded onto the Department's Internet website, noted above.

- The Office of Judicial and Staff Training which would be responsible for developing a curriculum of continuing professional education and training programs for judges, court officers, and court support staff. This training curriculum also would include orientation training for new judges, court officers, and court staff. Staff in this office would include individuals who have been trained in the methods and techniques of adult education. Although Article 5(1) provides for the professional training of the "civil servants of the Department," there are no references in the Draft Law to any responsibility for ensuring the professional education and training either of judges or of court staff other than mention in Article 5(u) of judicial conferences. It may be that training is provided for by another organization within the larger organizational structure of the judicial system, but there should be some oversight by the Department.

Article 7: The Director of the Department and His/Her Deputies

Article 7 provides that the director of the Department shall be a judge. The drafters might wish to reconsider that position. Judges, no matter how competent in legal knowledge and adjudicative ability, do not always make the best managers. It may be advisable not to restrict the Council by selecting only from
amongst judges when appointing a director. In the United States, the directors of the Administrative Office of the U.S. Courts have not traditionally been judges. Most have been professional managers accustomed to directing organizations. Perhaps the most successful director of the U.S. Administrative Office has been the current one who brought to the position not only management and organizational skills but, in addition, significant previous experience in dealing with the Congress or legislative branch of the U.S. Government. Because he had previously established strong and productive working relationships with many of the Congressional leaders, he has been able to build on those relationships to obtain for the federal judiciary the necessary funding levels that have permitted the court system to grow in numbers of judge and staff, and to be properly equipped, to construct a large number of modern courthouse facilities, and to take advantage of new developments in technology and communications. Had a judge been appointed as director instead of him, the federal judiciary almost certainly would not have thrived the way it has under the current director's leadership.

Rather than specifying that the director be a judge, Article (7) might direct the Council to select an experienced, professional, and well-qualified executive-level manager. That does not exclude a judge from being selected, but it does give the Council a much wider range of prospective candidates from which to make its appointment. The same advice applies toward the two Department deputy positions described in Subsection (2). The Council should have the maximum possible flexibility to appoint someone with a broad range of professional skills and experience.

**Article 8: The Duties of the Department's Director**

*Subsection (1):* Note that Subsections (b) and (k) are very similar and could easily be merged. More important, it may be that the function of representing the courts and the judiciary abroad is best handled by the Council, as the representative body of the judicial power in the Republic of Moldova, than by the Department, whose function is primarily administrative oversight and support of the judicial system.

*Subsection (f):* It is unclear why employees in the Main Legal and Human Resources Divisions are exempt from the appointment and removal authority of the director of the Department. Ideally, in an organization, the chief officer retains appointment and termination authority over all employees within the organization. To grant special status to discrete groups within the organization gives them a special status that may end up breeding resentment and mistrust in the other employees. It also might engender an attitude of elitism in those who are exempt and an attitude that they are not subject to the authority of the Department director, thus imposing some restrictions on his ability to manage all of the employees in the Department. All three of these possibilities have the potential to disrupt the stability of the organization and undermine the authority of the director. It is more advisable to have all employees in the Department subject to the same general authority of the director.

**Article 9: The Department’s Employees**

Article 9 provides for the relative status of different categories of officers and employees in the various Directions of the Department. As was raised earlier in this discussion of the Draft Law, it is not clear why the Main Legal Direction and the Human Resources Direction are singled out for special status and, presumably, higher compensation levels than their counterparts in the other Directions of the Department. Unless there is a strong and logically clear justification for the special designations, they should be eliminated and all heads of Directions in the Department should be given equal status and, where possible, compensation.
C. Chapter III: Final and Transitory Dispositions

The sequencing of article numbers with chapter numbers needs to be reviewed. Chapter II, for example, begins with Article 5, continuing the numerical sequence started in Chapter I. However, the articles in Chapter III start with Article 1.

Article 2

Subsection (2) provides relevant professional staff who are likely to lose their Ministry of Justice positions when the Department is created should be placed into equivalent positions in the Department that require the skills and experience they acquired in their Ministry employment. It makes good sense to keep those skilled and experienced administrative employees essentially performing the same functions under a different organizational framework. It needs to be made clear to these transferred employees, however, that they are now officers and employees of the judicial power of the government and that their loyalties should be directed toward the judicial rather than the executive power.

Subsection (2) also provides that the Department also recruit from "...among judges detached from the courts." Detached seems to refer to judges who have been detailed to work at the Ministry of Justice and no longer actively adjudicate cases in court. Such detachment is relatively common in many European countries via a revolving-door arrangement that permits judges to circulate from the judiciary to the ministry and back. The Department might want to exercise caution in filling positions with detached judges except where they have the specific technical and/or administrative skills that positions in the Department require. The overall objective in creating this new Department should be to staff it with persons of specialized expertise in the various administrative areas for which it will provide support to the courts. Judges fall within a specialized professional occupation category, the education and skill requirements of which generally do not prepare them to effectively handle many of the administrative types of functions set forth in the Draft Law.
Appendix A

Draft Law on the Department of Judicial Administration for the Republic of Moldova
Draft Law
Law on the Department of Judicial Administration

Parliament adopts this law:

Chapter I
General Provisions

Article 1. The Department of Judicial Administration – Executive Body of the Superior Council of Magistracy
(1) The Department of judicial administration (hereinafter referred to as the Department) shall be the executive body of the Superior Council of Magistracy that ensures the organizational, material, and financial activity of the courts and especially that of the courts of appeals and the Appellate Court.

(2) The organizational, material, and financial activity of the courts means actions related to the work with personnel, measures of financial nature, measures of technical-material nature, as well as other measures aimed at creating adequate conditions for the good operation of an independent judiciary.

(3) The Supreme Court of Justice shall carry out its organizational activity according to the Law on the Supreme Court of Justice.

Article 2. The Legal Framework for the Department’s Activity
The manner of organization and operation of the Department shall be regulated by the Constitution, by this law and other laws that regulate the organization of judiciary and status of judge, by the international legal acts the Republic of Moldova is part to, as well as by other normative acts of the self-governing judicial bodies that were passed within the limits of their competence.

Article 3. Non-Admittance of Any Interference with the Administration of Justice
The Department shall perform its duties by strictly respecting the principles of independence and impartiality of the courts without any interference with the administration of justice.

Article 4. Financing
(1) The Department shall ensure the funding of the courts, the Superior Council of Magistracy, qualification and disciplinary boards of the courts, the Judicial Center, as well as of the Department itself out of the State Budget.

(2) The Department shall develop the draft budget of the judicial system and shall submit it to the Superior Council of Magistracy within the period of time established by the Superior Council of Magistracy. The draft budget of the judicial system shall include the budget of each court and institution within the judicial system.
(3) In order to prepare the draft budget the Department shall request from the courts and other institutions to submit reasoned proposals on the necessary amounts of money for the good operation of their activities.

(4) The Department shall submit information on the use of financial means to the Superior Council of Magistracy on annual basis.

Chapter II

The Department’s Duties, Structure, and Organization of Activities

Article 5. The Department shall:

(a.) Ensure the activity of the Superior Council of magistracy and execute its decisions;

(b.) Ensure the organizational activity of the courts and create conditions necessary for their good operation;

(c.) Ensure the activity of the Board of Qualification and Attestation of Judges and that of the Disciplinary Board of judges.

(d.) Keep the statistical and personal records on the judicial personnel, propose the necessary personnel for the courts, ensure the performance of the work with judicial personnel and the work of selecting and preparing candidates for the position of judge, make proposals to detach judges;

(e.) Formulate proposals in the manner provided for by the legislation on appointing to, transferring to or removing judges, presidents and deputy presidents of the courts from position, develop draft decisions of the Superior Council of Magistracy and the respective documents related to the problems in cause;

(f.) Execute the Decrees of the President of the Republic on appointing to, promoting to, transferring to or removing judges from position, as well as the decisions of the Superior Council of Magistracy;

(g.) Make proposals in the established manner on the headquarters and circuit of the courts, their number and number of judges of the courts, as well as on the creation and liquidation of the courts;

(h.) Develop the draft budget of the judicial system;

(i.) Develop draft laws related to the operation and activity of the courts and provide advisory notes on draft laws;

(j.) Develop scientifically reasoned guidelines on the workload of judges and employees of the courts’ personnel;

(k.) Study the organizational activity of the courts and develop proposals on improving it;
(l.) Ensure the selection and professional training of civil servants of the Department;

(m.) Keep records on the activity of training personnel within the judicial system;

(n.) Solve citizens’ petitions within its jurisdiction;

(o.) Take necessary measures to provide the technical-material and financial support as well as support of other types to the judicial system;

(p.) In collaboration with the courts and judicial self-governing institutions take measures to ensure independence, inviolability and security of judges as well as the security of members of their families;

(q.) Organize the providing of material support to judges including those removed and retired, and employees of the courts’ personnel; take measures to provide them with housing; organize the providing of medical assistance and other social guarantees provided for by the current legislation;

(r.) Establish and keep relations with the state bodies and other bodies, institutions and organizations including those located abroad in order to improve the organization of the courts’ work and increase the efficacy of the Department’s activity;

(s.) Develop draft regulations on the organization of the courts’ activity;

(t.) Provide the Council with proposals on the necessary number of judicial police staff that was put at the service of the courts;

(u.) Ensure the convening of the judicial conferences on issues related to judicial activity;

(v.) Take other measures aimed at ensuring the operation of judiciary.

(2) Within its jurisdiction the Department shall be entitled to the following:

(a.) Requesting state bodies and other bodies and institutions, officials to provide the Department with, as well as to receiving from them documents, materials, and the necessary information for ensuring its operation;

(b.) Exercising control over the courts as to organizational problems;

(c.) Controlling the courts and other legal institutions as for the manner of using budgetary means, as well as to controlling financial and household-related activity of the courts;

(d.) Proposing instituting disciplinary proceedings against judges, presidents, deputy presidents of the courts;

(e.) Proposing measures of encouraging judges and applying such measures to employees of the Department;
(f) Making proposals on improving the work-related conditions, on providing material and social support to judges, employees of judiciary and to those of the Department.

Article 6. The Department’s Structure

(1) The following shall operate within the Department:

(a) The Main Legal Direction;

(b) The Human Resources Direction;

(c) The Direction for Finances, Records and Control;

(d) The Direction of Household and Supplies for Judiciary;

(e) Chancellery.

(2) As the case may be, the Superior Council of Magistracy, at the proposal of the Director of the Department, may create other subdivisions, as well.

(3) The Superior Council of Magistracy shall approve the Regulation on the Organization and Operation of the Department and its Subdivisions.

Article 7. The Director of the Department and His/Her Deputies

(1) The Department shall be managed by a director appointed to position by the Superior Council of Magistracy from among judges.

(2) The Director of the Department shall have two deputies appointed from among judges to position by the Superior Council of Magistracy at the proposal of the director. The heads of the Department’s subdivisions provided for by article 6, paragraph (1), letters a) and b) shall be appointed to position in the same manner.

Article 8. The Duties of the Department’s Director

(1) The Director of the Department shall:

(a) Organize and manage the Department’s activity;

(b) Represent the courts in the relationships with local and foreign bodies within his/her jurisdiction;

(c) Ensure development of the Regulation on the Organization and Operation of the Department and its Subdivisions;

(d) Within his/her jurisdiction issue orders, dispositions and guidelines that are obligatory for the courts exclusively in the area of organizational ensuring of their activity and verify their enforcement;

(e) Establish duties for his/her deputies;
(f.) Appoint to and remove from position employees of the Department except for employees of the Main Legal and Human Resources Directions;

(g.) Submit proposals on the number of personnel of the Department to the Superior Council of Magistracy within the limits of the salary fund;

(h.) Submit information on the Department’s activity to the Superior Council of Magistracy on annual basis;

(i.) Submit proposals on conferring state decorations on judges and other employees within judiciary to the Superior Council of Magistracy;

(j.) Propose instituting disciplinary proceedings against judges, presidents and deputy presidents of the courts;

(k.) Represent the Department in the relationships with other public authorities and institutions both from the country and abroad;

(l.) Be the chief administrator of the Department’s and the court’s financial means;

(m.) Perform other deputies provided for by law.

(2) In the Director's absence his/her duties shall be performed by one of his/her deputies on the basis of an order issued by the Director.

(3) The Department’s Director shall be personally responsible for the performance of the duties.

Article 9. The Department’s Employees

(1) The Director, his/her deputies, chiefs of the Main Legal Direction and Human Resources Direction, as well as employees with university-level legal education of these directions shall have the status of judge.

(2) The Director of the Department shall have the status of deputy president of the Supreme Court of Justice. The deputy directors and chiefs of the directions provided for by paragraph 1 of this article shall have the status of judge of the Supreme Court of Justice. Employees of these two directions shall have the status of judge of the Appellate Court and shall be appointed by the Superior Council of Magistracy, as a rule, from among detached judges or from among individuals who previously worked within judiciary no less than 6 years.

(3) The conditions for appointing, detaching and promoting of the individuals provided for by paragraph 1 of this article, their disciplinary liability, remuneration of work and facilitations, as well as other requirements established for them shall be regulated by the Law on the Status of Judge.

(4) The other employees of the Department shall be civil servants and their status shall be regulated by the Law on the Public Service.
(5) The Main Legal Direction and the Human Resources Direction may hire, as the case may be, employees with status of civil servant.

**Article 10. Legal Status of the Department**

The Department shall be a legal entity, have its headquarters in municipality of Chisinau and a seal with the image of judicial authority symbol and its name.

**Chapter III**

**Final and Transitory Dispositions**

**Article 1**

The Government shall conform the Regulation of the Ministry of Justice to this law and submit proposals in order to conform current legislation to this law.

**Article 2**

(1) The personnel and expenses draft budget of the Department shall be established by the Superior Council of Magistracy.

(2) The Department’s personnel shall be formed out of the unities of the current personnel of the Superior Council of Magistracy, out of the unities that are to be dismissed from the Ministry of Justice that performed functions related to the administration of justice, out of the units that provided material and financial support to ensure the operation of the judicial system, as well as from among judges detached from the courts.

**Article 3**

The Department’s financial means shall be formed out of the means provided for by the State Budget and out of other financial aid provided by foreign donors that support the judicial reform in Moldova.

**Article 4**

This law shall go into effect on the date of its publication and shall be applied since January 1, 2005.

Eugenia OSTAPCIUC

President

Parliament of the Republic of Moldova