JUDICIAL REFORM INDEX

FOR

BULGARIA

JULY 2002

www.abanet.org/ceeli

CENTRAL AND EAST EUROPEAN LAW INITIATIVE

JUDICIAL REFORM INDEX

FOR

BULGARIA

July 2002

 This publication was made possible through support provided by the U.S. Agency for International Development Bulgaria Mission, under the terms of the Associate Cooperative Agreement No. 183-A-00-00-103-00 and Leader Cooperative Agreement No. ENI-A-00-00-00003-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the view of the U.S. Agency for International Development.

ISBN: I-590-31-157-4

Printed in the United States of America

TABLE OF CONTENTS

Introduction

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

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

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

Assessing Reform Efforts

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

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

Id. at 615.

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

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

Larkins, *supra*, at 615.

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

ABA/CEELI's Methodology

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

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

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

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

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

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

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

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

Acknowledgements

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

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

stewarded its completion. Finally, ABA/CEELI also expresses its appreciation to the experts who contributed to the ABA/CEELI Concept Paper on Judicial Independence: James Apple, Dorothy Beasley, Nicholas Georgakopolous, George Katrougalos, Giovanni Longo, Kenneth Lysyk, Roy Schotland, Terry Shupe, Patricia Wald, and Markus Zimmer.

Bulgaria Background

Legal Context

The Republic of Bulgaria is a parliamentary democracy, governed by a president, prime minister, council of ministers, parliament -- known as the National Assembly (*Narodno Sobranie*) -- judiciary, Constitutional Court, and local officials.

Officially the head-of-state, the President has limited powers in domestic affairs. He represents the state in international relations and is the commander-in-chief of the armed forces. He appoints the high command of the army and ambassadors. When Bulgaria is in imminent threat, he may declare war. He may veto bills, but that veto may be overridden by a simple majority vote of the National Assembly. Significantly, the President appoints the presidents of the Supreme Court of Cassation (SCC), the Supreme Administrative Court (SAC), and the Chief Prosecutor. The President is elected for a five-year term and may only serve two terms.

The Council of Ministers acts as a type of cabinet. It is composed of the Prime Minister, Deputy Prime Ministers, and the Ministers. While the Prime Minister has overall responsibility for the administration of the government, the Council of Ministers is responsible for implementing the state's domestic and foreign policy. In particular, the Council draws up the state budget and presents it to the National Assembly. Like the Council itself, individual ministers may issue regulations in their field of competence.

Legislative authority rests with the 240 members of the National Assembly, which is elected for a term of four years. The National Assembly's chairman proposes the agenda for each session. In addition to its general authority to pass laws, the Assembly is specifically directed to pass the state budget, establish tax rates, declare war, ratify treaties, schedule presidential elections, elect and dismiss the Prime Minister, and, on the motion of the Prime Minister, elect members of the Council of Ministers and other members of the government. Before it becomes law, legislation requires two votes before the Assembly. Following a vote of no confidence in the government, which requires a majority of the members of the Assembly, the government must resign.

The judicial branch is composed of judges, prosecutors, and investigators, all of whom are deemed magistrates. All courts have related prosecutor offices. Prosecutors, who report to a Chief Prosecutor, bring criminal charges, oversee the enforcement of criminal and other penalties, and take part in civil cases as required by law. Investigators conduct investigations in criminal cases. While certain budgetary, oversight, and administrative functions are shared with or controlled by the Ministry of Justice (MOJ), the judiciary is largely overseen by a Supreme Judicial Council (SJC), composed of judges, prosecutors, investigators, and political appointees. The Constitutional Court, which is not part of the judiciary, rules on constitutional issues.

Regional Governors, who implement state policy, are appointed by the Council of Ministers. At the local level, municipal councils and mayors are elected every four years.

A Grand National Assembly, composed of 400 elected representatives, may be convened upon a vote of two-thirds of the National Assembly. The Grand National Assembly may create a new constitution and designate changes to the territory of the nation.

The provisions of the Constitution apply directly, without need of legislative implementation. Treaties appropriately ratified also are applied directly and supercede domestic legislation.

History of the Judiciary

Communists led the government that seized control following the Soviet invasion of Bulgaria near the end of World War II. People's Tribunals were established by the communists and used to eliminate thousands of opponents of the new regime. Many non-communist judges, prosecutors, investigators, and law professors were purged or killed. The judicial council, which had advised the Ministry of Justice on personnel issues, was abolished; the concept of an independent judiciary was rejected; and the Communist Party took control of judicial appointments. The courts were seen as part of the larger effort to consolidate and support a socialist system. To promote the communist ethos, Comrades' Courts were later introduced in all enterprises. Most judges, especially high-level court judges, were members of the Communist Party. Generally, Communist Party members, especially party leaders, were beyond the reach of the courts and essentially operated above the law.

After the fall of Bulgaria's communist leader in November 1989, an assembly dominated by communists crafted a new constitution that was approved in 1991. The Judicial Systems Act (JSA), the basic statute that governs the courts and the judiciary, was passed in 1994.

Today, the Bulgarian judiciary is widely seen as being in crisis. Bulgarian legal experts, Bulgarian nongovernmental organizations (NGOs), the European Commission, the World Bank, and even the current Ministry of Justice have strongly criticized the administration of the courts, court staff and facilities, and the ethics and general performance of judges, prosecutors and investigators. Surveys indicate that the public has little trust in the court system, and Bulgarians believe that corruption is widespread among magistrates and court staff.

The government elected in June 2001 has moved robustly forward to address many of the concerns raised by commentators, preparing an action plan, a related strategy, and proposed amendments to the JSA, which were passed just as this report was going to press (see below). Judicial reform is a widely debated subject in Bulgarian society. The very vigor of this debate is a sign of real strength in Bulgaria's political and judicial system.

Structure of the Courts

In 1998, Bulgaria instituted a three-tier court system for civil and criminal cases. This system is composed of trial courts, either Regional or District Courts; interim appellate courts, District Courts and Courts of Appeal; and a cassation court, the Supreme Court of Cassation (SCC**).** Regional Courts' decisions are appealed to the relevant District Court, and, finally, to the SCC. If the original trial takes place in a District Court, its decisions are reviewed by the relevant Court of Appeals, and ultimately the SCC. The second instance is in effect a second trial court. Original trial court decisions may be appealed on any ground. The second level court may hear new evidence, including evidence existing but not mentioned at the original trial and evidence that came into existence after the lower court ruling. Cassation review is more limited in scope, focusing on conformity with the law.

Regional Courts, the lowest level trial courts, handle all trials not expressly referred by law to another court (*e.g.*, the District Courts). There are over one hundred such courts. The simple civil and criminal cases they hear are typically adjudicated by one judge. Decisions of Regional Courts may be appealed to the District Courts.

District Courts function as both first and second instance courts. There are twenty-eight District Courts in the country, including the Sofia City Court, which covers the capital. District Courts are typically divided into criminal and civil colleges. Acting as first instance courts, they hear complicated civil cases, including all commercial cases, and grave and complicated criminal cases. Three judge panels hear civil cases. Criminal cases are heard by one judge and two lay

judges. The first instance decisions of the District Courts are appealed to the Courts of Appeal, and, if necessary, the SCC. District Courts also hear appeals from Regional Court decisions.

Courts of Appeal hear appeals from trials that originate in District Courts. The Courts of Appeal sit in three judge panels and have civil, commercial, and criminal colleges. There are six Courts of Appeal, including one which hears military cases; their decisions may be appealed to the SCC.

The **Supreme Court of Cassation**, the third and final instance, hears appeals from the District Courts, when they act as second tier appeals courts, and the Courts of Appeal. The SCC sits in panels of three judges. If constitutional issues arise, the SCC is required to refer the case to the Constitutional Court. Relevant civil or criminal colleges of the SCC issue interpretive rulings to ensure the uniform and precise application of the law by the courts.

Administrative Law

Challenges to administrative acts may first be made to the government body making the act. Court appeals of administrative sanctions (*e.g.*, fines) are made in all instances directly to the Regional Courts, and they may be appealed to District Courts, the final level of review. Initial court appeals of administrative acts by senior executive officials or government agencies are made directly to the **Supreme Administrative Court** (SAC).

The SAC hears appeals of administrative cases from the District Courts, and it serves as the only instance for challenges against regulations and challenges to acts made by senior members of the executive branch. Cases first appealed to the Regional Courts, involving administrative sanctions such as fines, may only be appealed once more to the relevant District Court. Like the SCC, the colleges of the SAC issue interpretive rulings to rectify incorrect or contradictory rulings of lower judicial bodies. The SAC also must refer constitutional issues to the Constitutional Court.

Constitutional Law

The **Constitutional Court** is not formally part of the judiciary. Nevertheless, it does have the power of judicial review, determines certain legal powers of the branches of government, acts as the trial court for Presidential impeachments, and considers legal challenges to parliamentary and presidential elections. Constitutional issues arising in a case may only be referred to the Court by the SCC, SAC, or the Chief Prosecutor. Lower court judges presented with what they believe to be a constitutional issue must notify the SCC and SAC, who may refer the matter to the Constitutional Court. Similarly, prosecutors and investigators presented with constitutional issues notify the Chief Prosecutor, who may refer the issue to the Constitutional Court. The President, the Council of Ministers, the SCC, the SAC, the Chief Prosecutor, or one-fifth of the members of the National Assembly also may bring more abstract or general constitutional questions, which have not arisen within a case, before the Court.

Judicial Administration

The Constitution grants general authority over the courts to the **Supreme Judicial Council** (SJC). The SJC is composed of twenty-five members, including the presidents of the SCC and SAC and the Chief Prosecutor, who are automatically members. Half of the remaining positions are filled by candidates elected by the National Assembly. The other half are elected by the magistrates themselves, with six chosen by the judges, three by the prosecutors, and two by the investigators. SJC members must have at least fifteen years professional experience in the law, including at least five years as a magistrate (*i.e.*, judge, prosecutor, or investigator) or law professor. They serve five-year terms and may serve a second term, but this may not immediately follow their first term. The Minister of Justice chairs the meetings, but the Minister may not vote.

The SJC nominates the presidents of the SCC and the SAC, as well as the Chief Prosecutor. The President, who appoints these judicial leaders, cannot reject a second nomination of the same individual. The SJC also determines the number and geographic jurisdiction of courts; establishes the number of magistrates; determines their pay; promotes, demotes, and (when permitted by law) dismisses magistrates; handles magistrate discipline; lifts magistrates' immunity; submits the draft budget for the judiciary to the Council of Ministers; and administers the judicial budget.

Conditions of Service

Qualifications

Judges must graduate from law school; complete a one-year internship; not have been convicted of a premeditated crime; and possess some, undefined, "moral and professional qualities." Those seeking judgeships out of law school serve as junior judges for two years before being appointed as full members of the bench. Legal professionals with a minimum of two years experience as prosecutors, investigators, private lawyers, or a variety of other official legal positions may be appointed directly to the bench, without first serving as a junior judge. Individuals may also be appointed directly to higher posts in the court system following service in the legal system, within or outside of the judiciary. Lawyers with "high professional and moral integrity" and at least fifteen years of professional experience are eligible to serve as justices on the Constitutional Court.

Appointment and Tenure

The SJC appoints judges. District Court presidents submit nominations to the SJC for entry-level positions. The presidents of the relevant higher-level courts make nominations for direct appointment to their respective courts. The twelve justices of the Constitutional Court are appointed four each, by the National Assembly, the President, and, sitting in a joint meeting, the SCC and SAC courts.

After completing three years of service, judges are essentially granted life tenure. They may be removed only for serious criminal activity. Constitutional Court justices are appointed for non-renewable nine-year terms. They may only be removed if sent to jail for a deliberate crime or if they fail to meet the prerequisites of the office (*e.g.*, a justice runs for political office).

Training

There is no legal requirement that judges participate in continuing legal education. Within the Ministry of Justice, an Inspectorate is charged with organizing the training of magistrates, but that task currently is handled by a nongovernmental organization, the Magistrates Training Center. The Center, created in 1999, is managed by the Bulgarian Judges Association, the Alliance for Legal Interaction and the Ministry of Justice. Currently, all newly appointed judges receive approximately one-month training before assuming their duties. Other judges are invited to attend shorter training seminars on an *ad hoc* basis.

Assessment Team

Jim Corsiglia led the Bulgaria 2002 assessment team. Hristo Ivanov provided substantial assistance, and Svetozara Petkova, Violetta Kostadinova, Biliana Gyaurova, and Valentin Bojilov provided additional research and legal analysis. Scott Carlson, Angela Conway, Amanda Gilman, and Julie Broome also provided significant editorial assistance. The conclusions and analysis are based on interviews that were conducted in Bulgaria and the United States during the Winter of 2001 and the Spring of 2002 and relevant documents that were reviewed at that time. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

Note: Judicial Systems Act Amendments

The research and drafting of this report was conducted at a time when Bulgaria was addressing significant reforms in its judiciary. As a result, the report does not necessarily fully reflect Bulgaria's efforts, and especially the efforts of the current Ministry of Justice, to tackle important various issues raised in this report. As previously noted, the Ministry recently completed a strategy and corresponding implementation plan, and the substance of its proposed amendments to the Judicial Systems Act were passed by the National Assembly just as this report was being sent to the printer. *See* JUDICIAL SYSTEMS ACT, S.G. 59/1994, *amended by* S.G. 74/2002 [hereinafter JSA 2002]. These sweeping amendments represent a substantial effort by the Ministry of Justice, and it took a sustained commitment by the government to have the amendments passed in its first year in office.

Where the JSA amendments may have a considerable impact on one of the factors described below, a brief discussion of the relevant amendments is included in brackets at the conclusion of the commentary for that factor.

Bulgaria JRI 2002 Analysis

The Bulgaria JRI 2002 Analysis reveals a judiciary that remains weak, poorly administered, inadequately funded, and low in morale. Bulgaria, however, is a sound democracy, and the state and civil society seem increasingly determined to address these problems. While the correlations set forth below may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

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

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

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

Conclusion	***Correlation: Negative***
Judges have university training, but there is no law school regime especially for judges. The training that exists does not provide prospective judges with the practical skills needed to serve on the bench, a failing only partially compensated for by service as a junior judge. University level legal training programs are weak in some substantive areas.	

Analysis/Background:

Among the requirements for appointment to the bench is the obligation to attend "law school," which in Bulgaria is five years of university education. JUDICIAL SYSTEMS ACT, S.G. 59/1994, *amended by* S.G. 25/2001 art. 126(1) [hereinafter JSA]. There is no legal requirement that individuals practice before tribunals before becoming a judge, and there are minimal requirements for law school accreditation. *See* REGULATION ON THE UNIVERSAL STATE REQUIREMENTS FOR OBTAINING HIGHER EDUCATION IN THE FIELD OF STUDY OF LAW AND OF PROFESSIONAL QUALIFICATIONS FOR A LAWYER, COUNCIL OF MINISTERS ORDINANCE No. 75 of 1996, S.G. 31/1996 *amended by* SUPREME ADMINISTRATIVE COURT DECISION No. 6795 of 2000. Under the law, there are nineteen mandatory courses, but the substance of those classes is not specified. *See id.* art. 7. Students are required to spend fourteen days per year undergoing training in the executive or judicial branches of government. *Id.* art. 10.

Foreign observers are particularly critical of the law schools. A World Bank Report notes that library facilities in law faculties are "outdated and lacking in modern resources." WORLD BANK, LEGAL DEPARTMENT, EUROPE AND CENTRAL ASIA REGION, BULGARIA: LEGAL AND JUDICIAL REFORM, JUDICIAL ASSESSMENT 24 (1999) [hereinafter WORLD BANK REPORT]. Writing before the Magistrates Training Center was established, the World Bank found that "[Judges] are not well educated on the applicable rules of law either substantively or ethically." *Id.* at 21. A European Commission expert found that the "quality of the basic [law] university education is of a doubtful level" and varies widely. PHARE MISSION REPORT, TECHNICAL ASSISTANCE TO FACILITATE THE NEEDS ASSESSMENT AND PROJECT IDENTIFICATION IN THE FIELD OF REFORM OF THE JUDICIARY AND JUDICIAL CO-OPERATION sec. 1.3, 2.1.2 (1999) [hereinafter PHARE REPORT]. Coalition 2000, a Bulgarian association dedicated to fighting corruption, issued an Action Plan that asserts that judges leave the university with fine theoretical knowledge, but a woeful lack of practical skills. COALITION 2000, CLEAN FUTURE: ANTI-CORRUPTION ACTION PLAN FOR BULGARIA 28 (1998) [hereinafter COALITION 2000 ACTION PLAN].

Bulgarian government officials, judges, scholars, and legal practitioners have called for a greater link between theory and practice in the curriculum, examinations, which better test students' analytical skills, improved teaching, and courses which better reflect recent legal reforms. JUDICIAL REFORM INITIATIVE, PROGRAM FOR JUDICIAL REFORM IN BULGARIA 9-10 (2000) [hereinafter PROGRAM FOR JUDICIAL REFORM REPORT]. Several concerns about the system are widely held. Perhaps the most significant concern is that legal education is highly theoretical and does not

prepare students for the practical duties of a judge. For example, there are no required courses concerning the role of the judge in society, cultural sensitivity, or ethics, and those subjects, if taught at all, are covered in an extremely rudimentary fashion. In addition, rote memorization is the quality most valued at the schools, not the ability to analyze or understand nuances of the law. Even students from the best universities graduate with little, if any, practice in writing. In addition, numerous universities were opened in the 1990s, and the quality of training at all but a few of these schools is considered dubious. The quality of teaching also varies widely. Law professors travel throughout the nation to lecture at different schools, a practice not conducive to quality education. Further, there is little interaction between students and professors.

Many judges and lawyers feel that the traditional core courses (*e.g.*, civil law) at the best universities are taught well, but there is a range of opinions concerning the ability of these schools to teach new fields of law (*e.g.,* securities, competition, banking, and European Union law). Some, particularly judges, feel that law schools have made significant strides in those areas in recent years. Others, particularly business lawyers working in firms, feel that the law schools still fail to cover those courses with any measure of success, and they complain that judges do not understand cases dealing with modern commercial law. There is widespread recognition that the study of economics is insubstantial, making it difficult for judges to deal with a broad range of cases involving financial issues.

Several factors mitigate the poor performance of the schools in preparing judges for the bench. As some members of the judiciary note, the universities are still attempting to recover from the legacy of the communist regime, which sought ideological conformity from its law professors. Since the fall of communism, the pace of change in law, a veritable revolution, would make it extraordinarily difficult for any university to keep its students abreast of the current statutes and legal practice. Further, many of these new laws, drafted in haste and constantly revised, lack coherence, making it even more difficult to master them. Finally, the general poverty of the country afflicts the law schools: the schools are poorly funded.

Following law school, prospective judges are required to complete a one-year internship in the courts or private practice before they may be appointed a judge. JSA art. 126(2). Interns, in theory, are rotated through a variety of judicial offices (administrative, archive, notary, criminal court, administrative court, etc.). MOJ REGULATION ON TRAINING AND THE PROCEDURE FOR ATTESTATION OF THE JUDICIAL CANDIDATES AND THE INTERN ATTORNEYS No. 30 of 1996, S.G. 20/1996. There is universal condemnation of this internship. Although dedicated individuals can learn a great deal from the year-long program, the vast majority do not. Most graduates fail to participate in the internship, simply showing up at court to have the required papers signed by a judge, but never setting foot in a courtroom. Even if interns want to learn, there are far too many of them for judges to train individually. *See also* WORLD BANK REPORT at 25 (finding that judges have neither the time nor the incentive to handle the training). Nonetheless, almost no one fails the exam that comes at the end of the internship. Many believe that the exam is outdated and unconnected to any training given or judicial responsibilities. Bulgaria's Program for Judicial Reform summed up the general attitude: "[T]he unanimous opinion is that the internship. . . fails to achieve its intended objectives." PROGRAM FOR JUDICIAL REFORM REPORT at 10.

[The JSA amendments reduce the one-year internship to three months. *See* JSA 2002 arts. 163, 167. Prior to becoming junior judges, the candidates study for one year in the National Institute of Justice. JSA 2002 art. 35g. (Article 167 of the Judicial Systems Act now refers to Article 165 for an exam that should be taken following the internship, but Article 165 is repealed by the amendments.)]

Factor 2: Selection/Appointment Process

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

Conclusion	***Correlation: Negative***
Although some courts have introduced formal competitions for openings on the bench, there are no national standards used to evaluate candidates. The Supreme Judicial Council does not have the capacity to evaluate candidates thoroughly.	

Analysis/Background:

To qualify for appointment as a judge, one must:

(i) complete university level legal training ("law school");
(ii) complete a one-year internship (in courts or private practice) and pass an exam following the internship;
(iii) not have been convicted of a premeditated crime; and
(iv) have the required moral and professional qualities.

JSA arts. 126, 165(2).

If a judicial candidate follows the standard career path after law school, the candidate completes an internship and then is appointed a junior judge. *See id.* art. 147(1). After completing two years of service (which may be extended six months or reduced to one year) a junior judge may be appointed a judge at a Regional Court, the lowest trial court. *See id.* arts. 127(1), 147(2), 148(2). Junior judges hear cases in the same manner as other judges, but there may be no more than one junior judge on a three-judge panel. *Id.* art. 148(1). In exceptional cases, junior judge service may be waived entirely and a candidate appointed directly to a judgeship. *Id.* art. 127(1). Individuals with two years experience in the legal profession -- including as a prosecutor, investigator, private lawyer, bailiff, notary, academic, legal expert in the Ministry of Justice, etc. -- may be appointed to a Regional Court without prior service as a junior judge. *Id.* art. 127(5).

Individuals may be directly appointed to higher posts in the system following a term of professional legal service outside of the judiciary, the length of which varies with the level of the appointment. A portion of the required length of service for senior appointments must come only as a judge, prosecutor, investigator, or attorney. *Id.* art. 127(6). For example, one could be a private lawyer for five years and a prosecutor for seven years and then be appointed a SCC judge. Nonetheless, the standard route to the bench remains five years of law school, a one-year internship, two years of service as a junior judge, and then appointment as a Regional Court judge.

The SJC appoints judges. *Id.* arts. 27(1)(4), 124(1). The procedure for appointment is that District Court presidents submit nominations to the SJC for entry-level positions. *Id.* art. 30(1)(7)(a). The presidents of higher-level courts make nominations for direct appointment to their respective courts. *See id.* art. 30. The Minister of Justice also may nominate judges for any post. *Id.* art. 30(2).

This legislative scheme, however, masks the reality. SJC approval is, in the vast majority of cases, a mere formality. In truth, it is the court presidents that make nominations to the SJC who

exercise the real control over who is appointed a judge. Even if it wished to become more involved, the SJC has little if any information concerning most proposed candidates and lacks the resources to undertake a thorough evaluation of the nominees. As the Judicial Reform Initiative states, the SJC "is actually unable to judge on the professional qualities of all newly-appointed and promoted magistrates. . . . [I]t relies mainly on the assessment made by the proposing officials." PROGRAM FOR JUDICIAL REFORM REPORT at 8-9. The managing board of the Bulgarian Judges Association released a memorandum advocating for the creation of a standing committee within the SJC that would be responsible for the ongoing evaluation of magistrates' work. Position of the Bulgarian Judges Association Regarding the Draft Law Amending and Supplementing the Judicial Systems Act drafted by the Ministry of Justice, part 2, para. 3 (January 21, 2002) [hereinafter BJA MEMO].

Equally problematic is the absence of national standards governing appointments; in many courts, there are no standards at all (other than the minimal requirements set forth in the law). *See* COALITION 2000, CORRUPTION ASSESSMENT REPORT 2001 40 (2002) [hereinafter COALITION 2000 REPORT] (advocating the development of detailed statutory criteria). In the absence of formal standards, the appointment process is open to political influence. "[P]olitics will continue to motivate some judicial appointments. . . . [S]everal legal professionals confirm that the [SJC] does not have objective criteria [for judicial selections]. . . .They lament that . . . professional qualification is not always the sole factor in determining appointments." ALBERT P. MELONE, CREATING PARLIAMENTARY GOVERNMENT: THE TRANSITION TO DEMOCRACY IN BULGARIA 225 (1998) [hereinafter MELONE]. Depending on the court, subjective factors can play an enormous role in the appointment process. Many magistrates and attorneys believe that some applicants secure their appointments through family or other connections. The World Bank sees weakness in the appointment process leading to ethical failures:

> There is . . . no systematic determination made as to the character of people who apply for judgeships. When this is coupled with the lack of job descriptions and lack of regular supervision, it is clear that this is one reason that there are serious problems within the judiciary as to incompetence and corruption.

WORLD BANK REPORT at 10. This assessment may be overly grim. Good candidates are not excluded from the judiciary. To the contrary, especially in recent years, many believe that the quality of the applicants has increased and that a very high percentage of those appointed are well qualified. In particular, in many courts, especially the larger cities where there are more applicants than openings, individual courts have introduced formal competitions. While these competitions undoubtedly mark a substantial step forward, some still question whether they are entirely fair and bemoan the lack of objective, national criteria. The European Commission found no progress in 2001 towards introducing transparent national criteria and competitions for the recruitment (or promotion) of judges. COMMISSION OF THE EUROPEAN COMMUNITIES, 2001 REGULAR REPORT ON BULGARIA'S PROGRESS TOWARD ACCESSION 18 (2001) [hereinafter EC REPORT].

The absence of standards creates different problems in some of the country's less populated regions. It is not uncommon for there to be only one applicant for an open post. Candidates who may only meet minimal standards are selected simply because no one else applies. In those instances, required service as a junior judge may be reduced or eliminated. *See* PROGRAM FOR JUDICIAL REFORM REPORT at 9.

One judge commented that the closed nature of the appointment system causes many to doubt the process even when every effort is made to advance the finest candidates. Although the competitions in some courts create certain, known standards, in general, the activities of the SJC and the decisions of court presidents lack transparency. To address these problems, the Ministry of Justice Action Plan calls for uniform criteria for the recruitment and appointment of judges, and using competitions to fill openings. Ministry of Justice, *Program for the Implementation of the*

Strategy for Reform of the Bulgarian Judiciary 6, 9 (2001) [hereinafter MOJ STRATEGY FOR REFORM].

[Under the JSA amendments, the SJC is required to create a contest for those applying to become judges. JSA 2002 arts. 35g, 127a. The JSA amendments call upon the Ministry of Justice to comment on all nominations for judicial appointments to entry level and higher level courts. *Id.* art. 30(1). Court presidents are subject to a term of five years. *Id.* art. 125a(5). They may be reappointed, but they evidently must go through the appointment process at the end of each five-year term. *See id.* arts. 56a(2)(1), 59(3)(1), 76(2). (The selection and removal process for the heads of the SCC, SAC, and Constitutional Court, largely determined by the Constitution, remains unchanged.)]

Factor 3: Continuing Legal Education

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

Conclusion	***Correlation: Negative***
An independent Magistrates Training Center performs admirably, but it has inadequate resources to meet ongoing training needs. There is no requirement that judges maintain competence in the emerging fields of law or in the latest developments in traditional legal subjects.	

Analysis/Background:

Judges are not required to participate in continuing legal education, and there is no formal link between continuing education and advancement in the judiciary. By law, the Ministry of Justice is charged with organizing the training of all magistrates, but allocates few if any funds for this purpose. JSA art. 35(1)(4). Instead, training is actually conducted by a nongovernmental organization, the Magistrates Training Center (the Center is designed to serve all magistrates, including prosecutors and investigators). Formed in April 1999, each of the Center's (founders-the Bulgarian Judges Association, another Bulgarian legal not-for-profit group, the Alliance for Legal Interaction, and the Ministry of Justice) has two seats on the board. All new judges attend a thirty-day training program at the Center. It does not, however, provide ongoing systematic training to experienced judges. All of the Center's programs come at no cost to judges. When the Center opened, it conducted a detailed, professional survey of judges, attempting to determine where they lack expertise and seek further instruction. After each course, judges are asked to identify areas in which they would like to receive additional training in the future. With two of the Center's board members from the Bulgarian Judges Association, at least two of the six board members are always judges, and the executive director is a former judge. Thus, at the moment, judges have considerable influence on the nature of the instruction they receive at the Center. Strangely, the MOJ's Inspectorate, which is technically responsible for training, has virtually no contact with the Center.

Nearly everyone interviewed who had contact with the Magistrates Training Center, including all of the judges, gave it a positive report. For the most part, the Center offers relevant, timely instruction that judges find useful, often extremely useful. All agree that, given the vast number of new, frequently amended laws, the Center needs to train more judges more often. Two obstacles stand in the way of achieving that goal: resources and the busy schedule of judges. The Center currently relies heavily on foreign donors for financial support. Even with this support, there are

insufficient funds available to meet all of the nation's training needs. The Center itself lacks adequate staff and office space, and there is no permanent hall or classrooms. Second, most judges complain that they do not have time to attend training seminars because they are too busy with a high backlog of cases. *See* PROGRAM FOR JUDICIAL REFORM REPORT at 11. An informal agreement with court leaders allows all new judges to attend the thirty-day introductory course, but there are no regulations requiring any judges to attend the Center or any other training. Given these problems, the Center does not now adequately train all judges on the rapidly evolving legal fields in Bulgaria.

The legal status of the Magistrates Training Center is also currently being debated. Private Bulgarian legal training groups tend to favor maintaining the current status of the Center as an independent organization. The Program for Judicial Reform advocates government funding for the Magistrates Training Center. *Id.* at 12-13. Coalition 2000 supports a "separate independent public institution funded by the state." COALITION 2000 REPORT at 41. The Bulgarian Judges Association managing board strongly advocates that the Magistrates Training Center remain a nongovernmental group, separate from, but funded by, the government. BJA MEMO at part 1, para. 5. On the other hand, the European Commission contends that the SJC and the MOJ have reached a "consensus" concerning the need for a state training center. EC REPORT at 19. That "consensus" is not shared by the European Commission's own expert, who argues that it is important that any training center remain independent. PHARE REPORT sec. 2.1.21. Nonetheless, the new government has indicated that it plans to establish a new, state-run center and incorporate the MTC into this new institution. The government has also stated its intention to institute mandatory training for magistrates both before they begin work and throughout their careers. MOJ STRATEGY FOR REFORM at 8-9, 18.

The Center would undoubtedly benefit from steady funding from the government, but the Ministry's plans to absorb the Center threaten its independence and quality. All of the senior officials in the current Ministry are judges, but there is no guarantee that the political vagaries of future governments will not weaken the institution. To the extent that they had a view, none of the judges interviewed favor a takeover by the Ministry; some vociferously opposed the idea. Further, the debates concerning the legal standing of the Center seem to be detracting from its ability to accomplish its mission.

Outside the Center, foreign groups (including ABA/CEELI), and Bulgarian NGOs sometimes provide training for judges, but this instruction, while often valuable, is sporadic, and it in no way meets the broad needs of judges in a systematic manner.

[One of the more dramatic changes made by the new JSA amendments is the creation of the National Institute of Justice, which will serve as a training center for judges, prosecutors, investigators, bailiffs, recordation judges, court clerks, inspectors, and other MOJ staff. *See* JSA 2002 art. 35f. Ministry of Justice representatives will occupy three of the seven board seats, with SJC representatives filling the remainder. *Id.* art. 35f(3).]

Factor 4: Minority and Gender Representation

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

Conclusion	***Correlation: Neutral***
Although a significant percentage of the Bulgarian population is Roma, there are no Roma judges. This exclusion is not attributable to explicit prejudice against Roma, and other minorities serve on the bench. Many women serve in high judicial positions, but they may have difficulty reaching senior positions on the highest courts.	

Analysis/Background:

There are no laws pertaining to judicial appointment that promote or discriminate against any minority. Under the Constitution, all citizens are equal before the law, and there may be "no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion," etc. CONSTITUTION OF BULGARIA, S.G. 56/1991 art. 6 [hereinafter CONST.]

Treatment of minorities in the judiciary should be considered within the context of their status in society at large. The International Helsinki Federation finds general discrimination against minorities in Bulgaria, in particular Roma. INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS, HUMAN RIGHTS IN THE OSCE REGION: THE BALKANS, THE CAUCASUS, EUROPE, CENTRAL ASIA AND NORTH AMERICA, REPORT 2001 77, 85-86 (2001) [hereinafter HELSINKI REPORT]. *See also* Bulgarian Helsinki Committee, 70 OBEKTIV 7, 9, 26. The U.S. Department of State's human rights report on Bulgaria cited discrimination and societal violence against Roma as a serious problem. U.S. DEPARTMENT OF STATE, *Bulgaria*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2000 (2001) [hereinafter STATE DEPARTMENT REPORT]. In the Bulgarian census of 2001, 4.6% of the population identified themselves as Roma and 9.4% of Turkish ethnic origin. EC REPORT at 23. There appear to be no Roma and few Muslims or those of Turkish ethnic background serving as judges. The other two principal minority groups, Armenians and Jews, are represented on the bench, including some of the nation's highest courts.

The absence of Roma on the bench is part of the complex problem of Roma in Bulgarian society that is beyond the scope of this study. Most judges feel their absence from the judiciary is attributable to cultural factors, and their lack of university level legal education. Many feel that if sufficient numbers of Roma did attend law school and wanted to become judges, they would not face discrimination. Nonetheless, Roma suffer from widespread discrimination in Bulgarian society, and those lawyers that act for them in court or otherwise represent their interests feel that judges share at least some of the prejudices of society. This prejudice, harsh as it may sometimes be in practice (Roma have died in police custody), should be placed in perspective. Bulgaria in many ways is a remarkably tolerant society. Despite the sharp decline in living standards in the past decade and the high unemployment, there is virtually no room in the Bulgarian political landscape for open racism or xenophobia. This broad tolerance is reflected in the views of those shaping the judiciary.

Although most judges are women, men hold the top positions in the judiciary. The heads of the Constitutional Court, the SAC, and the SCC, and the Chief Prosecutor are all men. On the other hand, many powerful court presidents, senior judges on the SJC, and the head of the Bulgarian Judges Association are women. There is no consensus on the issue, but senior, female judges claim that it is difficult for women to make it to the very top in the judiciary. Some feel that the majority of judges are female because men, clinging to the notion that they must be the primary providers for their families, leave the courts to obtain more lucrative positions in private practice.

There is little or no attempt to address or even discuss issues concerning minority representation or gender imbalance in senior judicial positions. Interestingly, many of those interviewed stated or implied that they had not considered the topic before.

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: Positive***
Facing direct executive challenge to its authority in the mid-1990s, the Constitutional Court emerged as a strong body with an accepted right to strike down unconstitutional legislation.	

Analysis/Background:

The Constitution is the supreme law in Bulgaria, and no other law may contravene it. CONST. art. 5(1). The Constitutional Court, composed of twelve justices serving nine-year terms, has among its powers the authority to:

(i) provide binding interpretations of the Constitution;
(ii) rule on the constitutionality of laws and acts of the President; and
(iii) rule on the compatibility between international treaties, prior to their ratification, and the Constitution.

Id. arts. 149(1)-(2), (4).

The powers of the Constitutional Court cannot be limited by law. *Id.* art. 149(2). The President, one-fifth of the members of the National Assembly, the Council of Ministers, the SCC, the SAC, or the Chief Prosecutor may ask the Constitutional Court to consider a constitutional issue independent of any particular case. When confronted with what appears to be an unconstitutional law in a particular case, the SCC and the SAC must suspend their deliberations and refer the case to the Constitutional Court. CONST. art. 150(2); JSA art. 84(2). Regular judges confronted with what they believe to be an unconstitutional law must notify the SCC or the SAC, who may then determine to forward the issue to the Constitutional Court. Similarly situated investigators and prosecutors must also notify the Chief Prosecutor, who may pass the issue to the Constitutional Court. JSA art. 13. Individual panels of the SCC or the SAC hearing a case may make a referral directly; approval of the entire court is not needed. DEFINITION No. 1 of 1997, S.G. 54/1997. Official acts are reviewed through the administrative law process (*i.e.*, either when unconstitutional acts are not in conformity with administrative law, the law itself is unconstitutional, or the Constitution may be applied directly).

Commentators argue that the Court does handle constitutional issues, including judicial review, and its decisions are respected. *See, e.g.,* MELONE at 233-240; HERMAN SCHWARTZ, THE STRUGGLE FOR CONSTITUTIONAL JUSTICE IN POST-COMMUNIST EUROPE 165 (2000) 172-190 [hereinafter SCHWARTZ]; Venelin Ganev, *Judicial Independence And Post-Totalitarian Politics: The Case of the Bulgarian Law on Judicial Power,* 3 PARKER SCHOOL J. OF E. EUR. L. 229-31 (1996). Two authors make the point directly: "[The Court] established itself as the defender of

the Constitution and contributed to making the Constitution a significant part of Bulgarian society in the eyes of many." SCHWARTZ at 191. The Court had "success in advancing constitutional supremacy, both in terms of enforcing the Constitution as higher law and enhancing its symbolism of a new order, based on . . . the rule of law." Hristo D. Dimitrov, *The Bulgarian Constitutional Court and Its Interpretive Jurisdiction*, 37 COLUM. J. TRANSNAT. L. 505 (1999) [hereinafter DIMITROV].

These accolades are deserved. The Constitutional Court deals with many of the most significant and controversial problems facing the judiciary, and while bearing the brunt of considerable criticism from certain political quarters, its decisions are enforced. The Court has not hesitated to strike down statutes when it finds a conflict with the Constitution. Its refusal to capitulate in the face of fierce political attacks on the judiciary and the Court itself in the mid-1990s have earned the Court widespread respect. If the Court now operates under more tranquil conditions, it is not squandering its hard-earned respect. However, there is a sense that a minority of its decisions have been improperly influenced by politics. That view, while common among jurists, is not uniformly held. One of the Court's relatively recent decisions upholding a statute permitting the National Assembly to interpret legislation in a case pending before a court was viewed by some as disturbing. *See* Factor 6 infra.

More disconcerting is the failure of the SCC and the SAC to refer individual cases to the Court. These referrals are extremely rare, and the high courts do not yet seem comfortable letting the Constitutional Court confront cases involving private parties. This disinclination to deal with private parties may be shared by some on the Court itself. One justice commented: "By design, the Court's primary function is to resolve conflicts between the other political institutions and branches of government. For the most part, therefore, its decisions will be directed at political elites." Venelin Ganev, *Interview with Constitutional Court Justices Todor Todorov and Tasanko Hadjistoichev* 6 E. EUR. CONST. CT. REV. 65, 68 (1997) [hereinafter GANEV INTERVIEW]. This view seems to ignore the referral mechanism altogether. In any event, lawyers and judges contend that constitutional issues in their cases are rarely addressed.

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***
Administrative law and procedure are convoluted. The path to challenge government action is not always clear, and the ability to compel government action is limited. Nonetheless, the increasingly strong administrative courts regularly curtail improper government actions.	

Analysis/Background:

Pursuant to the Constitution, legal and natural persons "are free to contest any administrative act which affects them, except as provided by law." CONST. art. 120(2). The SAC oversees the application of administrative justice and rules on legal challenges to the acts of the Council of Ministers, individual ministers, and "other acts established by law." *Id.* art. 125.

The Administrative Procedures Act (APA), the Supreme Administrative Court Act, the Administrative Violations and Penalties Act, and the JSA are the primary statutes governing the courts' authority to review administrative acts. The APA controls the review of most administrative acts. That review is limited both by the APA's definition of an administrative act

and specific limits on the range of acts that may be challenged. The APA defines an administrative act as (i) an act issued by government organs where rights and obligations are created or which affect rights and lawful interests of citizens, and (ii) the refusal to act. ADMINISTRATIVE PROCEDURES ACT, S.G. 90/1979, *amended* S.G. 95/1999 art. 2(1) [hereinafter APA]. Excluded from the definition of an administrative act are acts of the President and Council of Ministers, acts related to planning for "socioeconomic development and pricing," and internal rules of government bodies. *Id.* art. 3.

Administrative acts may be appealed by "interested individuals and organizations" and the relevant prosecutor. *Id.* art. 21(1), (3). Appeals may be made to the state organ issuing the act and its superior body. *See id.* arts. 19-32. Appeals may be made to the courts if appeals to the relevant state organs are exhausted or the time to appeal to the state organs has expired. *Id.* arts. 33(1), (2), 35(2). There are certain limits on appeals to courts. A court may review the form of a document, the authority to issue the document, and the prerequisites for issuing the document. However, the court may only review officials' discretionary judgments and decisions if the law authorizing the state action sets standards for the review of that administrative action. *See id.* art. 33(3). Further, courts cannot review administrative acts that are connected with national security or that are made under laws that exclude judicial review of administrative acts made pursuant to their authority. *Id.* art. 34.

The APA permits court appeals directly to the SAC when an administrative act is issued, approved, or amended by a minister, the head of an agency that is immediately subordinate to the Council of Ministers, or a provincial governor. In all other instances, the relevant District Court hears the appeal. *Id.* art. 36. A court challenge automatically halts implementation of the act unless the court determines otherwise. *Id.* art. 37(3).

The Supreme Administrative Court Act expands the jurisdiction of the SAC to review acts or decisions of the Council of Ministers, the Prime Minister, Ministers and Deputy Ministers, heads of institutions directly subordinate to the Council of Ministers, regional governors, the Supreme Judicial Council, and the Bulgarian National Bank. SUPREME ADMINISTRATIVE COURT ACT, S.G. 122/1997, *amended by* 95/1999 art. 5(1) – (3) [hereinafter SUP. ADMIN. CT. ACT]. Conversely, the Act bars the SAC from reviewing (i) acts where government bodies propose legislation to the National Assembly, (ii) acts concerning the conduct of foreign or defense policy, or national security or (iii) the internal regulations of a state organ. *Id.* art. 7.

The Administrative Violations and Penalties Act provides for appeal and review of administrative sanctions such as fines. These sanctions can be appealed first to the Regional Court and a final time to the District Court. *See* ADMINISTRATIVE OFFENCES AND SANCTIONS ACT, S.G. 92/1969 *amended by* S.G. 25/2002 arts. 59-63. Finally, under the Judicial Systems Act, natural and legal persons can contest administrative acts that affect their "rights and legal interests," unless the law specifies otherwise. JSA art. 9(2). In limited circumstances, Bulgarian citizens also may seek damages for government acts. *See* CONST. art. 7; *see generally* LAW ON STATE LIABILITY FOR DAMAGES CAUSED TO CITIZENS, S.G. 60/1988 *amended* by S.G. 92/2000.

In addition to the foregoing, recent cases have affected Bulgarians' right to challenge government acts in court. One of these cases addressed the power to compel the government to act when the law commands. Although the language of the APA indicates that the failure to act is an administrative act, the issue has landed in the courts several times, perhaps most significantly in Hasan and Chaush v. Bulgaria, EUR. CT. H.R. (2000), *available at* http://www.echr.coe.int/eng. The case recounts two SAC decisions directing the Council of Ministers to take certain actions. Despite these repeated calls for the Council of Ministers to act, the Council refused to do so. *Id.* at paras. 32-38, 8-9. The European Court of Human Rights found that "the repeated refusal of the Council of Ministers to comply with the [SAC] judgments . . . was a clearly unlawful act of particular gravity." *Id.* at para. 87, 22-23.

Another case concerned the power of the National Assembly to effectively intervene in an administrative case pending before the SAC. In January 2000, the National Assembly passed a statute that rendered an interpretation of an article from the Act on Foreigners, while a case on this act was pending before the SAC. INTERPRETATIVE LAW ON ART. 47 OF THE LAW ON FOREIGN NATIONALS IN THE REPUBLIC OF BULGARIA, S.G. 153/1998, *amended by* S.G. 70/1999. The January 2000 amendment barred the SAC from reviewing certain Ministry of Interior actions made pursuant to the original Act on Foreigners. Thus, the statute retroactively halted the SAC's ability to consider a pending case. In the Constitutional Court, the law was challenged as an impermissible violation of the separation of powers, and, more plainly, legislative interference in the judicial functions of the SAC. The Constitutional Court upheld the law, claiming that this type of law was not prohibited in the Constitution and that the power to adopt, amend, and repeal laws implicitly included the power to interpret the law. Decision No. 13, S.G. 51/2001.

As this outline of the law reveals, the line defining precisely what can be challenged and the procedure for doing so remains murky. Bulgarian lawyers and commentators seek greater clarity and a simplified consolidation of administrative law and procedure. *See, e.g.,* PROGRAM FOR JUDICIAL REFORM REPORT at 30-31, COALITION 2000 REPORT at 30. Further, current law considerably narrows the scope of acts that may be reviewed; it is unclear if any acts of the President can be challenged.

Nonetheless, the competence and authority of the administrative law courts is generally well regarded. Administrative law is one of the few areas given a fairly positive review by the European Commission. *See* EC REPORT at 16. Given that a decade ago administrative acts were beyond challenge, individuals remain somewhat reluctant to fully exercise their rights in this area, and government officials resist oversight. But the SAC takes major cases and rules against the government. *See, e.g.,* Theodora Vasile, *Bulgaria's Supreme Administrative Court Annuls Privatization Deal for Blagoevgrad Mak Tours*, CAPITAL, Feb. 3-9, 2001 at 5. When the courts repudiate government actions, there is generally compliance with those orders.

In the rare instance when a statute (*e.g.*, the Access to Information Law) contains a procedure permitting citizens to compel government action, one can, with some difficulty, force the government to act. Otherwise, legal authorities are split on whether it is even possible under Bulgarian law to compel the government to pursue some action that is mandated by law. Some maintain that it is only possible to be awarded a fine (generally, a trivial sum) in compensation for government inaction, but not an order requiring action itself. At the very least, all concede that it is difficult to even get that far. Even if a party obtains a decision demanding government action, the prospect of compliance is uncertain. Despite these problems, as Hasan shows, the SAC believes it has the power to force government action.

The field of administrative law has developed rapidly, and the SAC is a powerful institution. The authority and jurisdiction of the administrative courts continues to grow. At the moment, the powers of those courts are restricted by the convoluted rules governing administrative law and the history of unassailable government action that, to an ever-diminishing extent, lives on today.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

Conclusion	***Correlation: Positive***
The courts have the sole authority to rule on matters concerning civil rights and liberties.	

Analysis/Background:

The courts, including the Constitutional Court, have exclusive jurisdiction over all cases concerning civil rights and liberties. Under the Constitution, the judiciary "shall safeguard the rights and legitimate interests of all citizens [and] juridical persons . . . ." CONST. art. 117(1). The judiciary must "defend the rights and legal interests of the citizens, legal persons, and the State." JSA art. 2(1). Penal cases may only be considered by courts established in accordance with the Constitution. CRIMINAL PROCEDURE CODE, S.G. 89/1974, *amended by* S.G. 70/1999 art. 6 [hereinafter CRIM. PROC. CODE]. The procuracy has attempted, thus far with little success, to carve out some power over civil liberties for itself, hoping to gain authority over arrest, detention, and search and seizure decisions. *See also* Factor 20.

Factor 8: System of Appellate Review

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

Conclusion	***Correlation: Positive***
Except for one, troubling Constitutional Court decision that appears to permit legislative meddling in judicial matters, final court decisions are not challenged by the other branches of government.	

Analysis/Background:

Only courts, including the Constitutional Court, may reverse lower court decisions. A case tried by a court may not be reviewed by any other authority. JSA art. 4(2).

As noted in Factor 6, a constitutional court decision in 2001 upheld the authority of the National Assembly to interpret legislation in a pending case. Although this is a highly disturbing precedent, it is isolated. It does not appear, at this stage, that the Constitutional Court will generally permit this kind of intrusion in the judicial process or that the National Assembly seeks that power.

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: Negative***
With few exceptions, judges have inadequate means of compelling the proper conduct of witnesses and parties. Once awarded a final judgment, litigants face enormous hurdles enforcing judgments. At best, lengthy delays are the norm; at worst, debtors avoid payment.	

Analysis/Background:

The judiciary has subpoena, contempt, and enforcement powers under the Civil Procedure Code and the Criminal Procedure Code. CIVIL PROCEDURE CODE, S.G. 12/1952, *amended* by S.G. 25/2000 [hereinafter CIV. PROC. CODE]; *see also* CRIM. PROC. CODE.

In civil cases, judges have limited authority to compel compliance with their orders. These powers include the ability to impose fines on parties and witnesses who fail to properly participate

in a court proceeding. For example, a judge can fine a witness 3 leva (US $1.42) for failing to appear. CIV. PROC. CODE art. 72. Judges can order the collection of court expenses "by force." *Id.* art. 60. The judge acting as the chair of the court session may remove any person who is disorderly. *Id.* art. 106.

Judges have similar powers in criminal cases. They may fine witnesses who fail to appear and order them to appear. CRIM. PROC. CODE art. 95(3). When a defendant fails to appear, a judge may order the defendant brought to court by force. *Id.* 157(1), 268(2)-(3). To secure the attendance of the defendant, the court also may require a signed promise of appearance, posting of bail, house arrest, or detention. *Id.* arts. 146(1), 152a, 153.

When an individual must be brought to a criminal trial by force, the Ministry of Interior (*i.e.,* the police) carries out the task. *Id.* art. 157(4). (While the Civil Procedure Code does not specifically direct the police to undertake this task in civil cases, they perform this role in all cases.) *See* MINISTRY OF INTERIOR ACT, S.G. 122/1997, *amended by* S.G. No. 28/2001 arts. 60(1)10,12. Court officials, municipal officials, or the Ministry of Interior (*i.e*., the police) serve summons, subpoenas and other court papers. *Id.* art. 158(1)-(2). A judge may fine those officials who "violate their duty" with regard to serving these documents up to 100 leva ($47.39). *Id.* art. 162(1). As in civil cases, a judge may, after issuing a warning, order the unruly expelled from court. *Id.* art. 266(1), (4). In addition to being ejected, a judge may fine non-parties up to 40 leva ($18.96) for such disturbances. *Id.* art. 266(4).

Although the preceding rules give judges the authority to control courtrooms and the legal process on paper, legal, practical, and historical problems thwart judges' ability to exercise this authority. Most judges can control their courtrooms, either through the use of the sanctions offered in the law or, more likely, through the force of their own personalities. But young, inexperienced judges can be intimidated, and the general lack of respect for the judiciary makes it difficult for some judges to impose their will. Ultimately, unless a defendant is brought from prison, there are no court guards to enforce a judge's order during a hearing. Direct, physical threats against judges are rare; however, they do occur, and some judges have concerns regarding their own safety.

Most judges complain that they have insufficient powers to control the process of a case. Lawyers tend to agree, but they also argue that judges do not use the powers that they already possess. Under communism, prosecutors, not judges, were expected to take a commanding role in court, and that legacy lingers. There is a reluctance to punish parties, attorneys, and witnesses who delay or attempt to thwart legal proceedings. On the other hand, even the most aggressive judge can be stymied by the weaknesses in both procedural codes, ethical lapses by attorneys, corruption on the part of those serving summonses and notices, and evasion by parties and witnesses. Attorneys routinely use falsely procured medical certificates as an "excusable" reason for not appearing, thus postponing a hearing and avoiding a fine. In civil cases especially, it is extremely difficult to compel the attendance of parties and witnesses, who may be intimidated or negligent. Fines are infrequently imposed on attorneys, parties, or witnesses and are generally trivial in amount and rarely collected. Bomb threats to courthouses are used to force the cancellation of hearings. Given the crowded docket, rescheduling a hearing may take months. In criminal cases, where many different prosecutors handle the same case over the course of many different hearings, individual prosecutors often fail to aggressively push a case to conclusion, and judges have scant ability to address prosecutorial delay. Various analyses of the legal process have repeatedly identified these same problems. *See* generally WORLD BANK REPORT at 16-17.

These difficulties during trial pale in comparison with the problems arising once the court renders a "final" decision. *See* COALITION 2000 ACTION PLAN at 27 ("[it] is possible to deliberately delay the execution of an obligation until it becomes impossible to fulfill"). PROGRAM FOR JUDICIAL REFORM REPORT at 25 (the inefficient execution process "renders meaningless any effort to improve the administration of justice."); WORLD BANK REPORT at 30-31 (trial court study showed

less than one-fifth of judgments enforced, citing, among other things, difficulties serving summonses; poor working conditions, salary, and training for execution judges; an auction process conducted by judges that is needlessly time-consuming; a civil procedure code with excessive protection for debtors; and the hiding and fraudulent conveyance of assets by debtors). In fact, some believe that the only final judgments carried out with any certainty are those condemning a defendant to prison.

In civil cases, once a final judgment is rendered, the case passes out of the hands of the trial court, and a new judge, who is part of a separate corps of foreclosure judges, takes over the collection of the judgment. This aspect of the Civil Procedure Code is, by all accounts, outdated, based largely upon provisions of the Code drafted as early as 1952. The process favors the debtor and virtually calls for an entirely new legal process for the prevailing party to vindicate the rights determined in the trial court. In that new process, the creditor has few rights and little means to influence the proceedings. Depending upon the type of obligation (*e.g.*, monetary claims, repossession of assets) and the object of foreclosure (*e.g.*, movable property, real estate, receivables), different procedures apply. The most common procedure for the satisfaction of a money judgment is the foreclosure against property. In this process, after a judgment is awarded, a regular judge issues a special writ authorizing foreclosure. *Id.* arts. 237, 242. That writ is then presented to a foreclosure judge, who, in turn, enters into a series of complex procedures, including an auction, all governed by intricate, rigid rules. *See generally id.* arts. 326, 344, 348, 367, 370(6), 371b(2), 374, 376, 378(5), 382(1). If necessary, foreclosure judges can use the police and other government authorities to enforce their orders. *Id.* art. 328(2). A similar, although slightly more flexible, process exists for the collection of fines (including court ordered fines) and other obligations owed the government. Foreclosure is carried out by an official of the Collection of State Receivables Agency with the Ministry of Finance. *See generally* TAX PROCEDURE CODE, S.G. 103/1999, *amended by* S.G. 109/2001 arts. 137, 146; COLLECTION OF STATE RECEIVABLES ACT, S.G. 26/1996, *amended by* S.G. 46/2002 art. 85(2).

If the execution process works at all, it takes many years. All of the acts of the foreclosure judge, including those requiring business judgment (*e.g.,* finding the debtor, locating assets, serving notices, organizing and conducting asset sales, setting minimum sale values) are governed by inflexible rules. At the very least, the system creates opportunities for corruption; many say those opportunities are eagerly seized. As one senior judge commented: "It makes our work useless."

In criminal cases, the defendant is sentenced, and the court's order is sent to the prosecution for execution. CRIM. PROC. CODE art. 375(2); *see also* MINISTRY OF INTERIOR ACT, S.G. 122/1997, *amended by* S.G. No. 45/2002 art. 60. Court orders for the seizure of objects are executed by the relevant mayor; if a fine is imposed, a writ of execution is issued (leading back to the civil procedure outlined above for the collection of fines by the Ministry of Finance). CRIM. PROC. CODE. art. 375(3)-(4).

The current government has the stated goal of assessing the full range of institutional and practical factors that impede enforcement of judgments. Its aim is to pass legislative amendments that will lead to enforcement provisions matching current European standards. *See* MOJ STRATEGY FOR REFORM at 20-21.

[A new judicial security force, operated by the Ministry of Justice, is called for under the JSA amendments. The force is specifically tasked with assisting in the summoning of persons to court. JSA 2002 art. 36e.]

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***
The SJC has input in the budget process, but the executive's financial proposals usually determine the amount of funds actually allocated. Weak financial management hampers the SJC's ability to demand more funds. Once allocated, the judiciary controls funds allotted to the courts.	

Analysis/Background:

According to the Constitution, the judicial branch of government must have "an independent budget." CONST. art. 117(3). Pursuant to that authority, the JSA grants the judiciary an "autonomous budget" to be "prepared, allocated, and controlled by the Supreme Judicial Council." JSA art. 196(1). *See also* Decision 18/1993, S.G. 1/1994. Under the law, the SJC submits a draft judicial budget to the Council of Ministers, who then submits the draft budget to the National Assembly. JSA arts. 27(8), 196(2). The Council of Ministers also may submit to the National Assembly its comments on the SJC's budget, but it may not alter it without the SJC's permission. *Id.* art. 196(3). The National Assembly establishes funding levels for different major categories. The National Assembly's 2002 judicial financing law provides for the following:

SCC	10 million leva
SAC	4
Procuracy	30
Investigators	23
SJC	0.9
Courts	54
Total	121.9 million leva (US $57.77 million)

Source: STATE BUDGET FOR THE YEAR 2002 ACT, S.G. 111/2001, *amended by* S.G. 28 /2002 art. 2 [hereinafter STATE BUDGET]. 1 lev equals US $0.47. Exchange rate source: Bulgarian National Bank, *available at* http://www.bnbank.org/bnb/home.nsf/fsWebIndex?OpenFrameset.

The Constitutional Court found that the National Assembly cannot cut all appropriations to the SJC, nor, the Court decided, can Parliament make funding for the entire judiciary contingent on certain tax revenues. *See* DIMITROV at 474.

Despite these legal protections, the SJC's ability to influence the budget process is severely limited by its own institutional weaknesses and executive intrusion into the budget process. U.S. consultants found that the judicial budget process was not truly independent. USAID POLICY ANALYSIS: A NATIONAL COURT ADMINISTRATION FOR BULGARIA, 10 (2001) [hereinafter COURT ADMINISTRATION REPORT]. With a minuscule financial staff, the SJC is ill-equipped to prepare and defend a meaningful budget. Modern financial management practices are not in place. The Council of Ministers, and Finance Ministry officials, comment on the SJC's proposed budget, and those comments, in effect, amount to an alternative budget proposal, one typically about one-third less than the SJC proposal. Given that the same party or coalition controls both the government

and the National Assembly, the alternative proposal of the Finance Ministry is generally adopted by the parliament. *See generally* COURT ADMINISTRATION REPORT at 46. In a rare occurrence this past year, the SJC succeeded in having the National Assembly restore a small portion of the 2002 budget that the Finance Ministry originally sought to cut. In the 2002 judicial funding law, the National Assembly allocated funds to the several large categories indicated above. Technically, the SJC may move funds among the various divisions of the judiciary, but in practice, the funds allocated to the SCC, the SAC, the procuracy, and the Investigators are controlled by those bodies. *See* STATE BUDGET, art. 3. The SJC controls only the funds allocated for its own administration and the line item for "Courts." Most of those funds are for judicial salaries, leaving the SJC with little discretionary funding. Unfortunately, the SJC does not have sufficient staff capacity to carefully monitor its own disbursements. As SJC operations are largely secret, it is nearly impossible for the public to monitor expenditures. *See generally* WORLD BANK REPORT at 8-9.

As a result, the SJC is caught in something of a vicious cycle. No doubt, the judiciary needs and deserves more funds, but without a financial management team, the institution is hard-pressed to make a case for any added resources. Still, the SJC is able to voice objections to the extensive cuts routinely made in its budget proposals, but at least until recently, it seemed likely that those objections would be given scant regard by the authorities that actually allocate funds.

The situation is further confused by the Ministry of Justice's control over the Court House Fund, which is funded from various fees collected by the government in connection with the functioning of the judicial system. This fund is used, in part, to construct, maintain, and equip court buildings. JSA arts. 197-98. Both the SJC and the Ministry seem to have some authority over equipment expenditures, the two institutions, however, fail to carefully coordinate, plan, and monitor expenditures for court construction, maintenance, and equipment. *See* COURT ADMINISTRATION REPORT at 11 (advocating SJC control over all of the funds).

To address these financial concerns, the Bulgarian Government currently proposes: (i) adding staff to the SJC budget office to improve financial planning capacity, (ii) an SJC officer to liaison directly with the National Assembly on budget matters, and (iii) establishing a unit that would coordinate Ministry of Justice and SJC work on budget proposals. MOJ STRATEGY FOR REFORM at 24.

The Constitutional Court has its own independent budget, which is administered by the Court's president. CONST. CT. ACT art. 3(1); CONST. CT. RULES art. 6(1). The Constitutional Court president submits a draft budget directly to the National Assembly.

[The JSA amendments create a further administrative staff for the SJC and the courts at large. JSA 2002 arts. 187-188s. While the amendments preserve the SJC's authority to independently draft the annual budget, the language from the old statute stating that the budget shall be "prepared, and controlled" by the SJC has been dropped. *See* JSA arts. 196(1)-(2). In addition, the National Assembly appears to be granted additional powers to allocate funds for particular units within the judiciary. *See* JSA 2002 art. 196(4).]

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***
Judges are not adequately paid, partially due to the poor economic conditions of the country. As a result, some quality judges leave the bench to seek more lucrative positions in the private sector.	

Analysis/Background:

Many judicial salaries are established using a formula based on the pay scales for other government positions. The president of the Constitutional Court receives a salary equal to the mean of the compensations of Bulgaria's President and the Chair of the National Assembly. Regular Constitutional Court justices are paid 90% of the Court president's salary. CONST. CT. ACT art. 10(1)-(2). The presidents of the SCC and the SAC (and the Chief Prosecutor and the Director of the Special Investigative Service) receive a base monthly salary equal to 90% of that of a Constitutional Court justice. Entry level salaries for judges (and prosecutors and investigators) are equal to twice the amount of the average monthly wage of government employees. JSA art. 139(2). Upon retirement, judges who have worked in the judicial system for ten years prior to their retirement receive a payment equivalent to twenty monthly gross salaries. *Id.* art. 139d. Like all citizens, they also receive regular social security payments based upon a portion of their annual salary of judges. *See* COMPULSORY SOCIAL INSURANCE CODE, S.G. 110/1999, *amended by* S.G. 10/2002 art. 68. Constitutional Court justices receive retirement pay at the end of their nine-year terms regardless of whether they have reached retirement age. CONST. CT. ACT art. 10(4). The basic monthly salaries for judges are as follows:

Junior Judge	520 leva	(US $260)
Regional Court Judge	570	(285)
District Court Judge	630	(315)
Appellate Court Judge	740	(370)
Judge on the SAC or the SCC	1,000-1,300	(500-650)

Comparative national monthly salary and government figures for 2001 are set forth below:

Average State Budget Official	249.6	(118)
Average Private Sector	262.7	(124)
National Average	259.6	(123)
Minister	1,150.50	(545)
Member of National Assembly	921	(436)
Senior Expert in a Ministry	450	(213)
Minimum Teacher's Salary	247	(117)

Source for judicial salaries: JRI INTERVIEW. Source for three average salaries: Bulgarian Ministry of Finance web site http://www.minfin.government.bg/en/index.html. Source for government figures: REG. ON THE OFFICIAL STATUS OF THE STATE SERVANTS, Adopted by Ordinance of the Council of Ministers No. 35 of 2000, S.G. 23/2000, *amended by* S.G. 108/2001. Source for Ministers and the National Assembly: Local Bulgarian media. 1 lev = $0.47 (May 28, 2002).

Given the poor economic conditions in Bulgaria, there is some dispute as to whether judicial salaries are improperly low. *See* MELONE at 228 (given the scarcity of resources, "the judiciary is not a particular target for ill-treatment."). There is general agreement that the salaries are insufficient to permit judges to live in a reasonable environment. Those with children and without a spouse with a second income are often forced to leave the judiciary. Some exceptional judges do remain in the system, but many of the best leave for the higher incomes available in private practice. Many of the top law students never enter the judiciary because of the low salaries. For many years, it was the norm for judges to serve a few years, gain experience and contacts, and then opt for the benefits of private practice. That career path still exists, but it seems to have slowed due to the continuing economic difficulties in the private sector. Compared to the typical civil servant, judges are well paid, but that is small consolation to judges who feel, rightly, that they have considerably more responsibility than the average government bureaucrat. Moreover, unlike most civil servants, important ethical rules bar judges from receiving almost all types of outside income, making it impossible for them to supplement a meager government salary. JSA art. 132(1). Insufficient salaries are only part of the problem. Salaries are not always paid on time.

Relying on "strong anecdotal information," a World Bank report found that low pay leads to corruption to meet basic living expenses. WORLD BANK REPORT at 10. The evidence that low pay leads directly to bribery is not apparent, but higher salaries would indisputably improve the quality and morale of the corps of judges.

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***
Some courthouses, recently renovated, are in admirable condition. Most are worn down, some with serious physical defects. Overcrowding, especially in urban areas, is severe.	

Analysis/Background:

Although there tends to be a minimum threshold, court conditions vary considerably. Buildings do not have gaping holes in the roof or broken windows. Many provide decent, even admirable, working conditions for judges and halls for hearings. There are exceptions, but courthouses are generally easy to find and centrally located. But few, if any, courts are in excellent shape. Some have serious problems. The European Commission found "very poor" conditions in the majority of courts. EC REPORT at 18. The most common problem cited by those examining courthouses is overcrowding. Especially in major urban areas, there is insufficient space and facilities are poorly maintained. Frequently, judges work with one, two, or three colleagues in dingy, cramped offices. When courtroom space is full, it is not unusual for judges to hold hearings in their own offices. In rare instances, heating is a problem. The conditions in appellate courts are comparable to those in the trial courts.

Conditions in courthouses are gradually improving. The current government plans to evaluate the physical condition of all judicial facilities and to create a strategy for the acquisition of new buildings as necessary. MOJ STRATEGY FOR REFORM at 24-25.

Factor 13: Judicial Security

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

Conclusion	***Correlation: Neutral***
Violence against judges is quite rare; serious threats are unusual, but they do occur. More common is the informal, *ex parte* pressure put on judges by lawyers and parties.	

Analysis/Background:

Few grave threats are made against judges, and many judges feel they do not face serious harassment. Still, few courthouses are constructed to provide a buffer between judges' offices and the public, and court security is virtually nonexistent. One young judge described handing down a criminal sentence in a nearly empty courthouse in the early evening. The only people in view as the judge went to her office and left the courthouse were a large, sullen contingent of friends and relatives of the convicted man. Nothing happened, but the atmosphere was tense, and had she been attacked, she would have been defenseless. Recently, the Bulgarian Judges Association proposed that a body be created within the SJC to hear complaints from threatened judges. The proposal came in response to the report that two judges were threatened with an acid attack in a prominent case involving the Chief Prosecutor. *See Judges Demand a Special Body to Deal With Threats and Pressure*, MEDIAPOOL, Online News Service (Mar. 27, 2002), *available at* www.mediapool.bg/site/bulgaria/2002/03/27/0005.shtml. The numerous cases of violence against prosecutors and investigators contribute to this unstable environment.

More common is the mild form of harassment to which judges routinely submit. Parties frequently burst into judges' offices or stop them in the street to badger them over the substance or progress of a case. A prominent attorney believes these intrusions are a legacy of the communist era people's tribunals (*i.e.*, courts where members of the community actively participated in "court" proceedings). Others claim this petty harassment stems from the public's lack of respect for the judiciary. Whatever the basis for these *ex parte* communications, judges, while annoyed by them, unfortunately do not firmly repulse them, leading to at least the appearance of ethical impropriety. The problem is exacerbated by the lack of secure conditions for judges.

The MOJ Action Plan calls for modifying court buildings to improve security and eventually the creation of a court security force. MOJ STRATEGY FOR REFORM at 25.

[A new security force specifically for the judiciary is created under the JSA amendments. Its direction and organization is left to the discretion of the Ministry of Justice. JSA 2002 art. 36e.]

IV. Structural Safeguards

Factor 14: Guaranteed tenure

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

Conclusion	***Correlation: Positive***
Judges are appointed for life. Justices of the Constitutional Court are appointed for nine-year, non-renewable terms. Many claim that it is too difficult to remove judges who fail to perform their duties properly.	

Analysis/Background:

Judges become "irremovable upon completing three years of service in the office they hold." JSA art. 129. After three years of service, they may only be removed upon: (i) retirement, (ii) resignation, (iii) being sentenced to prison for more than a year for a premeditated crime of a public nature (*i.e*., a crime automatically prosecuted by judicial officials, not private citizens), or (iv) becoming unable to perform their duties for more than a year (*e.g.,* due to illness). *Id.* art. 131. *See also* CONST. art. 129(3). Decisions to remove a judge are made by the SJC. JSA art. 27(1)(4).

The presidents of the SCC and the SAC are nominated by the SJC and appointed by the President of the Republic for a seven-year term; they may not be reappointed. They may only be removed on motion of the SJC, with approval of the President. The President cannot deny SJC nominations or SJC motions for removal that are made twice. CONST. art. 129(2); JSA arts. 27(1)(1). There are few grounds for removal: resignation, incapacity due to illness, imprisonment, and serving in posts deemed by law to be incompatible with their position (*e.g*., being a member of the National Assembly while serving as the SCC president). JSA arts. 16(4), 29(1).

The twelve justices of the Constitutional Court are appointed for non-renewable nine-year terms. CONST. art. 147(2). They may only be removed upon resignation, the enforcement of a prison sentence for a deliberate crime, incapacitation, or a failure to meet the prerequisites of the office (*e.g*., a justice runs for political office). *See id.* art. 147(5), 148.

The "irremovability" provisions of the law foment considerable criticism. Most judges, not surprisingly, favor retention of the broad protections. Some observers agree, believing that preserving what amounts to life-long tenure is a necessary safeguard of judicial independence and a necessary benefit, given the low wages and poor conditions, to entice people to become judges. Others in the government, the broader legal field, and amongst the public at large are not so sure. A judge and SJC member has argued that the life-tenure for judges may, in some cases, lower the quality of their work. *See* MELONE at 228-29; *see also* COALITION 2000 REPORT at 26 (suggesting limiting immunity to address corruption). The U.S. State Department claims that the "difficulty and rarity of replacing judges virtually regardless of performance often has been cited as a hindrance to effective law enforcement." STATE DEPARTMENT REPORT at 5. The current "irremovability" provisions protect judges from direct assault, but the very extent of these protections may also make them more susceptible in limited cases to other, improper influence. Their "irremovable" status also protects judges from facing the consequences of less than dedicated, professional work. Some judges support reforming the irremovability provisions to make it easier to remove judges. However, those who hold this opinion believe that it is essential that such reforms be accompanied by corresponding reforms that increase the transparency and

objectivity of the disciplinary system. The current government, seeking greater accountability, would like to make it easier to remove judges, extend the period of service required prior to granting secure tenure, and more extensively review judges' qualifications before declaring them "irremovable." *See generally* MOJ STRATEGY FOR REFORM.

[The JSA amendments make two significant changes concerning the granting of "irremovable" status. First, judges become "irremovable" after five years on the job, not three. Specifically, they serve two years as junior judges and then three years as judges before they become "irremovable." JSA 2002 art. 129. Second, a detailed evaluation is made before they are granted "irremovability," and the statute provides some standards to guide this evaluation, including compliance with the code of conduct. *Id*. arts. 129(2)-(3), 131(2)-(4).]

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***
Few objective standards governing promotion exist. There is no central institution with the necessary resources to fairly analyze candidates seeking promotion. Highly qualified judges may be promoted, but time served as a judge is the major factor influencing promotions.	

Analysis/Background:

Technically, judges are promoted, demoted or dismissed by the SJC. CONST. art. 129(1); JSA arts. 27(1)(4), 124(1). The presidents of the respective courts or the Ministry of Justice make proposals for promotion. JSA art. 30(1)-(2). The JSA sets forth terms of service that are required for promotion. These range from two years of service for appointment to the lowest court to twelve years for appointment to the SCC or the SAC. *Id.* art. 127(1)-(4). The terms of service can be satisfied by work as a private attorney, investigator, prosecutor, academic, or a variety of other "official" legal positions, but for the higher courts up to five years of the required service must be as a judge, prosecutor, investigator or private lawyer. *Id.* art. 127(5)-(6). Other than these length-of-service requirements, the only legal requirement regarding promotion is a demonstration of the candidate's "high qualifications and an exemplary performance of their official duties." *Id.* art. (142)1.

As with judicial appointments, the legal requirement that the SJC make promotions is observed more in form than in substance. Except at the highest levels, court presidents determine promotions: their recommendations to the SJC are accepted without serious debate or review. In the majority of cases, the SJC knows nothing about the candidates for low-level promotions. At the upper echelons of the judicial system, members of the SJC are more likely to know those vying for the increasingly small number of senior court positions. Of course, in all instances, the SJC's prosecutors, investigators, and National Assembly appointees, who collectively hold the majority of the seats on the SJC, are less likely to know the candidates. Some contend that this makes the SJC more objective; other believe it only heightens the role of contacts, bias, and politics in the process. Such divergent conjecture underscores the lack of transparency and standards.

The concentration of power in the hands of court presidents means that the quality of the promotion process depends to a great degree on the character and quality of the court presidents. Those presidents competent in personnel matters and dedicated to the objective

advancement of meritorious candidates promote good judges. Those less skilled in personnel issues and more open to politics permit problematic judges to move up the ranks.

This does not necessarily mean that incompetents are routinely promoted. Observers vary widely on the significance to the process of connections, lobbying, gossip, and politics. Almost all agree that these factors play a major role in at least some cases. The World Bank finds that "promotions are granted in a haphazard fashion, and are as often based on political and family connections as they are on levels of knowledge and experience." WORLD BANK REPORT at 11. This seems overstated. In fact, length of service was most frequently given as the primary justification for promotions. There is little dispute that in most instances, almost regardless of their merits, if judges remain with the system they will eventually be promoted at least once. Even for those who contend that merit plays a large role in most promotions, the lack of objective standards, other than the length-of-service requirements, is indisputable. Aside from the widespread belief that court presidents effectively pick who will be promoted, outsiders rarely have any idea why or how the SJC makes any decisions. Under these fluid, vague conditions, intelligence, professionalism, and dedication generally spurs advancement, and at the same time, judges lacking those qualities can be found on the very highest courts.

Various reforms are proposed. The leaders of the Bulgarian Judges Association are pushing for the creation of a commission (composed of judges, private lawyers, and members of the public) reporting to the SJC that would review promotions. BJA MEMO part 2, para. 3. *See also* PROGRAM FOR JUDICIAL REFORM REPORT at 9 (advocating for written criteria and assessments by a panel composed of judges and Ministry of Justice officials); COALITION 2000 REPORT at 40 (calling for specific criteria in the law for advancement with periodic performance evaluations by the SJC). The current government advocates the establishment of criteria for promotion and demotion, including the assessment of judges' workload and an evaluation before "irremovable" status is granted. MOJ STRATEGY FOR REFORM at 6-8.

[A number of modifications have been made in the JSA concerning the advancement of judges. First, a greater number of ranks now exist, making it possible to have finer gradations of advancement. JSA 2002 art. 143. Second, promotions are made following the same analysis and standards that are used to evaluate judges prior to making them "irremovable." *Id.* arts. 142(3), 143(3). Third, it appears that judges with superior qualities may be promoted before the necessary length of service requirements are met, rewarding quality over time served. *See id*. art. 167a(1)(3). Fourth, even lacking promotion, symbolic recognition may be offered for superior work. *Id.* art. 167a. Fifth, the possibility of demotion for poor work or standards is more explicitly established under the new amendments. *Id.* art. 131a.]

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	***Correlation: Neutral***
Immunity protects magistrates from actions taken in their official capacity as well as all criminal acts. Procedures for lifting immunity are not transparent and rarely invoked. Thus, immunity provides protection for judges and simultaneously weakens public confidence in the judiciary.	

Analysis/Background:

Judges (and prosecutors and investigators) are immune from criminal prosecution or detention except if they have committed a grave crime (defined as one in which punishment exceeds five

years in prison) and their immunity is lifted by the SJA. They may be detained without SJC approval only if they are caught in the course of committing a grave crime. CONST. arts. 70, 132; PENAL CODE art. 93; *see also* JSA arts. 11, 134. To lift a judge's immunity a majority of two-thirds of the SJC must vote by secret ballot to remove the protection. JSA art. 32(2). Judges also are immune from all civil liability "for damages they have inflicted while discharging their official duties, unless their actions constitute a crime." JSA art. 135. Constitutional Court justices have immunity similar to that given regular judges, although they are not explicitly guaranteed civil liability protection. CONST. art. 147(6). Immunity can be lifted by a majority vote of two-thirds of their fellow justices. CONST. art. 148(2); *see also* CONST. CT. ACT art. 9(2); *see* JSA art. 134(1).

It remains extremely difficult to prosecute a judge, prosecutor, or investigator for any crime, unless the criminal violation is gross and their culpability is obvious. Even in such cases, a successful prosecution is far from assured and sometimes never seriously attempted. *See* Roumen Georgiev, President, Chamber of Investigators, Comments at the Conference on Immunity and Irremovability of Magistrates (Dec. 14, 2001) [hereinafter IMMUNITY CONFERENCE] (SJC has never lifted immunity of a judge and only lifted immunity of four magistrates out of 3,700, who have served since SJC was created); *id.* at Comments of Mihail Genov, Investigator (despite written confession of magistrate, SJC does not lift immunity); WORLD BANK REPORT at 12 ("virtually never" is immunity actually lifted). Clearly, the high level of immunity of judges helps insulate them from political pressure, but it lowers risks for those who might be open to improper influence. *See generally* Vania Savova, Prosecutor, IMMUNITY CONFERENCE; COALITION 2000 REPORT at 26; WORLD BANK REPORT at 12 (immunity is a "serious block to dealing with criminal activity by judicial branch"); EC REPORT at 18 (immunity makes "it difficult to know the potential scale of corruption or criminal activity in the judiciary"). Furthermore, it does severe damage to the reputation of the judiciary by creating the impression that judges are beyond the reach of the law. It bothers the public, foreign investors, and even many judges that judges are protected from prosecution for, say, traffic crimes.

On the other hand, even judges inclined to limit immunity argue that the current powers and inclinations of police, investigators, and particularly, prosecutors, make it essential to maintain the existing broad protections. Without this immunity, many judges believe they would be subject to harassing investigations and trumped-up prosecutions. Those fears may or may not be justified, but at least as far as the procuracy is concerned, they are not unreasonable. *See generally* IMMUNITY CONFERENCE.

Immunity is a topic of considerable debate in Bulgaria, especially among foreign observers, but it is only one component of a complex reform effort. Eliminating or maintaining immunity will not, by itself, substantially alter the condition of the judiciary. *See* Mario Dimitrov, Deputy Minister of Justice, IMMUNITY CONFERENCE (main problems of judiciary are lengthy judicial procedures and the inefficient execution of judgments); *see also id.* Comments of Roumen Nenkov, Judge, Supreme Court of Cassation (main problems of judiciary are inefficiency and political influence).

[Under the JSA amendments, the core immunity for magistrates, as a constitutional mandate, remains unchanged. But one-fifth of the SJC members and the Chief Prosecutor now may request that the SJC lift immunity and temporarily remove a judge from office. JSA 2002 art. 27(1)(6). Under the old statute, only the Chief Prosecutor could make recommendations to lift immunity and remove judges from office. *See* JSA art. 27(1)(6).]

Factor 17: Removal and Discipline of Judges

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

Conclusion	***Correlation: Negative***
The standards governing judicial discipline are vague, and the discipline process is not transparent. No institution exists that is capable of carefully investigating all complaints and prosecuting disciplinary charges.	

Analysis/Background:

Judges may be disciplined for:

(i) offences and omissions while discharging their official duties;
(ii) unjustified delay in the discharge of their official duties;
(iii) actions that "lower the prestige of the judicial system";
(iv) breaking their oath of office; and
(v) failing to act according to legal procedure and within the time limits set forth in the procedural rules.

JSA art. 168.

Court presidents propose the initiation of disciplinary proceedings for judges in their courts. The Minister of Justice also may propose that disciplinary proceedings be initiated against a judge. JSA art. 171. The court presidents or MOJ submit their complaints along with the written response of the accused judge to the SJC. *Id.* art. 173. Upon receiving a proposal for discipline, a five-member panel of the SJC, chosen by lot, holds a hearing to consider the accusations. *Id.* arts. 33, 174. At the hearing, the person making the disciplinary proposal, or a designate, acts as the prosecutor, and the accused has the right to counsel. The panel may question witnesses, hear experts, and collect evidence. *Id.* art. 177. If it finds that a disciplinary violation has occurred, the SJC may impose the following sanctions: (i) reprimand, (ii) reduction in salary for two months, (iii) denial of the possibility of promotion for six months to three years, (iv) reassignment to another location for up to three years, or (v) dismissal or demotion. *Id.* arts. 169, 178. Although the disciplinary panel may recommend the last three sanctions, they may only be imposed by the full SJC. JSA art. 178. Dismissal is not a disciplinary option for those judges who have served for at least three years. *See* JSA arts. 129, 131, 169(2); CONST. art. 129(3). All judges and Constitutional Court justices, however, may be removed if their immunity is lifted, and they are convicted of a serious crime. *See* Factors 14 and 16 above. Decisions of the disciplinary panel and the full SJC may be appealed by the accused judge and the party proposing the discipline. The appeal is heard by a panel of three SCC judges and two SAC judges, with each member of the appeal panel chosen by lot. JSA arts. 34, 179-180. That appeal is final. *Id.* art. 182(2).

The procedural rules for disciplining judges are known, but the process is complex and seldom invoked. Even fairly clear-cut cases can take years to process. There are extensive procedural safeguards for accused judges, but views still differ on the fairness of the system. Although special rules governing judicial conduct exist, the standards are often quite broad. Official, detailed guidelines for conduct do not exist, and until recently when the Magistrates Training Center began annual seminars on the subject, there was no training in law school or elsewhere on ethics. Judges on the SJC discipline panel necessarily rely on their own experience and judgment in handling disciplinary cases. One senior judge found some SJC decisions "shocking,"

with the guilty absolved and the innocent condemned. It is difficult to assess the validity of such charges because the activities of the SJC, including its discipline proceedings, are shrouded in mystery. Most of what judges know concerning these proceedings comes from hearsay.

Although technically disciplinary hearings are open to all magistrates, this seems to be ignored in practice; certainly, the public has little or no knowledge of what goes on and why. *See* JSA art. 177(4). The process only becomes transparent when an appeal is made to the joint Supreme Court panel. Moreover, prosecutors, investigators, and the National Assembly's political appointees form a majority of the SJC. It is not at all clear that these parties are familiar with the ethical obligations of judges, or that their presence on discipline panels contributes to the independence of judges.

Regardless of its efforts to be objective, the SJC has insufficient staff to conduct independent investigations, review complaints and monitor judicial behavior more generally. They can ask relevant parties to testify before the discipline panel, but the lack of institutional resources must stymie any effort to be consistently thorough and to develop cases independently of the complaints brought by court presidents. *See* WORLD BANK REPORT at 12.

In response to these problems, the new government has called for the enforcement of a judicial code of ethics (which has yet to be approved), and the development of the SJC's capacity to investigate alleged improper behavior among magistrates. MOJ STRATEGY FOR REFORM at 6, 16.

Other than the procedures to lift a justice's immunity and then remove him or her from office, the law mandates no disciplinary procedures for members of the Constitutional Court.

[In addition to those already authorized to recommend discipline, the JSA amendments provide that one-fifth of the SJC members may propose discipline for a judge. JSA 2002 art. 171(2). Significantly, judges may be disciplined for violating the proposed code of conduct. *Id.* art. 168(1)(3). Appeals from SJC disciplinary rulings are now made solely to the SAC. *Id.* art. 179.]

Factor 18: Case Assignment

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

Conclusion	***Correlation: Negative***
Case assignment is conducted without transparency or formal standards. Many court presidents perform the task admirably. But there are few if any guarantees that abuses will be checked, and reports of manipulation are common.	

Analysis/Background:

Court presidents assign cases or delegate this task to a deputy or the presidents of various colleges within a court. *See* JSA art. 63(1)(1). In assigning cases, presidents attempt to equalize workload, and in some instances, satisfy the personal interests of judges. Specialized and more complex cases are typically assigned to more experienced judges. The system probably works well in the majority of instances. There are, however, no formal standards governing case assignment and complaints abound. Some hardworking judges feel that their industriousness is rewarded with extra work. Others say that favorites are more likely to obtain the cases they want.

More problematic, the absence of an objective system of case assignment makes manipulation possible. Court presidents or their deputies know that a particular judge is more likely to arrive at a particular outcome (*e.g.* some judges, as in every nation, tend to give longer jail terms than others). There is no procedure to ensure that case assignment is not directed to influence the outcome of a case. Most interviewees are confident that this manipulation happens at least some of the time. *See also* WORLD BANK REPORT at 58 (the system is open to manipulation and corruption, and "private attorneys . . . suggested that such abuse of the system may be happening"). The court staff can also influence the process. An attorney reported that in one court a US $200 bribe permitted parties to select their judge. A judge in the same court admitted that court staff switched the labels identifying which judge was to receive specific cases.

As is often true in Bulgarian court administration, the case assignment system is not at all transparent. *See* EC REPORT at 18. The integrity of the process depends heavily on the individual court presidents.

Reportedly, the SJC is adopting case management software that will further impartial case assignment by automatically distributing many cases according to uniform, objective criteria.

Factor 19: Judicial Associations

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

Conclusion	***Correlation: Neutral***
The Bulgarian Judges Association is an exceptional force for judicial reform and the promotion of the independence of judges. Poorly organized, however, the Association does not do all that it might to support the interests of its members.	

Analysis/Background:

Judges may form and join organizations that "defend their independence and professional interests." JSA art. 12(2). The Bulgarian Judges Association is the only such organization in Bulgaria composed exclusively of judges. The Association has superb intellectual leadership that speaks with an articulate voice. Often the organization is the principal (or only) body defending the independent authority of judges. Association members actively participate in legislative working groups and advise the Constitutional Court and the SCC on matters pertaining to the judiciary. Active in the creation of the Magistrates Training Center, the Association holds two seats on the board of that institution. Judges' robes were obtained for judges primarily as a result of the group's efforts. The organization drafted two ethics codes. In the frequently heated public debate surrounding the activities of the judiciary, the Association is the most consistent advocate of reasoned reform, and the Association has played a major role in advancing and sustaining that reform. For a typical example of the Association's defense of the corps of judges and insight into judicial reform see the recent memorandum by the group's board responding to the Ministry of Justice's proposed changes in the JSA. *See* BJA MEMO.

Unfortunately, poor administration haunts the growth of the organization. It does boast more than five hundred members, but although membership fees are small, its membership represents only one-third of the Bulgarian judiciary. Those active in judicial reform issues in the capital are well aware of the importance of the Association, others considerably less so. Most judges interviewed feel disconnected from the group, and other legal professionals had only vague impressions of the Association. The organization does almost no active fundraising and has little in the way of a

financial plan. While many young judges are eager to participate in the group's activities and an active committee began work on a judge's journal in 2001, there is little progress at drawing judges from the provinces into the activities of the organization. Few responsibilities are delegated from the board down to its members. The Association itself feels that it has failed to adequately arrange for the material needs of judges, including salaries, working conditions, etc.

Three other significant legal groups include judges as members: the relatively new Alliance for Legal Interaction, the Union of Lawyers, an organization that has existed for decades, and the Legal Initiative for Training and Development (PIOR), which has existed since the mid-1990's. All three entities have broader goals than the Bulgarian Judges Association, which focuses on protecting the status and interests of judges.

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***
The perception of widespread corruption within the judiciary is probably inaccurate, but judges frequently face improper pressure from their superiors, other branches of government, and private parties. Judges have good reason to fear pressure from the procuracy.	

Analysis/Background:

The law clearly compels judges to disregard improper influence. "The judicial branch shall be independent. In the performance of their functions, all judges . . . shall be subservient only to the law." CONST. art. 117(2). *See also* JSA arts. 6, 13; CRIM. PROC. CODE arts. 9, 16(1). Upon taking office, judges take an oath swearing to: "[act] according to [their] conscience and inner conviction; [to] be impartial, objective, and fair . . . [and] always remember that [they are] responsible before the law for everything." JSA art. 107. Similarly, Constitutional Court justices swear to faithfully carry out their legal duties. CONST. CT. ACT art. 6(1).

However, judges face pressure from supervising judges, other branches of government including the procuracy, and private parties that might undermine these legal standards. Considering the public sector first, observers are split on the likelihood of court presidents abusing their positions to influence cases. Credible reports indicate that some court presidents manipulate case assignments in an effort to influence the outcome of cases, or they pressure judges to rule in a certain manner on some cases. Conditions vary greatly from court to court, and it is unclear how often these incidents occur. It is clear that the conditions exist for court presidents to abuse their positions. Today, they essentially have life-tenure as presidents and great discretion in case assignment, promotions, appointments, and discipline. Some act in a superlative manner and do not abuse this discretion; others do not. There is little official oversight of their actions. Although individual judges can probably resist improper pressures from court presidents without suffering immediate consequences, decisions of court presidents can substantially affect their careers. To address these concerns, the Ministry of Justice's Action Plan calls for imposing term limits on court presidents to control their power. MOJ STRATEGY FOR REFORM at 8. The Judges Association has indicated its support for such a change. *See* BJA MEMO at part 2, para. 10.

Other branches of government are also a source of improper influence. In a carryover from communist times, some executive officials call judges and tell them how they should rule on cases. Members of Parliament may call the Minister of Justice and ask him to become directly involved in a case. Other executive officials may call the relevant court president and ask him or her to take an interest in a case. One report described a ministry official who visited court presidents all over the nation and asked each to call a meeting with a judge sitting on a case involving the ministry. The court president would then ask the judge to rule in favor of the ministry. Direct and indirect reports indicate that such calls or visits are not isolated incidents. Judges, however, now say that they ignore the advice of these government officials. Still, some witnesses to these interventions indicate that they yield positive results for the government. More broadly, many attorneys claim that, in disputes between citizens and the government, judges retain an institutional bias in favor of the government. (These comments do not generally pertain to the new government that came to power in the summer of 2001).

As for open institutional conflicts with the executive and the parliament, in the mid-1990s, the governing party made various, direct attempts to curb the power of the courts. MELONE at 231-238; Venelin Ganev, *Judicial Independence And Post-Totalitarian Politics: The Case of the Bulgarian Law on Judicial Power,* 3 PARKER SCHOOL J. OF E. EUR. L. 228-31 (1996). The intensity of the disputes from the mid-1990s has receded. *See* FREEDOM HOUSE REPORT, 1999-2000 at 183; HELSINKI REPORT at 79. But the memory of political attacks lingers, and other disputes remain. Judges commonly feel that the government blames them for societal problems, starving them of resources, attempting to reduce their power, and infringing on their independence. There is some merit to these complaints. The judiciary is under-funded, and politicians frequently prefer to blame judges rather than address the serious and complex problems facing the judiciary. Now that the new government is beginning to address judicial problems, several of their initiatives could infringe upon the powers of judges. No particular initiative spells the demise of the independence of the judges, but several of them, collectively, demonstrate an executive ever willing to expand its prerogatives at the expense of judges. The role of the Ministry of Justice's Inspectorate (which monitors certain procedural actions of the judiciary) has been cited, especially by judges, as an infringement on judicial independence. *See* BJA MEMO at part 1, para. 2. More broadly, the Bulgarian Judges Association protests against (i) the housing of judges' personnel files in the Ministry of Justice, (ii) the Ministry's plan to channel all personnel proposals through the Ministry and to comment on personnel changes, and (iii) the Ministry's effort to take over the Magistrates Training School (now an independent body, *see* Factor 3). BJA MEMO at part 1, paras. 1-5. *See* MOJ STRATEGY FOR REFORM; MINISTRY OF JUSTICE PROPOSED AMENDMENTS TO THE JSA (2000) *available at* http://www.mjeli.government.bg [hereinafter DRAFT AMENDMENTS]. Furthermore, in recent years, the government has repeatedly entertained the idea of modifying the Criminal Procedure Code in a manner that would limit judges' power to protect individual rights. Finally, the constitutional structure potentially threatens the independence of judges. Officials who are not judges, almost half of whom may be appointed by the party in power, dominate the SJC. From the executive branch, the Minister of Justice presides at SJC meetings, and he controls the Inspectorate. To the extent that the SJC wants to protect judges' interests, it has few resources to do so, lacking the administrative capacity to undertake the constitutional duties it is assigned.

Finally, considering public sector pressure, a variety of circumstances raise the issue of possible influence by the procuracy on judges. Numerous commentators have detailed efforts by the procuracy to intimidate various members of society, including judges. Setting the background for these claims are charges that the procuracy is itself subject to improper influence and unable or unwilling to perform its assigned constitutional function. There is a "widespread feeling by both the government and the public that the prosecutor's [sic] offices have not always acted to carry out their legal responsibilities, and that they have sometimes been the source of extreme delays and corruption." WORLD BANK REPORT at 40. *See* STATE DEPARTMENT REPORT at 4 (sources contend that "organized crime influences the prosecutor's office"); *Constitutional Watch, Bulgaria*, 8 E. EUR. CONST. REV. 5, 6 (Winter/Spring 1999) (prosecutors "arbitrarily . . . allow suspected

criminals to evade prosecution"); *Constitutional Watch, Bulgaria*, 9 E. EUR. CONST. REV 10, 10 (Fall 2000) ("apparently" many "high-profile" cases brought to Chief Prosecutor were dismissed or "protracted endlessly"). An article in the East European Constitutional Review broadly described the problems with the procuracy. When two prosecutors were demoted by the SJC, the article found, the Chief Prosecutor immediately pulled them into his own office, effectively nullifying the SJC's discipline. Zdravka Kalaydjieva, 8 E. EUR. CONST. REV. 81. Prosecutors are "'independent' actors inside the judiciary . . . some [of whom] no longer feel accountable in any way." *Id.* "[M]any serious crimes remain unprosecuted," Kalaydjieva writes, and "dubious accusations may continue to dangle ominously over the heads of the accused." *Id.* at 82. She cites the "lack of transparency in the work of the procuracy." *Id.* at 83. When newspapers published information concerning alleged meetings between representatives of the procuracy and the underworld, the procuracy initiated dozens of criminal libel proceedings against journalists making these reports and those that voiced negative views of the procuracy. A prominent Bulgarian legal reform group found similar institutional problems with this branch of the judiciary. *See* COALITION 2000 REPORT at 34-35. These types of reports led the newspaper Capital to the view that the Chief Prosecutor uses his powers to exert "[p]ressure, pressure and only pressure against all that he considers his enemies or competitors." *How Does the Chief Prosecutor Use His Powers*, CAPITAL, Mar. 17-23, 2001, at 11 [hereinafter CHIEF PROSECUTOR CAPITAL ARTICLE]. Capital concludes: "After all this no one dared raise their voice against the chief public prosecutor." *Id.*

Next come a series of reports describing direct or indirect pressure by the procuracy on individual judges or the corps of judges as a whole. U.S. court administration experts noted as a threat to judicial independence the Chief Prosecutor's power to make recommendations for judicial appointments, and his potential involvement in deliberations on judicial performance. COURT ADMINISTRATOR REPORT at 10. More concretely, the Chief Prosecutor recently issued orders to review all of the hundreds of privatization contracts. Momchil Milev, *Nikola Filchev Vs. Privatization*, CAPITAL, Sept. 15-21, 2001, at 37, *available at* www.capital.bg/weekly. The article claims that the Chief Prosecutor is trying to blame all of the legal failures on other branches of the judiciary and, in particular, "trying to put the blame on judges." *Id.* The "strongest pressure," however, was reserved for Rumen Yankov, the former president of the SCC, a man the Chief Prosecutor saw as a rival for control of the judiciary. News articles appeared alleging that Yankov beat up a disabled woman, assaulted a female colleague, was a State Security Agent, and was a homosexual. The Chief Prosecutor said that he could no longer cover up Yankov's crimes, but when Yankov urged the Chief Prosecutor to reveal what those crimes were, the Chief Prosecutor refused to give details. The media attacks against Yankov did not cease until Yankov resigned as SCC president. CHIEF PROSECUTOR CAPITAL ARTICLE. There are also a series of reports describing pressure by the procuracy on other institutions and individuals including journalists, parliamentarians, municipal officials, and prosecutors. *See Press Release By The Publishers Of Capital And Dnevnik Newspapers, available at* www.dnevnik.bg/fil/default.asp?p=8 (Mar. 5, 2001) (newspapers assert that thirty tax checks began one week after one of the papers initiated an investigation of the Chief Prosecutor's brother).

Moreover, the Chief Prosecutor has indicated that certain judicial powers should be shifted from judges to prosecutors. Prior to 2000, the procuracy could order pre-trial detentions without court approval. *See* Varbanov v. Bulgaria, EUR. CT. H.R. (2000) *available at* http://www.echr.coe.int/eng. (without court review, prosecutor orders citizen confined to psychiatric hospital where he is tied to bed and given sedatives). In 1999, Bulgaria gave judges greater authority to monitor the activity of prosecutors, especially in the area of pre-trial detention. *See* PROGRAM FOR JUDICIAL REFORM REPORT at 27-28. The Chief Prosecutor continues to criticize these changes, stating that prosecutors are forced "to take into account demands of capricious judges." Quoted in Milev and Nikolov, *Filchev Vs Filchev*, CAPITAL Mar. 17-23, 2001, at 11 *available at www.capital.bg.weekly.* The Chief Prosecutor accused judges of arrogance and sharply criticized the European Convention for Human Rights, which posits judges as the protectors of civil liberties, arguing that the Convention fails to "provide a proper reflection of contemporary public life." Quoted at *id.* He has often stated that some civil rights should be

restricted. *Id.* The Chief Prosecutor pushed for laws that would (i) give the Chief Prosecutor control of the Special Investigative Service (it being the only unit "that has managed to escape from the iron grip of the Chief Prosecutor"), (ii) grant the Chief Prosecutor alone the authority to lift judicial immunity, (iii) permit the procuracy to suspend cases, (iv) grant the procuracy the right to issue arrest warrants, and (v) bring investigators more directly under the control of prosecutors. *See id.*

Regardless of whether each detail of these accusations can be verified, it is beyond dispute that many judges fear the procuracy and that their concerns are reasonable given the environment. It is not clear that the procuracy, a highly centralized institution, is directly threatening judges, but some judges are nonetheless intimidated. In a nation where judges do not always have the prestige to withstand attacks from parties, *see* Nikolai Staikov, *Judge Presiding over Balkan Airlines Case Resigns*, CAPITAL Feb. 9-15, 2002 *available at* www.capital.bg/weekly (judge "succumbed to the pressure" and withdrew from major bankruptcy after conflict with creditors and receivers), pressure from the procuracy is particularly dangerous. There is a strong perception that the Chief Prosecutor is an extremely powerful person and that to cross him, or his subordinates, is risky. Given that the Chief Prosecutor also is a member of the SJC and that prosecutors are involved in all criminal cases and many civil cases, the danger to independent, impartial decision-making by judges is clear.

Private parties are another source of improper influence on the Bulgarian judiciary. Although the practice of private parties bribing judges is widely believed to be common, this activity is probably not the most serious threat to the independence of judges, and it is doubtful that the actual level of corruption is as high as is commonly supposed. Extremely odd decisions on a securities or antitrust case may result from a judge's lack of economic expertise, not favoritism. Delays may not be the result of a civil defendant's bribe, but they may arise from a judge writing on a manual typewriter in a cramped office that is shared by three other judges. Similarly, prosecutors and investigators may fail to move a case forward in a timely manner, requiring judges, pursuant to Bulgaria's obligations under international human rights conventions, to free on bail a notorious criminal. Judges raise additional legitimate points concerning the likelihood of widespread corruption. Many, perhaps most, decisions are rendered by a three-judge panel; it is difficult to bribe all three. Most decisions are appealed at least once; many, numerous times. Bribing one judge, or even a complete panel, at the trial level is no guarantee of ultimate success. Several judges, some with long careers, claim they had never once been offered a bribe. Finally, as one judge put it, "I don't know any rich judges." In short, critics that feel corruption is the norm are probably wrong.

Nonetheless, these arguments do not eliminate the possibility of corruption. Even one judge on a panel, especially the judge writing the decision, can be highly influential, even decisive. Payment for delaying a case need not require bribing an entire panel. Decisions may be appealed, but trial rulings are not always irrelevant. Moreover, there are allegations of bribes at all levels. Some judges may never be offered a bribe because it is obvious they will not take it. One judge said he was shocked when he was offered a bribe, not because he thought bribes were shocking, but because he thought he had a reputation for not taking bribes. He said that those offering money usually do their homework. Judges may not be rich, but the mere fact of their relative poverty indicates that some may be swayed by relatively small bribes.

Most statistical measures of corruption assess perceptions. *See, e.g.* TRANSPARENCY INTERNATIONAL AND THE NATIONAL CENTER FOR PUBLIC OPINION STUDIES, PUBLIC PERCEPTIONS OF CORRUPTION (Jan. 2000) *available at* http://www.transparency-bg.org/eng/index.html [hereinafter TI CORRUPTION PERCEPTION SURVEY]. The link between perceptions and reality, however, is a difficult one to make. Even in suspicious, publicized cases, facts are difficult to discern. *See, e.g., Bulgaria Media On Corruption*, WEEKLY REVIEW June 26 – July 2, 1999 *available at* http://www.online.bg/coalition2000/eng/preview/Summary-W20.html (it is "believed that the court decision was influenced" in Decotex scandal by the former court president). Most telling are

statistics indicating that 6.8% of respondents had been asked by a judge for a bribe, COALITION 2000 SURVEY at 5, and that 10.6% had paid a bribe for judicial service, TI CORRUPTION PERCEPTION SURVEY. The latter figure may include all magistrates and court staff, but nonetheless, both figures are large, especially considering that most people surveyed probably do not have any cases in court.

There was near universal agreement that the company register and foreclosure processes (both of which require the approval of judges) were extremely corrupt. In conducting the JRI, ABA/CEELI was quoted prices for the cost to quickly register a company in Sofia (*e.g.,* US $200 for the registration of a limited liability company in three days). More often, payments, favors, gifts, or pressure usually comes indirectly, through friends or acquaintances. In a paradigm mentioned repeatedly, a bribe is paid to a lawyer (not involved in the case) that is married to a judge ruling on the affected case.

Again, opinions vary, but it is commonly reported that frequently judges act not for money, but to do a favor for a friend or relative. These may appear to be small matters, such as speeding up the processing of a case (at the expense of other cases). Even more widely acknowledged is the prevalence of *ex parte* communications. Parties burst in to judges' offices, accost them on the street, and meet with them in cafes. In these communications, judges admit that many parties will use any means to influence a decision: condemning their opponents, bolstering their own arguments, and flattering the judge. Judges deny that they are influenced by these blandishments; they find them irritating. But they also fail to stop them when they occur.

There are bright spots. All agree that if judges want to act honorably, they cannot be forced to do otherwise. No court president can monitor every act of mischief, but the good presidents can and do set a tone of integrity. For example, in Plovdiv, a new judge in charge of company registration reportedly eliminated corrupt practices in that department.

[Some measures were taken under the JSA amendments that may impact issues raised in this Factor. Most obviously, magistrates must now publicly declare their assets and liabilities. JSA 2002 art. 135(2). In addition, one fifth of the members of the SJC may request that the Chief Prosecutor be divested of immunity and temporarily removed from office pending the outcome of a criminal trial. *Id.* art. 134(4). More generally, the various efforts to increase the professionalism of magistrates, including amendments calling for a code of conduct, should help reduce the perception and reality of improper influence. These changes are described in Factors 2, 3, 14, 15, 17, and 21.]

Factor 21: Code of Ethics

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

Conclusion	***Correlation: Negative***
No enforceable ethics code exists for judges. There is no required training on ethics and little ethics training of any kind. Statutory rules do significantly confine improper judicial conduct, but these do not adequately cover important ethics topics.	

Analysis/Background:

No enforceable judicial code of ethics exists, and no laws require the training of judges on ethics. The JSA and procedure codes do include numerous provisions on ethics. These include prohibitions on participation in political activities and membership in trade unions. JSA art. 12(1), (3). The provisions forbid judges from holding elective or appointive office in national or local government, practicing law, giving legal advice, conducting any commercial activities and acting as officers or board members of any corporations. *Id.* arts. 132, 138. The requirements stipulate that judges must maintain the secrecy of their deliberations and the confidentiality of any information obtained in the course of their work. *Id.* arts. 107, 136(1). They may not give preliminary opinions on their own cases or comment on cases handled by other judges. JSA art. 137. Judges may not hear cases: if they are related to one of the parties or the attorneys; have taken part in the settlement of the case; participated in the case as a witness, expert, or attorney; or have an interest in a party or the outcome of the case that raises a "well-founded" doubt concerning their impartiality. CIV. PROC. CODE art. 12. Similar conflict of interest provisions apply in criminal cases. CRIM. PROC. CODE art. 25. In addition to adhering to their oath, which requires submission to the Constitution and the Constitutional Court Act, Constitutional Court justices are required to perform their duties conscientiously and keep Court sessions and state and official secrets confidential. CONST. CT. RULES art. 7(4). In 1998, the Bulgarian Judges Association drafted a code of ethics for judges, which serves as a voluntary guide for its own members, about one-third of the active judges in Bulgaria. It is composed of seven basic ethical rules. Since that time, a group of judges from the Association has worked (with ABA/CEELI's assistance) on drafting a more detailed set of ethical rules. The Ministry of Justice also has plans to develop a code of conduct governing all magistrates. The new code would be administered by the SJC. *See* MOJ STRATEGY FOR REFORM at 6. *See* DRAFT JSA AMENDMENTS arts. 27(1), 168(1).

The ethical rules under existing law, while important, do not cover all substantial ethics topics and do not amount to a code of ethics. There is little or no training on ethics of any kind in law school. Only with the advent of the Magistrates Training Center are some judges beginning to study ethics. While many in the legal field favor a judicial ethics code, *see* PROGRAM FOR JUDICIAL REFORM REPORT at 14; COALITION 2000 ACTION PLAN at 29, most judges are skeptical of the prospect, doubting its benefits and fearing that it could be used to improperly control them. These attitudes are gradually changing, but the proposals of the Ministry of Justice regarding an ethics code have not calmed fears. If the SJC, a body controlled by non-judges, administers a code, prosecutors, investigators and political appointees could be in a position to interpret the code in a manner that harms the independence of the judges. Further, the Ministry's view that one code should encompass judges, prosecutors, and investigators is confusing, as the three professions have different ethical obligations.

[The JSA amendments do not establish a code of conduct, but they do direct the SJC to approve separate codes of conduct for magistrates and court staff. JSA 2002 art. 27(1)(13)-(14). Compliance with the magistrates' code is a factor in determining initial appointments and promotion, granting "irremovable" status, and a basis for discipline proceedings. *Id.* arts. 126(2) (initial appointment), 129(3)(7) (irremovability status), 142(3) (promotion), 168(1)(3) (discipline).]

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***
Complaints are considered by various government entities, but there is no unified, publicized, and transparent system for reviewing complaints. Nor is there is any effective mechanism to independently screen or investigate serious complaints.	

Analysis/Background:

Rules and regulations governing the filing of judicial conduct complaints do not exist. A variety of means, however, are currently used to register complaints. Lawyers may protest conduct through legal motions. For example, a party can ask the court to reconsider any ruling not related to a final judgment on the merits. CIV. PROC. CODE art. 195. Further, parties may immediately appeal a ruling that "impedes the further course of the case" or when the progress of the case is "delayed unjustifiably" by the lower court. *Id.* arts. 213(a), 217a. These motions seldom result in any negative repercussions for a judge, but they often speed the case. Individuals may also complain to court presidents (or the president of the relevant superior court). Court presidents handle complaints directly unless the complaint concerns a judge on an inferior court, in which instance the complaint is probably forwarded to the subordinate court president. The Ministry of Justice also accepts and reviews complaints. If the MOJ finds them meritorious, it forwards them to the SJC. The MOJ's Inspectorate also usually responds directly to the complaining party. The SJC receives approximately fifty complaints a week. The SJC follows a self-imposed deadline of two months to respond to complaints. In theory, members of the SJC write letters responding to every allegation (one lawyer said several complaints went unanswered). Often the service the SJC performs is educational, informing parties, for example, that they may appeal a ruling if they feel it is incorrect. To gather information concerning complaints, the SJC forwards complaints to court presidents and seeks a response from those presidents.

Outside of formal motions, ordinary citizens are generally told nothing about where to lodge a complaint or the nature of the process. It is doubtful that citizens have any idea what will happen to their complaint letters when they do submit them; few judges ABA/CEELI interviewed were familiar with the process. Complaints by judges about other judges are rare.

Even if citizens manage to deliver their complaints to the appropriate officials, the current process for reviewing and addressing complaints is unregulated and inefficient. Although complaints can result in the institution of SJC disciplinary proceedings, the SJC and the Inspectorate lack trained staff to screen complaints and make a legitimate inquiry into serious complaints. Further, the overlapping authority of the SJC and Inspectorate to probe allegations leads to inefficiency and creates tension. Regardless of where a complaint is originally sent, it often is simply passed on to the court president immediately supervising the judge who is the subject of the complaint. Court presidents end up sifting through frivolous complaints before they can address real problems. The entire procedure is closer to a mail forwarding program than an investigation and discipline program.

At no level is the complaint process transparent, and the success of the system largely depends on the qualities of the individual court presidents. If court presidents have an open, impartial, and thorough method for dealing with complaints, the results may be satisfactory. If not, the results are likely to be less positive. Of course, in egregious cases the SJC may become more directly involved regardless of the actions of the court presidents, but the SJC's administrative

weaknesses prohibit it from properly handling serious misconduct consistently. For all the defects of the system, citizens can and do send in complaints; those complaints are usually considered; and it is possible that some action may result.

Factor 23: Public and Media Access to Proceedings

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

Conclusion	***Correlation: Neutral***
Public access to court hearings exists, but judges have great discretion to close courtrooms. Constitutional Court hearings are closed, and the media are sometimes excluded from politically sensitive cases.	

Analysis/Background:

All ordinary court hearings are public unless provided otherwise by law. CONST. art. 121(3); JSA art. 101(1); CRIM. PROC. CODE art. 13; CIV. PROC. CODE art. 105. The law calls for closed sessions when necessary to protect state secrets, "morals," the identities of witnesses when the witness or his family or friends are at risk due to the testimony, or the intimate lives of citizens. *See* CRIM. PROC. CODE arts. 97a(1)-(2), 262(1)-(2). The Criminal Procedure Code also calls for closed hearings in specific types of cases and sets forth the rules for doing so. Court hearings for young defendants are closed unless the court finds it in the public interest to have a public hearing. *Id.* art. 383(1). Criminal sentences are announced publicly in all cases. *Id.* art. 262(3).

In civil cases, a hearing may be closed if the court determines on its own or on the motion of a party that a public hearing would be harmful to the public interest or would disclose the intimate lives of citizens. Other hearings that must be closed include "fast track" proceedings, hearings considering rulings on evidence presented before trial, and applications for a writ of execution. CIV. PROC. CODE. arts. 126c, 242. Mid-level appeals in civil cases are held in public. *Id.* art. 208. Generally, SCC hearings of civil cases are public. *Id.* art. 218f. *But see id.* art. 218b(c).

Under the law and in practice, judges rarely close a courtroom, and there are few complaints in this area. Perhaps the most common reason to exclude the media or public is a lack of space in courtrooms. More troubling is the continuing, though uncommon, exclusion of the media from courtrooms. Journalists complain of exclusion in sensitive cases, especially dealing with official misconduct involving law enforcement officials. Journalists see no easy means to appeal a decision to seal a courtroom, even when they have no idea why they are being removed from court.

Despite the presumption in the law for open courtrooms, judges actually enjoy wide latitude. If both parties request closure of the court, the judge will almost always comply. Even the request of one party, unopposed, may be accepted. Judges generally want a significant justification for closing a courtroom, but they may limit access anytime they feel public exposure may harm the parties or the public good. Abuse of that discretion seems unusual.

The situation is different in the Constitutional Court. It holds hearings behind closed doors unless it decides otherwise. With limited exceptions, even the parties are not invited to the hearings. CONST. CT. RULES art. 27; CONST. CT. ACT art. 21. *See also* CONST. CT ACT arts. 25(2), 26 (providing for exceptions to this rule).

Factor 24: Publication of Judicial Decisions

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

Conclusion	***Correlation: Negative***
Most judicial opinions are not open for public scrutiny, but most significant appellate decisions, including all Constitutional Court decisions, are published. Appellate judges, however, may refuse to have their opinions published.	

Analysis/Background:

All court decisions must contain a rationale for the ruling, and the JSA requires that judges announce their decisions pursuant to procedures established by law. CONST. art. 121(4); JSA art. 101(2). In civil and administrative law cases the court announces its decision within thirty days of the final hearing on the case. The decision is signed by all of the judges, with dissenting and majority judges setting forth the basis for their positions. *See* CIV. PROC. CODE arts. 187-190. There is no requirement, however, that the decision be read in open court. In civil cases, parties are sent a notice indicating that a decision has been made, and they then proceed to the relevant clerk's office to read the decision.

In criminal cases, the judgment is read in open court by the presiding judge. CRIM. PROC. CODE art. 308(1). This statement must include the rationale of the court and numerous details concerning the facts and issues before the court. *Id.* arts. 299, 303. As an exception, when the facts and law are complex, the rationale for the case may be set forth within fifteen days of handing down the sentence. *Id.* art. 306. In criminal trials, it is now the norm for judges to take advantage of this supposed exception for complex cases. Thus, all verdicts are announced in court, but the parties later read the rationale in the clerk's office. Decisions of mid-level appellate courts on criminal matters are announced to the parties at a hearing. *Id.* art. 337a(2). Similarly, SCC criminal rulings are announced within thirty days after the hearing of the case. *Id.* art. 357(5).

The actual disclosure of decisions and accompanying rationales varies greatly depending on the judge or the court. One route to the judge's written explanation of the case is through the case file, which includes all decisions. Except in cases involving legal persons, case files are released for inspection only to the parties and their respective counsel. MINISTRY OF JUSTICE REGULATION 28 ON THE FUNCTIONING OF THE EMPLOYEES OF THE AUXILIARY BODIES AND CLERICAL OFFICES OF THE REGIONAL, DISTRICT, MILITARY AND APPELLATE COURTS, S.G. 30/1995 *amended by* S.G. 12/1997 art. 33(1) [hereinafter MOJ REGULATION 28]. Non-parties can appeal to the court to view the case file if the file is needed for another case or by another official institution or organization. *Id.* art. 35(3). Generally, however, case files and the related decisions are not open to the public, but access to the case files varies from court to court, judge to judge, and even case to case. Parties and their attorneys can always see the file, and certain court documents, such as a company registry, are always open to the public. Usually any attorney can see any case file. Sometimes judges have a firm policy on file access; sometimes it depends on the mood of the judge. Sometimes access is primarily controlled by the court clerk, and the mood of that clerk may determine access to the files. Sometimes media can review the file, sometimes not. Sometimes NGOs are able to access the decisions, sometimes not. Sometimes there is good physical control over the case files, sometimes almost anyone can get in.

At the appeals level, there is greater access. All interpretive decisions of the SCC and the SAC and all Constitutional Court decisions are published. Many SCC and all SAC opinions are

available on the Internet. But SCC cases involving private parties and mid-level appellate decisions are only published with the permission of the judge. Individual court decisions may be published in private compilations by scholars, in legal periodicals, and in the SCC Bulletin. In effect, publication often depends on the whim of the judge and the publisher. All Constitutional Court decisions include a rationale for the decision of the justices, and those decisions, together with any dissenting opinions, are published in the State Gazette within fifteen days of their adoption. *See* CONST. CT. RULES arts. 32(3), 33(1).

Factor 25: Maintenance of Trial Records

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

Conclusion	***Correlation: Negative***
Transcripts or summaries of court proceedings are generally not available to the public, but judges or clerks may grant access to the case file in certain circumstances. The quality of the protocol is frequently open to question.	

Analysis/Background:

Records of proceedings, referred to as the protocol, are made in all civil cases, they are signed by the presiding judge of the court and court reporter within three days of a hearing, and include: (i) the time and place of the session; (ii) the jury members; (iii) the parties that appeared; (iv) a summary of statements of the parties and witnesses; (v) the written evidence produced; and (vi) court rulings. CIV. PROC. CODE art. 126. The chair of the court dictates the protocol to the court secretary. *Id.* Detailed records are kept of all steps in a criminal investigation and court proceeding. CRIM. PROC. CODE arts. 100, 310. In addition to the details regarding the participants and those who failed to appear at hearings, the record includes the defendant's response to the charges; witness testimony; any expert testimony; documents and evidence read into the record; closing arguments and the defendant's final plea; all rulings of the court including the sentence; and explanations regarding the procedure for appeal. *Id.* art. 310. The protocol is signed by the presiding judge and the court reporter. *Id.*

Protocols are placed in case files and made public to the same extent and manner as court decisions: access is largely restricted to parties and attorneys, but depending upon the policy or mood of the judge or clerk, others may gain access. Even when higher-level decisions are published, the public does not gain access to the entire case file. *See* Factor 24. Journalists have a fair chance of obtaining the case file if they push hard enough, but it is extremely difficult to obtain the file before the case is concluded, making timely reporting difficult. In addition to making the judicial process unnecessarily clandestine, one judge noted that the rationale for the system is incoherent. If anyone can observe what happens in a courtroom, it seems inconsistent to deny them the opportunity to read the record of what they have already seen.

On a more practical level, some observe judges, in a rush, making mistakes when dictating to the court reporter. Often the questions put to a witness are omitted, leaving meaning unclear. Inexperienced court reporters working on relatively slow, manual typewriters expand the potential for error. More experienced reporters who are fortunate enough to have a computer produce better results. But there is no guarantee of quality. More disturbing, although uncommon, are charges of manipulation of the record by the judge. This is seen as a result of bias or efforts to obscure misconduct by law enforcement officials.

Constitutional Court session minutes contain the place and time of the hearing, the justices and other participants present, and the procedural acts executed. The Court president and record-keeper sign the minutes. CONST. CT. RULES art. 34(1), (3). Constitutional Court case files are not public. *See id.* arts. 43, 45, 53.

VI. Efficiency

Factor 26: Court Support Staff

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

Conclusion	***Correlation: Negative***
Court staff are poorly trained, equipped, and motivated. Judges usually handle all of their own legal research and a host of other administrative tasks. These conditions significantly contribute to the poor administrative performance of the courts and delay in the resolution of cases.	

Analysis/Background:

Few are satisfied with the status of the administrative staff working in the courts. Foreign and Bulgarian commentators are uniform in their condemnation of the nature and extent of assistance given to judges. *See* COALITION 2000 ACTION PLAN at 28 (skills of support staff are "highly inadequate," their conditions of work are "primitive," they receive no training, and their poor work can "thwart the efforts of the magistrates"); PROGRAM FOR JUDICIAL REFORM REPORT at 19. All judges seek greater training or higher qualifications for their staff. Many have a secretary (who often doubles as a court reporter), but in many cases that person has no legal training. Nor can they usually be trusted to handle significant tasks. Unskilled, poorly paid, and uninspired, they are all too often susceptible to corruption.

All those interviewed who commented on the subject feel that judges are bogged down in non-legal tasks that absorb far too much of their time (estimates range from 20% to more than 50%). Conditions vary widely, but with few exceptions, judges do not have assistance with legal research or mundane tasks that require no advanced legal skills. GANEV INTERVIEW, at 70 (Constitutional Court justices do all their own research, including obtaining official documents, visiting libraries and finding the relevant literature); WORLD BANK REPORT at 15 (judges spend an estimated 20% of their time on clerical matters, including answering own phones, accepting unscheduled visitors, and handling most docket issues). This widespread problem is particularly acute for certain judges. One bankruptcy judge spoke of having dozens of creditors at a meeting and personally checking each party's power of attorney documents. There was no one to help him find documents from a thirty-volume bankruptcy case file.

While most advocate for more staff, many feel better training for staff, serious modifications to civil and criminal procedure, the promotion of alternative dispute resolution, and the removal of many procedures (*e.g.*, company registration) from the courts are also necessary to reduce the burden on judges. The current government is calling for several reforms to address this situation. These include (i) the development of various criteria and procedures to improve administrative staff work; (ii) the implementation of a code of conduct for court staff; (iii) the introduction of customer service standards; (iv) a staff training program; (v) competitive hiring, procedures for staff evaluation, and job descriptions; and (vi) increased staff. MOJ STRATEGY FOR REFORM at 7, 13-15. The recent creation of a National Association of Court Clerks is a positive sign.

[A number of steps were taken in the JSA amendments to enhance the status and number of court staff. The statute calls for the creation of assistant judges for the SCC and the SAC. JSA 2002 art. 148a. The new law makes it easier to dismiss bailiffs who are performing poorly. *Id.* art. 152(1)(6). For exemplary service, senior bailiffs may be given raises equaling the pay of a district court judge, and all bailiffs are given certain additional benefits. *Id.* arts. 156, 157a. Finally, a cadre of judicial administrators and clerks is established to assist in the management of the courts. *See id.* arts. 187-188s. These clerks are to be governed by their own code of conduct. *Id.* art. 27(1)(14).]

Factor 27: Judicial Positions

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

Conclusion	***Correlation: Neutral***
The SJC has the legal authority to create new positions for judges, and it occasionally exercises that power. There are, however, virtually no funds available to pay additional salaries, and in many courts, there is not sufficient physical space for additional judges.	

Analysis/Background:

The SJC has the power to determine the number of judges in all courts, the number of courts, and the jurisdiction of all courts. JSA art. 27(2)–(3). Pursuant to this authority, the SJC can and does create new positions for judges. The SJC is constrained by two factors: funds and space. Unable to meet the judicial payroll in a timely manner at the end of 2001, the SJC is hard pressed to expand the number of judges. In many courthouses, it would be difficult to add more judges because there is insufficient physical space to accommodate them and an insufficient number of courtrooms for them to hold hearings. In some courthouses, as many as four judges share a single, small office.

Caseloads have increased dramatically and delays and case backlogs are the norm. Thus, assuming one could find means to pay and house them, hiring more judges would be beneficial. There is a strong argument, however, made even by some judges, that adding judges is no panacea. The current body of judges could handle the workload efficiently, or at least far more efficiently, if other aspects of the judiciary were transformed. The extreme formality and complexity of the procedure codes, the absence of law clerks, inadequate training for judges and staff, poor working conditions and inadequate equipment for judges, the inability to properly measure judicial performance, burdening courts with many tasks (*e.g.*, company registration, foreclosure) that could be handled outside the judiciary, the lack of widespread arbitration and mediation alternatives, and a consolidation of the trial – all of these reforms might obviate or greatly reduce the need for more judges.

Factor 28: Case Filing and Tracking Systems

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

Conclusion	***Correlation: Neutral***
Docketing, case tracking, and file management have long been mismanaged. In many areas, severe problems linger, including the manual processing of cases and a lack of security for files. Major efforts to correct these problems have led to vast improvements in numerous courts.	

Analysis/Background:

A modern case management system is not in place nationally, nor is filing automated. This situation has resulted in delayed processing and a general perception of inefficiency. Still, substantial improvements are underway. A case tracking system is operational, but in the majority of courts, where there are no computerized systems, the tracking process is hardly transparent or user-friendly. Where new computer systems have been installed, there are positive reports from judges, and, when the system is open to the public, from attorneys.

File management is more troubling. Reports vary widely, but nearly all claim that files are lost, stolen, or tampered with at least some of the time. Lawyers tend to believe that theft of documents or an entire file is easy and frequent. Judges generally feel both are rare. Transfers of files between courts, common given the high rate of appeals, cause particular delays and expose files to risks. Some claim that files are lost when magistrates, frustrated with noise and crowding in their offices, take them home to work. There are vast differences in the conditions in different courts. The SAC gets high marks. Similarly, the performance of the clerks managing the files apparently differs greatly. Some are corrupt, some diligent but overwhelmed, and some indifferent ("it's just paper to them").

The Judicial Reform Project, a USAID-funded project, is working with the SJC to introduce new case management software and case filing system to pilot courts. The case filing system is expected to be implemented in all courts in the Summer of 2002. The expansion of the computerized case management system is likely to take at least five years. For the first time, the government is beginning to expend funds on these reforms, and foreign donors appear to be aligning themselves behind case management and filing systems approved by the SJC. Those exposed to the pilot courts see them as a substantial improvement over the old system, but the roll-out to the other courts, if it takes place, will be a challenge. Among other hurdles, the relevant clerks, now largely computer illiterate will need to be trained. Nonetheless, there are positive signs in this area. The development of a unified, national case-tracking system for the courts is one of the aims of the new Ministry of Justice Action Plan. MOJ STRATEGY FOR REFORM at 10, 12.

Factor 29: Computers and Office Equipment

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

Conclusion	***Correlation: Negative***
Improvements have been made in some courts, but there remains a severe shortage of adequate computers. Other equipment is usually available, but often in short supply.	

Analysis/Background:

The distribution of computers and equipment is not uniform. *See* PROGRAM FOR JUDICIAL REFORM REPORT at 17-18 (complaining of uneven implementation of automation and supporting "uniform and compatible software"). The SAC, Varna, and Blagovgrad courts are cited as examples of relatively well-equipped courts. Generally, the various pilot courts in the USAID Judicial Reform Project have benefited from the program. In many other areas, several judges share one computer, and the age of that computer might severely reduce its effectiveness. One judge reports that when he downloads the software containing the Bulgarian statutes, he has almost no remaining memory on the computer. Some judges have their own computers and work at home. Typically, there is only one fax machine and copier for a court; the number of phone lines is usually limited. The World Bank graphically describes problems caused when creating a court record: "The noise from the typewriters, combined with the judge's loud dictation creates an atmosphere much like a 'market,' rather than a courtroom." WORLD BANK REPORT at 59 (citing a USAID report). Conditions are improving, but most claim that judges do not have the basic equipment needed to work efficiently. The government aims to create an information system and gradually computerize the entire court system. *See* MOJ STRATEGY FOR REFORM at 11-13.

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***
Judges usually can obtain high court rulings and the latest legislation, but it is frequently quite difficult for judges to find relevant legal sources in an efficient and timely manner.	

Analysis/Background:

Although they might not have their own copy, virtually all judges have sufficient access to the State Gazette, which publishes changes in the law and Constitutional Court cases. *See generally* WORLD BANK REPORT at 16-17. The State Gazette, however, is an unwieldy research tool. Information appears chronologically, not by subject. The World Bank finds that the best software compendiums of legal material are pricey, but cheaper, satisfactory alternatives exist. *Id.* Two commercial software programs, APIS and CIELA, are widely used by judges. These programs provide monthly updates in the law, and contain published SAC and SCC cases. The databases are searchable by term. Of course, the judges' limited access to computers creates limitations on the utility of this software. It also seems that not all courts purchase the software. Selected SCC cases are published in the SCC Bulletin, but those cases appear months after decisions are rendered. Selected SCC cases also may be accessed via the Internet. All new SAC decisions are published on the SAC website, an exceptional and rare model of transparency in the Bulgarian judiciary. There is a serious lack of quality, up-to-date legislative commentaries. Scholars do publish collections of cases (holding supreme court and mid-level appellate court decisions), but judges usually are forced to purchase the books themselves. Court libraries, to the extent that they exist, are poor, and access to research materials is difficult. Given the extremely rapid development of the law, these are serious deficiencies. One judge stated that he keeps his own subject files, preserving relevant cases and commentaries by topic. Overall, judges frequently do not have efficient access to the latest legislation and important appellate cases.

Notes

Notes

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

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

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

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

PROMOTING THE RULE OF LAW

ABA CEELI

CENTRAL AND EAST EUROPEAN LAW INITIATIVE

CEELI