JUDICIAL REFORM INDEX

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TABLE OF CONTENTS

Introduction

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

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

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

Assessing Reform Efforts

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

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

Id. at 615.

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

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

Larkins, *supra*, at 615.

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

ABA/CEELI's Methodology

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

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

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

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive, neutral, or negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the

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

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

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

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

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

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

Social scientists could argue that some of the assessment criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a

cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

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

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Assessment Team

The Bulgaria JRI 2004 Analysis assessment team was led by Mary Noel Pepys and benefited in substantial part from the efforts of Valentin Bojilov, Georgi Tiholov, Todor Dotchev, Violetta Kostadinova, Bilyana Giaourova-Wegertseder, John Allelo and Marc Lassman. The conclusions and analysis are based on interviews that were conducted in Bulgaria in March 2004 and relevant documents that were reviewed at that time. ABA/CEELI Washington staff members Julie Broome, Melissa Zelikoff, Elena Toshkova, Olga Ruda and Andrew Solomon served as editors and prepared the report for publication. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

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 Sabranie*) -- 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 an absolute majority vote of the National Assembly. Significantly, the President appoints the presidents of the Supreme Court of Cassation, the Supreme Administrative Court, 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 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. 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 and administrative 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 the Supreme Judicial Council (SJC), composed of judges, prosecutors, investigators, and political appointees. The Constitutional Court, which is not a 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, designate changes to the territory of the nation and pass constitutional amendments affecting the form of state structure or the form of government.

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

A Communist-led government came to power in Bulgaria following 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 MOJ 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 the communist regime in 1989, a Grand National Assembly crafted a new Constitution (approved in 1991), thus setting in motion a sweeping process of changes to the Bulgarian legislation. The Judicial Systems Act (JSA), the basic statute that governs the courts and the judiciary, was passed in 1994.

The government elected in June 2001 has moved robustly forward to address many of the concerns pertaining to the judiciary, preparing an action plan, a related strategy, and legislative amendments. Under the current government, the JSA has undergone three sets of amendments, respectively in July 2002 (largely struck down by the Constitutional Court in December 2002), July 2003 and April 2004. In addition, an interpretative decision of the Constitutional Court in April 2003 made it necessary to amend the Constitution in order to remove certain constitutional barriers to a number of judicial reform initiatives. Thus, judiciary-related amendments to the Constitution were passed in September 2003.

Judicial reform is a widely debated subject in Bulgarian society and is treated as a crucial issue in the context of the country's anticipated accession to the European Union. 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 appeals; 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 appellate 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, civil, commercial and administrative sections. Acting as first instance courts, they hear complicated civil cases, including all commercial cases, and grave and complicated criminal cases. The first instance decisions of the district courts are appealed to the

courts of appeals, and, if necessary, to the SCC. District courts also hear appeals from regional court decisions.

Courts of appeals hear appeals from trials that originate in district courts. The courts of appeals sit in three judge panels and have civil, commercial, and criminal sections. There are six courts of appeals, 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 appeals. 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 sections 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 appeals of administrative acts issued 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 sections 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 part of the judiciary. Nevertheless, it does have the power of judicial review, gives binding interpretations of the Constitution, rules on the compliance of legislation and international treaties with the Constitution, 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, the SAC, or the Chief Prosecutor. Lower court judges presented with what they believe to be a constitutional issue must notify the SCC and the 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 a 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; approves the ethics code for judges; 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 three-month internship; not have been convicted of a premeditated crime; and possess "moral and professional qualities" assessed on the basis of the judges' ethics code. 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. Junior judges (entry-level positions) are appointed based on a competition. 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.

After completing five years of service and obtaining a positive evaluation by the SJC, judges are essentially granted life tenure. They may be removed only for serious criminal activity, persistent and actual impossibility to perform official duties for more than one year or serious breach of, or persistent failure to carry out, official duties, as well as for activities undermining the judiciary's prestige. Judges also leave their office upon reaching 65 years of age and resignation. Constitutional Court justices are appointed for nonrenewable 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

The National Institute of Justice, a state-funded entity functioning under the authority of the SJC, provides training to judges. Upon appointment, junior judges are required to participate in a six-month training. Other judges are invited to attend shorter continuing legal education training seminars on an *ad hoc* basis.

Bulgaria Judicial Reform Index (JRI) 2004 Analysis

The Bulgaria JRI 2004 analysis reveals that Bulgaria has made important progress in judicial reform during the past two years. Several recent changes appear likely to contribute considerably to judicial reform in the future, such as the judiciary-related amendments to the Constitution, amendments to the Judicial System Act, and significant increases in the judicial system's budget and judicial salaries. However, as the factor correlations indicate, in many areas where progress has been seen, there remains additional work to be done before the factor can be assessed as positive. The factor correlations and conclusions in the Bulgaria JRI 2004 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Bulgaria JRI 2002. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA/CEELI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

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

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

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

Conclusion	***Correlation: Negative***	***Trend: ↔***

Although judges are required to have formal university-level legal training, the quality of legal education in Bulgaria has decreased over the years due to the proliferation of law faculties and the lack of a credible accreditation process. Junior judges are now required to engage in a six-month initial training course conducted by the National Institute of Justice.

Analysis/Background:

A university-level legal training, which currently consists of a five-year curriculum, is required of all magistrates (judges, prosecutors, and investigators) in Bulgaria. JUDICIAL SYSTEM ACT, S.G. 59/1994, *last amended by* S.G. 70/2004, art. 126(1) [hereinafter JSA]. Additionally, all law school graduates, must complete a three-month apprenticeship program and pass the state theoretical and practical examination. *Id.* arts. 126(1), 163(1), 167. The JSA does not require the judicial candidates to have any additional legal experience prior to being appointed to the bench.

Legal education in Bulgaria continues to be routinely criticized by many Bulgarian legal professionals and foreign observers. It is widely believed that, since 1989, there have not been significant enhancements in the quality of legal education provided to students. The proliferation of law faculties is the major source of the decline of legal education in Bulgaria. Without a credible and rigorous accreditation process, numerous law faculties have sprung up throughout the country, in contrast to the sole law faculty that existed fifteen years ago and was universally praised. Down from a high of 17 law faculties, Bulgaria has ten law faculties today that have met the modest accreditation requirements. Even among these ten law faculties, there is one that reportedly failed to meet the minimal requirements, but continues to function.

Law students are admitted freely into some law faculties that have minimal entrance requirements, and they receive a lackluster education. Often their law professors have teaching assignments at various law faculties throughout the country as it is the predominant method for under-paid law professors to obtain a decent income. It is not uncommon for many of the qualified law professors to teach at two to three law faculties. Some law professors hesitate to fail law students as a high passage rate will promote the continued existence of the law faculty, and their supplemental income.

The apprenticeship program required of all law graduates who want to become magistrates was recently reduced from a requirement of one-year to three months. JSA art. 163(1). Apprentices are required to gain practical experience in the regional and district courts, and in the prosecution and investigation offices, and are supervised by a judge of the district court to which the apprentice is assigned. Given the reduction in the time requirement for the apprenticeship program, some law faculties are developing supplemental, practice-based courses for the law students.

Although the apprenticeship program in the past was a useful and beneficial program for law school graduates, due to the influx of law school graduates, the program has become difficult to

effectively administer and does not serve the purpose for which it is intended. The personnel, financial and technical resources do not exist to provide the framework for a productive apprenticeship for the vast majority of law graduates. Some law graduates who have benefited from the apprenticeship program usually credit the district court judges to whom they were assigned for taking a personal interest in their practical training course.

Following the apprenticeship program, the apprentices are required to pass the State Theoretical and Practical Examination, which is routinely given throughout the year, and tests the apprentice's basic knowledge of legal institutions, the judicial branch, and the bar. Apprentices taking the State Theoretical and Practical Examination, usually a 15-minute oral examination, think it is a useless exercise. Indeed, very few apprentices who take the examination fail it.

Although there is no requirement that judges have practiced before tribunals before taking the bench, there is a legal requirement that junior judges complete a six-month course consisting of the basic substantive and procedural areas of the law at the National Institute of Justice (formerly Magistrates Training Center). JSA arts. 35g(1) and 35g(2).

In 2003, the Magistrates Training Center (MTC), a non-profit organization created in 1999, was legally transformed into the National Institute of Justice (NIJ), a state-funded institute under the jurisdiction of the Supreme Judicial Council (SJC), and became fully operational as the NIJ in January 2004. *Id.* art. 35f(2); RULES OF ORGANIZATION AND PROCEDURE OF THE NATIONAL INSTITUTE OF JUSTICE approved October 1, 2003 by the SJC [hereinafter NIJ Rules]. The NIJ has the same mission as the MTC and is utilizing a similar organizational structure, curricula, training materials, and training instructors. The Managing Board consists of four representatives of the SJC and three representatives of the Ministry of Justice. The NIJ is funded primarily out of the judicial system's budget, although it also receives foreign financial assistance.

Pursuant to 2003 amendments to the JSA, the NIJ is now required to provide a compulsory six-month training course to all newly-appointed judges and prosecutors immediately after taking office. JSA arts. 35g(1) and 35g(2). This is in sharp contrast to the 2002 amendments to the JSA that required a one-year compulsory training course to judicial candidates prior to their appointment.

By reducing the compulsory initial training program from one-year to six months, and by changing the sequence of training from pre-appointment to post-appointment, there is significant criticism that the 2003 amendments to the JSA not only disrupted the comprehensive theoretical and practical training program designed and taught by Bulgarian judges, but also eliminated the use of performance during training as a criterion for judicial appointment. Under the current regulations, there is no final examination following the completion of the six-month training course.

As the 2003 amendments to the JSA are in the process of being implemented, it is too soon to assess the impact of the new training modules for newly-appointed judges; however, there has been universal praise of the quality of curriculum, instruction and course materials provided by the MTC during its first five years. There is also a general expectation that the high quality of judicial training services will continue under the able leadership of the NIJ.

Since the creation of the MTC in 1999, there have been over 1,380 attendees at the initial training program for new judges.

The NIJ's budget for 2004 is 1.169 million leva (approximately US$ 750 thousand), which is 65% of the 1.8 million leva (approximately US$ 1.15 million) requested by the leadership of the NIJ. The NIJ will increase its staff from 12 to 30 personnel and will allocate 1/3 of its budget to the renovation of a four-story building that will become the new headquarters of the NIJ in the Fall of 2004. Although the NIJ does not provide housing to the new judge participants during their initial training, the participants receive salaries as junior judges. JSA art. 35g(2).

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: Neutral***	***Trend: ↑***

Junior judges are appointed to the bench based on a written and oral competition conducted by the Supreme Judicial Council. Under certain circumstances, experienced individuals with law degrees may be appointed to the bench without having undergone a competition.

Analysis/Background:

The major change in the selection and appointment process of judges since the JUDICIAL REFORM INDEX OF 2002 is the creation of a national competition. The JSA was amended in 2002 and again in 2004 to require a national competition for all junior magistrates (judges, prosecutors and investigators) to be conducted by the Supreme Judicial Council (SJC). JSA art. 127a(1). The purpose of the competition is to improve the selection procedures for judicial appointments by instituting objective criteria on a national basis. The criteria and other rules are set forth in the SJC's REGULATION NO. 1, LAYING DOWN THE CONDITIONS AND PROCEDURE FOR CARRYING OUT COMPETITIONS FOR MAGISTRATES [hereinafter SJC REGULATION NO. 1], in effect as of April 23, 2003 and amended on December 3, 2003.

Following an announcement in the State Gazette that a competition will be conducted, a judicial candidate completes the application not only for the competition but also for the court to which he/she would like to be assigned. The competition is managed by a five-member examining commission appointed by the SJC that conducts a written and then an oral examination. JSA arts. 127b(1) and 127b(2); SJC REGULATION NO. 1 art. 8(3). The candidates are rated by their grade on the two exams and are grouped according to the court to which they applied. The highest-graded candidates for each court are appointed as junior judges in sufficient numbers to fill the vacancies on the court.

The first national competition was held in November 2002. The second and most recent competition was held in September 2003 for which there were 139 candidates for 12 vacant senior judge positions and 771 candidates for 29 vacant junior judge positions.

Unfortunately, the effect of these procedures allows for high-rated candidates to be rejected as junior judges on those courts to which many candidates apply. For example, there were 300 applicants for only four vacancies at the Plovdiv District Court for the first national competition held in November 2002, and 160 applicants for eight vacancies at the Sofia City Court for the second national competition held in September 2003. Those candidates who were not one of the top four or eight candidates respectively were not accepted as junior judges. The converse is also true. The procedures allow for lower-rated candidates to become junior judges on courts to which few candidates apply. District court presidents are required to accept the top candidates for their court, thereby eliminating their traditional influence over the appointment of judges.

Most observers believe the competition is a helpful improvement and a substantial step forward to creating an impartial judicial appointment process, although there is some concern that judicial candidates are only examined for their legal knowledge and not for their demeanor and ethical behavior.

Some court presidents suggest that the SJC should create a systematic approach to the competition so that vacancies on courts do not linger. Since the announcement, examination, and grading of the competition takes approximately two to three months, and coupled with the six months of compulsory initial training at the National Institute of Justice (NIJ), most junior judges do not begin their formal judicial duties for at least eight to nine months after the announcement in the State Gazette. Since court presidents are not able to forecast a year in advance the number of vacancies they will have, there is serious discussion concerning the necessity for judicial applicants to apply directly to the NIJ, rather than to a particular court, allowing court vacancies to be filled on a continuing basis.

In addition to the appointment of junior judges to the bench, experienced individuals with law degrees may be appointed to the bench without having undergone a competition. JSA art. 127. An individual with two years of legal service may be appointed to a regional court; five years of legal service to a district court; eight years of legal service to a court of appeals; and twelve years of legal service to one of the supreme courts. *Id.* arts. 127(1)-127(4). The requirement that a portion of the legal service must include a certain number of years as a judge, prosecutor, investigator, enforcement judge, recordation judge, attorney, in-house lawyer, inspector in the Ministry of Justice Inspectorate or legal scholar was eliminated in the 2004 amendments to the JSA. The amendments are troubling as they not only weaken the professional corps of judges but also enhance the opportunity for political appointments.

Factor 3: Continuing Legal Education

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

Conclusion	***Correlation: Neutral***	***Trend: ↑***
The National Institute of Justice is required to provide non-mandatory continuing training to experienced judges to increase their qualifications.		

Analysis/Background:

As stated in Factor 1, the Magistrates Training Center (MTC), a non-profit organization created in 1999, was legally transformed into the National Institute of Justice (NIJ), a state-funded institute under the jurisdiction of the Supreme Judicial Council (SJC). The NIJ became fully operational in January 2004. *See* JSA art. 35f(2); NIJ RULES.

In addition to being required to provide a compulsory six-month initial training course for junior judges, the NIJ is also required to provide non-mandatory continuing training to experienced judges to increase their qualifications. JSA arts. 35f(1), 35g, 35g(2). The Continuing Judge Training Program of the NIJ concentrates on providing continuing educational courses to experienced judges of all courts, and uses a curriculum based on a comprehensive needs assessment conducted by the MTC.

The MTC, now NIJ, has conducted numerous seminars on, *inter alia*, European Union (EU) law, commercial transactions, criminal, civil and procedural codes, anti-human trafficking, juvenile justice and judicial ethics for experienced judges. Since its creation in 1999, there have been over 70 continuing education courses attended by over 2,400 sitting judges. According to the NIJ Rules art. 43(2), the transportation, housing and meal costs associated with continuing training for experienced judges is to be paid by the NIJ.

The resources at the NIJ are limited, given its vast responsibilities. The NIJ is also required to train prosecutors, investigators, bailiffs, recordation judges, court clerks and other Ministry of Justice staff. JSA art. 35f(1). In light of its mandate and its limited resources, the NIJ has prioritized its training schedule. The first priority of the NIJ is to provide the compulsory 6-month initial training for junior judges, and its second priority is to provide training on EU law. In 2003, over 420 participants attended courses in the EU law training program.

Given the dynamic changes in numerous laws, many experienced judges expressed a need for the NIJ to develop a systematic course of continuing training rather than the piecemeal courses that are based primarily on the needs and interests of the foreign donors who assist in funding continuing training courses. The leadership of NIJ recognizes the need to provide a systematic continuing training program and is endeavoring to develop such a program.

Factor 4: Minority and Gender Representation

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***

Bulgaria does not maintain records on the ethnicity or religious composition of the judiciary, but there are statistics that demonstrate the majority of judges are women.

Analysis/Background:

The Constitution of Bulgaria mandates that all citizens, regardless of their race, nationality, ethnic self-identity, gender, origin, religion, education, opinion, political affiliation, personal or social status or property status are equal before the law. CONSTITUTION OF THE REPUBLIC OF BULGARIA, S.G. 56/1991, *amended by* S.G. 85/2003, art. 6 [hereinafter CONST.]. Additionally, a new law on protection against discrimination, S.G. 86/2003, became effective on January 1, 2004, which prohibits any direct or indirect discrimination.

Of the 2,003 judges in Bulgaria who sit on the general jurisdiction courts, the majority are women. Women reportedly join the judicial profession because of its stability and security. There are 743 women judges out of 1,120 judges on the regional courts; 419 women judges out of 618 judges on the district courts; 66 women judges out of 91 judges on the courts of appeals; 45 women judges out of 59 judges on the Supreme Administrative Court; and 56 women judges out of 78 judges on the Supreme Court of Cassation.

Even though most judges are women, men still hold the top positions in the judiciary. Of the 153 courts in Bulgaria, only 64 women judges serve as court presidents.

NUMBER OF WOMEN JUDGES
(as of March 2004)

Name of court	Number of judges	Number of women judges	Percentage of women judges	Number of court presidents	Number of women court presidents	Percentage of women court presidents
Regional courts	1,120	743	66.34%	112	51	45.54%
District courts (including Sofia City Court)	618	419	67.80%	28	13	46.63%

Courts of appeal	91	66	72.53%	5	-	-
Military courts (including Military Appellate Court)	37	1	2.70%	6	-	-
Supreme Court of Cassation	78	56	71.79%	1	-	-
Supreme Administrative Court	59	45	76.27%	1	-	-
TOTAL	**2,003**	**1,330**	**66.40%**	**153**	**64**	**41.83%**

Source: SJC ADMINISTRATION.

According to the 2001 census, 9.4% of the Bulgarian population identified themselves as ethnic Turks, and 4.7% as Roma. *See* National Statistical Institute's website, viewed April 28, 2004, at http://www.nsi.bg/Census/Ethnos.htm; *see also* COMMISSION OF THE EUROPEAN COMMUNITIES, 2002 REGULAR REPORT ON BULGARIA'S PROGRESS TOWARD ACCESSION, October 9, 2002, p. 32.

As there are no official statistics regarding the number of Turks and Roma on the bench, the information obtained is anecdotal. Those interviewed believe there are few minority judges, except those who sit on the bench in the Ruse region. Most individuals contend that the educational opportunities for ethnic minorities in Bulgaria, particularly the Roma, are limited, thus depriving them of meeting the education requirements for a judgeship. Furthermore, Roma are socially disadvantaged in Bulgarian society. If, however, there were sufficient numbers of Roma and other minority law graduates, many believe there would be a significant increase in the number of minorities serving on the bench, as discrimination against minorities does not regularly occur within the judicial branch.

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***	***Trend: ↔***
The Constitutional Court has established itself as an independent and respected body. Its decisions on the constitutionality of laws and acts are enforced.		

Analysis/Background:

The Constitutional Court has the authority to provide binding interpretations of the Constitution; rule on the constitutionality of laws and acts of the President; and rule on the compatibility between international treaties and the Constitution. CONST. arts. 149(1)(1), 149(1)(2), 149(1)(4); *see* JUDICIAL REFORM INDEX OF 2002, p. 14, for a discussion of the other relevant provisions of the Constitution and the JSA that pertain to the role and obligations of the Constitutional Court.

The positive assessment of the Constitutional Court in the JUDICIAL REFORM INDEX OF 2002 continues today. The Constitutional Court is a highly respected body whose decisions, although at times unpopular, are respected and enforced. Many of the Court's decisions confront issues

that are controversial, particularly when the authority of the Parliament and the President is challenged.

Within the past two years, the Constitutional Court has issued several important decisions, two of which pertain directly to the judicial system, specifically amendments to the JSA and an interpretation of the Constitution.

Although the Constitutional Court's primary jurisdiction is to accept challenges to the authority of the Parliament and the President, it also has the authority to consider constitutional issues raised in litigated cases. The Supreme Court of Cassation and the Supreme Administrative Court both have jurisdiction to refer cases affecting private parties to the Constitutional Court. If these courts find an inconsistency between the law to be applied and the Constitution, they must suspend court proceedings for a determination by the Constitutional Court of the constitutionality of a contested law. CONST. art. 150(2); JSA art. 84(2). After the Constitutional Court reaches its decision, the appropriate Supreme Court resumes its proceedings.

Factor 6: Judicial Oversight of Administrative Practice

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

Conclusion	***Correlation: Positive***	***Trend: ↑***

The authority and competency of the Supreme Administrative Court, which has the power to review administrative acts and to compel the government to act, is well-regarded. The Ministry of Justice is pursuing improvements in administrative law and procedure and in the specialization of administrative law courts and judges.

Analysis/Background:

Culminating with the Supreme Administrative Court (SAC), the judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists. (*See* JUDICIAL REFORM INDEX OF 2002, p. 15, for a discussion of the applicable laws).

Only recently have Bulgarian citizens vigorously pursued their rights against governmental regulations and decisions. In one recent case, the SAC ruled against the Council of Ministers concerning a decision to substantially increase the court fees collected by the courts, prosecution offices, investigation services, and the Ministry of Justice. Council of Ministers Ordinance No. 154 of 2003, S.G. 66/2003, was appealed by the Union for Support of the Small and Medium Size Enterprises on the grounds that the size of the increase in court fees exceeded the limitation set by the Constitution which states that Bulgarian citizens and companies should pay state taxes and fees in accordance with their income and property. CONST. art. 60(1). Ordinance No. 154 established court fees from 2 to 30 times higher than the current court fees. Since the increase in property and income of Bulgarian citizens and companies had only risen by 30%, the SAC determined that the extremely high increase in court fees limited the constitutionally-protected right of access to justice of Bulgarian citizens and companies, and struck down Paragraph 1 of Ordinance No. 154. SAC DECISION NO. 295, January 16, 2004, S.G. 6/2004.

The SAC has a mixed reputation among legal professionals. Some say the SAC is brilliant. It provides access to public information while ensuring the protection of personal data. The case management process is open and transparent and is readily available to the public and the media. The judges on the SAC are well-qualified, adequately paid, and, due to the Court's exposure to the operations of foreign administrative courts, conduct themselves as respectable

jurists. The administrative staff of the SAC is well-trained and extremely helpful to litigants and attorneys. The website of the SAC is excellent and is unique in that the case management system is document-based, rather than data-based, and allows the public to view all essential documents filed with each case. Yet, several respected legal practitioners noted that certain judicial decisions of the SAC unreasonably favored the well-connected.

The Judicial Reform Strategy of the Ministry of Justice, updated April 21, 2003, establishes as a priority the improvement of the judicial structure by the creation of specialized administrative courts. As administrative law is becoming more complex, and more citizens are availing themselves of court remedies, there is an apparent need for specialization among judges and other legal professionals in administrative law. However, there are proponents and opponents of the proposed unified system of regional administrative courts. The debate centers around the necessity to either create new administrative courts which will involve substantial funds or enhance the administrative sections within the existing court structure. In either event, the number of cases filed with the SAC would be reduced, thereby increasing its efficiency.

Another area of improvement in administrative practice is the drafting of a new Administrative Procedure Code. Currently, there are numerous sources of procedural rules (Administrative Procedure Act, Supreme Administrative Court Act, Tax Procedure Code, Administrative Offenses and Sanctions Act, and Civil Procedure Code and Criminal Procedure Code, when appropriate) that overlap with one another or even result in gaps and contradictions. The complex and confusing rules of various procedural codes lead to an inefficient judicial oversight of administrative practice. A working group has been established by the Ministry of Justice to develop a new Administrative Procedure Code, which will incorporate the Administrative Procedure Act, the Supreme Administrative Court Act and the Administrative Offenses and Sanctions Act. The draft is scheduled to be completed by October 2004 and is expected to be submitted to the Parliament before the end of 2004.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

Conclusion	***Correlation: Positive***	***Trend: ↔***
The courts have exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties. However, most citizens do not take advantage of protecting such rights through the judicial system.		

Analysis/Background:

Although the courts, including the Constitutional Court, have exclusive, ultimate jurisdiction over cases concerning the rights and legitimate interests of all citizens [CONST. art. 117; JSA art. 2(1)], Bulgarians do not utilize the courts to vigorously protect their fundamental human rights. This is largely due to a lack of understanding by Bulgarian citizens not only of their civil rights and liberties enshrined in the Constitution, but also of the courts' role in enforcing such rights.

Bulgaria is a signatory to the Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter CONVENTION], which became effective in Bulgaria on September 7, 1992. (*See* S.G. 66/1992 for ratification of the European Convention; *amended by* Protocol No. 11, *see* S.G. 84/1994 for ratification of the Protocol). Aggrieved parties may appeal to the European Court of Human Rights upon exhaustion of domestic remedies. CONVENTION, *as amended by* Protocol No. 11, arts. 34 and 35. Some human rights attorneys attempt to exhaust domestic remedies as

quickly as possible, and seek resolution in the Court as they believe most Bulgarian judges have yet to develop a thorough understanding of the precepts of the Convention. Indeed, judges have only limited access to the Convention or the Court's case law, as neither is systematically distributed throughout the judicial system. Proactive judges in Bulgaria may access the Court's website for the Convention and the Court's decisions, but they are only published in French and English. Other judges must rely upon the insignificant number of the Court's decisions which have been translated in Bulgarian, such as the collection of 40 cases involving the key provisions of the Convention, published by the Informational Center of the Council of Europe in 2001 and delivered, free of charge, to all courts in Bulgaria.

Factor 8: System of Appellate Review

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

Conclusion ***Correlation: Neutral*** ***Trend: ↓***
Although judicial decisions may be reversed only through the judicial appellate process, and procedures for such review are adequately set forth in the law, the integrity of the judicial appellate process is dubious.

Analysis/Background:

The judicial appellate process may be generally described as follows: the district courts hear appeals on cases of the regional courts; the courts of appeals hear appeals on cases of the district courts; the Supreme Court of Cassation (SCC) hears appeals on the accurate application of the laws in civil and criminal cases by all second instance courts; and the Supreme Administrative Court (SAC) hears appeals on the accurate application of laws in administrative cases. JSA art. 39.

Appeals before the district courts and courts of appeals are heard by a three-judge panel. CIVIL PROCEDURE CODE, Izv. 12/1952, *last amended by* S.G. 36/2004 [hereinafter CIV. PROC. CODE], arts. 196(1) and 208(1); CRIMINAL PROCEDURE CODE, S.G. 89/1974, *last amended by* S.G. 38/2004 [hereinafter CRIM. PROC. CODE], art. 23(2). The SCC hears cassation appeals by a three-judge panel. CIV. PROC. CODE art 218f(1); CRIM. PROC. CODE art. 23(3). Depending upon the type of challenge, the SAC hears appeals by a three-judge panel or a five-judge panel. Supreme Administrative Court Act, S.G. 122/1997, *last amended by* S.G. 84/2003 [hereinafter SACA], arts. 22 and 23.

The principle that judicial decisions may be reversed only through the judicial appellate process is not only well-established under Bulgarian law, but it is also strongly practiced without any reported instances of non-judicial reversals. However, the concern does not lie in the process of judicial appellate review, but in its substance.

Given the lack of trust most citizens have in the judiciary and in the integrity of judicial decisions, it is a common practice for the aggrieved litigant to appeal a judicial decision until the court of last instance is reached. Since most litigants believe judges are improperly influenced, the appellate process is doggedly utilized not only to redress the rights of the litigant, but also to reverse the alleged improper decision of each lower court.

Consequently, the appellate courts in Bulgaria are overburdened with appeals that are more filed out of course rather than a belief that a mistake in law has occurred. In the appellate courts, each case is assigned to a judge, known as the reporting judge, who sits on a three-judge panel. While the reporting judge is primarily responsible for the disposition and decision of the case, the other

judges on the panel are required to participate in the substance of the hearings and the written decision of the case. However, in practice, most panel members rely upon and reiterate the opinion of the reporting judge without engaging in an independent review of the case. Indeed, it is rare for a dissenting opinion to be issued in a case on appeal. Within a one-year period at the Supreme Court of Cassation, one judge reported that he wrote dissenting opinions for less than 1% of the 350-380 decisions in which he participated.

This is due largely to the massive caseload of appellate court judges, which makes it practically impossible for one judge to thoughtfully consider not only the allotment of cases assigned to him or her, but also to give equal consideration to the cases of the two other judges on the appeals panel. Additionally, a can be seen from the table below, a substantial number of cases heard by district court judges relate to company registration issues. There is a growing movement in Bulgaria to transfer the registration procedures from the judicial arena to the administrative arena, thereby reducing the caseload of judges (*see* OPPORTUNITIES FOR ESTABLISHMENT OF CENTRAL REGISTER OF LEGAL PERSONS AND ELECTRONIC REGISTRIES CENTER IN BULGARIA, Center for the Study of Democracy 2003), while also eliminating one of the most fertile sources of corruption within the courts.

MONTHLY CASELOAD FOR DISTRICT COURT JUDGES
(with the largest number of monthly cases per court)

Name of district court	Total number of cases per court (1st and 2nd instance)	Total number of cases per court (excluding company registration)	Monthly average number of cases per active judge	Monthly average number of cases per staff position	Monthly average number of cases per active judge (excluding company registration)
Blagoevgrad	7,290	3,525	40.05	30.38	19.37
Burgas	10,207	4,403	26.10	22.38	11.26
Varna	15,397	7,936	31.88	27.89	16.43
Veliko Turnovo	6,018	2,903	24.77	21.80	11.95
Dobrich	5,002	2,402	29.25	24.52	14.05
Pleven	5,916	3,144	25.95	23.48	13.79
Plovdiv	17,797	7,977	37.00	27.46	16.58
Ruse	6,374	2,989	30.21	25.29	14.17
Sofia (City)	52,326	20,069	46.27	42.33	17.74
Sofia (District)	5,457	2,873	24.04	18.19	12.66
Stara Zagora	7,402	3,442	34.59	28.04	16.08
Haskovo	5,037	2,257	34.74	23.32	15.57
TOTAL	**198,320**	**90,585**	**31.34**	**26.27**	**14.31**

Source: MOJ STATISTICS 2003; JRI INTERVIEW.

By relying solely upon the opinion of the reporting judge, appellate judges not only negate the citizen's right of appellate review as envisioned by the Constitution, but their behavior also has the effect of sanctioning poorly-reasoned or inaccurate judicial decisions, particularly if the reporting judge has been improperly influenced. It is not uncommon for a reporting judge, who is overburdened with work or other responsibilities, to quickly dispose of a case without any substantive review by either remanding it to the lower court on a minor procedural matter or affirming the case knowing the aggrieved litigant will appeal it.

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***	***Trend: ↔***
Although judges possess both contempt and subpoena powers, they do not effectively utilize these powers. The enforcement of civil judgments is extremely problematic.		

Analysis/Background:

Although judges possess both contempt and subpoena powers (*see* CIV. PROC. CODE and CRIM. PROC. CODE), they do not effectively utilize these powers.

The failure of parties, their attorneys and witnesses to appear in court is a long-standing problem within Bulgaria's justice system. Judges routinely reschedule hearings, rather than use their powers to compel compliance with the civil and criminal procedure codes. Judges have the power to impose fines and to compel the attendance of parties and witnesses who fail to appear. CIV. PROC. CODE art. 71; CRIM. PROC. CODE arts. 95(3) and 157(1). Judges can require the posting of bail, house arrest or detention in order to secure the attendance of the criminal defendant. CRIM. PROC. CODE arts. 146, 152, 152a. Judges may also remove from a court hearing any person who is disorderly. *Id.* arts. 266(1) and 266(4); CIV. PROC. CODE art. 106.

Judges' failure to effectively utilize their subpoena and contempt powers, coupled with the disrespect shown by parties, attorneys and witnesses who routinely fail to appear at judicial proceedings, result in considerable case delays, which are one of the major factors the public cites as evidence of judicial corruption.

Recent changes concerning judges' powers in conducting judicial proceedings have been made to the Civil Procedure Code that, if vigorously enforced, would have the effect of reducing case delays. As with courts of first instance, appellate courts are now required to summon the parties only for the first hearing thereby obligating the parties to inform themselves of subsequent hearings. CIV. PROC. CODE arts. 41(6) and 202. Courts now have the right to adjourn any case in which the party and its attorney do not appear due to an obstacle that the party cannot remove. *Id.* art. 107(2).

Fines and other financial sanctions have been increased for witnesses and experts summoned to court who do not appear without any valid reason, or who refuse to provide testimony without a valid reason. *Id.* arts. 71 and 72. Further, the party who causes an adjournment of a case by presenting demands, or stating facts or evidence that could have been stated in due time, must bear the expenses for the new hearing regardless of the outcome of the case. *Id.* art. 65(1).

The enforcement of civil judgments is extremely problematic. As of end of 2003, there are close to 380,000 judicial decisions which have yet to be enforced, some dating back a decade.

ENFORCEMENT PROCEEDINGS IN CIVIL CASES

Year	Pending enforcement proceedings (at the beginning of the reporting period)	Enforcement proceedings initiated	Enforcement proceedings terminated	Pending enforcement proceedings (at the end of the reporting period)
2002	362,661	60,748	56,094	367,315
2003	368,985	69,011	60,028	377,968

Source: MOJ STATISTICS.

The delays in enforcing judgments, often intentional, render many judicial decisions meaningless. The delays and, in many cases, the absence of the execution of judgments, give rise to the public's disrespect for the judicial system. Many of the enforcement problems are due to the numerous, complex and cumbersome enforcement procedures (*see* JUDICIAL REFORM INDEX OF 2002, p. 20, for a discussion of the applicable laws) and a lack of public resources.[1]

One of several recent amendments to the Civil Procedure Code imposes a seven-day deadline within which the execution judge must rule on the application for enforcement, thereby reducing the opportunity for appeals against the decision of the execution judge, which was one of the major causes of delay in enforcing judgments. CIV. PROC. CODE art. 325(a). An additional amendment to the Civil Procedure Code that will reduce delays in enforcing judgments is the new procedure that the enforcement judge's decisions are subject to appeal before the relevant district court whose decision is final rather than, as was previously required, before the relevant regional court whose decision was subject to appeal before the relevant district court. *Id.* arts. 333(1) and 334(4).

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: Positive***	***Trend: ↑***
The judiciary has influence over the amount of money it is allocated by the legislative branch, and has control over its own budget and the expenditure of funds.		

Analysis/Background:

The Supreme Judicial Council (SJC) is authorized to prepare, allocate and control the autonomous budget of the judiciary. CONST. art. 117(3); JSA art. 196. The judicial system's budget covers the operating costs of the courts and the salaries of court personnel, including all magistrates (judges, prosecutors and investigators), which consumes the largest percentage of the budget.

While the SJC has financial control over the functioning of the courts, the Ministry of Justice retains control over the Judicial Buildings Fund and the Penitentiary Buildings Fund, which covers the cost of constructing, maintaining and equipping all judicial system's buildings. JSA arts. 36b and 36c.[2]

[1] As of the publication date of the JRI, it should be noted that there are drafts of a Private Execution Law pending in the Parliament; however, no final action has been taken.

[2] In October 2004, the Constitutional Court decision No. 4, S.G. 93/2004, declared the unconstitutionality of Articles 36b and 36c of the JSA, as well as a number of other provisions related to the Ministry of Justice powers as to the provision of material conditions for the activities of the judiciary (JSA art. 36) and the acquisition of immovable property and real rights for the needs of the judiciary (JSA art. 36a). As of this printing, however, no further action has been taken as a result of this decision.

Prior to 2004, the SJC was required to submit its draft budget to the Council of Ministers, which provided its own comments to the SJC's draft budget before submission to the National Assembly. In effect, the comments of the Council of Ministers amounted to an alternative budget that was considerably less than the SJC's draft budget and was routinely adopted by the National Assembly.

However, the 2004 amendments to the JSA provide that the draft judicial budget prepared by the SJC is to be submitted to the Ministry of Finance for review, but not revision, and is then submitted by the Council of Ministers to the National Assembly. JSA, *as amended by* S.G. 29/2004, arts. 196(2) and 196(3).[3]

The SJC submitted a 2004 judicial budget for 292 million leva (approximately US$ 187 million), and is reportedly pleased with the National Assembly's final budget for the judiciary of 205 million leva (approximately US$ 131.5 million). This amounts to an increase of 68% in the judicial system's budget since 2002.

A portion of the revenues for the judicial budget is derived from the various fees paid for judicial services. In 2002, the fees amounted to 41 million leva (approximately US$ 19.9 million); in 2003 they were increased to 45.2 million leva (approximately US$ 26.2 million); and for 2004 they are 56 million leva (approximately US$ 35 million). *See*, respectively, 2002 REPUBLIC OF BULGARIA STATE BUDGET ACT, SG 111/2001; *amended by* SG 28/2002; 2003 REPUBLIC OF BULGARIA STATE BUDGET ACT, SG 120/2002; *last amended by* SG 60/2003; 2004 REPUBLIC OF BULGARIA STATE BUDGET ACT, SG 114/2003.

According to European standards, the national judicial budget generally equals 2-4% of GDP. In most EU member states, 73% of the national judicial budget pertains to staff salaries and social contributions. COMMISSION OF THE EUROPEAN COMMUNITIES, 2002 REGULAR REPORT ON BULGARIA'S PROGRESS TOWARDS ACCESSION, p. 24.

The 2004 judicial budget of Bulgaria equals 0.54% of GDP, and 77% of the budget pertains to staff salaries and social contributions. *See* 2004 REPUBLIC OF BULGARIA STATE BUDGET ACT.

JUDICIAL SYSTEM BUDGET
(in leva)

	2002	**2003**	**2004**
Supreme Judicial Council	900,000	632,500	1,197,100
Supreme Court of Cassation	10,000,000	10,121,300	16,034,400 *(including 7,500,000 for the Justice Palace in Sofia)*
Supreme Administrative Court	4,000,000	5,006,000	6,748,000
Prosecution Office of the Republic of Bulgaria	30,000,000	26,792,600	44,645,000
National Investigation Office	--	--	5,203,600
Courts of the Republic of Bulgaria	54,000,000	71,150,000	95,640,700
Investigation services	23,000,000	27,580,400	33,982,200
National Institute of Justice	--	--	1,169,000
Reserve funds for contingent and/or urgent purposes	--	600,000	600,000

[3] Constitutional Court decision No. 4, S.G. 93/2004, declared as unconstitutional the provision of the Law Amending the JSA, S.G. 29/2004, which modified Article 196(2) of the JSA to require the SJC to submit the draft judiciary budget to the Ministry of Finance for incorporation into the state budget.

TOTAL	**121,900,000**	**141,882,800**	**205,220,000**
Percentage of State Budget	**1.61%**	**1.76%**	**2.19%**
Percentage of GDP	**0.38%**	**0.41%**	**0.54%**

Source: 2002 REPUBLIC OF BULGARIA STATE BUDGET ACT; 2003 REPUBLIC OF BULGARIA STATE BUDGET ACT; 2004 REPUBLIC OF BULGARIA STATE BUDGET ACT; SJC ADMINISTRATION.

Note: Percentage of 2004 state budget is calculated on the basis of the entire spending under the state budget, including net transfers.

MINISTRY OF JUSTICE JUDICIAL BUILDINGS FUND

Year	Leva
2002	1,595,200
2003	2,482,568
2004	2,340,000 (including 100,000 subsidy from the republican budget)

Source: MOJ STATISTICS.

Although the SJC has increased authority over the preparation, submission and allocation of its budget, there are insufficient resources within the SJC to effectively administer the budget. The financial planning capacity of the SJC is limited, thus the SJC must rely on the validity of budgets submitted by the local courts, rather than provide an independent assessment of each court's needs.

Given the privacy with which the SJC engages in the budgetary process and its limited financial capacity, some individuals contend that the difference among local courts concerning the number of courtrooms, the ratio of court clerks to each judge, and the quality and quantity of technical and office equipment provided to the courts does not reflect the different caseloads within each court or the needs of each court, but instead reflects the disparate influence certain local court presidents have with the SJC.

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: Neutral Trend: ↑

Judges are adequately paid, and the salaries are sufficient to permit judges to live in a reasonably secure environment without having to seek alternative sources of income.

Analysis/Background:

Judicial salaries are, in general, adequate for judges to support their families and live reasonably well as public servants. Judicial salaries for all Constitutional Court judges, the Presidents of the Supreme Court of Cassation (SCC) and the Supreme Administrative Court (SAC), and junior judges are based upon a formula that considers the remuneration of other governmental positions. JSA arts. 139(1) and 139(2). The salaries of all other judges are determined by the Supreme Judicial Council (SJC). *Id.* art. 139(3).

Among the higher positions within the judiciary, the salary of the President of the Constitutional Court is the foundation upon which judicial salaries are based. The President of the Constitutional

Court receives a salary equal to the mean of the sums received by the President of Bulgaria and the Chair of the National Assembly. CONSTITUTIONAL COURT ACT, S.G. 67/1991, *last amended by* S.G. 114/2003 [hereinafter CCA], art. 10(1). Members of the Constitutional Court, as well as the Presidents of the SCC and the SAC, receive 90% of the Constitutional Court President's salary. *See*, respectively, CCA art. 10(2); JSA art. 139(1). Junior judges receive twice the amount of the average monthly salary for employees in the government budget sector. JSA art. 139(2). Finally, the salaries of judges of the SCC and the SAC, other than the Presidents, of court of appeals judges, district court judges and regional court judges are set by the SJC. On average, it was learned by the assessment team that judges at each court level earn 20-30% more than the judges at the level immediately below. Further, in interviews with the assessment team, most judges felt that their current salaries are sufficient.

Given the budgetary limitations of the state, the current salaries of judges are considered adequate. This is in contrast to the salaries judges received in 2001, on which the JUDICIAL REFORM INDEX OF 2002 was based. Since 2001, judges have received an increase in salaries from 35% for regional court judges to 69% for court of appeals judges.

All judges also receive a clothing allowance every year that equals two average monthly salaries of employees in the government budget sector, and is tax-free. JSA art 139a. In 2003, the clothing allowance equaled approximately 582 leva (approximately US$ 337.7).

While most judges are pleased with their salaries, prominent attorneys in the private sector can earn significantly more than judges. In the mid-1990's, numerous judges left the bench for the private practice of law which was considerably more lucrative; however, due to the abundance of new attorneys over the past several years, not only are judges remaining on the bench, but attorneys are seeking judgeships. Many legal professionals now consider the judicial profession to be a stable one, and although the income is not as attractive as practicing law, it is secure and is steadily rising.

Factor 12: Judicial Buildings

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Courthouses are generally conveniently located and easy to find; however, not all of them provide a respectable environment for the dispensation of justice. There are significant differences in the infrastructure and quality of courthouses throughout the country.		

Analysis/Background:

There are 153 courts located in 138 judicial buildings in Bulgaria. As some courts are located in former communist party headquarters, the size of the building and space allocated to the courts are sufficient. However some of these courts, as well as other courts, are in need of serious renovation. Some courts are located in older or decaying buildings that intrude upon the courts' ability to command the respect essential to an effective judicial process.

Even though there is a need for new judges, there is a hesitancy to create new judicial positions since courthouses do not have sufficient space to accommodate existing personnel, let alone additional personnel. Some courthouses have too few offices or courtrooms. It is not uncommon for judges to share offices, which can be very distracting to the thoughtful deliberation of cases.

Given the shortage of courtrooms, some judges have to resort to hearing civil cases in their offices.

Since 2002, several judicial buildings have been renovated or repaired, while new buildings have been constructed or acquired. Specifically, in 2002, fifteen judicial buildings have undergone renovation or were repaired, and three new buildings were constructed. In 2003, eighteen judicial buildings have undergone renovation or were repaired, and four new buildings were acquired. In 2004, eight buildings will undergo renovation or repair, five new buildings will be constructed and two buildings will be acquired.

Recently, the Palace of Justice in Sofia was partially renovated after relocating the Museum of National History, which had been situated in the Palace of Justice for decades. The Palace of Justice currently houses the Supreme Court of Cassation for 78 judges, the Sofia Court of Appeals for 31 judges, the Sofia District Court with for 26 judges, and the Sofia City Court for 101 judges. In addition, the Palace of Justice houses the Sofia Military Court, the Military Court of Appeals, the Chief Prosecutor's Office and several other prosecutors' offices.

Eleven of the twenty-one courts that are part of the model court program funded by USAID have undergone renovation and a reorganization of their physical spaces to allow for a more modern and improved court clerks' offices.

Factor 13: Judicial Security

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
The Ministry of Justice has increased resources to improve the security of courthouses and to protect judges from threats such as harassment and assault.		

Analysis/Background:

The Ministry of Justice (MOJ) has been attentive during the past two years to improving the security of courthouses and protecting judges against threats of harassment and assault.

Since 2002, the MOJ has provided certain courts around the country with 12 metal detector frames, 48 hand-held metal detectors, and 6 devices for checking incoming correspondence. Additionally, one metal detector frame was installed in the Supreme Administrative Court and four metal detector frames and three scanners – in the Palace of Justice. These are necessary improvements for several courts, particularly the Sofia Regional Court, as well as the Palace of Justice, which were the subject of numerous bomb threats in 2002 and 2003.

While conducting some of the interviews, the assessment team was able to enter a few courthouses bypassing the metal detector as it was unmanned. In other courthouses, the metal detector was fully operational and sufficiently manned. Some attorneys have expressed concerns regarding the delays they experience given the length of time for a diligent security check and have requested that a separate security line be created for them.

In 2003, a new specialized security unit for the judiciary was created, which is under the direction and organization of the MOJ. JSA art. 36e. The court police within the specialized security unit are responsible for the security of all judicial buildings and the protection of judges and witnesses. Court police are armed and present in each court; however, there are varying numbers of court

police on duty at the same time in different courts. There are currently 809 court police (ANNEX TO THE MOJ ORGANIC REGULATION, S.G. 83/2002, *last amended by* S.G. 18/2004) who have the responsibility for: (1) providing the security of all judicial buildings and of all judges, including prosecutors, investigators and witnesses; (2) securing the order in judicial buildings; (3) assisting the judicial bodies in summoning persons to the court as well as in judgment enforcement proceedings; (4) escorting indicted persons; and (5) providing for the security of pretrial detention facilities. JSA art. 36e(1).

IV. Structural Safeguards

Factor 14: Guaranteed tenure

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

Conclusion	***Correlation: Positive***	***Trend: ↔***
Judges, other than those on the Constitutional Court, who have served for five years and have received a positive evaluation from the Supreme Judicial Council receive life tenure. Judges on the Constitutional Court serve a single nine-year term.		

Analysis/Background:

Following criticism of the "irremovability" provisions of the Constitution and the JSA allowing judges to receive life-time tenure upon completion of three years of service, both the Constitution and the JSA were recently amended to provide that after five years in office, and a positive evaluation by the Supreme Judicial Council (SJC), judges acquire "irremovability status". CONST. art. 129(3); JSA art. 129(1). The requirement of five years includes the two years served as a junior judge. JSA art. 129(1).

The evaluation of the judge seeking tenure is conducted by the Recommendations and Evaluation Commission (REC) of the SJC. *Id.* art. 30b(5). The REC is a permanent Commission of the SJC and is composed of seven SJC members. The REC chairman is elected from among the seven members. *Id.* art. 30a(3).

The evaluation by the REC must be based, in part, on the opinion of the president of the court on which the judge sits; the number, type and complexity of cases the judge has managed; the judge's compliance with timelines; and the number of judicial decisions upheld and reversed, and the reasons for such reversals. *Id.* art. 30b(4). Within 14 days of the submission of a request for an evaluation, the REC must conduct the evaluation and forward its results to the SJC. *Id.* art. 30b(5). If the evaluation results are negative, the judge being evaluated has the opportunity to be heard by the SJC and to provide written objections. *Id.* art. 30b(6). The final decision taken by the SJC is by a secret, absolute majority vote. *Id.* arts. 27(1)(19) and 30b(7).

Both a judge seeking tenure and the president of the court upon which the judge sits may submit a request to the SJC for an evaluation of the judge. *Id.* art. 129(2). The request for an evaluation must be submitted at least three months before the five-year time period expires. *Id.* art. 30b(2).

The procedures envisaged by the April 2004 amendments to the JSA represent a positive change towards the creation of a national evaluation mechanism by which all judges will be assessed

under the same standardized procedures in contrast to the past during which evaluations were conducted locally.

A judge who has not had three years of service as of September 30, 2003, and thus had not yet acquired "irremovability" under the previous provision must abide by the new "irremovability" provisions in order to obtain life tenure. LAW AMENDING THE JSA, S.G. 29/2004, Transitional and Final Provisions, para. 71. Thus, life tenure under the new "irremovability" provisions will not be obtainable earlier than September 29, 2005 for those sitting judges who have yet to become tenured.

Although Constitutional Court judges are not entitled to "irremovability", their single nine-year term is of sufficient duration to contribute to their independence. CONST. art. 147(2).

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: Neutral***	***Trend: ↑***
Judges are advanced through the judicial system more on the basis of quantitative criteria than on qualitative criteria. In some instances, political considerations are a significant factor.		

Analysis/Background:

Although the Supreme Judicial Council (SJC) continues to have the ultimate authority to promote judges [*see* CONST. art. 129(1); JSA art. 27(1)(4)], the process of promotion, including the qualifications for promotion, have recently undergone major changes. Legislative changes have introduced, to some degree, the principle of competition into the promotion process.

Recommendations for promotion of judges to each court must be made by the president of the court to which the recommended judge belongs, and may also be made by at least one-fifth of the members of the SJC or by the Minister of Justice, and submitted to the Recommendations and Evaluation Committee (REC) of the SJC for an evaluation. JSA arts. 30(1), 30(2), 30(4), 30b(1).

Recommendations for appointment to the position of president of the regional, district and appellate courts must be made by the president of the immediate higher court, and may also be made by one-fifth of the members of the SJC or by the Minister of Justice, and then submitted to the REC. *Id.* arts. 30(1), 30(2), 30(4), 30a(1). Appointment to the position of president of the regional, district and appellate courts is limited to a five-year term, and may be renewed only once. CONST. art. 129(4); JSA art. 125a(5).

Interestingly, sitting judges, as well as prosecutors, investigators, practicing attorneys, legal advisors, and law professors, as well as anyone else with a law degree who meets the relevant years of service requirement set forth in Article 127 of the JSA, are now qualified to be appointed to the position of president or vice-president of the regional, district or appellate courts. *Id.* art. 125b(2). Candidates for the presidency or vice-presidency of these courts must have previously qualified to serve as a magistrate (judge, prosecutor or investigator), but are not required to be currently serving as a sitting judge. *Id.* art. 125b(1). The effect of having legal professionals who are not actively serving as a judge as a court president or vice president may result in a demoralized judiciary where political considerations rather than professional performance as a judge is the determinative factor for promotion.

In assessing the performance of judges proposed for promotion, the REC (*see* Factor 14 for a discussion of the REC) must base its decision, in part, on the opinion of the relevant court president; the number, type and complexity of cases the judge has managed; the judge's compliance with timelines; and the number of judicial decisions upheld and reversed, and the reasons for such reversals. *Id.* art. 30b(4).

Within 14 days of the submission of a request for an evaluation of the proposed promotion, the REC must conduct the evaluation and forward its results to the SJC. *Id.* art. 30b(5). If the evaluation results are negative, the judge being evaluated has the opportunity to be heard by the SJC and to provide written objections. *Id.* art. 30b(6). The final decision taken by the SJC is by a secret, majority vote. *Id.* art. 30b(7).

The procedures for appointing the presidents of the Supreme Court of Cassation and the Supreme Administrative Court have also undergone several changes. Previously, the law allowed the general assemblies of the Supreme Courts to initially propose a nomination for their respective president, later permitting any one member of the SJC to propose a nomination. Now the law requires that one-fifth of the members of the SJC or, alternatively, the Minister of Justice, propose the nomination. At least two-thirds of the members of the SJC may nominate individuals to the two positions. *Id.* art. 28. Requiring a qualified majority of the SJC to nominate the presidents of both Supreme Courts will help to diminish the politicization of the previous nomination process. Following their nomination, the candidates are appointed by the President of the Republic of Bulgaria for a non-renewable term of seven years**.** CONST. art. 129(2); JSA art. 125a(4).

Even with the legislative changes that undoubtedly will help to improve the process of judicial advancement, there are continuing concerns expressed by some over promoting or even retaining a small number of current judges due to a perception of disparate professional abilities. Therefore, court observers contend that the criteria used to evaluate the performance of a judge for promotion must not be limited to the length of service, the number and type of cases assigned to a judge, the number of reversals, and the judge's compliance with timelines, particularly given the manipulation of case assignment (*see* discussion under Factor 18) and the flawed appellate procedure (*see* discussion under Factor 8).

Basing promotion on court records that are essentially a compilation of numbers (number of cases, number of reversals, and timelines achieved) can be deceiving, and can even have a deleterious effect on the work product of judges. Some judges believe their superiors are more concerned with the statistics of case management rather than the integrity of the judicial process. Because of this, there are judges who concentrate on the quantity rather than the quality of their work. Indeed, some judges can increase the number of cases attributed to them in an artificial manner. In order to enhance their record, some judges, knowing they were assigned the wrong case due to its jurisdictional issues, will purposely open and close the file, and then transfer it to the appropriate division in the court, rather than transferring the file without recording that it had been opened and closed, which increases the judge's numbers. Other judges, in order to meet the timelines, knowingly compromise the quality of their decisions.

Court observers suggest that the criteria used for promotion, as well as for tenure (*see* discussion under Factor 14), should be expanded to specifically include the quality of the judge's judicial decision-making process, including its objectivity and neutrality, the judge's character for honesty and integrity, and the judge's professional experience. *See* Coalition 2000, CORRUPTION ASSESSMENT REPORT OF 2003, pp. 37-38.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	***Correlation: Positive***	***Trend: ↑***
Judges have immunity while conducting their official duties, unless their actions constitute a deliberate indictable offense.		

Analysis/Background:

Recent amendments to the Constitution and the JSA have resulted in transforming the unlimited and highly-criticized immunity previously afforded to judges to "functional" immunity. Rather than receive immunity from prosecution for all but serious crimes that result in a prison sentence exceeding five years, judges now receive only "functional" immunity. By limiting judicial immunity, judges will continue to be protected while performing their official duties, but will be generally responsible for their non-official behavior, just as other Bulgarian citizens.

Judges may not be held criminally or civilly liable while conducting their official duties, unless their actions constitute a deliberate indictable offense. CONST. art. 132(1); JSA art. 134(1). No charges may be brought against a judge without the Supreme Judicial Council's (SJC) approval. JSA arts. 27(1)(6) and 134(2). If such charges have been brought against a judge, the SJC must suspend the judge until the criminal proceedings have been completed. *Id.* art. 140(2).

A judge may not be detained, except for a grave crime, and with the approval of the SJC. *Id.* art. 134(3). However, if a judge is caught in the course of committing a grave crime, approval by the SJC for detention is not required. *Id.* art. 134(3). If a judge is under investigation for a crime of a general nature, the SJC may suspend the judge until the criminal proceedings have been completed. *Id.* art. 140(1).

The Chief Prosecutor or at least one-fifth of the total number of SJC members may submit to the SJC a request to obtain the necessary approval required to bring a charge against a judge, to detain a judge, or to request a suspension. *Id.* arts. 134(4) and 140(1).

While these recent amendments to the Constitution and the JSA are laudable, there is, nevertheless, concern that the Chief Prosecutor retains considerable authority over the prosecutorial and investigative functions concerning judges' immunity. Given the centralized structure of the public prosecutor's office, this may give the Chief Prosecutor undue authority even though one-fifth of the SJC members now have the parallel authority to seek the approval of the SJC to bring charges against a judge, detain or suspend a judge. *See* Coalition 2000, CORRUPTION ASSESSMENT REPORT 2003, p. 30.

Factor 17: Removal and Discipline of Judges

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

Conclusion	***Correlation: Neutral***	***Trend: ↑***
Major amendments to the Judicial System Act have been recently enacted with the intent of improving the regulatory process to discipline and to remove judges from office. The amendments have yet to be tested, thus it is premature to assess whether the disciplinary process is transparent, and whether the official misconduct is sufficiently specific to hinder abuse of discretion.		

Analysis/Background:

The Supreme Judicial Council (SJC) has the authority to decide disciplinary cases against judges, and to remove judges. JSA arts. 27(1)(4), 27(1)(7), 173(1).

Judges are subject to disciplinary action for failure to perform their official duties, and for violating the rules of professional ethics. *Id.* arts. 168(1) and 168(2).

Disciplinary sanctions for judges, other than court presidents and their deputies, include:

- Warning;
- Reprimand;
- Demotion in rank or position for a period of 6 months to three years; or
- Dismissal.

Id. art. 170(1).

Disciplinary sanctions for court presidents and their deputies include:

- Warning;
- Reprimand; or
- Removal from the position as president or deputy.

Id. art. 170(2).

A recommendation to discipline a judge must be made by the president of the court. A recommendation to discipline the president of the regional, district and appellate courts must be made by the president of the immediate higher court. *Id.* art. 172(1). Recommendations to discipline judges may also be made by at least one-fifth of the members of the SJC, or by the Minister of Justice. *Id.* art. 172(3).

Within 14 days after submission of the recommendation to discipline with a warning or a reprimand, the decision to initiate disciplinary proceedings must be made, and a rapporteur must be appointed from among the members of the SJC to determine whether grounds exist to impose a disciplinary sanction. *Id.* arts. 175(1) and 175(3).

If the submission of the recommendation to discipline is for demotion or dismissal, then disciplinary proceedings must be initiated by a three-member panel, chosen by lot from among the members of the SJC. The disciplinary panel must designate a rapporteur and schedule a hearing within 14 days of the initiation of the disciplinary proceedings. *Id.* arts. 33, 176(1), 176(2). The judge who submitted the recommendation to discipline, or the judge's representative, has the right to be heard at the disciplinary hearing. *Id.* art. 178(1). The accused judge also has the right to be heard and the right to counsel. *Id.* arts. 174, 178 (1), 178(2). The decision of the panel to recommend a disciplinary sanction may be made by a simple majority. *Id.* arts. 180(1) and 180(2).

After receiving the report of the rapporteur or the decision of the disciplinary panel, the SJC, by majority vote, determines whether or not to impose a disciplinary sanction. *Id.* arts. 181(1) and 181(2).

Any interested party may appeal the SJC's decision to the Supreme Administrative Court (SAC). *Id.* art. 184(1). The appeal does not suspend the decision of the SJC. *Id.* art. 184(2). The appeal must be heard by a five-judge panel of the SAC not later than one month after it was filed with the Court. The SAC panel's decision is final. *Id*.

Judges may be removed from office under numerous circumstances, including the following:

- Reaching the age of 65 [in lieu of voluntary retirement];

- Resignation;
- Non-appealable imprisonment sentence for an intentional crime;
- Persistent and actual impossibility to perform official duties for more than one year;
- Serious breach of, or persistent failure to carry out, official duties, as well as engaging in activities undermining the judicial system's prestige; and
- Decision of the SJC not to grant "irremovability" status.

Id. art. 131(1).

Presidents of courts and their deputies may be removed from their respective office under the same circumstances as above, except that they are also subject to removal either upon the expiration of their term or if their persistent and actual impossibility to perform official duties lasts six months, rather than one year. *Id.* art. 125c(1).

As with disciplinary matters, recommendations for removal of judges on each court must be made by the president of the respective court, and recommendations for removal of the president of the regional, district and appellate courts must be made by the president of the immediate higher court. Recommendations for removal of judges may also be made by at least one-fifth of the members of the SJC or by the Minister of Justice. All recommendations for removal must be submitted to the Recommendations and Evaluation Committee (REC) of the SJC. *Id.* arts. 30 and 30a. The circumstances for removing the Presidents of the Supreme Court of Cassation (SCC) and the SAC are slightly different from those that apply to other court presidents. *Id.* art. 29(1). The process for removing the Presidents of the two Supreme Courts is the same as for their appointment. *Id.* arts. 28(1)-(8), 29(2).

The recommendation for removal for all judges, except the Presidents of the SCC and the SAC, must be submitted in writing and include supporting evidence that any one of the circumstances listed as a cause for removal has occurred. *Id.* arts. 30a(8) and 30a(9). The recommendation must be submitted within 14 days of the occurrence of any circumstance that gives rise for removal. Within 14 days of receipt of the recommendation, the REC must submit its written decision to the SJC. *Id.* arts. 30a(5) and 30a(11). The SJC may decide by majority vote to remove a judge. *Id.* art. 30a(12).

Court observers caution that allowing only the presidents of courts to submit a recommendation to discipline or a recommendation for removal imposes a heavy burden on these few individuals who, for a variety of reasons, may be dissuaded to file a valid recommendation. By limiting the initial investigation to 14 days, the timeframe is too short in order to allow for a thorough examination of the facts before any disciplinary proceeding is initiated. Further, mandating formal disciplinary proceedings in certain cases limits the SJC's discretion to dismiss groundless claims, while subjecting innocent judges to unnecessary public scrutiny.

Additionally, court observers caution that the new category as a basis for removal of judges, "activities undermining the judicial system's prestige", is too general and vague. Without specific guidelines, the SJC, and, if its decision is appealed, the SAC has considerable discretion to broadly interpret the category. *See* Coalition 2000, CORRUPTION ASSESSMENT REPORT, 2003, p.30.

Since the regulatory process to discipline or to remove judges from office has recently undergone major changes, it is premature to assess whether the disciplinary process will be transparent, and whether the official misconduct will be sufficiently specific to hinder abuse of discretion.

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***	***Trend: ↔***

The assignment of cases is left to the discretion of the court president as there are no formal standards governing case assignment. Even though computer capability exists in several courts to assign cases randomly, it is seldom, if ever, utilized.

Analysis/Background:

The assignment of cases is conducted primarily by the president of the court, and may be delegated, usually to the vice-president(s) who are section chairs within the court. As there are no formal standards governing the assignment of cases, the president of the court as well as his or her designee may assign cases according to any desired method, objective or subjective.

In most courts, the president has developed objective criteria by which cases may be assigned. These criteria are generally based on the specialty of the judge, the complexity of the case, the workload of the judge, and the judge's seniority. Some presidents attempt to distribute evenly among all judges on the court certain types of cases, such as automotive traffic cases, in order to equalize the burden of these cases.

In those courts where the president attempts to randomly assign cases, it is usually done within the appropriate subject-matter division (civil, criminal, administrative or commercial), and is either assigned in numerical or alphabetical order.

In several courts, a computerized case management system with appropriate software for random case assignment exists, yet it is rarely, if ever, utilized. In one court with modern computer capability to randomly assign cases, the court president has yielded to the demands of his deputies allowing them to personally assign cases. And yet, even when utilized, an automated case assignment system can be manipulated, according to critics of the Supreme Administrative Court.

Although case assignment is generally conducted on a rational basis using objective criteria, abuse of the system thrives, and is one of the major causes of improper influence on the outcome of court cases.

A court president or designee who wants to influence the outcome of a case, or who wants to support the career path of a judge, can willfully assign cases to particular judges. Knowing the propensity of certain judges to succumb to influence, the court president or designee can direct cases to them. The reverse is also true. Cases can be withheld from judges who refuse to bow to external pressure. Some judges are assigned simple cases that can be processed quickly thereby allowing them to receive a higher number of cases, which enhances their record. Since advancement in the Bulgarian judiciary is based largely on numbers, a judge with a high caseload is promoted faster than judges with a low caseload, even though their cases may be considerably more complex and the quality of their decisions superior.

The abuse of case assignment is exacerbated in the civil sections of appellate courts as cases may be reassigned, without cause, unlike criminal cases on appeal. A court president or designee who wishes to exert influence on the outcome of a case on appeal may change the reporting judge to whom the case has been assigned (*see* Factor 8) and may even change the panel of

judges hearing the case, all without cause. Not only may this impact the outcome of the case, but it can also add considerable delay to the resolution of the case.

The initial assignment of cases, as well as the right to reassign without cause civil cases on appeal, are two fundamental and major methods by which improper influence can be exerted in the courts. The degree to which improper influence succeeds is difficult to ascertain, yet what is certain is the appearance of impropriety by the arbitrary assignment and reassignment of cases.

The Ministry of Justice has drafted a Regulation on Court Administration in the Regional, District, Military and Appellate Courts[4] that includes provisions, which, if strictly enforced, will assist in reducing the arbitrariness of the initial assignment and reassignment of cases. Article 26 of the draft Regulation (as of February 14, 2004) states that cases must be assigned "to a reporting judge pursuant to the principle of random selection" by alphabetical order, and that "the reporting judge may be changed only in the event of recusal or absence".

Factor 19: Judicial Associations

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
The Union of Judges continues to be an exceptional force for judicial reform and the promotion of judicial independence in Bulgaria. Rather than being institutionally-based, the Union of Judges is personality-driven and is dependent upon its president to spearhead significant reforms.		

Analysis/Background:

Since its creation, the Union of Judges (also known as the Bulgarian Judges Association) has had two presidents, both of whom are viewed as being extremely competent and committed to judicial reform in Bulgaria. Both are leaders in the judicial community and have been the driving force behind the progress and effectiveness of the Union of Judges.

Of the approximately 2,000 judges in Bulgaria, over 600 are members of the Union of Judges. The initial fee to join the Union of Judges is 10 leva (approximately $6.66 in April 2004) and the annual membership fee is 12 leva (approximately $8.00 in April 2004).

The activities of the Union of Judges are generated by the strength of the individual who serves as president rather than the organizational structure and membership of the Union of Judges. In the words of one judge, "The Union of Judges can not become active through judicial neutrality. It is incumbent upon the members of the Union of Judges to become more proactive."

Some judges contend that members of the Union of Judges would be more motivated to participate in the activities of the Union if they believed in the power of their advocacy. As there are competing professional and personal demands upon the judges' time, they would be inspired to become proactive if they saw results from their concerted efforts to make changes in the judicial system.

In the past two years, the Union of Judges has engaged in significant activities that demonstrate their increased stature within the judicial community. In December 2003, the Union adopted a

[4] As of this printing, the Regulation has been approved and promulgated in S.G. 95/2004.

Code of Ethics for Bulgarian Judges**,** which was approved by the Supreme Judicial Council in March 2004. The Union of Judges also adopted a Public Relations Strategy in May 2004. In 2003, the Union of Judges distributed a nation-wide survey to key judges, attorneys, court staff and other users of the court system to ascertain their views concerning the necessary qualifications for court presidents.

The Union of Judges has not been very active in providing comments on pending legislation. Given the confusing and often conflicting laws passed by the National Assembly which impact the work of the judiciary, some believe it is incumbent upon the Union of Judges to develop a systematic approach to providing input during the drafting stages of the legislative process, particularly on laws that threaten to weaken the judiciary.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

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

Conclusion	***Correlation: Negative***	***Trend: ↔***

The prevailing public perception is that judicial decisions are not based solely on the facts and law. Judges are subject to undue influence from parties and their attorneys, from other magistrates, including judges, and from government officials.

Analysis/Background:

The Constitution and other relevant laws clearly provide that judges are independent and subservient only to the law. Judges must be impartial, objective and fair and are to act in accordance with their own conscience and convictions. CONST. art. 117(2); JSA arts. 1(2), 13, 107; CIV. PROC. CODE arts. 4(1) and 188; CRIM. PROC. CODE arts. 9 and 16(1).

Yet, the public perceives judges to be corrupt, using their judicial authority for personal gain, which results in an improper delivery of judicial services and legal protection for all citizens. Indeed, corruption in the justice system in Bulgaria is reputed to be endemic.

The role of the judiciary in Bulgaria is to protect human rights and civil liberties of citizens, and all citizens are to receive equal access to the courts and equal treatment by the courts. Nevertheless, Bulgarian citizens overwhelmingly believe that the powerful, well-connected, and wealthy escape prosecution or conviction in criminal cases and secure judgments in their favor in civil cases.

There is a tolerance for corruption in Bulgaria, particularly because it is viewed as essential for doing business and the only avenue for accomplishing certain results. Receiving governmental services in Bulgaria is reportedly based more on influence than on merit; appointment and promotion is more often a product of patronage and political considerations; educational and professional success is achieved when the right connections are employed. Thus, it is believed, whom you know rather than having the law on your side is more important when seeking judicial results. The conviction in the power of contacts rather than content is so pervasive in Bulgaria that even when judicial decisions are based on merit, most citizens dismiss the decisions as the product of personal influence.

The Bulgarian press allegedly fuels the perception of corruption and, as a result, over 75% of the public believes that magistrates (judges, prosecutors and investigators) are corrupt. *See* Center for the Study of Democracy, JUDICIAL ANTI-CORRUPTION PROGRAM, 2003, p.90. Litigants approach the court expecting the judge to be corrupt. There is no presumption of innocence of Bulgarian judges. Indeed, litigants often view any behavior by the judge that is negative to the litigant's case as evidence of the judge's corruption.

There are various forms of corruption reported within the Bulgarian judiciary, although no information was ever provided as to specific acts of particular people. The two most pervasive forms of corruption cited were the payment of bribes and undue influence sought by individuals, friends and relatives, parties and their attorneys, other magistrates, including judges, and government officials, who have a relationship with the judge.

With regard to bribery, it is reported that some judges will still seek payment from individuals associated with the case or that a bribe will be proffered by a litigant or attorney. Many litigants, it is said, succumb to bribery as a faster and cheaper way to utilize the judicial process, particularly given the lengthy and cumbersome appeals process. Again, however, no information about specific acts by particular people was ever provided.

As for external influence, there is societal pressure within Bulgaria to help others. In fact, it is so engrained in the Bulgarian culture that some judges often do not believe that doing favors for family, friends, or colleagues impacts their role as impartial arbiters.

And yet, not all judicial decisions that do not accurately reflect the facts of the case and applicable law are the result of corrupt behavior. Some judges are inexperienced and have to grapple with the complexity of current Bulgarian law. Many judges find the fast-paced amendments to laws confusing and often contradictory. Some judges suffer from the weight of their caseload, while other judges are intimidated by the press and government officials. (*See* Factor 23). Inaccurate decisions often reflect these daunting circumstances rather than the dishonesty of the judge.

The major problem in overcoming corruption in the Bulgarian judiciary is to differentiate between actual corruption and the public perception of corruption. The perception of corruption in the courts is as insidious as corruption itself, for both have the effect of undermining the public's trust in the justice system. Yet, corruption in the judiciary is difficult to prove and is very hard to measure. Most of the corruption occurs outside the public eye and often between only two individuals, both of whom are engaged in the illegal conduct and each receiving a personal benefit. Thus, the perception of corruption is necessarily based on speculation and hearsay.

In the past few years, the Bulgarian government has engaged in several measures that are designed to combat corruption. One of the measures is the new requirement of judges to file a declaration of assets. Judges must now report their property and income on an annual basis beginning with their appointment and ending upon their departure. JSA art. 135(2).

Most observers believe that declaring assets is a much-needed requirement for judges, given that other public servants are obliged to file declaration of assets. Filing a declaration of assets may deter the acquisition of improper income while serving on the bench. It will clearly force judges to declare their home and major personal possessions, such as an automobile, which could demonstrate that their standard of living exceeds the annual salary of a judge. Other observers, however, believe that the requirement is meaningless as assets can be easily hidden using the names of distant family members or friends. The Supreme Judicial Council's Anti-Corruption Committee has authority, along with the National Audit Office, to verify information about the existence of serious differences between the judges' declared assets and acquired assets. REGULATION ON THE ORGANIZATION OF WORK OF THE SUPREME JUDICIAL COUNCIL AND ITS ADMINISTRATION, *available at* http://www.vss.justice.bg/bg/statut/3.html, viewed June 4, 2004 [hereinafter SJC INTERNAL REGULATION], art. 22(1)(4).

Most of the remedies for reducing corruption have been institutional. However, the ultimate remedy, without which corruption will never be eradicated, is societal. An unethical justice system benefits the individual, while the country suffers. Corruption within the justice system has had a deleterious effect on the economic and political growth of Bulgaria. There is no fundamental belief in Bulgaria that ethical behavior matters. Until ethical behavior is rewarded, and the rewards exceed the risks of engaging in corrupt behavior, corruption, and/or the perception thereof, in the judiciary will not cease.

Factor 21: Code of Ethics

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

Conclusion	***Correlation: Neutral***	***Trend: ↑***

A judicial code of ethics encompassing general statements of ethical behavior was adopted by the Union of Judges and approved by the Supreme Judicial Council in 2004. Judicial ethics training is provided to new judges, and is periodically taught to sitting judges at the National Institute of Justice.

Analysis/Background:

In 2004, the Union of Judges adopted the Code of Ethics for Bulgarian Judges in accordance with the JSA. JSA art. 27(1)(13). The Code was approved by the Supreme Judicial Council on March 10, 2004 as required by JSA art. 27(1)(13).

The Code of Ethics encompasses general statements of ethical behavior and covers the professional conduct of judges with regard to the judge's integrity and independence, competency, confidentiality, relations with the media and civil society organizations, and treatment of other individuals during the course of his/her official duties. The Code of Ethics also includes provisions relating to the personal conduct of judges.

The Code of Ethics is enforceable through JSA art. 168(1), for violating which disciplinary penalties can be imposed including the imposition of a warning, a reprimand, demotion or dismissal. *Id.* art. 170.

In addition to the Code of Ethics, the JSA, the Civil Procedure Code and the Criminal Procedure Code also govern judges' behavior. (*See* discussion in the JUDICIAL REFORM INDEX OF 2002, p. 38). The totality of all provisions is comprehensive and generally covers the necessary issues which require a judge to act in such a manner that there is no doubt as to his objectivity and independence.

Adoption of the Code of Ethics by the Union of Judges was a significant step in judicial reform. Even though it replaced a set of seven principles that served as voluntary guidelines for the members of the Union of Judges, it evidenced a change in attitude of Bulgarian judges toward promulgating a code of judicial ethics. Over the years, Bulgarian judges have equated ethics with morality. Since they know the difference between right and wrong, they believed a code of ethics was unnecessary. However, they finally overcame their resistance and recognized that a code is useful in addressing ethical challenges that arise in the daily work of every judge.

Although e*x parte* communications are not prohibited by law, the Code of Ethics addresses the issue of *ex parte* communication by prohibiting a judge from establishing personal relations with

the parties to a pending case that would reasonably question his/her integrity. *See* CODE OF ETHICS FOR BULGARIAN JUDGES, art. 4(1)(3). This provision is an important first step in reducing the level of *ex parte* communications.

Ex parte communications are commonplace within the Bulgarian judiciary, particularly at the regional court level. Although the judge is prohibited from giving legal advice (JSA art. 138), the judge is not prevented from receiving information that may prejudice the outcome of the case. E*x parte* communications during which the strengths and weaknesses of the case are discussed without the presence of the opposing party can lead to undue influence by a party to a pending case, particularly when the other party is not given a similar opportunity to state his case or refute the assertions made by his opponent.

Some judges have visiting hours during which the public, including attorneys and parties to pending cases, may meet with the judge to discuss the merits and procedures of the case. Court presidents who have visiting hours defend their *ex parte* communications as a means of ensuring that the operations of the court are running smoothly. Yet, expecting judges to alter hearing dates to accommodate requests made during visiting hours by parties or attorneys could result in improper external pressure on the independence of the judge. Too many rejections of the court president's requests may have a negative impact on promotion.

Even if judges refuse to engage in *ex parte* communications, such communications are difficult to avoid. Judges often receive phone calls from, or are personally approached by, attorneys, parties, public officials, friends and relatives who seek to influence the judge's decision.

European civil law countries acknowledge *ex parte* communication as a viable method for judges to elicit sufficient facts which will theoretically reveal the truth and assist in the administration of justice. However, these countries are unlike former socialist countries where *ex parte* communications were systematically and historically practiced as a means of influencing the judge. Thus, in Bulgaria, *ex parte* communications are viewed by the public as an essential practice in order to obtain the desired outcome of a court case. Even if the substance of the *ex parte* communication is appropriate, the appearance of influence peddling fuels the public's suspicion that judicial decisions are for sale.

Judges are required to receive training on judicial ethics before taking office, although there is no requirement for continuing training on judicial ethics during their tenure. The National Institute of Justice provides courses on judicial ethics as a component of its curriculum for junior judges and periodically provides a CLE course on ethics for sitting judges. *See* MAGISTRATES' TRAINING CENTER: BUILDING A FAIR, IMPARTIAL, AND EFFICIENT JUDICIAL SYSTEM, 2003, pp. 12 and 33.

Factor 22: Judicial Conduct Complaint Process

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
An outdated, but nevertheless applicable regulatory process exists under which citizens may register complaints concerning judicial conduct.		

Analysis/Background:

Bulgarian citizens have the constitutional right to file complaints with the state authorities. CONST. art. 45. In the development of "socialist democracy" in Bulgaria, the Law on Proposals, Notes, Complaints and Applications was promulgated in 1980 to "promote the unconditional observance of socialist laws" and to ensure that citizens participate in the "social management system". Law on Proposals, Notes, Complaints and Applications, S.G. 52/1980, *last amended by* S.G. 55/2000 [hereinafter LPNCA].

In general, citizens may file complaints for the protection of their rights and legal interests with the competent "social management" body, which is obligated to render a decision in an objective and lawful manner. *Id.* arts. 3 and 6. The competent "social management" body [hereinafter "competent body"] must correct the breach of the citizens' rights and legal interests, and must take necessary steps to hold officials accountable. *Id.* arts. 9 and 31(2).

Specifically, citizens may file complaints with the competent body against unlawful or improper acts or actions, against tardiness, callous treatment or any other manifestations of bureaucracy that infringe on their rights or legal interests, and may also file complaints with the court regarding violations of laws by state bodies, officials and citizens. *Id.* arts. 29(2), 29(3), 30.

The competent body that received the complaint is obligated to give instructions to the citizens and explain to them their rights and obligations. The competent body is also obligated to provide an explanation in those cases where the complaint is unlawful or ungrounded. *Id.* art. 16. In those cases where the competent body does not acknowledge the reasonableness of the complaint, the complaint, together with the competent body's explanation, may be submitted to the superior body. *Id.* art. 31(3).

The competent body must thoroughly investigate the complaint and seek explanations from the parties concerned, and must render a decision within one month (or two months if it is a national body) from the date the complaint was filed. *Id.* arts. 17 and 33(1). The competent body must provide the complainant with a written opinion within seven days of rendering the decision, and must take measures for its execution. *Id.* arts. 34(1) and 20. Upon execution of the decision, the complaint process is terminated. *Id.* art. 21.

Although the decision by the competent body is not subject to appeal, the complainant is entitled to notify a superior competent body, which may take necessary steps to correct the breach or irregularity. Indeed, the superior body is even entitled to exercise corrective measures on its own initiative. *Id.* art. 40.

Even though the LPNCA is controlling, it is not clear that the procedures set forth therein are being strictly followed by the three "social management" bodies that are competent to receive citizens' complaints against judges: the courts, the Supreme Judicial Council (SJC) and the Ministry of Justice.

While it is generally understood that citizens have the right to file complaints against judges, there are no uniform standards or procedures for handling complaints, nor is the complaint process transparent. The courts, in particular, lack sufficient staff to properly screen and dismiss frivolous complaints while investigating the meritorious complaints.

The Ministry of Justice receives and reviews citizens' complaints, and through the Inspectorate, forwards the complaint, if meritorious, to the SJC for consideration.

The SJC has developed internal regulations for handling citizens' complaints. Citizens may file complaints directly with the SJC. The Complaints Committee, a permanent committee of five SJC members, reviews the complaint and provides a response within 30 days of completing its investigation. In conducting its investigation, the Complaints Committee discusses the complaint

with the relevant court president who performs his/her own review and provides a response to the complainant and the Complaints Committee. The Complaints Committee also refers the complaint to the Ministry of Justice, which, through the Inspectorate, conducts an inspection and provides a response to the complainant and the Complaints Committee. SJC INTERNAL REGULATION arts. 25(1)(1) and 25(3).

When citizens' complaints are found to be meritorious, and the accused judges are found guilty of violating Article 168 of the JSA (which addresses failure to perform their official duties and violation of the rules of professional ethics), then the president of the court on which the judge sits, the Minister of Justice or one-fifth of the SJC members may file with the SJC a recommendation for discipline. JSA art. 172; *see* discussion under Factor 17.

According to the SJC 1998-2003 Activity Report, *available at* http://www.vss.justice.bg/bg/doklad/1.1.html, viewed June 4, 2004, during the period of 1998-2003, the SJC received 3,917 complaints filed under the LPNCA. After an investigation and review by the Complaint Committee, 3,537 complaints were processed. It should be noted that the total number of complaints filed were not solely against judges, but include the other magistrates (i.e., prosecutors and investigators) as well.

Factor 23: Public and Media Access to Proceedings

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

Conclusion	***Correlation: Positive***	***Trend: ↑***
Courtroom proceedings are generally open to the public and press. Judges are given discretion to close a courtroom to the public and the media under certain circumstances. Lack of courtroom space in some courts impedes public access.		

Analysis/Background:

The laws of Bulgaria provide for all ordinary court hearings to be public unless otherwise restricted by law. (*See* JUDICIAL REFORM INDEX OF 2002, p. 40, for a discussion of the applicable laws).

Courtroom proceedings are generally open to the public and press. Judges infrequently invoke their right to close court hearings. There remains, however, an obstacle to public access, which is a lack of courtroom space in some courts.

During the past two years, there has been significant improvement in accommodating public and media access to courtroom proceedings. The position of the press attaché was created within the judicial branch to enhance the relations between the court and the public, and to assist in the communications between the court and the media. JSA art. 188r.

At present, there are nine press-attaché offices in Bulgaria. They are situated at the Supreme Administrative Court, Supreme Court of Cassation, Sofia City Court, one for Sofia Appellate and Sofia District Courts, one for Sofia Regional Court, one at each Plovdiv, Varna, Bourgas and Veliko Turnovo Appellate Courts. The press attachés at the appellate courts cover the activities of the district and regional courts in the corresponding cities.

The press attachés provide information to the public and press regarding the administrative functions of the court. Press attachés disseminate the calendar of hearings, assist the media in

obtaining court files and other court-related documents, and schedule meetings and press conferences with judges.

Although the media is not required to contact the press attaché to obtain court documents or other information, some journalists prefer to rely upon those press attachés who have a reputation for competency and commitment.

In recognizing the role of the court to educate the public of its work, some press attachés assume the responsibility of educating journalists about the criminal procedure process, which is of particular importance in highly-publicized criminal cases that are sometimes inaccurately portrayed in the press. Cases involving a serious crime or a well-known criminal defendant often receive sensational coverage not only by the press but also by governmental officials.

In those cases in which the procedural laws were properly applied, the sensational and inaccurate statements made by the media and some public officials sometimes cause the public to be outraged by the leniency of the court's treatment of the defendant who may have been released from pre-trial detention or was acquitted. Rather than view the inaccuracies as a reflection of the ignorance or bias of a journalist or a public official, the public views the inaccurate statements as evidence of corruption within the criminal justice system. It is not uncommon for judges who have correctly applied the law in certain highly-publicized criminal cases to be vilified by the press or public officials. This leads to a detrimental effect on other judges who may be inexperienced or insecure, and thus become fearful of applying the correct, but unpopular decision in order to avoid public scorn. The irresponsibility of the press in covering certain criminal cases underscores the need for press attachés to be thoroughly well-versed in court administration and legal procedures, and to be placed within all courts buildings.

In June 2003, the Supreme Judicial Council approved the Unified Media Strategy of the Judiciary with the intent to help establish a positive public image of the judiciary and to provide citizens with their constitutional right to receive information. The Unified Media Strategy sets forth the role and responsibilities of the press attachés, the responsibilities of judges in dealing with the media, and the basic methods for judges and press attachés to communicate with the media. UNIFIED MEDIA STRATEGY OF THE JUDICIARY, approved June 25, 2003, *available at* http://www.vss.justice.bg/bg/doklad/1.6.html, viewed June 4, 2004.

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***	***Trend: ↔***
Most judicial decisions are not a matter of public record. While judicial decisions are available to the litigants and their attorneys, third parties must generally obtain court approval to receive a copy of the decision.		

Analysis/Background:

Although court decisions must be announced publicly in accordance with the Civil Procedure and Criminal Procedure Codes (*see* JUDICIAL REFORM INDEX OF 2002, p. 41, for a discussion of the relevant code provisions), most of the lower court judicial decisions are not published.

Interpretative decisions of the Supreme Court of Cassation and the Supreme Administrative Court are published and are binding on the judicial and executive authorities. JSA arts. 86(2) and 97(2).

There is no requirement, however, that the interpretative decisions be published in the State Gazette, except for those decisions of the Supreme Administrative Court that revoke a normative act. SACA art. 31. All Constitutional Court decisions are published in the State Gazette. CONST. art. 151(2).

Litigants and their attorneys have a right to review their case files and may make copies of any documents, including the judicial decision, within the file. Information contained with the case files must be given to the party or his attorney on the day, or no later than the following day, the request was made for the case file. The case file may not be removed from the court, and documents may not be taken from the file. MINISTRY OF JUSTICE REGULATION NO. 28 ON THE FUNCTIONS OF THE EMPLOYEES OF THE AUXILIARY BODIES AND CLERICAL OFFICES OF THE REGIONAL, DISTRICT, MILITARY AND APPELLATE COURTS, S.G. 30/1995, *last amended by* S.G. 73/2003 [hereinafter MOJ REGULATION 28], arts. 33, 35(1), 35(2). Litigants and their attorneys criticize the arbitrary imposition of fees for obtaining copies of documents within their case files. As there is no uniform fee structure among the courts, court clerks often dictate the fee, which varies widely among the courts.

Third parties may obtain copies of documents in case files provided they have a legitimate interest in receiving a copy of the document. *Id.* 28 art. 35(3). Yet, MOJ Regulation 28, limiting access to case files, is not uniformly enforced throughout the country.

Attorneys complain that the restrictions of MOJ Regulation 28 contradict the Attorneys Law which states that "the attorney shall have unimpeded access and may make inquiries with regard to cases, demand copies of documents and receive information by priority from the courts … after verifying his standing as an attorney." Attorneys Law, S.G. 80/1991, *last amended by* S.G. 84/2003 art. 12.[5]

The Supreme Administrative Court has ruled on three occasions that MOJ Regulation 28 restricting access to case files to attorneys is legally binding. The Court found that unlimited access by attorneys to all court files would violate the litigant's right to privacy, and may even harm such legally protected values as national security, public order, public health and public morals. *See* SUPREME ADMINISTRATIVE COURT DECISION NO. 1128, February 22, 2001; SUPREME ADMINISTRATIVE COURT DECISION NO. 803, January 31, 2003; SUPREME ADMINISTRATIVE COURT DECISION NO. 5445, June 3, 2003.

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***	***Trend: ↔***
Summaries of the testimony of court proceedings (called court protocols) are required to be maintained, but their accuracy is subject to debate. As with judicial decisions, court protocols are available to the litigants and their attorneys. Third parties must generally obtain court approval to receive a copy of the protocol and other documents within a case file.		

[5] Both MOJ Regulation 28 and Attorneys Law were repealed after this JRI was completed but prior to the publication date. MOJ Regulation 28 was repealed in October 2004 by the Ministry of Justice Regulation on Court Administration in the Regional, District, Military and Appellate Courts, S.G. 95/2004. The Attorneys Law was superceded by the new Attorneys Law, S.G. 55/2004, in June, 2004.

Analysis/Background:

A court protocol is required in all civil and criminal cases. (*See* JUDICIAL REFORM INDEX OF 2002, p. 42, for a discussion of the relevant provisions of the Civil Procedure Code and Criminal Procedure Code).

Although in most courts, the protocol of the hearing continues to be written in long-hand by a court secretary and then reviewed for accuracy by the reporting judge, there are some courts in which the court secretary has access to a computer during hearings in the courtroom. And in certain model courts, the judges hearing the case also have access to a computer, located on the bench. While the court secretary is typing a summary of the oral proceedings, it is being displayed simultaneously on the judges' computer so they may observe in real time the written protocol. While this is a significant improvement over the current system, the vast majority of courts continue to operate with inadequate resources to provide an accurate and complete record of the proceedings.

As with judicial decisions, the protocol and other documents in a case file are available to the litigants and their attorneys, and may be available to third parties if approval by the court is given. (*See* discussion under Factor 24).

VI. Efficiency

Factor 26: Court Support Staff

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

Conclusion	***Correlation: Neutral***	***Trend: ↑***

Although court clerks generally have the reputation of being poorly educated and trained, are ill-equipped and underpaid, there has been significant improvement in the motivation of clerks to enhance their professional qualifications, and in their administrative performance within several courts.

Analysis/Background:

The major concern regarding the court support staff is not the number of court clerks, but rather the quality of their work, their professionalism, their education and training, and their attitude towards litigants and attorneys.

Many judges complain that court clerks are insufficiently motivated to meet their obligations, and even when they do, the quality of their work is substandard. Some judges refuse to give court clerks certain administrative tasks, knowing it will take longer to correct the mistakes of the court clerk than doing the administrative task him or herself. Judges also complain that the protocol dictated to the court clerk is often error-ridden and considerable time is wasted correcting and re-correcting the mistakes of the court clerk.

The public has its own complaints that the court clerks are inefficient, irresponsible, lazy and rude. Rather than view themselves as civil servants owing the public a high-quality service to which tax-payers are entitled, court clerks lack the motivation, given their poor training and salary,

to effectively and efficiently serve the public. Litigants, even attorneys, complain of the surly attitude of many court clerks.

Some court clerks unknowingly engage in improper administrative tasks, not out of a dishonest motivation, but out of ignorance and lack of adequate training. The numerous amendments to the procedural codes are confusing and often contradictory, and lead some court clerks to make innocent mistakes, which, to a suspicious public, appear to be corrupt.

Within the past few years, however, there has been a heightened awareness of the need to enhance the professionalism and resources of court clerks. Until recently, court clerks were an ignored component of the justice system. While judges, prosecutors, investigators and attorneys were being trained and retrained, court clerks were overlooked. With significant funding directed towards enhancing the infrastructure of the courts, including computerization, the need to increase the professionalism of court clerks became apparent. International donor programs began focusing on the court support staff. That has had a major impact on the improvement of court services.

Among the twenty-one model courts and courts in partnership established by a USAID-funded project, eleven court clerks offices have been redesigned and remodeled to allow for efficient and transparent court administrative functions.

Within the Blagoevgrad District Court, a model court, the court clerks office was recently redesigned by eliminating small offices in which inappropriate behavior by court clerks could be conducted without detection, into one large room where all court clerks work, can observe and be observed by each other, thereby reducing the opportunity for abusing their discretion. Job descriptions for each court clerk have been written, and the new rules of court administration are applied. Court clerks wear badges to be easily identified; their behavior towards the public has changed dramatically; and their improved relationship with court users, litigants and attorneys has heightened the efficiency of court operations. As public servants, court clerks keep their office open continuously throughout the day, which is a departure from the current practice of most courts to close the court clerks' office during lunch hour. Attorneys and litigants alike praise the recent changes to the court administrative practice.

As a result of a USAID-funded project, all court clerks' offices in Bulgaria have current desk guide manuals for the criminal intake process, the civil intake process, and the summons process. Additionally, all court files are color-coded and are filed numerically so they can be easily identified and retrieved.

In 2001, the National Association of Court Clerks (NACC) was created to improve public service, increase the skills of court clerks, and improve the work atmosphere of the courts. Of 4,319 (according to SJC charts – this number includes courts clerks, janitors, drivers, etc.) court clerks in Bulgaria, 2,477 are members. While the NACC is headquartered in Sofia, there are 94 regional offices, covering 105 courts throughout the country. The NACC was the first to adopt a Code of Ethics that, *inter alia*, specify how court clerks should act in the event of being offered a bribe. The NACC has also conducted training for its members on ethics and anti-corruption techniques. Those who have participated in the trainings have been given high ratings for dramatically improving their work ethic.

According to the 2002 amendments to the JSA, new court clerks are to undergo a competition prior to being hired. JSA art. 188a(1). In very few courts, such as the Supreme Court of Cassation, such competition has taken place, as most courts are awaiting Ministry of Justice regulations for implementing the amendment.

Also included in the 2002 amendments to the JSA is the creation of court administrators for all courts. *Id.* art. 188q. The purpose of the court administrators is to improve court operations by increasing the level of management expertise in the courts, thereby relieving court presidents of

their numerous administrative tasks and allowing them to concentrate on judicial decision-making. Although presidents of many courts have been trained on the division of responsibilities between the president and the court administrator, and their relationship to the court administrator and other court staff, not one court administrator has been hired, as funds have not been appropriated for the new positions.

Finally, the 2002 amendments to the JSA created the position of judicial assistants for the Supreme Court of Cassation and the Supreme Administrative Court. *Id.* art. 148a. Only the Supreme Administrative Court has employed judicial assistants. The Supreme Court of Cassation has not taken similar steps, due to a lack of adequate space.

Judges complain that the ratio of court clerks to judges is small, thus compelling some judges to spend up to 30% of their time on administrative matters. Additionally, court clerks are not properly distributed throughout the country. Some judges have a higher ratio of court clerks than others even though their workloads do not warrant it. Apparently, certain court presidents have significant influence with the Supreme Judicial Council and are able to obtain a higher budget with a larger staff.

ADMINISTRATIVE EMPLOYEES IN THE JUDICIARY
(includes all court employees other than judges)
(as of March 2004)

Name of court	Number of courts	Number of judges (including recordation judges)	Number of administrative employees in courts	Ratio of administrative employees in courts to judge
Regional courts	112	1,120	2,670	2.38
District and city courts	28	618	1,172	1.90
Courts of appeal	5	91	108	1.19
Military courts and Military Appellate Court	6	37	101	2.73
Supreme Court of Cassation	1	78	163	2.09
Supreme Administrative Court	1	59	105	1.78
TOTAL	**153**	**2,003**	**4,319**	**2.16**

Source: SJC ADMINISTRATION.

Factor 27: Judicial Positions

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
The number of judicial positions is determined by the Supreme Judicial Council; however, the creation of these positions does not meet the demand for new judges due to insufficient funding and lack of adequate infrastructure.		

Analysis/Background:

The Supreme Judicial Council (SJC) has the authority to determine the number of judges, the number of courts, and their territorial jurisdiction. JSA arts. 27(1)(2) and 27(1)(3). The determination by the SJC to create new judicial positions is based on several factors which include: the number of judicial positions in a court, the number of active judges, the average number of working hours per judge, the total number of cases heard and reviewed, and the number of cases closed. In general, a judicial position is created when judges in a particular court have a larger caseload than the average caseload of judges in a similar court.

In 2002 and 2003, there were 131 new judicial positions created in the regional, district, and appellate courts and 10 new judicial positions in the two supreme courts. Yet the remaining obstacle is that there are insufficient financial resources to timely create the number of judicial positions necessary to meet the needs of the judicial system. Furthermore, the infrastructure within many courthouses is limited in its capacity to accommodate additional personnel. Given the limited resources to create new judicial positions to meet the demand, the caseload per judge has increased significantly while the number of judges has remained the same.

Factor 28: Case Filing and Tracking Systems

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

Conclusion Correlation: Neutral Trend: ↔
Many courts continue to conduct their work operations manually. All entries into registry and index books, as well as statistics, are manually maintained and hand-written. Yet, for those courts with significant computer equipment, the case filing and tracking system has greatly improved. Case delays remain a significant problem in Bulgaria.

Analysis/Background:

Although in many courts much of the work continues to be conducted manually, there has been significant improvement among all courts in the case filing and tracking system. This is due primarily to a USAID-funded project that created and recently instituted in all 153 courts a case filing system utilizing color-coded files based on the subject matter of the case. Additionally, all cases are filed numerically according to the date and time filed.

Not only does the new case filing system enhance the organization and identification of files, it also has the effect of reducing corruption by those court clerks who may be inclined to accept illicit payments to alter the date the complaint was received. In some courts, the organization of the files provides for a written notification when a file was removed from the court clerks' office, the name of the individual in possession of the file, and the current location of the file. This oversight process assists in identifying individuals who may have improperly removed documents from the case file or have removed the case file from the court building.

An electronic case management system has been developed and is specifically tailored to the Bulgarian court system. The case management system is document-based, rather than data-based, and allows for documents to be electronically stored and, in some courts, for attorneys to file complaints and other documents electronically. Entries into the registry are electronic and, with the filing of new documents, are updated electronically. Summonses and other court documents are also produced electronically.

On October 9, 2003, the Supreme Judicial Council (SJC) approved a single case management system as the national system to be implemented in all courts. *See* SJC 1998-2003 Activity Report, *available at* http://www.vss.justice.bg/bg/doklad/1.1.html, viewed June 4, 2004. As of early June 2004, the national case management system was implemented in 17 courts. Out of those 17 courts, 10 are so-called model courts or courts in partnership.

Some legal professionals question the security of the case management system, as standards for usage by court personnel are not uniform, nor strictly enforced. Thus, some believe, rightfully or not, that judges or court clerks who wish to alter case figures may have the opportunity to manipulate the documents stored electronically.

Despite improvements in the case filing and tracking system, there are considerable delays in the processing of cases. Case delays are one of the major reasons for the poor reputation of judges and the public's perception that the judiciary is corrupt. In some instances, there is an unconscionable delay of cases. Some cases are older than ten years, and it is not uncommon for cases to linger two or more years before their resolution.

Many cases are not handled expeditiously due to a variety of reasons: 1) the increased number of cases filed resulting in a high ratio of cases per judge; 2) the lack of courtrooms and poor scheduling of court hearings; 3) judicial indifference to case delays; 4) the advantage attorneys take of legislative opportunities for postponement; 5) the fees attorneys receive for each court hearing; and 6) the litigiousness of Bulgarian society, caring more about causing pain to the other party in delaying the case than about seeking its resolution.

Unless the courts provide a credible rationale for the delays in case processing, the public will create its own reasons for such delays and the excuses are never admirable leading to the poor reputation of the judiciary in Bulgaria.

Factor 29: Computers and Office Equipment

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

Conclusion	***Correlation: Neutral***	***Trend:*** ↑
There have been significant improvements in the distribution of computers and other office equipment to the courts.		

Analysis/Background:

While not all judges have their own computers, nor is there sufficient office equipment in each court to provide for an effective and efficient processing of cases, there has been a significant improvement in the distribution of computers and other office equipment in most courts in Bulgaria.

As of June 2004, 1,127 judges have been supplied with personal computers. Additionally, 936 printers have been distributed throughout the courts.

In addition to the Supreme Court of Cassation and the Supreme Administrative Court, eleven of the twenty-one courts that are part of the model court and courts in partnership program of the USAID-funded project, are fully computerized. These twenty-one courts include eleven model courts: Sofia and Plovdiv Courts of Appeals, Sofia District Court, Sofia Regional Court (family section only), Blagoevgrad District and Regional Courts, Gabrovo District and Regional Courts,

Smolyan District and Regional Courts, and Shumen District Court, all of which are computerized. There are also ten courts in partnership: Kurdzhali District Court, Kyustendil District Court, Montana District Court, Veliko Turnovo District Court, Vratsa District Court, Chepelare Regional Court, Gotse Delchev Regional Court, Sevlievo Regional Court, Shumen Regional Court, and Sofia Regional Court (criminal section), of which four are approximately 50% computerized and six are approximately 30% computerized.

Other courts, such as the Plovdiv Regional Court, are also well-equipped with computers primarily because of the initiative of the president of the court. Upon learning that the Supreme Judicial Council did not have funds to finance the acquisition of computers, the Plovdiv Regional Court contracted with a local bank to supply sufficient computers to centralize its computer operations.

By being fully computerized, these courts have significantly improved their case management system and have provided for more transparency and more information to the public.

The Ministry of Justice is allocating 12 million Euros to implement the MOJ's Judicial Reform Strategy, of which EU PHARE is contributing 9.3 million Euros. Of the total amount, 7.7 million Euros will be apportioned to the court computerization component of the Strategy to purchase hardware, servers, and networking equipment for court automation and case management.

Factor 30: Distribution and Indexing of Current Law

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
A system exists whereby judges receive current domestic laws in a timely, cost-effective manner; however, legal jurisprudence and international conventions to which Bulgaria is a signatory are less likely to be systematically distributed to all judges.		

Analysis/Background:

The distribution and indexing of current laws in Bulgaria is adequate, but is far from ideal. While most judges throughout the country have immediate access to domestic laws, some lower courts do not receive current laws on a timely basis. Often, the initiative taken by a local court president can be the determinative factor in receiving timely access to current laws. In many courts, judges are not provided with their own copy of the State Gazette in which all laws are published; thus, they must make photocopies for their own use. A recurring problem is the proliferation of legislative amendments to a myriad of laws that makes it quite difficult for every judge to remain up-to-date on the current law.

Several commercial software programs that provide a legal database of all laws and important judicial decisions in an electronic format continue to be available to the courts in Bulgaria. However, many judges do not have the technical capacity to access the Internet or the software programs.

Judges cited two major deficiencies in the distribution of jurisprudence. The first is the need for more legislative commentaries on domestic laws that are essential for their judicial practice, given the rapid evolution of legislation in Bulgaria. The second deficiency is the need for efficient access to international conventions, the EU law, and international legal treatises. Many judges

admit a lack of general understanding of the EU law and international conventions. Without easy access to such international legal information, the judges are incapable or even fearful of applying international legal norms to domestic cases.