



The Legal Profession Reform Index

For

BULGARIA

November 2004

© American Bar Association



USAID
FROM THE AMERICAN PEOPLE

The statements and analysis contained herein are the work of the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), which is solely responsible for its content. The Board of Governors of the American Bar Association has neither reviewed nor sanctioned its contents. Accordingly, the views expressed herein should not be construed as representing the policy of the ABA. Furthermore, nothing contained in this report is to be considered rendering legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication was made possible through support provided by the U.S. Agency for International Development Bulgaria Mission, under the terms of the Associate Cooperative Agreement No. 111-A-00-00-00067-00 and Leader Cooperative Agreement Nos. ENI-A-00-00-0003-00 and ABA6004407. The opinions expressed herein are those of the author(s) and do not necessarily reflect the view of the U.S. Agency for International Development.

ISBN: 1-59031-438-7

Printed in the United States of America

Copyright © 2004

American Bar Association and Central European and Eurasian Law Initiative

740 15th Street, NW, Washington, DC 20005

www.abaceeli.org

Table of Contents

INTRODUCTION	I
BULGARIA BACKGROUND	1
SUMMARY FINDINGS.....	6
TABLE OF FACTOR CORRELATIONS.....	8
I. PROFESSIONAL FREEDOMS AND GUARANTEES	9
Factor 1: Ability to Practice Law Freely	9
Factor 2: Professional Immunity.....	11
Factor 3: Access to Clients.....	12
Factor 4: Attorney-Client Confidentiality.....	14
Factor 5: Equality of Arms	15
Factor 6: Right of Audience.....	17
II. EDUCATION, TRAINING, AND ADMISSION TO THE PROFESSION	18
Factor 7: Academic Requirements	18
Factor 8: Preparation to Practice Law	19
Factor 9: Qualification Process	21
Factor 10: Licensing Body.....	22
Factor 11: Non-discriminatory Admission	24
III. CONDITIONS AND STANDARDS OF PRACTICE.....	25
Factor 12: Formation of Independent Law Practice	25
Factor 13: Resources and Remuneration	27
Factor 14: Continuing Legal Education	28
Factor 15: Minority and Gender Representation.....	30
Factor 16: Professional Ethics and Conduct.....	31
Factor 17: Disciplinary Proceedings and Sanctions.....	32
IV. LEGAL SERVICES.....	35
Factor 18: Availability of Legal Services	35
Factor 19: Legal Services for the Disadvantaged	37
Factor 20: Alternative Dispute Resolution.....	40
V. PROFESSIONAL ASSOCIATIONS	42
Factor 21: Organizational Governance and Independence	42
Factor 22: Member Services	44
Factor 23: Public Interest and Awareness Programs.....	46
Factor 24: Role in Law Reform.....	47
<u>LIST OF ACRONYMS</u>	<u>49</u>

INTRODUCTION

The American Bar Association's Central European and Eurasian Law Initiative [hereinafter "ABA/CEELI"] developed the Legal Profession Reform Index [hereinafter "LPRI"] to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyer identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provide benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The Index is primarily meant to enable ABA/CEELI or other legal assistance implementers, legal assistance funders, and the emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA/CEELI's companion Judicial Reform Index [hereinafter "JRI"], will also provide information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights, and legal education reform.

The LPRI assessment does *not* provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process is not a statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal professional" and "lawyer." The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As a result, CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests, vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. In addition, ABA/CEELI has also developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies. At some point, CEELI may also consider developing an assessment tool for prosecutors as well.

Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience

before courts. For example, in France, there are three main categories of advocate lawyers: *avocat*, *avoués à la Cour*, and *advocates aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoués à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoués à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *advocates aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conceil d'Etat* (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, other factors further complicated efforts to define the term "lawyer", including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union [hereinafter "CCBE"], there were 22,048 lawyers currently practicing law in Poland in 2002. Of that number, only 5,315, or 24 percent, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis, i.e., excluding government lawyers and corporate counsel. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

In the specific case of Bulgaria, however, the definitions and terminology are somewhat different. All members of the legal profession, including judges, prosecutors, investigators, *advokati*, notaries, and corporate and government counsel, who have completed their law school educations are considered *jurists*, a term commonly translated by Bulgarians into English as "lawyers." To be entitled to practice law on a regular and independent basis for multiple clients, whether in or out of the courtroom, one must be admitted to the registry of an attorneys' college and, thus, become an *advokat*. This term is typically translated into English as "attorney." Accordingly, in this LPRI the term "lawyer" will be used to refer to any member of the legal profession, while the term "attorney" will mean a lawyer who is an *advokat* and thus authorized to practice law on a regular and independent basis.

ABA/CEELI's Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, *Judicial Reform Index: Manual for JRI Assessors*. (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations Basic Principles on the Role of Lawyers (1990) [hereinafter “UN PRINCIPLES”], the Council of Europe’s Recommendation (2000) 21 to Member States on the Freedom of Exercise of the Profession of Lawyer (2000) [hereinafter “COE RECOMMENDATIONS”] and ABA/CEELI’s more than 10 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.

To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology, and that provides flexible guidance on areas of inquiry. Particular emphasis was put on avoiding higher regard for common law concepts related to the structure and function of the profession of lawyers. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool¹ in a number of ways. For example, the LPRI borrowed the JRI’s factor “scoring” mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country’s reform progress since attempts at overall scoring would be counterproductive.² Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country’s regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a “positive” score 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 is given a “neutral.”

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. 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 users to easily compare and contrast the performance of different countries in specific areas and – as LPRIs are updated – within a given country over time. There are two main reasons for borrowing the JRI’s assessment process, “scoring,” and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will give ABA/CEELI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002.

² For more in-depth discussion on this matter, see C.M. Larkin, “Judicial Independence and Democratization: A Theoretical and Conceptual Analysis,” 44 *American Journal of Comparative Law*. 605, 611 (1996).



correlating factors, ABA/CEELI has formed a committee that includes the assessor and select ABA/CEELI DC staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, non-governmental organization [hereinafter "NGO"] representatives, and other government officials are meant to help issue-spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being 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 lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI 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.

The LPRI was designed to fulfill several functions. First, ABA/CEELI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Third, combined with the CEELI's JRI, the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

Acknowledgements

ABA/CEELI would like to thank the team that developed the concept and design of the LPRI, including the project coordinators Claude Zullo, Associate Country Director of ABA/CEELI's Caucasus Programs, and Andrew Solomon, Co-Director of ABA/CEELI's Rule of Law Research Office, Michael Maya, Deputy Director and NIS Regional Director, Cristina Turturica, ABA/CEELI Fellow, and Gavin Weise, ABA/CEELI Program Associate.

During the yearlong development process, input and comments were solicited from a variety of experts on legal profession matters. ABA/CEELI would also like to thank its executive leadership David Tolbert, former Executive Director; Mary Greer, Director of ABA/CEELI's Criminal Law Program and Coordinator of Legal Profession Reform Focal Area; and Scott Carlson, former Central and Eastern Europe Regional Director and Coordinator of Judicial Reform Focal Area for reviewing the initial versions of the LPRI's factors and structure. Additionally, ABA/CEELI would like to thank the members of its LPRI Expert Group, who helped to revise the initial LPRI structure and factors, including Kathleen Clark, Kathryn Hendley, Stéphane Leyenberger, William Meyer, Avrom Sherr, Christina Storm, Roy Stuckey, Rupert Wolff, and, in particular, Mark Dietrich, who later implemented the pilot LPRI phase. Finally, ABA/CEELI would also like to thank its resident staff attorneys who participated in the development process, including Marin Chicu (Moldova), Tatiana Chernobil (Kazakhstan), Gulara Guliyeva (Azerbaijan), Jetish Jeshari (Kosovo), Azamat Kerimbaev (Kyrgyzstan), and Eduard Mkrtchyan (Armenia).

The LPRI assessment was conducted between September 27 and October 8, 2004, by a team led by Daniel FitzGibbon, a former CEELI liaison and legal specialist who has served in Russia, Azerbaijan, the Czech Republic, Bosnia, and Serbia and has worked on two prior projects involving the attorney profession in Bulgaria. Other members of the team included Violetta

Kostadinova, Todor Dotchev, Georgi Tiholov, Bilyana Giaourova-Wegertseder, and Valentin Bojilov, staff attorneys in CEELI's Sofia office. The team received strong support from other members of the CEELI staff in Sofia, including Bulgaria Country Director Marc Lassman and Liaison John Allelo. ABA/CEELI Legal Analyst Dr. Carson Clements provided research, analytical assistance, substantive law provisions, and prepared and edited the report for publication. During the course of the assessment, the team met with over 50 attorneys, judges, prosecutors, governmental officials, journalists and NGO leaders, and reviewed numerous laws and other documents collected by CEELI or provided by those interviewed. CEELI is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project. A confidential list of the persons interviewed and an unclassified list of the documents reviewed are on file at the Washington, DC office of CEELI.

BULGARIA BACKGROUND

Legal Context

The Republic of Bulgaria is a parliamentary democracy, governed by the 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/she represents the state in international relations and is the commander-in-chief of the armed forces. He/she appoints the high command of the army and ambassadors. When Bulgaria is under imminent threat, he/she may declare war. He/she may veto bills, but that veto may be overridden by an absolute majority vote of the National Assembly. The President also appoints the presidents of the Supreme Court of Cassation [hereinafter "SCC"] and the Supreme Administrative Court [hereinafter "SAC"], the Chief Prosecutor and one-third of the members of the Constitutional Court. The President is elected for a five-year term and may serve only 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 and other members of the government. Before it becomes law, legislation requires two votes before the National Assembly. Following a vote of no confidence in the government, which requires a majority of the members of the National 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, direct pre-trial proceedings, 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 [hereinafter "MOJ"], the judiciary is largely overseen by a Supreme Judicial Council [hereinafter "SJC"], composed of 25 lawyers: judges, prosecutors, investigators and political appointees.

Bulgaria has a three-tier court system for civil and criminal cases. This system is composed of trial courts, either Regional or District Courts; interim appellate courts, District Courts and Courts of Appeal; and a cassation court, the SCC. Regional Court decisions are appealed to the relevant District Court, and, finally, to the SCC. If the original trial takes place in a District Court, its decisions are reviewed by the relevant Court of Appeals, and ultimately the SCC. The second instance is in effect a second trial court. Original trial court decisions may be appealed on any ground. The second level court may hear new evidence, including evidence existing, but not mentioned at the original trial and evidence that came into existence after the lower court ruling. Cassation review is more limited in scope, focusing on conformity with the law. The Constitutional Court, which is not part of the judiciary, rules on constitutional issues. Challenges to administrative acts may first be made to the government body superior to that making the act

and then, with certain exceptions, to the courts. Court appeals of administrative sanctions (*e.g.*, fines) are made in all instances directly to the Regional Courts, and they may be appealed to District Courts, the final level of review. Initial court appeals of administrative acts by senior executive officials, or government agencies, are made directly to the SAC.

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, consisting 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 supersede domestic legislation.

Overview of the Legal Profession

The term “lawyer” is broadly defined in Bulgaria to include anyone who has graduated from law school, a five year undergraduate program ending with state oral examinations. Upon becoming lawyers, most persons pursue one of the following careers:

- Procurators, or prosecutors, who oversee investigations and prosecute criminal defendants; are treated as part of the judiciary and considered magistrates;
- Investigators, who investigate crimes and are also part of the judiciary and deemed magistrates;
- Judges, also magistrates, who sit on first-instance (Regional or District) courts, appellate (District or Appeals) courts, or the highest courts in the land (the SCC or the SAC);
- Attorneys, who are members of Attorneys’ Colleges and are the only lawyers who can engage in the private practice of law independently on behalf of multiple clients;
- Non-attorney lawyers, known as legal advisors or *jurisconsultants*, who may work within companies, governmental agencies, or NGOs, and may engage in the practice of law only on behalf of their respective employers;
- Notaries, who are responsible for preparing and filing certain types of contracts, loan documents and real estate ownership records, as well as for verifying signatures and documents, certifying powers of attorney and similar functions;
- Bailiffs, who are appointed by the MOJ and have powers concerning execution of judgments; and
- Recordation judges, who are also appointed by the MOJ and have powers pertinent to entries, recordings and deletions in the property registers.

For reasons outlined in the LPRI Introduction, the scope of this report is limited to attorneys, although some factors, such as those pertaining to legal education and preparation for practice, can be applied to the broader legal profession as outlined above.

Under the Bulgarian Constitution, the bar is “free, independent and self-governing”, and its organization and activities are to be prescribed by law. Constitution of the Republic of Bulgaria [hereinafter “CONSTITUTION”], prom. State Gazette [hereinafter “SG”] No. 56 (July 13, 1991), as

amended SG 85 (Sept. 26, 2003), art. 134. The current law requires attorneys to be admitted to and registered by an Attorneys' College, a group administered and overseen by an elected Bar Council. Members of the Attorneys' College are subject to sanctions imposed by an elected Disciplinary Court. Attorneys Act, prom. SG 55 (June 25, 2004) [hereinafter "ATTORNEYS ACT"], arts. 78 - 98. There is a separate Attorneys' College, and a corresponding Bar Council and Disciplinary Court, for each of the 28 districts in Bulgaria with the exception of Sofia; the Sofia district and the Sofia city district share a single Attorneys' College. There is also a comparable supervisory structure at the national level that includes a National General Assembly of Attorneys, a Supreme Bar Council (hereinafter "SBC"), a Supreme Supervisory Council (hereinafter "SSC") and a Supreme Disciplinary Court (hereinafter "SDC"). *Id.* arts. 111 – 130. In summary, Bulgarian attorneys are free and independent within the parameters of national legislation, subject to the direction and regulation of mandatory bar associations.

Historical Context

Regulation of the attorneys' profession in Bulgaria has its origin in an 1883 law that subordinated attorneys to the courts and placed broad powers in the hands of the Deputy Minister of Justice. Following widespread resistance to the law, it was repealed by royal decree a mere two months later. A subsequent effort at regulation was enacted in 1888, requiring attorneys to apply to "attach" themselves to District Courts that held the power of acceptance, or rejection, as well as disciplinary supervision. The 1888 law contemplated the possibility of elected bar councils that could carry out certain disciplinary functions, but in practice they did very little. Attorneys were still not able to organize and regulate themselves, but were instead under the control of the various District Courts.

A major shift in philosophy and practice occurred in 1925 when a new ATTORNEYS ACT allowed the bar to organize itself as a self-governing and independent profession. For the first time, attorneys were required to join legal entities called Attorneys' Colleges, the organs of which were Bar Councils having executive, managerial and disciplinary functions. The law established a SBC as the highest body governing the profession, responsible for such things as drafting a regulation on internships; determining the existence and locations of Attorneys' Colleges; maintaining and publishing a list of attorneys; overseeing elections and regulations of local Bar Councils; and serving as the final authority on admission and disciplinary appeals. The Bulgarian bar was fully autonomous and self-regulating.

This situation continued until the end of World War II, when Bulgaria came under Soviet domination and a communist government took power. The 1925 law was repealed in 1947 by new legislation, which kept the Attorneys' Colleges, Bar Councils and SBC in place, but severely limited their powers and independence. Attorneys were assigned to collectives, which held monopolies on the practice of law, taking in all clients and parceling their matters out among member attorneys. Fees were set by the collective, based on a tariff published by the Ministry of Justice, and were paid to the collective, which forwarded them (less certain deductions) to the applicable attorney. The attorney lacked a direct relationship with the client and the opportunity to negotiate a mutually acceptable fee. Disciplinary proceedings could be brought against attorneys not only by Bar Councils, but also by courts. The proceedings themselves were conducted by Disciplinary Courts comprised not only of attorneys, but also of judges. The SBC lost its power to hear disciplinary appeals, a power that was now exercisable by a Supreme Disciplinary Court consisting of three attorneys and three judges.

The government further tightened its reins on the attorney profession in 1952, when a new decree abolished the SBC and assigned overall management and supervision over attorneys to the Ministry of Justice. This body was given the power to adopt regulations for the organization and activities of the Attorneys' Colleges, Bar Councils and collectives (now called legal offices), to hear appeals of their decisions, and to amend or rescind their actions. In 1976, a new decree created a Central Bar Council with representatives of the Attorneys' Colleges, the Ministry of Justice and other organizations. The Ministry of Justice still retained overall administration and

supervision of the bar, however, with the power to overturn or amend decisions of the attorney groups and review disciplinary appeals.

In 1989, Bulgaria was able to rid itself of communist rule, and in 1991 the principle of a free, independent and self-governing bar was enshrined in the new CONSTITUTION. A new attorney's act was passed, recreating the Supreme Bar Council and restoring to it the overall governing authority it had originally been given in 1925. The Ministry of Justice no longer had a meaningful role in the administration of the profession. This act, in turn, was replaced in June 2004 by the ATTORNEYS ACT.

As of January 1, 2004, there were 11,283 attorneys in the country, of which nearly 4,500 were members of the Sofia Attorneys' College.

Organizations of Legal Professionals

As noted earlier under Overview of the Legal Profession, there is an elaborate structure of local and national mandatory bar organizations that administer, oversee, assist and regulate attorneys in Bulgaria. Because of their obligatory nature and considerable authority and influence, these organizations are by far the most important associations of attorneys in the country.

Lawyers seeking to engage in the independent practice of law as attorneys must belong to an Attorneys' College. Each of the 28 districts in Bulgaria (except for Sofia district and Sofia city district, which are combined for this purpose) has one, and only one, Attorneys' College, but an attorney admitted to any Attorneys' College may practice in any district and before any forum in the country. The only limitation is that the attorney must maintain an office in the territory of the Attorneys' College of which he or she is a member. ATTORNEYS ACT, art. 40.(6). Accordingly, Attorneys' Colleges are mandatory organizations of attorneys, governed by their respective Bar Councils and whose members are subject to disciplinary procedures conducted by their respective Disciplinary Courts.

Locally, the Attorneys' Colleges, meeting in General Assemblies, elect the members and chairpersons of their respective Bar Councils and Disciplinary Courts and the members of their respective Supervisory Councils, *Id.* art. 82. The powers of the Bar Council under the ATTORNEYS ACT are quite broad and include, among others, general authority to conduct the activities of the Attorneys' College and carry out its decisions; budgetary powers, including establishment of mandatory monthly dues; organization and conduct of a bar examination; maintenance of a registry of attorneys; defense of the rights and dignity of the profession; oversight of the activities of member attorneys; investigation, referral and prosecution of disciplinary complaints; monitoring of possible unauthorized practice by non-attorneys; mediation of disputes between attorneys; improvement of professional qualifications; and registration of attorney partnerships. *Id.* art. 89. The Supervisory Council is responsible for overseeing implementation of the budget and protection of the property of the Attorney College and for reporting improprieties to the General Assembly and the SSC. *Id.* art. 95. The Disciplinary Court hears attorney disciplinary cases referred by the Bar Council as a court of first instance, *Id.* art. 97, and may impose sanctions ranging from a reprimand to a five-year suspension from practice. *Id.* art. 133.

At the national level, the SBC has 15 voting and 10 reserve members, who are elected by a National General Assembly of Attorneys proportionally representing the various Attorneys' Colleges. The SBC has sweeping legal and persuasive power to oversee, regulate and protect the interests of the legal profession. Among the statutory powers are: adoption of an Attorneys' Code of Ethics and other regulations contemplated by the ATTORNEYS ACT; budgetary authority, including establishment of dues; ruling on election complaints and protests of decisions of local General Assemblies and Bar Councils; maintenance of a unified registry of attorneys; organization of a training center for attorneys and determination of training and continuing legal education [hereinafter "CLE"] programs; and providing opinions and proposals concerning

existing or proposed legislation and administrative interpretations. *Id.* arts. 121 and 122. In addition, as the country's ultimate body supervising and representing practicing attorneys, the SBC (and its chairperson individually) serves as a symbol of the attorneys profession. As such, it advocates the interests and concerns of the profession as a whole and of individual attorneys before the National Assembly, the government, the judiciary and the general public.

The National General Assembly of Attorneys also elects the members of the SSC and the members and chairperson of the SDC. The SSC inspects the financial activities of the Supreme Bar Council and controls the activities of the local Supervisory Councils. *Id.* art. 127. The SDC hears appeals of decisions of the district Disciplinary Courts as a court of second instance, and tries disciplinary cases of local and national bar officials as a court of first instance; the latter, and only the latter; category of cases is subject to judicial review by way of a direct appeal to the SCC. *Id.* art. 129.

Besides the organized bar associations, there are a number of voluntary organizations of attorneys and other lawyers, including judges, prosecutors, investigators and legal advisors, such as the Union of Bulgarian Jurists [hereinafter "UBJ"], the Bulgarian Lawyers for Human Rights Foundation [hereinafter "BLHRF"], and the Bulgarian Helsinki Committee [hereinafter "BHC"]. There is also at least one organization of women attorneys in the country, the Bulgarian Association of Women Jurists, which is not very active, but in the past has worked on issues such as protection of children, gender equity, and lawyer training.

SUMMARY FINDINGS

Perhaps the two most striking and positive features of the attorney profession in Bulgaria are its constitutional assurances of independence and autonomy and the governing apparatus of the bar, with its fair and democratic internal processes and its strong and energetic leadership.

The CONSTITUTION requires that the bar be “free, independent and self-governing”, art. 134, and this principle has generally been applied in implementing legislation. Attorneys typically have and exercise their freedoms and rights in practice, with only occasional interference by the government (See Factor 1). They do, however, experience difficulties getting timely access to detained clients and adequate facilities for meetings with them (See Factor 3). They also lack legal assurance of immunity for the statements they make in accordance with professional standards (See Factor 2), and sometimes face practical impediments in obtaining and reviewing legal documents.

The principal problems facing the bar relate to the influx of poorly prepared new attorneys and the need to improve professional standards. The numbers of law schools and law students have proliferated ten-fold in the past 15 years, and the quality of legal education and preparation has suffered accordingly. Practical training has never been a priority of the country’s legal educational system, and it has declined in recent years. The deficiencies in preparation, the lack of a supervised apprenticeship program, a sporadic and uneven system of ongoing professional training, the weakness of the Bulgarian economy and the resulting competition for clients have all converged to lower both professional standards and attorney remuneration. Attorneys who lack suitable legal skills and knowledge to attract clients and serve their interests on the merits reportedly resort to other tactics, including improper influence, to develop business and achieve results. The present lack of a clear, comprehensive and well-enforced code of ethics contributes to this problem and to the low public perception of the attorney profession.

Some of these difficulties should be addressed by the law schools, the government and the National Assembly, while some others are ingrained and cultural. The organized bar has a responsibility in this area as well, and there is cause for hope under the present leadership and focus of the SBC. This group is busily organizing and preparing a newly authorized bar examination that should establish minimal standards of competence for admission into the profession. The SBC has begun work on a coordinated and regular system of continuing legal education through a new attorneys’ training center. It is planning to draft and adopt a new and extensive code of ethics based on available models after soliciting the input of attorneys throughout the country, hopefully gaining their “ownership” of the new code and their compliance with and enforcement of its standards. Unfortunately, these promising measures were not in place at the time of the LPRI visit, and there is no way to predict how effective they will be once implemented.

The SBC and its district counterparts have generally served the profession well, pursuing the interests of attorneys as a whole and of individual attorneys who are treated improperly by the government. The SBC has been actively involved in reviewing and advocating new and amended legislation and regulations that affect the bar and the legal and judicial systems. There is much more to be done, however, even beyond the projects mentioned above that are currently underway, or planned. Additional efforts need to be made as a profession to increase public awareness of citizen rights and the role of attorneys in protecting them, and to recommend reforms to laws affecting the public generally and not just those of special interest to attorneys. The organized bar should also consider undertaking bold initiatives to improve the quality of legal education, including support for new required courses in practical skills and ethics and even participation in the accreditation process.

There are presently sufficient attorneys in Bulgaria, reasonably distributed geographically, to meet the needs of the people and businesses in the country. Both genders, and ethnic minorities

other than Roma, are fairly represented in the profession. The problem, aside from the preparation and professional standards of many attorneys, is that the abundance of attorneys does not translate into affordable legal services for everyone. A public defender system exists for persons accused of serious crimes or fitting certain other categories, but it is poorly funded and does not always attract the best defense counsel. Economically disadvantaged citizens have very few opportunities for legal representation in civil litigation, civil counseling situations, or administrative matters. Both the government and the organized bar need to find better ways to provide these vital services, especially for needy persons.

Bulgaria has well-established and generally well-regarded arbitration tribunals for certain types of disputes, though attorneys have mixed views of the merits of the arbitration option. Mediation is relatively new and somewhat controversial, but ambitious programs are underway to expand its use and acceptance. Among other virtues, mediation has the potential to reduce the costs of dispute resolution, which can ease some of the problem of affordable legal services for the poor.

TABLE OF FACTOR CORRELATIONS

The Bulgaria 2004 LPRI analysis reveals a developing legal profession in transition. While these correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI emphasizes that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA/CEELI views the LPRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

I. Professional Freedoms and Guarantees		
Factor 1	Ability to Practice Law Freely	Positive
Factor 2	Professional Immunity	Neutral
Factor 3	Access to Clients	Negative
Factor 4	Attorney-Client Confidentiality	Neutral
Factor 5	Equality of Arms	Neutral
Factor 6	Right of Audience	Positive
II. Education, Training, and Admission to the Profession		
Factor 7	Academic Requirements	Positive
Factor 8	Preparation to Practice Law	Negative
Factor 9	Qualification Process	Negative
Factor 10	Licensing Body	Positive
Factor 11	Non-discriminatory Admission	Neutral
III. Conditions and Standards of Practice		
Factor 12	Formation of Independent Law Practice	Positive
Factor 13	Resources and Remuneration	Negative
Factor 14	Continuing Legal Education	Neutral
Factor 15	Minority and Gender Representation	Neutral
Factor 16	Professional Ethics and Conduct	Neutral
Factor 17	Disciplinary Proceedings and Sanctions	Neutral
IV. Legal Services		
Factor 18	Availability of Legal Services	Positive
Factor 19	Legal Services for the Disadvantaged	Negative
Factor 20	Alternative Dispute Resolution	Neutral
V. Professional Associations		
Factor 21	Organizational Governance and Independence	Positive
Factor 22	Member Services	Neutral
Factor 23	Public Interest and Awareness Programs	Negative
Factor 24	Role in Law Reform	Neutral

I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Attorneys are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

CONCLUSION	CORRELATION: POSITIVE
<p>Except for isolated and non-systemic cases, which appear to be either non-representative or insignificant, attorneys are able to practice freely, independently, and without improper interference, intimidation or sanction.</p>	

Analysis/Background:

From the standpoint of legal structure, attorneys clearly have full rights to practice their profession without external interference of any sort. Article 134 of the CONSTITUTION provides as follows:

- “(1) The bar shall be free, independent and self-governing. It shall assist citizens and juridical persons in the defense of their rights and legitimate interests;
- (2) The organization and manner of activity of the bar shall be established by law.”

In addition, Article 2.(1) of the ATTORNEYS ACT states that the exercise of the attorney’s profession “shall be based on the principles of independence, exclusivity, self-governance and self-support.” In furtherance of the principle of independence, Article 5.(2) (1-5) of the ATTORNEYS ACT provides that persons may not be attorneys if they are:

1. merchant, managers in a commercial partnership or executive directors of joint stock companies;
2. civil servants;
3. persons employed under an employment contract, (other than university teachers or legal scholars);
4. persons who have been released from the position of a judge, prosecutor, investigator under Article 129 (3) of the Constitution or persons who have been disciplinarily dismissed from the position of recordation judge, bailiff, company lawyer and police investigator and before the expiration of the two year period from the date of the dismissal;
5. Persons who have been deprived of their right to practice as notary publics- for the period of deprivation.

The ATTORNEYS ACT also declares that an attorney “shall be treated as a judge before the courts, the bodies of pre-court proceedings, the administrative and other authorities in the state with regard to the respect owed to him/her, and shall be entitled to rely on the same cooperation as a judge does”. *Id.* art. 29.(1). In addition, under Article 31 an attorney shall have free access documents and other information in the custody of any court, bodies of pre-court proceeding and other such entities upon mere presentation of his/her attorney’s card. *Id.* art. 31. An attorney’s papers, client correspondence and other files shall be “inviolable” and not subject to search, and his/her discussions with clients may not be tapped or recorded. *Id.* art. 33. He/she may not be interrogated during legal proceedings regarding his/her client discussions and correspondence, *Id.* art. 33.(4), and has the right to meet privately with detained clients and exchange documents with them, *Id.* art. 34.

Article 24.(1) of the (1-3) of the ATTORNEYS ACT defines an “attorney’s practice” to include providing legal counseling and opinions, drafting legal papers, and representing clients before courts and administrative bodies and in dealings with other individuals and entities. *Id.* art. 24.(1). The ATTORNEYS ACT also provides that the attorney’s profession may be exercised only by a registered attorney who practices independently or as part of a registered attorneys’ partnership. *Id.* art. 3.(1).

There are also general duties and standards of conduct set forth in the ATTORNEYS ACT, including duties of diligence, accuracy and unselfishness, *Id.* art. 40; restrictions on solicitation of clients and advertising, *Id.* arts. 41 and 42; representation of clients only in areas where competent, *Id.* art. 43.(1); avoidance of conflicts of interest, *Id.* art. 43.(2) – (6); nondisclosure of client confidences, *Id.* art. 45; payment of bar dues, *Id.* art. 49; and retention/return of client documents, *Id.* art. 47. The attorney is legally responsible for a client’s damages resulting from an intentional breach of his/her obligations, *Id.* art. 51, and must carry professional liability insurance to protect clients against his/her malpractice, *Id.* art. 50. Ten categories of conduct constituting disciplinary violations are listed in Article 132, with sanctions ranging from a reprimand to a five-year suspension as set forth in Article 133. Disciplinary proceedings are spelled out in Articles 136 – 146. These obviously do constitute potential sanctions that affect an attorney’s ability to practice freely, but only, of course, when the attorney engages in conduct or inaction violating established professional standards.

As earlier described under “Overview of the Legal Profession” and “Organizations of Legal Professionals”, attorneys are required to belong to self-governing Attorneys’ Colleges and are subject to the oversight and regulation of elected local and national Bar Councils and Disciplinary Courts. The SBC has the power and the responsibility to create and conduct a bar examination, to adopt of Code of Ethics, to establish a CLE program and standards, and to take a wide range of other actions to support and direct the attorney profession. The district and Supreme Disciplinary Courts hear cases involving alleged attorney violations of their ethical, professional and other obligations. Both under the Attorneys Act and in practice, all of this activity takes place within the profession, without the involvement, influence or direction of governmental agencies or officials or (except for certain appeals) members of the judiciary.

From a practical standpoint, there have been very few reported incidents of attorneys’ suffering improper interference, intimidation or sanctions. Respondents indicated that these appear to be isolated cases of individual personalities, rather than the result of institutional policies. One attorney was detained briefly in October 2002 while representing a client and accused of violating public order; the matter was dropped, but she filed a complaint, which is still pending. Attorneys have occasionally complained of disrespect and lack of cooperation from some court administrative personnel. In the more egregious cases, the chairperson of the SBC has quickly and effectively stepped in to address and resolve the problem.

There is occasional intimidation of a subtle or indirect nature, the effectiveness of which may depend on the economic circumstances and personal integrity of the attorney involved. This can occur when a public defender is appointed by an investigating magistrate or prosecutor during the pre-trial investigation phase, and may feel he/she should not act zealously on behalf of the client to improve the likelihood of future appointments. It can also arise if an attorney is, or wants to get, on a so-called “preferred list” of counsel allegedly kept by an embassy or ministry dealing with foreign investment in Bulgaria.

The negative incidents and circumstances cited under this factor are neither systemic nor especially significant. While they do need to be monitored and aggressively addressed in the future, they are not at this time sufficient to counteract the strong positives present in the Bulgarian system.

Factor 2: Professional Immunity

Attorneys are not identified with their clients or the clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

CONCLUSION	CORRELATION: NEUTRAL
<p>Attorneys generally believe as a practical matter that identification does not occur and that <i>de facto</i> immunity exists; however, there is no legal assurance that these desirable practices will continue.</p>	

Analysis/Background:

There are no laws, codes, or other normative acts that prohibit identification of attorneys with their clients or their clients' causes, or that grant immunity to attorneys for statements made in good faith in court or in pleadings on behalf of their clients. On the contrary, like Bulgarians generally, attorneys are subject to prosecution for insulting or libeling another person, including disclosing an "ignominious circumstance regarding another" or accusing another of a crime without proof of the genuineness of the circumstance or accusation. Penal Code, prom. SG 26 (Apr. 2, 1968) and last amended SG 26 (Mar. 30, 2004) [hereinafter "PENAL CODE"], arts. 145 – 148 and 286. The absence of clear legal immunity for attorneys contravenes the UN PRINCIPLES, paras. 18 and 20, and the COE RECOMMENDATIONS, Principle I, para. 4.

This lack of official immunity for attorneys may be contrasted with the provisions of Article 70 of the CONSTITUTION, which states that "[a] member of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of a serious criminal offense, and in such case the permission of the National Assembly or, in between its session, of the Chairman of the National Assembly, shall be required". Even then (unless the member is caught in the act) a warrant must first be obtained from the National Assembly or its chairperson.

In terms of the judiciary, the CONSTITUTION also grants immunity, although limited in certain instances. For example, under Article 132 (1), "[w]hen exercising the judicial function, judges, prosecutors and investigating magistrates shall bear no civil or criminal liability for their official actions or for the acts rendered by them, except where the act performed constitutes an indictable intentional criminal offense". In addition, under Article 132 (2) in "cases under paragraph (1), accusation cannot be brought against a judge, prosecutor or investigating magistrate without the permission of the Supreme Judicial Council." Furthermore, under Article 132 (3), "[j]udges, prosecutors and investigating magistrates cannot be detained, save for serious criminal offense, except with the approval of the Supreme Judicial Council".

On the other hand, even attorneys who often represent unpopular clients in opposition to the government believe they are not identified with their clients' causes, and most attorneys indicated they feel a sort of practical immunity for statements made in good faith in their professional capacity. No one who was interviewed reported any recent instance of civil, criminal or disciplinary sanctions for such statements.

Still, the absence of legal underpinnings for attorney immunity and non-identification is a deficiency in Bulgaria. Without such laws, there can be no assurance that the present practice of civil and penal forbearance will continue indefinitely.

Factor 3: Access to Clients

Attorneys have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

Conclusion	Correlation: NEGATIVE
<p>Primary legislation mandates prompt access and private meetings, but conflicting secondary legislation, poor facilities and frequently uncooperative police officers combine to produce a reality of delayed access, inadequate meeting facilities and inconsistent privacy.</p>	

Analysis/Background:

Primary legislation in Bulgaria provides strong legal support for the attorney’s right to meet with clients and communicate with them in private. Article 34 (1) of the ATTORNEYS ACT provides that “the attorney shall have the right to private meetings with his/her client including when the latter is under detention”. In these meetings, the attorney and client may exchange relevant documents free of inquiry, *Id.* art. 34 (2), and discussions may be observed but not recorded *Id.* art. 34 (3). All the attorney is required to do to gain access to the client is present his/her attorneys’ card issued by the Attorneys’ College *Id.* art. 34 (4).

Similarly, Article 75 (1) of the Penal Procedure Code, prom. SG 89 (Nov. 15, 1974), last amended SG 38 (May 11, 2004) [hereinafter “PENAL PROCEDURE CODE”], states that one of the rights of counsel is “to meet the accused in private,” and that “counsel shall be entitled to attend all actions of the investigation” In addition, Article 73.(2) obligates the pre-trial body to inform the accused of his/her right to counsel and give the accused a chance to contact counsel before it can proceed with its pre-trial investigation.

In addition, the Law for the Execution of Penalties, prom. SG 30 (Apr. 15, 1969), last amended SG 70 (Aug. 10, 2004) [hereinafter “EXECUTION OF PENALTIES LAW”], art. 132a.(1) gives defense counsel the right of access to the accused. Article 132b (1) also declares that “the accused and indictee shall have the right to meetings with their defense counsel immediately after detention”. Furthermore, “[d]uring the meeting with the defense counsel the accused and indictee can give and receive only written materials in connection with the case, which contents are not subject to check”. Finally, under Article 132b (3) “[t]he conversations with the defense counsel cannot be listened to or recorded, but the meetings can be observed”.

From the perspective of the accused, Article 56 of the CONSTITUTION provides that “[e]veryone shall have the right to legal defense whenever his rights or legitimate interests are violated or endangered.” In addition, each person is also given the “right to be accompanied by legal counsel when appearing before an agency of the state.” *Id.*

The Law for the Ministry of the Interior, prom. SG 122 (Dec. 19, 1997), last amended SG 70 (Aug. 10, 2004) [hereinafter “Law for MOI”], art. 70 (4), specifically states, “[f]rom the moment of detention the persons shall have the right to a legal defense.”

Unfortunately, secondary legislation (administrative rules and ordinances) which should carry out the primary authorities is somewhat more restrictive, as the following examples demonstrate:

- The MOJ has declared that attorney-client meetings “shall be conducted on preliminary determined days and in especially furnished premises in the presence of an employee from the administration”, thus limiting both access and privacy. Regulation for Implementation of the Law for the Execution of Penalties, prom. SG 97 (Dec. 4, 1990), last amended SG 25 (Mar. 8, 2002), art. 36(1) [hereinafter “MOJ PENALTIES

- EXECUTION REGULATION”]. The Regulation further requires that the defense counsel present a certificate, of unspecified contents, issued by his/her Bar Council. It also specifies that meetings be “in connection with cases,” a limitation which could deny access to consult on other legal issues. *Id.* art. 36.(5). (This limitation is reportedly being challenged by the BLHRF before the SAC, Pavlina Zheleva, *Attorneys and Firm Challenge 7 Ordinances*, Dnevnik, Nov. 11, 2004.) Article 37.a.(2) of the MOJ PENALTIES EXECUTION REGULATION goes on to permit telephone calls of prisoners only to family members, implicitly not to attorneys. (upheld by SAC Dec. No. 8064 (July 31, 2003)).
- Another MOJ authority, Ordinance No. 2 on the Condition of the Accused and Defendants under Detention, prom. SG 39 (Apr. 27, 1999), last amended SG 4 (Jan. 12, 2001) [hereinafter “MOJ ORDINANCE NO. 2”], art. 20, does provide a right of access by defense counsel “immediately” after detention, but puts limits on this access by restricting the meetings to working hours. Moreover, by referring to “defense counsel”, MOJ ORDINANCE NO. 2 further implies due authorization by the accused through a power of attorney, in contrast to the ATTORNEYS ACT’s acceptance of a mere attorney’s card. An attorney may want a preliminary meeting with the accused to discuss or consider an engagement and may thus not have a power of attorney at that time.
 - The MOJ’s Regulation on the Organization of Security and the Powers and Duties of Supervisory and Security Staff at Investigation Detention Places, prom. SG 101 (Dec. 12, 2000) [hereinafter “MOJ DETENTION SECURITY REGULATION”], define a guard’s post as “a place designed for security purposes or a territory in which the guard fulfills the tasks assigned to him.” *Id.* at para. 3.(1) of the Additional Provisions. This provision later specifies that a post can be “temporary”, to include a “meeting with defense counsel.” *Id.* at para. 3.(2).4 of the Additional Provisions. The implication is that a guard may, and perhaps even has a duty to, station himself at a meeting of an attorney and his detained client.
 - The MOI, which controls the police, has its own rule providing detainees the right to visit at any time with their attorneys, but then declares that the visit “is to be permitted by the operative official on duty . . . with the consent of the official working directly with the person.” Instruction No. I-167 on the Detention of Persons by the Authority of the Ministry of the Interior, prom. SG 71 (Aug. 12, 2003) [hereinafter “MOI INSTRUCTION I-167”], art. 28.

Given the conflicts between secondary and primary legislation on this topic, with more restrictive provisions set by governmental ministries, it is not surprising that inconsistencies and undue limitations appear in practice. It appears to be the widespread, perhaps universal, practice of the police to deny an attorney access to a detained client during the first 24 hours of police detention. Sometimes denial is based on the attorney’s lack of a power of attorney (from a client he/she is yet to meet), contrary to the mere attorney’s card requirement of the ATTORNEYS ACT. Other times, the attorney is refused access because the investigator is not present and unable to “consent” to the meeting, a condition imposed by MOI instructions that contravene primary legislation. Occasionally, it is simply a matter of the police officer’s delay (whether intentional or not). Eventually, though certainly not “immediately”, in virtually all cases the attorney is allowed access to the client, however, training, oversight and control of certain elements of the judiciary and police may need attention.

Attorneys commonly, though not in all cases, report difficulties meeting with the detained client in private. One recurring problem is the inadequacy of facilities, especially during the pre-trial investigation. Often the meeting must take place in a corner of a hallway, where others are moving about, a situation not conducive to candid and thorough discussions and trial preparations. Sometimes the only place to meet is the office of the investigating magistrate, who may or may not be willing to leave the room during the meeting. Even in larger cities and prisons,

where attorney and client sit across from each other separated by a screened dividing wall, the facility is adequate, but privacy may be compromised by the nearby presence of a security guard, or by the presence of other attorneys and detained persons. Courtrooms lack special places for attorney-client meetings during the trial, a fact that necessitates either whispered discussions in a section of the hearing room, or eviction of everyone else from the room.

While Bulgaria's primary legislation on this factor is satisfactory, the same cannot be said for its conflicting secondary legislation and instructions. This is revealed in the common practice of police denying access during the early detention period, in the poor facilities usually provided for meetings, and in the lack of privacy that often marks attorney-client conferences. The result is delayed access and substandard meeting conditions, and, therefore, a negative evaluation.

Factor 4: Attorney-Client Confidentiality

The state recognizes and respects the confidentiality of professional communications and consultations between attorneys and their clients.

Conclusion	Correlation: NEUTRAL
<p>The laws recognize attorney-client confidentiality and the state generally respects that principle, though there have been interceptions of attorney-detained client correspondence and isolated cases of searches of attorney files.</p>	

Analysis/Background:

The ATTORNEYS ACT clearly supports the principle of attorney-client confidentiality. For example, Article 33 (1) states that the “[a]ttorney’s papers, files, computer, electronic documents and other information shall be inviolable and shall not be subject to searches, copying, reviewing and seizures.” Under Article 33 (2) attorney-client correspondence is also “inviolable, not subject to searches and seizures and may not be used as evidence”. Under Article 33 (3) “[d]iscussions between the attorney and client shall not be tapped or recorded. If the discussions are recorded they cannot be used as evidence and shall be destroyed immediately”. The attorney may not be required to testify concerning any of his/her discussions or correspondence with the client or even with other attorneys. *Id.* art. 33 (4). As noted earlier under Factor 3, the attorney also has the right to meet privately with his/her detained client without having the discussion recorded or exchanged documents examined. *Id.* art. 34. Complementing these provisions, the attorney is obligated to preserve client confidences forever and may not testify concerning information provided by his/her client or another attorney. *Id.* art. 45.

These provisions are reinforced by Article 75.(1) of the PENAL PROCEDURE CODE (right of counsel to meet the accused in private) and Article 132b of the EXECUTION OF PENALTIES LAW (right to meeting, with exchanged documents not to be inspected and with conversations not to be overheard or recorded).

However, these sweeping assurances are undermined in the case of attorney meetings with incarcerated clients by the MOJ PENALTIES EXECUTION REGULATON (meetings must take place in the presence of an administration employee) and by the MOJ DETENTION SECURITY REGULATION (which implies that one of a guard’s duty stations is an attorney-client meeting location).

In 2003, Bulgaria revised its Anti-Money Laundering Measures Act, SG 85 (July 24, 1998), last amended SG 31 (Apr. 4, 2003) [hereinafter “ANTI-MONEY LAUNDERING ACT”], to impose special reporting requirements on “persons who provide legal advice by occupation.” Article 3

(2) item 28, ANTI-MONEY LAUNDERING ACT. In essence, if (a) an attorney is involved in the planning or implementation of virtually any sort of client business, financial or real estate transaction, and (b) the attorney is aware that his/her legal advice will be used for money laundering purposes, or that the client seeks to obtain legal advice for such purposes, then the attorney must disclose the client's identity, transaction and other information to the government. Article 3 (5), ANTI-MONEY LAUNDERING ACT. There are exceptions where the attorney receives information in the course of conducting due diligence into a client, in performing procedural representation services, during court proceedings, while defending a client before a court or governmental body. Article 3 (6), ANTI-MONEY LAUNDERING ACT. Still, this law is sufficiently broad and intrusive to jeopardize attorney-client confidentiality, chill client disclosures and even discourage prospective clients from seeking legal representation when needed. The SBC has protested this provision and has sought without success to have it repealed.

Attorneys report that correspondence between the accused and his/her defense counsel is regularly opened by prison personnel, consistent with Article 132.d of the EXECUTION OF PENALTIES LAW, which provides that all correspondence of detainees is subject to inspection. As the result of a human rights case, SAC No. 7982 (Dec. 22, 2000), Article 25.(1) of MOJ Ordinance No. 2 was struck down so as to allow for the confidentiality of correspondence between the accused and his/her defense counsel. The problem continues to exist, however, as some prison administrators claim they don't know who all the attorneys are and can't be sure the letter is in fact from, or to, a real attorney.

Attorneys generally believe that their own client files and communications have not been improperly searched, or intercepted, though several expressed suspicion that their telephone lines had been tapped in the past. It is difficult to know for certain that wiretapping and other recording devices are not being employed, particularly since judges and prosecutors have been unwilling to disclose meaningful information concerning approved wiretaps.

Factor 5: Equality of Arms

Attorneys have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.

Conclusion	Correlation: NEUTRAL
The law entitles attorneys to full access and, while this right is generally respected, access is limited to attorneys for the parties and is often impeded by practical obstacles.	

Analysis/Background:

Article 31 of the ATTORNEYS ACT specifically allows every attorney free access to documents and other information in court, prosecution and government agency records, and the right to demand copies, on a preferential basis and upon a mere showing of an attorney's card. There is no requirement that the documents pertain to the attorney's own client, or that the attorney even have a client in whose behalf he/she is seeking access.

Articles 209 (1-5) (the indictment) and 214 (the full investigation file) of the PENAL PROCEDURE CODE provide for the accused and his/her counsel to receive relevant information. In addition, Article 104 offers a means by which persons can compel government agencies to furnish requested documents.

The Civil Procedure Code, prom. SG 12 (Feb. 8, 1952), last amended SG 36 (Apr. 30, 2004) [hereinafter "CIVIL PROCEDURE CODE"] contains several provisions, which obligate the parties

(and others) to supply documents and information to each other. For example, under Article 99, along with the statement of claim the following shall be presented:

- a) the power of attorney, when the application is filed by an attorney;
- b) the state charges and expenses, when such are due; and
- c) transcripts of the statement of claim and the supplements thereto, according to the number of defendants.

In addition, Article 110 allows for either party to present new evidence. Article 152 states that “[e]ach party may require the other party to present a document the latter holds, by explaining its significance for the dispute”. Finally, Article 153 (1-3) states that:

- (1) Each party may require, by a written application, a person that does not take part in the case, to present a document it holds;
- (2) A transcript of the application shall be sent to the third person, and it shall be given a term for the presentation of the document;
- (3) Any third person that, without any ground, fails to present the required document, besides the responsibility under art. 73, shall be responsible to the party for the damages incurred to it.

The broad sweep of the ATTORNEYS ACT has been narrowed by the MOJ and the practices of court personnel. MOJ Ordinance No. 28 on the Functions of Officials at the Auxiliary Units and Registries of Regional, District, Military and Appellate Courts, prom. SG 30 (Mar. 31, 1995), last amended SG 73 (Aug. 19, 2003) [hereinafter “MOJ ORDINANCE 28”], provides that court files, other than company registration records, “shall be provided for consultation only to the parties and to their representatives.” *Id.* art. 33.(1). Pursuant to this provision, the courts allow attorneys access to court files only upon presentation of a power of attorney signed by a party to the case. While in most circumstances this limitation would be acceptable, it can preclude an attorney from reviewing a file before deciding whether to accept a proffered employment or (absent a prior showing of need) from viewing documents relevant to another proceeding, or transaction. This restriction continues in place even after the case is decided and appeals are exhausted. Notwithstanding the conflict between this regulation and the ATTORNEYS ACT, the SAC has repeatedly upheld the ordinance in the interests of protecting the privacy of the parties. SAC Decisions. No. 1128 (Feb. 22, 2001) and 5445 (June 3, 2003). (After the LPRI interviews were completed, the MOJ issued a new Regulation for Court Administration in the Regional, District, Military and Appellate Courts, prom. SG 95 (Oct. 26, 2004), to be effective Nov. 26, 2004, repealing MOJ ORDINANCE 28. The new regulation still limits guaranteed access to parties “as well as their representatives, including attorneys and defense counsel . . .”, (Article 60), thus continuing to imply a need to present a power of attorney. Article 60 goes on to permit third parties to gain access, but they must first file a written request with the court and prove a legitimate interest in the files, making it impossible for attorneys for non-parties to review the documents on a confidential basis.)

Perhaps the most irksome impediments to document access are practical in nature and relate to the court facilities, court management and/or the selection and training of court personnel. While variations exist from court to court and city to city, most places where files are kept are small and congested and lack tables and chairs for sorting and reading voluminous records. Attorneys must often stand in crowded registries, especially in regional courts and criminal divisions, to review files. Some court registries are poorly organized, with short hours and long lines of attorneys seeking papers. If the registrar is absent for some reason, there is usually no backup to provide access. Some registrars require that the power of attorney be certified, or that the party personally appear before allowing the attorney access. Files have been known to “disappear”, or to be sent to the prosecutor’s office for a prolonged period. In one major city, the company registry clerk requires a two-day wait and written permission to inspect company records. In

another place, the bailiff requires attorneys to sign a register in order to view documents. Some court personnel are rude and disrespectful to attorneys seeking files, or give special preferences to certain attorneys. Similar difficulties can arise in many administrative bodies that have custody of documents. Despite these objectionable practices, attorneys rarely complain to supervisors and judges; the general attitude among attorneys seems to be that a complaint would be unproductive and time-consuming, and would only aggravate relations with court or agency personnel. On the positive side, however, there is a sense that conditions in some courts have improved in recent months and years.

Prior to the enactment of the ATTORNEYS ACT in June 2004, it was difficult for attorneys to obtain access to documents and information deemed confidential by the government. Special clearance was required, and that process required a lengthy application with numerous supporting documents, disclosure of sensitive personal information and a typical wait of four months, with no assurance clearance would be granted. The ATTORNEYS ACT also contained a provision placing attorneys on a par with judges and prosecutors under the Law on Protection of Classified Information, prom. SG 45 (Apr. 30, 2002), last amended SG 89 (Oct. 12, 2004), in allowing them blanket access for their specific cases. While this legislation is too new to measure its effect in practice, the expectation is that attorneys will be able to obtain full access to relevant classified information in their cases without the need for prior clearance of any sort.

Factor 6: Right of Audience

Attorneys who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

Conclusion	Correlation: POSITIVE
<p>Attorneys are allowed to appear before courts and agencies on behalf of their clients and, while there are concerns about bias where the state is on the other side, attorneys are treated substantially the same as other attorneys and prosecutors.</p>	

Analysis/Background:

The ATTORNEYS ACT states that the practice of an attorney shall include, among other things, “representing clients and defending clients’ rights and legitimate interests before judicial authorities, administrative bodies and authorities, as well as before individuals and legal entities.” *Id.* art. 24.(1).3. The statute goes on to provide that an attorney is to be treated the same as a judge in the courts, pre-trial bodies and administrative agencies with regard to the respect and cooperation to which the attorney is entitled. *Id.* art. 29.(1). The only limits placed on the right of an attorney to appear on behalf of clients relate to years of experience. An attorney with fewer than two years in the bar is considered a “junior attorney”, and faces certain restrictions on representing clients in District Courts and Courts of Appeal (see discussion under Factor 9). *Id.* art. 20.(6). Similarly, an attorney with under five years’ experience cannot appear before the SCC or the SAC. *Id.* art. 24.(2).

Other legislation, while less expansive, provides for attorney participation in the specific cases of criminal and civil proceedings. For example, under Article 75.(1) of the PENAL PROCEDURE CODE, counsel has the following rights: “to meet the accused in private; to get acquainted with the case and to make the necessary abstracts; to produce evidence; to participate in the penal proceedings; to make requests, notes and objections, and to appeal against the acts of the court and pre-trial bodies, which harm the rights and legitimate interests of the accused. The counsel shall be entitled to attend all actions of the investigation, and his or her non-appearance shall not prevent their performance”. In addition, under Article 20.(1).a of the CIVIL PROCEDURE CODE

advocates are listed among those who may be representatives of the parties by proxy, with Article 22 listing the powers that can be exercised by the advocate pursuant to the proxy.

From a symbolic perspective, the new ATTORNEYS ACT seeks to equalize the physical appearance and potentially the authoritative stature of attorneys with prosecutors and judges by providing for attorneys to attend court hearings dressed in robes. *Id.* art. 40.(7) Still, courtroom facilities typically position the prosecutor at a higher level than the attorney and closer to the judges.

Attorneys generally believe they have full rights to an audience before courts and agencies and are treated equally in these forums. This does not necessarily mean they feel their clients' positions are weighed and evaluated fairly and neutrally, especially when the state is on the other side. Some attorneys believe that a bias in favor of the state permeates administrative agency proceedings, particularly in the tax area, and that this bias occasionally carries over to court appeals of administrative actions. In the criminal defense area, statistics from 2003 suggest that over 96% of criminal cases end in sentences, as opposed to acquittals or terminations. Bulgarian National Statistical Institute, "Crimes with Penalty Inflicted and Persons Convicted in 2003", at http://www.nsi.bg/SocialActivities_e/Crime_e.htm., (June 10, 2004). While this conviction rate could be attributed to many factors, including fair and thorough pre-trial investigations, it is high enough to raise questions about a pro-prosecutor leaning among judges. Notwithstanding this concern, it is apparent that attorneys are, by law and in practice, fully allowed to appear before judicial and administrative bodies on behalf of clients and are treated substantially the same as other attorneys and prosecutors.

II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

Attorneys have a formal, university-level, legal education from institutions authorized to award degrees in law.

Conclusion	Correlation: POSITIVE
Attorneys must have a five-year university law degree to be admitted to the bar, and there are formal requirements for law school accreditation, courses and faculties.	

Analysis/Background:

Article 4.(1).1 of the ATTORNEYS ACT states that one of the conditions a person must satisfy to become an attorney is "to have a university law degree." A similar requirement is imposed on certain foreign attorneys seeking to take a transfer test in Bulgarian law to permit them to practice in the country. *Id.* art. 18.(1) (effective January 1, 2007).

The Bulgarian university system is governed by the Higher Education Act, prom. SG 112 (Dec. 17, 1995), last amended SG 70 (Aug. 10, 2004) [hereinafter "HIGHER EDUCATION ACT"]. This law provides that higher education is the responsibility of both the National Assembly and the Council of Ministers, with the latter group specifically charged with setting the state requirements for earning degrees in the specialties of the regulated professions. *Id.* art. 9.(3).5. The accrediting organization is a corporate body known as the National Agency for Assessment and Accreditation [hereinafter "NAAA"], which is directed by a council appointed by the Rectors' Council, the Ministry of Education and Science [hereinafter "MOES"], the Academy of Science

and the National Center for Agrarian Sciences. *Id.* arts. 11 and 86. The NAAA conducts two kinds of accreditation, one for the university and one for its programs (including a law school), and has ongoing monitoring responsibilities. *Id.* arts. 11 and 76. Its procedures are spelled out in Regulation for the Activity of the National Agency for Assessment and Accreditation, prom. SG 52 (June 27, 2000).

The Council of Ministers, in its Ordinance on the Unified State Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer”, adopted SG 75 (Apr. 5, 1996), last amended SG 117 (Dec. 17, 2002) [hereinafter “LEGAL EDUCATION ORDINANCE”], established the basic standards a law school must meet. The program must run at least 10 semesters, with a minimum of 3,500 hours of instruction, and must include 19 specified disciplines with certain minimum hours. Required courses, which constitute a little over half of the minimum total hours for graduation, must generally be taught by professors or assistant professors. Lectures must constitute at least half of the hours of instruction. Other courses may be electives chosen by the law school (which must include five listed topics) and optional subjects. Beginning after the second year, the student must participate in practical study consisting of at least 14 days of work in executive and judicial bodies under a university program in coordination with the MOJ. After completing the course work, the student must take a state oral examination and, upon passing, receives a diploma with the professional qualification of “lawyer” and a Master of Laws degree. Lawyers then serve a three months’ practical internship in the judiciary and must pass another oral examination administered by the MOJ under Article 163 of the Judicial System Act, prom. SG 59 (July 22, 1994), last amended SG 70 (Aug. 10, 2004) [hereinafter “JUDICIAL SYSTEM ACT”]. (There are other conditions that must be met before those seeking to become attorneys can be admitted to the bar; see ATTORNEYS ACT art. 4.(1) and discussion under Factor 10.) The ordinance assigns responsibility for implementation jointly to the MOES and the MOJ.

Bulgaria, which until fifteen years ago had only one law school, now has 10, one of which is in a technical university. Of that number, seven are state schools and the remaining three are private. Even though, applying the standard literally, this factor is positive, the quality of the education provided by law schools in this country is not so well regarded (see Factor 8).

Factor 8: Preparation to Practice Law

Attorneys possess adequate knowledge, skills, and training to practice law upon completion of legal education.

Conclusion	Correlation: NEGATIVE
<p>With the recent proliferation of law schools and continuing weaknesses in development of practical skills, newly graduated attorneys generally lack the necessary knowledge, skills and training to practice independently.</p>	

Analysis/Background:

The prerequisites to completion of a legal education in Bulgaria are spelled out in the HIGHER EDUCATION ACT and the LEGAL EDUCATION ORDINANCE (see Factor 7). The common perception, even among some law school professors, is that this education is inadequate to prepare the lawyer to practice law.

The principal explanation for this deficiency is the ten-fold increase in the number of law schools over the past fifteen years, which has had several predictable outcomes:

- There has been a dilution in faculty talent as the number of teaching positions has greatly expanded. Related to this, the requirement of Article 26.(1) of the HIGHER EDUCATION ACT that faculties have at least 40 employed academics and that those with academic rank teach at least 70% of lecture courses has led to the phenomenon of “traveling professors”, qualified academics under contract with two or three different law schools. As might be expected, traveling professors are frequently not on campus and are unavailable to provide individual attention and guidance to students.
- A similar dilution in the quality of entering students has occurred, as the pool has expanded to encompass less qualified or motivated young people seeking to enter the profession. Article 4 of the LEGAL EDUCATION ORDINANCE provides that students are admitted to law schools based on competitive examinations in Bulgarian history and language, but each school creates and administers its own examination and sets its own standards for acceptance.
- The NAAA’s exercise of its assessment, accreditation and monitoring functions has become more challenging with its greater responsibilities, adversely affecting quality control of legal education.
- The number of law students undergoing required internships during and after law school has gone from a few hundred to a few thousand every year, making proper organization and supervision of these internships more difficult. By the same token, absorption of new graduates into the bar and development of informal mentoring relationships with senior attorneys are much more problematic.

In this regard, a recent report by the British Council, commissioned by the World Bank, was highly critical of legal education in this country and made numerous recommendations for change, including reducing the number of law schools by closing down those which lack adequate academic staff or sufficient numbers of students.³

A secondary explanation lies in the predominantly theoretical nature of law school education in Bulgaria and many other civil law countries, with less focus on development of professional skills and practical knowledge. This is a long-standing deficiency, independent of the problem of law school proliferation, though that problem is surely an aggravating circumstance. All of the required courses, specified in the LEGAL EDUCATION ORDINANCE, Article 7, are substantive subjects, and there is nothing that would encourage schools to offer elective or optional courses in legal research and writing, legal ethics in real life situations, trial advocacy, practice management and other practical techniques useful to young attorneys entering the profession. The mandatory 14 days of study practice each year, beginning after the second year of study, *Id.* art. 10, have some potential to teach some useful techniques, but the general view is that this program is insufficiently organized and monitored to be effective. A few legal clinics, which offer students the opportunity to learn client interview skills and basic courtroom practices while working on real matters for disadvantaged clients, have only recently and randomly been established, and have had difficulties gaining acceptance from faculties and the bar. Compounding the problem, the three months’ internship in the judiciary required after completion of law school, *Id.* art. 13.(3), represents a major reduction from the 12 months’ training period in place through 2002. The post-internship oral examination administered by the MOJ is generally perceived as far too easy, with virtually everyone given a passing grade. Law firms typically find they must invest significant time and resources of their own to bring the practical skills of new attorneys up to suitable standards.

³ British Council, “Final Report”, submitted under Project Title: Preparing for Judicial Reform, PHRD Grant for the Preparation of the Second Programmatic Adjustment Loan (May 20, 2004).

These observations are not intended to be critical of the young people graduating from law schools these days, many of whom are intelligent and motivated and will become valuable assets to the profession. New graduates possess greater computer and language skills and are typically more familiar with current substantive laws (especially in commercial and related areas) than their elders in the practice. Deficiencies in their preparation are not their responsibility, but rather that of the government, the National Assembly and the law schools. Under the present circumstances, however, it is impossible to say that these graduates possess adequate knowledge, skills and training to practice law just because they have completed their legal educations.

The organized bar, incidentally, does not see a role for itself in improving legal education by such direct measures as becoming involved in law school accreditation or providing input on curriculum and teaching methods. This is understandable, since applicable laws assign responsibility in this area to other entities and since the ATTORNEYS ACT does not include it in the enumerated powers and duties of the Supreme and local Bar Councils. The segmented nature of the legal profession also makes it difficult to contend that legal education is, or should be, the responsibility of attorney groups, as opposed to other organizations of legal professionals. The SBC and the Bar Councils see their role as limited to the administration of a bar examination, which should keep the most poorly prepared out of the profession and indirectly influence the future direction and quality of legal education. Nonetheless, the SBC may wish to consider whether it, perhaps in conjunction with other legal associations and institutions, could be a constructive force for improving law student preparation for the practice. Initiatives could include advocating the use of more interactive teaching methods, lobbying for required courses in practical subjects such as the ones mentioned earlier, gaining a bar representative on the NAAA for evaluation and accreditation of law schools, encouraging greater and more regular dialogue between law faculties and practicing attorneys, and sponsoring or coordinating internships and informal gatherings between law students and members of the bar.

Factor 9: Qualification Process

Admission to the profession of attorney is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

Conclusion	Correlation: NEGATIVE
<p>The new ATTORNEYS ACT contemplates a bar examination and efforts are underway to put one in place. Current testing measures do not meet the standard of fair, rigorous and transparent and there is no supervised apprenticeship to prepare one for the profession of attorney.</p>	

Analysis/Background:

At present, the only examinations in place, that must be passed in order to become an attorney, are the state-wide oral examination necessary for a law school diploma (applicable to all would-be lawyers) and the MOJ's oral pass-fail examination on completion of the post-law school three months' internship in the judiciary (given to all prospective legal professionals). LEGAL EDUCATION ORDINANCE, arts. 11 and 12.(3). Neither of these examinations could be considered rigorous, while the oral nature of the testing process necessitates grader-student contact and creates opportunities for corruption in the grading process. (It should be noted, however, that there is no evidence of actual corruption or of unfairness in the evaluations of different students). Some Bar Councils, acting on their own, imposed oral tests for persons seeking admission to the bar, but the existence and contents of these tests varied among Bar Councils and they were generally considered extremely easy to pass.

In an effort to fill this gap and to allow the bar to insure the competence of its members, Article 4.(1).4 of the ATTORNEYS ACT has added, as a condition to bar admission, the requirement that lawyers must pass a new entry examination. However, under Article 6.(3) exceptions are provided for applicants with a doctorate in legal science or five years of record of legal service. The examination is given on a pass-fail basis twice each year under procedures established by ordinance of the SBC, and has both oral and written sections. *Id.* art. 8.

The SBC has been moving quickly to develop a bar examination, having by the time of the LPRI interview visit appointed members of the commission responsible for administration of the test. At its Oct. 29, 2004 meeting, the SBC was to consider a draft ordinance on this topic, which will include a blind grading system for the written portion of the examination. The chairperson of the SBC insists that the bar examination will be transparent, non-discriminatory and rigorous, but that it will not be a device for limiting the number of attorneys. While there is every reason to believe that the SBC, under its present leadership, will develop a bar examination that meets the LPRI criteria, and the first test is scheduled for December 2004, the fact is that no such examination was in place at the time of the LPRI visit and this factor must be evaluated accordingly.⁴

The only thing remotely resembling a supervised apprenticeship in Bulgaria is the three months' judiciary internship required under Article 13.(3) of the LEGAL EDUCATION ORDINANCE after satisfactory completion of law school. It does not purport to be an apprenticeship for the practice of the attorney profession as such, and the numbers of new graduates flooding these short internship programs make supervision erratic at best.

Article 4.(1).3 of the ATTORNEYS ACT does require that an applicant to the bar "have at least two years of record of legal service" and establishes a category of "junior attorney" for those with less than two years of experience. *Id.* arts. 4.(2) and 20. The junior attorney has most of the rights and obligations of a regular attorney, including the right to represent clients in Regional Court and, on appeal of the same case, in District Court. The junior attorney must otherwise have a regular attorney along as co-counsel in District Court cases, and may not appear in Courts of Appeal or (like other attorneys with less than five years' experience) before the SCC or SAC. There is no provision for supervising or evaluating his/her performance, and upon completion of the two year period the junior attorney automatically becomes a full attorney, unless there is some employment or other basis for disqualification. This arrangement, therefore, cannot fairly be described as a supervised apprenticeship.

Factor 10: Licensing Body

Admission to the profession of attorney is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

Conclusion	Correlation: POSITIVE
<p>The Bar Council of the applicable Attorneys' College impartially administers the admission process, and decisions may be appealed first to the SBC and then to the SCC.</p>	

Analysis/Background:

⁴ On 04 December 2004 and 18 December 2004, the SBC administered the written and oral portions of the first bar exam given pursuant to the new Attorneys Act.

The only way one may become an attorney is set forth in Article 4. (1) (1-5) of the ATTORNEYS ACT, which provides that “(a)ny Bulgarian citizen of legal capacity may become an attorney if he/she meets the following conditions:

1. to have a university degree in law;
2. to have acquired the right to practice law;
3. to have at least two years of record of legal service;
4. to have passed the exam provided under this Act, except for the cases under Article 6, paragraph 3 [those with doctorates in legal science or five years’ experience]; and
5. to have the necessary moral and professional qualities for exercising the attorney’s profession”.

One meeting these conditions may seek admission to an Attorneys’ College by submitting an application with supporting documents to the corresponding Bar Council. *Id.* art. 6.(1). There is no provision for sponsorship of an applicant by an existing member of the Attorneys’ College. The Bar Council has one month to review the documents and confirm that the conditions are satisfied, and must issue a reasoned written decision on the application. *Id.* art. 6.(2). The Bar Council must then notify both the applicant and the local Supervisory Council, either of whom may appeal the decision to the SBC within 14 days of notification. *Id.* arts 7.(1) and (2). The SBC then has a month to act on the appeal, after which a further appeal may be made to the SCC. *Id.* arts. 7.(4) and (5).

The body making the initial decision on admission, the Bar Council, is a group of five to eleven (depending on the size of the Attorneys’ College) principal members who must normally be attorneys with 10 or more years of legal experience. *Id.* art. 86.(1) – (4). Like the profession generally, the Bar Council is independent of the executive branch. The criteria for the admission decision are clear and objective, with the exception of the “necessary moral and professional qualities” clause of Article 4.(1).5. It is conceivable that this clause could be used as a basis for unfairly denying admission to selected applicants or for limiting the size of the Attorneys’ College, but the Bar Council would have to explain its reasoning in writing and any unjustified denial would presumably be reversed on appeal. The LPRI interview process could not uncover any example or allegation of unjustified denial of admission on this, or any other ground. It is, of course, possible that this criterion deters questionable individuals from applying to the bar in the first place.

As noted, the decision of the Bar Council may be appealed first within the profession to the independent SBC and thereafter to the SCC for judicial review.

All indications are that the admission process works fairly and well. The only adverse comments made in the interviews concerned the size of the one-time bar admission fees payable to the local Bar Council and the SBC and to a perception that it is somehow more difficult to be admitted to the Sofia Attorneys’ College than to others. Neither of these concerns would appear to justify anything less than a positive evaluation.

Factor 11: Non-discriminatory Admission

Admission to the profession of attorney is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

Conclusion	Correlation: NEUTRAL
Admission is not denied due to discrimination on any of the grounds specified in the factor, though high entrance fees in certain Attorneys' Colleges could deter less affluent applicants.	

Analysis/Background:

Article 6 of the CONSTITUTION provides as follows:

- “(1) All persons are born free and equal in dignity and rights.
- (2) All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status.”

A year ago, the National Assembly passed a Law on Protection against Discrimination, prom. SG 86 (Sept. 30, 2003), last amended SG 70 (Aug. 10, 2004) [hereinafter “ANTI-DISCRIMINATION LAW”]. This law prohibits discrimination on the basis of citizenship, handicap, age or sexual orientation, in addition to the classifications set forth in Article 6.(2) of the CONSTITUTION. However, citizenship is a permitted basis for discrimination when stipulated by another law.

There is nothing in the ATTORNEYS ACT that would permit discrimination in admission decisions on any grounds other than citizenship, *Id.* art. 4.(1), moral and professional qualifications, *Id.* art. 4.(1).5, conviction of certain crimes *Id.* art. 5.(1).1), mental disease presenting a lasting obstacle to exercise of the attorney’s profession, *Id.* art. 5.(2), certain business or employment positions, *Id.* art. 5.1(2), or dismissal/suspension from certain other legal professions, *Id.* None of these permissible distinctions is included in the criteria for Factor 11. Even in the case of foreign citizens, Articles 10 through 19 contain provisions that, effective January 1, 2007, will allow them to practice law, or even be admitted to practice in certain circumstances.

Nationality is not a basis for discrimination, so long as the individual is a Bulgarian citizen. Certain ethnic groups could conceivably face hardship in becoming attorneys, since proceedings are conducted in the Bulgarian language. For example, Article 11.(1) of the PENAL PROCEDURE CODE states that “[t]he penal proceedings shall be conducted in the Bulgarian language”. In addition, Article 5 of the CIVIL PROCEDURE CODE provides that Bulgarian shall be the language used in courts, but does provide for a translator where a person does not know Bulgarian. Whether this would apply only to the parties or to the advocate as well, is unclear. The exact language of Article 5 reads as follows “[t]he court language is the Bulgarian language. Where in the case persons who do not know Bulgarian take part, the court shall appoint a translator with whose help those persons shall perform the legal procedural actions and the actions of the court shall be explained to them”. As a practical matter, though, members of ethnic minorities in Bulgaria appear generally able to speak the national language and would have to do so to earn a law degree and pass the bar examination.

As noted under Factor 10, there are significant one-time entrance fees that must be paid in a lump sum by applicants to the bar, with amounts varying by years of experience and applicable

Bar Council. Using dollar equivalents as of the LPRI visit, the fees payable to the SBC are either \$127 (less than three years' experience) or \$319 (three or more).⁵ Local Bar Councils generally charge amounts ranging from \$32 to \$510, though one Bar Council reportedly charges as much as \$2,550. These one-time costs are in addition to monthly membership fees contemplated by Articles 49, 89.17 and 122.2 of the ATTORNEYS ACT. The one-time admission fee going to the SBC is provided for under Article 122.2 of the ATTORNEYS ACT as an "entrance" contribution. There does not appear to be any statutory basis for the admission fees charged by local Bar Councils, but they are apparently rationalized as implicit in the self-governing nature of the bar. In any case, the magnitude of these local fees could deter less affluent law school graduates from applying for admission to the bar, and could thus have the effect, if not the purpose, of discriminating against applicants based on property, or property status. While there is no evidence anyone has been denied admission based on his or her net worth, property holdings, or lack thereof, the local bar entrance fees could have the indirect effect of limiting admission to those owning or having access to certain minimum financial resources. The SBC may wish to consider reviewing the various Bar Council entrance fees to be sure that they are not prohibitively high for a significant segment of the population and that they are reasonably tied to the costs of the admission process, and to consider imposing controls or standards on these fees. This concern is troubling enough to downgrade an otherwise positive correlation for non-discriminatory admissions to neutral.

III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Attorneys are able to practice law independently or in association with other attorneys.

Conclusion	Correlation: POSITIVE
<p>The ATTORNEYS ACT permits attorneys to practice law as sole practitioners, alone or under office sharing arrangements, in contractual associations, in special attorney partnerships or under service contracts with other attorneys or attorney partnerships.</p>	

Analysis/Background:

Attorneys in Bulgaria may practice as individuals or in concert with other attorneys under a variety of contractual relationships, ranging from office sharing arrangements to professional partnerships. While the previous law governing attorneys contemplated the possibilities of practicing individually, or forming partnerships, it provided no guidance or details concerning the organization, ownership or operation of these entities or the relationships and liabilities of their members. This gap has been filled by the new ATTORNEYS ACT.

Article 3.(1) of the ATTORNEYS ACT provides that the profession of attorney "may be exercised only by an attorney who practices independently or in partnerships, which are registered under this Act". Article. 52 (1) permits attorneys to practice in partnerships regulated under the Law of Obligations and Contracts, prom. SG 275 (Nov. 22, 1950), last amended SG 19 (Feb. 28, 2003) [hereinafter "CONTRACTS LAW"]. Though characterized as partnerships, such groupings are

⁵ The exchange rate used in this LPRI is 1.57 leva to one U.S. dollar, the prevailing rate during the LPRI interviews.

not legal entities and more closely resemble joint ventures or associations; they will be referred to in this LPRI as “civil law partnerships.” The arrangement must be in writing and must be registered with the Bar Council. ATTORNEY’S ACT art. 52 (3). Attorneys from different Attorneys’ Colleges may join forces in a civil law partnership, in which case registration is to be entered with the Bar Council specified in the agreement. *Id.* art. 52 (2). However, members of a civil law partnership may not represent clients with conflicting interests. *Id.* art. 55.

Articles. 57 – 75 of the ATTORNEYS ACT provide for a new type of legal entity called an “attorney partnership”, and serve as its governing law. For example, under Article 57 (2), only attorneys may be partners in an attorney partnership. Furthermore, under Article 57 (3) an attorney may be in only one such partnership. The attorney partnership and its members cannot represent clients having conflicting interests. *Id.* art. 57 (4). Detailed rules are set forth concerning the partnership agreement, permissible names of the entity (only names of partners may be used), registration, offices, management, capital contributions and provision of legal services. *Id.* arts. 58 – 70. The client engages the partnership, but may designate the attorney to perform the work. *Id.* art. 71. In addition to partnership liability to the extent of capital contributions, each partner is personally liable for damages incurred by the client as a result of the negligence of the working attorney. *Id.* art. 72. Finally, Articles 73 and 75 provide for termination and liquidation of an attorney partnership.

Attorney partnerships, as well as attorneys, may combine with individual attorneys or other attorney partnerships to form civil law partnerships. Art. 52.(1) and (2). Attorney partnerships and individual attorneys may also enter into contracts with other attorneys and attorney partnerships, which really are like joint ventures, “for the performance of a particular legal service or a common undertaking of work on certain cases.” *Id.* art. 76.

Attorneys and attorney partnerships may also be parties to a service or “mandate” contract with an individual attorney, engaging him/her for a definite or indefinite period of time to perform legal services for an agreed remuneration. *Id.* art. 77. The essential terms of the relationship thereby created are described in the mandate contract provisions of the CONTRACTS LAW, Articles 280 – 292. While this arrangement appears similar in substance to an employment contract, employees are forbidden from becoming attorneys unless they are law professors or scholars. ATTORNEYS ACT art. 5.(2).3. The mandate contract, in this context, serves as a mechanism for attorneys and attorney partnerships, unlike commercial enterprises and most other persons and entities, to hire attorneys who can represent multiple clients in providing the full range of legal services.

While the ATTORNEYS ACT offers no detailed guidance or limitations on office sharing arrangements, it does make express provision for them in para. 4 of its Additional Provisions: “Several attorneys may share an office without being partners.”

The framers of the ATTORNEYS ACT made the conscious decision to create a new category of professional partnership for attorneys and to prevent attorneys from combining under the umbrella of an ordinary commercial partnership, joint-stock company or other business entity. The SBC wanted to reinforce the status and public perception of attorneys as learned professionals rather than commercial entrepreneurs operating for profit. Article 5.(2).1 expressly provides that, in addition to the ban on persons employed under employment contracts, “merchants, managers in a commercial partnership or executive directors of joint-stock companies may not be attorneys”. In addition, Article 5.(2).1 prohibits civil servants from being entered as attorneys. One consequence of this legislation is that attorneys practicing in such business entities must reorganize into an attorney partnership or other acceptable arrangement, and must drop any corporate or trade name previously used. Another consequence is that the income taxation rules applicable to physical persons, rather than corporate entities, will apply to their new arrangement, with a flat 35% deduction for expenses and no allowance for depreciation of assets used in the practice. Law for the Taxation of the Income of Physical Persons, prom. SG 118 (Dec. 10, 1997), last amended SG 108 (Dec. 10, 2004), art. 22.(1).1.(d); Law for the Levying

of the Corporate Income Tax, prom. SG 115 (Dec. 5, 1997), last amended SG 107 (Dec. 7, 2004), arts. 21 and 22.(1).

There is presently no provision in effect allowing foreign attorneys or law firms to practice law in Bulgaria. While the ATTORNEYS ACT does contemplate a variety of roles for foreign attorneys, those articles (10 - 19) do not take effect until January 1, 2007, at which time European Union accession is expected.

The civil law partnerships, attorney partnerships and mandate contracts are sufficiently new that many such arrangements have yet to be registered with the Bar Councils, and it is likely that attorneys have not fully evaluated the merits and disadvantages of the various forms of practice. The sole practitioner model has traditionally been the choice of most Bulgarian attorneys, with occasional cooperative representations in discrete matters and fluid office sharing arrangements. There seems to be widespread recognition that increasing globalization and legal complexity bring with them the need for greater specialization, and both deeper and broader expertise, to deliver services more responsively, competently and effectively, especially for foreign clients. Many attorneys, however, are reluctant to lose the independence they now enjoy as sole practitioners. For those who have previously combined their practices with others, and for those who do so in the future, there are adequate choices of form with varying degrees of permanence, formality, vicarious liability and complexity to meet the concerns and needs of the attorneys involved.

Factor 13: Resources and Remuneration

Attorneys have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

Conclusion	Correlation: NEGATIVE
<p>While legal information, other than unpublished court decisions, is generally available, attorneys lack other resources required in their practices and, with few exceptions, appear to be poorly compensated for their services.</p>	

Analysis/Background:

The combination of recent dramatic increases in the number of attorneys and the country's weak economy has severely impacted the remuneration of attorneys in Bulgaria. While statistics on attorney compensation are not available, the consensus is that most attorneys throughout the country are struggling financially. A few attorneys and law firms, particularly those with major foreign clients, are believed to be doing very well, but they are definitely a small minority.

Article 36 of the ATTORNEYS ACT provides for the remuneration rate of an attorney to be a "fair and justified" amount, as agreed with the client, but not less than the minimum compensation specified in the Supreme Bar Council's regulation for the type of service provided. These minimum amounts are very low by international standards, though some attorneys in the smaller cities and towns consider them to be acceptable, even high. Using approximate dollar equivalents, some examples are as follows: \$64 for a divorce case, from \$64 to \$764 (depending on the potential sentence for the offense) for representing a criminal defendant, \$13 for a written consultation or a will, and from \$10 to \$266 (depending on the contract price) for drafting a contract worth up to \$64,000 plus 0.1% of the excess contract value. Regulation No 1 of 9 July 2004 related to the Minimum Rate of Attorneys' Remuneration, prom. SG 64 (July 23, 2004) [hereinafter "MINIMUM FEE TARIFF"]. While attorneys are free to negotiate a higher fee, of

course, these minimum rates are often viewed as the standard with a presumption of fairness in the minds of many clients.

The rates set by the MINIMUM FEE TARIFF are also referenced, and commonly applied, when attorney fees are required to be paid by a losing party in an amount determined by a court or agency. See, e.g., PENAL PROCEDURE CODE, art. 169; CIVIL PROCEDURE CODE, art. 64; Tax Procedure Code, prom. SG 103 (Nov. 30, 1999), last amended SG 53 (June 22, 2004), art. 130.(4). ATTORNEYS ACT, art. 38.(2).

Bulgarian law provides for public defenders to be appointed in criminal cases by the investigator or the judge, depending on the stage of the proceeding, in certain specified situations. PENAL PROCEDURE CODE, art. 70. Public defenders are also appointed to represent civil defendants who cannot be found at their last known addresses. CIVIL PROCEDURE CODE, art. 16.(5). Under Article 44 of the ATTORNEYS ACT, the court is required to pay the public defender, out of its budget, the applicable amount set by the MINIMUM FEE TARIFF. Many attorneys complain that, in practice, the letter from the court to the Bar Council requesting nomination of a public defender specifies a fee below the allowable minimum. Aside from the economic burden of this judicial practice, it puts the attorney in an untenable position. He/she must accept the employment or violate Article 44 of the ATTORNEYS ACT, unless the accused meets certain poverty standards, by receiving the sub-minimum fee subjects him/herself to discipline under Article 132.5. Even worse, some attorneys report that the fee eventually paid is often lower than the fee originally specified by the court and that payment is commonly deferred until the end of the court's fiscal year.

The economic plight of attorneys is aggravated by the fact that office space is very expensive, not only in Sofia, but throughout the country.

An indication of the financial difficulties of attorneys is the fact that many are delinquent in the payment of monthly membership fees to their respective Bar Councils and face disciplinary penalties, including suspension from the practice, as a result. While hard numbers are not presently available, reportedly one-third of Varna attorneys and nearly 10% of Sofia attorneys are in that position.

In terms of other resources, attorneys generally have adequate access to laws, court decisions and other authorities necessary for their practices through several sources. Those owning, or having access to, computers can take advantage of excellent legal databases available in Bulgaria. The SBC has a highly regarded library, and many Bar Councils offer their own libraries of varying size and quality. The SBC also publishes a monthly magazine containing recent legislation and court cases. One deficiency noted in this area is the fact that very few court decisions, even of the SAC and SCC, are published; this not only deprives attorneys of important information for their practices but also contributes to inconsistent and unpredictable court decisions and a lack of judicial transparency.

Factor 14: Continuing Legal Education

Attorneys have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of attorney.

Conclusion	Correlation: NEUTRAL
CLE activities now take place on a sporadic and uneven basis, though a new CLE regime contemplated by the ATTORNEYS ACT has the potential to provide regular, organized and effective programs and improve professional qualifications of all attorneys.	

Analysis/Background:

Article 27 of the ATTORNEYS ACT imposes on attorneys the “obligation to maintain and improve their qualification.” To that end, Article 28 (1-2) goes on to require the SBC to “...establish an Attorneys’ Training Center [hereinafter “Training Center]” and “determine the [Training] Center’s structure, organization, admission requirements, training programs and funding by means of a Regulation thereof”. One of the enumerated powers and duties of the SBC under Article 122.9 is to “organize the creation of the Training Center for attorneys and determine training conditions and continuing legal education programs.” Local Bar Councils are also given the responsibility of conducting “activities related to the improvement of the professional qualification of attorneys.” *Id.* art. 89.11. While CLE is cast as an obligation on the part of attorneys, there is no annual minimum hour standard that must be met under the law.

Because of the newness of the ATTORNEYS ACT and the number of other pressing mandates it imposes, the SBC has not yet published a regulation on an Attorneys’ Training Center, or created a formal CLE program and schedule. It has, however, taken important initial steps in that direction and plans to have the center operational by the end of 2005.

Even without the complete structure of the Training Center and its implementing ordinance, the SBC and some local Bar Councils have historically provided CLE programs for attorneys. These have typically been sporadic in timing, conducted in response to new or amended legislation, or other developments, and uneven in quality and preparation. Topics of such trainings have included commercial law, property registry law and tax law, with videotapes of the training being sent to all of the Bar Councils. The Sofia Bar Council has regularly offered CLE lectures, and in fact presented four of them in the nine months preceding the LPRI visit. Unfortunately, because of space limitations, only 60 or 70 participants can be accommodated at these lectures. A few other Bar Councils provide periodic CLE programs, but not on the scale and frequency of the Sofia model.

Funding is and will continue to be an issue for bar-sponsored seminars and workshops, as budgets are reportedly stretched thin and economic circumstances make it difficult to pass the cost on to participants. Most training sessions are funded by a combination of participant payments (30 *leva*, or about \$19), SBC contributions and ABA/CEELI support, but long term sustainability will require that participants pick up a greater share of the cost. This in turn will necessitate imaginative incentives for attendance and further consideration of CLE minimum hours.

Other organizations, including for-profit entities, such as legal database providers, offer occasional CLE programs as well. While the for-profit programs are considered fairly expensive, especially for young attorneys and those from smaller cities and towns, they do suggest the possibility of a partnership, or other cooperative arrangement, between the organized bar and private companies to develop sustainable and worthwhile CLE projects. The UBJ, which is open to all lawyers including judges and prosecutors, also holds periodic seminars for its members as new developments arise.

Factor 15: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of attorney.

Conclusion	Correlation: NEUTRAL
Both genders and some minorities appear to be adequately represented in the profession, if not in leadership positions, but Roma are seriously underrepresented.	

Analysis/Background:

The basic right of any Bulgarian citizen to become a member of the attorney profession is enshrined in the CONSTITUTION, as well as various legislation. For example, Article 6 (1) of the CONSTITUTION states that “[a]ll persons are born free and equal in dignity and rights”. In addition, Article 6 (2) states that “[a]ll citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status, or property status”.

The ANTI-DISCRIMINATION LAW also prohibits discrimination on the basis of citizenship, handicap, age or sexual orientation, in addition to the classifications set forth in the CONSTITUTION (see discussion Factor 11).

Article 4 (1) (1-5) of the ATTORNEYS ACT also addresses the right and requirements for becoming a member of the Attorney’s College (see Factor 10). Specifically, Article 4 (1) (1-5) states that “[a]ny Bulgarian citizen of legal capacity may become an attorney if he/she meets the following conditions:

1. to have a university degree in law;
2. to have acquired the right to practice law;
3. to have at least two years of record of legal service;
4. to have passed the exam provided under this Act, except for the cases under Article 6, paragraph 3 [those with doctorates in legal science or five years’ experience]; and
5. to have the necessary moral and professional qualities for exercising the attorney’s profession.”

Based on this language, it is clear that persons of ethnic and religious minorities, as well as both genders, have, at least on the surface, equal opportunity under the law to become members of the profession. However, as illustrated below certain groups are not represented in line with their percentage of the population, although women clearly are well represented.

To help explain the disparity in representation it will be useful to detail the makeup of the population. According the U.S. Department of State, “Background Note: Bulgaria”, at www.state.gov/r/pa/ei/bgn/3236.htm, (Oct. 2004), the two principal ethnic minorities in Bulgaria are Turkish (9.42%) and Roma (4.68%), based on March 2001 estimates. The main religious minorities are Muslim (12.2%), Roman Catholic (0.6%) and Protestant (0.5%). No statistics are kept on the representation of ethnic and religious groups in the bar, and it is difficult, if not impossible, to determine one’s ethnic or religious affiliation simply by reading his/her name. During the communist era, the government required members of the Turkish minority to adopt Bulgarian names and, while that requirement no longer exists, many persons in this group have kept their adopted names. Physical appearance is sometimes an indicator of one’s ethnic category, but intermarriage and other factors render it unreliable. Virtually the only way to be sure of a person’s ethnic, and especially religious, status is for him/her to volunteer the

information or take some other public action to announce it, something which doesn't happen very often. This leaves anecdotal evidence and speculation as the basis for estimates of minorities in the profession.

Despite these limitations, the consensus of persons interviewed was that members of the Turkish ethnic minority are reasonably well represented in the attorney profession, particularly in certain parts of the country having large Turkish populations. The general view was that, while the percentage is probably below 9.42%, it is reasonably close to that level. However, Roma representation is another matter entirely. The sense among respondents was that the number of Roma attorneys is nominal, certainly under 1% of the bar. None of the respondents offered an estimate of the representation of religious minorities, but there is presumably some overlap between Turkish and Muslim groups.

The reasons for the underrepresentation of Roma in the profession are unclear, though blame is sometimes placed on the substandard neighborhood schools attended by Roma children that may contribute to poor scores on law school entrance examinations.

Women, on the other hand, are well represented in the legal profession. Over 50% of attorneys are women. Looking at organized bar leadership positions at both the local and national level, women comprise 41% of the membership of all councils and disciplinary courts. Only two women (14%) serve on the Supreme Bar Council, though women make up two-thirds of the Supreme Disciplinary Court and a woman serves as its chairperson. For source see <http://vas.lex.bg/authorities.html>, last visited Dec 17 2004.

Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by attorneys.

Conclusion	Correlation: NEUTRAL
<p>While the ATTORNEYS ACT contains some general ethical rules and a comprehensive code of ethics is planned for 2005, there are presently very few clear and useful standards of conduct for attorneys and ethical behavior needs improvement.</p>	

Analysis/Background:

The ATTORNEYS ACT contains some ethical standards for attorneys, but they are very general and provide little specific guidance to members of the profession. For example, Article 40 (1) requires that the attorney “shall perform his duties diligently and shall, through conduct professionally and otherwise, be worthy of the due confidence and respect for the legal profession”. Under Article 40 (2) “the attorney shall be guided by the supremacy of the law and shall protect his/her clients’ interests in the best way possible”. Under Article 40 (3) the attorney “shall present to his/her client correct information of their rights and obligations”. He/she cannot procrastinate or create unnecessary impediments, *id.* art. 40 (4), shall be “unselfish and independent in his professional conduct” and cannot be “influenced by his/her own interests.” Article 41 states that the attorney “may not attract clients through paid agents”, while Article 42 provides that he/she may not advertise or otherwise attract clients in unacceptable ways (specifying certain acceptable ways). Article 43 (1-6) forbids the attorney from taking on assignments where he/she lacks the necessary knowledge or training, and sets forth certain basic rules against conflicts of interest (serving as attorney in the same case where he/she served as a judge or prosecutor; representing two parties in the same case unless their interests do not conflict and they consent to the dual representation; representation of related persons and

legal entities, etc.). Article 45 obligates the attorney to preserve the confidentiality of client information, while Article 46 dictates that the attorney keep relevant documents for a certain period. Article 50 requires (effective January 1, 2005) that the attorney carry professional liability insurance. Article 51 holds the attorney liable to the client for damages resulting from an intentional breach of his/her legal and ethical obligations. While these provisions do lay out some basic ethical principles and provide a basis for discipline and/or liability in cases of clear violations, they do not offer much direction in more nuanced situations and in other areas typically covered by codes of ethics.

For this reason, Article 121 of the ATTORNEYS ACT expressly authorizes, and requires, the SBC to adopt a Code of Ethics. It also indicates that a violation of this Code of Ethics will subject an attorney to discipline, *Id.* art. 132, and potentially to liability to a client damaged by his/her conduct, *Id.* art. 51.

While the legal structure is in place for the adoption and enforcement of a Code of Ethics, the SBC has not yet had the opportunity to consider, draft and adopt such a far-reaching and important regulation. The SBC has stated that it is considering a draft code of ethics supplied by ABA/CEELI together with the Code of Conduct of the CCBE, and will prepare its own draft for circulation to attorneys throughout the country for comments. The SBC then plans to hold a conference of bar leaders in May 2005 to discuss the draft and, as soon as possible thereafter, adopt a final Code of Ethics. At the time of the LPRI visit, however, no Code of Ethics was in place.

Nevertheless, at present, a widespread perception exists that attorneys in Bulgaria do not consistently adhere to high ethical standards and that many engage in improper practices. Some attorneys believe that unethical practices are more common in the criminal defense area, while others (especially criminal defense attorneys) believe that the real problem rests with the commercial law practice. The recent flood of lawyers into the profession has made it considerably more difficult to compete for clients and a reputation for improper influence is more important to some prospective clients than professional competence. While these assertions cannot be documented, they do suggest a need for a required ethics course in law school and ongoing ethical training as part of a comprehensive CLE program.

Factor 17: Disciplinary Proceedings and Sanctions

Attorneys are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

Conclusion	Correlation: NEUTRAL
<p>The disciplinary process under the ATTORNEYS ACT is fair and workable and most attorneys are satisfied with its operation in practice. However, the vast majority of cases merely involve non-payment of membership fees and it is unclear how well other ethical standards are being enforced.</p>	

Analysis/Background:

Article 131 of the ATTORNEYS ACT provides that attorneys and junior-attorneys “shall bear disciplinary responsibility for violations of their duties.” Categories of conduct constituting disciplinary violations ranging from the general to the specific are set forth in Article 132. For example, under Article 132 (1) “failure to perform the duties envisaged in the present Act [ATTORNEYS ACT], the regulations and decisions of the Supreme Bar Council and the decisions

of the Bar Councils and General Assemblies shall be deemed as a disciplinary violation". Under Article 132 (2) (1-10) acts which constitute disciplinary violations include:

1. Breach of client confidentiality;
2. Omissions, which have harmed a client's rights and legal interests;
3. Systematic failure to complete his/her obligations or gross incompetence;
4. Personal direct advertising of the professional activity in violation of this Act;
5. Receiving remuneration, which is below the established minimum envisaged in the regulation of the Supreme Bar Council for the respective service, unless in this Act, or in a regulation, such an opportunity is provided;
6. Accepting or performing a representation unlawfully;
7. Concealing important information on admission to the bar;
8. Systematic failure of an attorney to perform his/her duties as a member of a governing, disciplinary or controlling body of a bar;
9. Breach of professional ethics, morality and collegiality toward other attorneys or attorney partnerships;
10. Undermining the prestige of the profession and crude violation of the professional ethics.

Penalties for disciplinary violations are varied and flexible, ranging from a mere personal warning in the case of minor violations to a reprimand, a fine of between one and eight months' minimum salaries (the monthly minimum is about \$64), loss of the right to be elected to a governing body of the bar for a period of one to three years, suspension of the right to practice for between three and 18 months, and a five year suspension in the case of repeated violations. *Id.* art. 133. While the predecessor statute contemplated the possibility of permanent disbarment from the practice, this sanction is not provided by the ATTORNEYS ACT. Once the punishment period expires, if the disciplined attorney pays full compensation for his/her violation and the costs of the disciplinary proceedings and goes three years without further violations or complaints, he/she may apply to the SDC for "rehabilitation". If rehabilitation is granted, the discipline will be expunged from the attorney's record. *Id.* art. 135.

There is what amounts to a statute of limitations of one year (or, if earlier, the death of the subject attorney) from the date of commission of the violation within which disciplinary prosecution must take place. *Id.* art. 134.(1).

Disciplinary proceedings are covered in detail by Articles 136 – 146 of the ATTORNEYS ACT. Any physical or legal person, or governmental body, may initiate a proceeding by informing the applicable Bar Council or SBC. *Id.* art. 136 (1). The Bar Council or SBC then must notify the subject attorney and allows him/her seven days to provide an explanation. *Id.* art. 137 (1). If the Bar Council concludes that it may be reasonably assumed that a violation occurred, it appoints a member of the Bar Council to investigate the matter and report back to the Bar Council. *Id.* art. 137 (2). The Bar Council then decides whether to institute disciplinary proceedings. *Id.* art. 137 (5). If the decision is made to institute disciplinary proceedings then the Bar Council appoints the investigator or another Council member to file and prosecute the complaint with the Disciplinary Court. *Id.* art. 137 (7). Under Article 137 (6) "[r]efusal to institute disciplinary proceedings may be appealed to the SBC within fourteen days" by the interested party. Once the matter is before the

Disciplinary Court, the chairperson selects the panel, schedules a hearing date, and gives notice of the hearing along with the complaint to the subject attorney. *Id.* art. 138. Within seven days after notification, the attorney may express his/her objections to the complaint and submit supporting evidence. *Id.* art. 138 (4). The attorney is entitled to legal representation throughout the proceeding. *Id.* art. 139 (4). The Disciplinary Court holds the hearing, reaches its decision on both guilt and punishment, and issues a reasoned opinion. Either party may then appeal the decision to the SDC, which hears the case under similar procedures. *Id.* art. 141 (1). If the ultimate decision is a disciplinary sanction, it is recorded in the Unified Registry of Attorneys, *Id.* art. 144 (1), and, if the sanction is a suspension, published in the State Gazette. *Id.* art. 144 (2). Reprimands and deprivations of the right to be elected to bar leadership positions are not published.

Under Article 129 (1) “[d]isciplinary cases against members of the Bar Councils, Supervisory Councils and Disciplinary Courts of Colleges, of the Supreme Bar Council, and of the Supreme Disciplinary Court shall fall within the jurisdiction of the Supreme Disciplinary Court as a court of first instance”. Under Article 130 (2) “[d]ecisions of the Supreme Disciplinary Court as a court of first instance may be appealed before the Supreme Court of Cassation within a 14-day period following pronouncement” by either party. This is the only category of cases where judicial review of a disciplinary decision is possible and, of course, here it is necessary because no other reviewing body is available within the bar. The rationale for not offering judicial review in cases involving rank and file attorneys is that, under the CONSTITUTION, the bar is supposed to govern itself and attorney discipline ought not to be a matter for the judiciary. Even under the predecessor statute, judicial review was available only for disbarment sanctions and that penalty no longer exists under the ATTORNEYS ACT. The SDC is an independent organization able to look at the case objectively from a fresh perspective and thus perfectly capable of a fair and meaningful review. Judicial review is provided under the ATTORNEYS ACT also in the case of bar admissions decisions, Article 7.(5), but there the rights of citizens generally, not just attorneys already in the profession, are affected.

There appears to be some confusion as to whether the disciplinary hearing is open to the public as a whole, presumably stemming from the provision in the revoked statute that expressly stated hearings would be closed to the public. The ATTORNEYS ACT does not deal specifically with this issue, but it does provide that “disciplinary proceedings shall follow the Penal Procedure Code unless otherwise provided in this Law.” *Id.* art. 139.(6). Article 13 of the PENAL PROCEDURE CODE, provides that hearings shall be held in public, with certain exceptions not relevant to attorney discipline. That fact, as well as the presumption created by the omission of the closed hearing rule under previous law, strongly supports the proposition that disciplinary hearings shall be open to the public. That is the informal position of the SBC, though at least one local Disciplinary Court chairperson has the opposite view.

The SDC plans to meet with the leadership of the local Disciplinary Courts in the spring of 2005 to discuss uniform procedures, and later to develop written rules governing all Disciplinary Courts. By that time, variations concerning the public nature of hearings and any other procedural points should be eliminated. It should be noted that the SDC does not plan to establish uniform sanctions, believing penalties should be left to the discretion of local Disciplinary Courts because of different concerns and priorities in different jurisdictions. This position could produce an awkward and unfair situation where a given act of misconduct by two attorneys having identical disciplinary records and experience could result in two widely disparate sanctions. An attorney reprimanded in Bourgas for conduct that would produce a suspension in Varna could presumably then represent a client in a case in Varna. Some standardization of penalties would avoid that situation and would assure proportionality of sanctions and offenses.

Comprehensive disciplinary statistics have been difficult to obtain, so it is impossible to know precisely what types of misconduct occur most often, what percentage of accusations lead to proceedings before the Disciplinary Courts, what percentage of Disciplinary Court decisions result in each of the available sanctions, what percentage of Disciplinary Court decisions are appealed

and what are the outcomes of the appeals, etc. As noted in Factor 13, anecdotal evidence suggests that many, perhaps a large majority of, cases involve delinquencies in payment of bar membership fees. Data supplied by the Sofia Bar Council, for example, indicate that 400 attorneys now face discipline for nonpayment of fees, while other sources put the number in Varna at 328. In Sofia, aside from nonpayment cases, over 250 complaints (one per 18 attorneys) were filed during an eight months period in 2004, only seven of which have so far resulted in the initiation of disciplinary proceedings. These include cases where the attorney accepted a fee and then failed to do anything to earn it. In Rousse in 2003, 20 new complaints (one per 15 attorneys) were filed last year, of which 11 were dismissed, three were still pending, and presumably the other six were referred to the Disciplinary Court. Overall in 2003 there were 15 disciplinary proceedings conducted by the Rousse Disciplinary Court (including complaints from previous years), seven of which were for unpaid bar fees and the remainder of which were for professional malpractice. Six attorneys were suspended for periods ranging from three months to one year. The SDC reported that in 2003 it heard 17 appeals, 13 of which were for unpaid dues, while in the first nine months of 2004 there were 16 appeals, including 11 for nonpayment of membership fees.

Opinions vary concerning the fairness and efficacy of the disciplinary process, though the prevailing view seems to be that it works reasonably well. There have been some criticisms, including a perception among some attorneys that current ethical standards are not enforced and that attorneys can escape discipline so long as they pay their bar membership fees. Others felt that the disciplinary process is used more to protect fellow attorneys and enforce dues payments than to protect clients. One attorney stated that self-regulation is inherently undesirable and discourages fair punishment because of professional courtesy and a fear of one's own future discipline. Another believed that investigations should be more comprehensive, a topic that can be addressed in the contemplated uniform procedural rules to be promulgated by the Supreme Disciplinary Court. A different attorney suggested that public reprimands be a possible sanction as a way to increase awareness among both attorneys and the public of the fact discipline occurs and of the types of conduct that will provoke it, without subjecting the disciplined attorney to the burden of a suspension from practice.

It should be re-emphasized that, in addition to disciplinary sanctions, attorneys are now liable to their clients for intentional breaches of their obligations under the ATTORNEYS ACT, the Code of Ethics and regulations of the SBC. In addition, effective January 1, 2005 attorneys will be required to carry professional indemnity insurance to protect clients from the consequences of their malpractice. ATTORNEYS ACT arts. 50 and 51.

IV. Legal Services

Factor 18: Availability of Legal Services

A sufficient number of qualified attorneys practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Conclusion	Correlation: POSITIVE
There are enough attorneys in Bulgaria as a whole, and distributed among its regions, to meet the needs of citizens and businesses for appropriate legal representation.	

Analysis/Background:

Bulgaria as a whole has 11,283 attorneys roughly one for every 700 people in the country.⁶ There is a strong consensus that there are enough (many would say more than enough) attorneys in Bulgaria, and that they are appropriately distributed geographically around the nation.

Comparisons with other countries are not very useful because of widely varying legal systems, cultural traditions, regulatory climates and degrees of economic development, as well as the basic problem noted earlier of classifying members of the legal profession on a consistent basis. The United States, for example, has about one private practitioner for every 410 persons, but it has a common law adversarial system that places a greater burden on attorneys than magistrates for investigating cases and presenting evidence. Norway has only one private practitioner per 1,200 inhabitants, fewer attorneys *per capita* than in Bulgaria. Armenia, perhaps a more comparable model, has only one advocate per 6,900 persons. It is difficult to disagree with the prevailing view that Bulgaria as a whole is well stocked with attorneys.

With respect to geographic distribution, the following table breaks down the numbers of Bulgarian attorneys according to district and shows the approximate ratio of attorneys to district population. The attorney numbers are as of January 1, 2004, whereas population figures are from the 2001 census, so the ratios are inexact. The table shows that ratios range from 1:321 in Sofia to 1:2,187 in Kurdjali, with many districts clustered around 1:1,300. As a general rule, the greatest concentrations of attorneys are in the capital of Sofia and other major cities, especially Varna. It is not surprising that Sofia has a disproportionately large number of attorneys; given the fact that so much of the governmental machinery, judiciary and business headquarters (especially for foreign companies) are based in Sofia. Varna is not only Bulgaria's third largest city but, as a Black Sea port, a major center of commerce, industry and tourism. The larger cities also tend to attract more complex business transactions and litigation, with a correspondingly greater need for depth and breadth of legal representation. The general perception is that the numbers of attorneys in the smaller towns and rural areas are adequate for the volume and sophistication of the legal work there, and in fact that in many such places attorneys do not have enough work to do. There, citizens and business enterprises tend to represent themselves, particularly when dealing with simple or routine legal matters.

	<u>ATTORNEY DISTRIBUTION</u>	
DISTRICT	NUMBER OF ATTORNEYS	ATTORNEYS: POPULATION
Blagoevgrad	289	1: 1,181
Bourgas	554	1: 765
Dobritch	179	1: 1,202
Gabrovo	110	1: 1,310
Haskovo	326	1: 851
Kjustendil	252	1: 645
Kurdjali	75	1: 2,187
Lovetch	110	1: 1,545
Montana	189	1: 964
Pazardjik	253	1: 1,228
Pernik	189	1: 793
Pleven	237	1: 1,317
Plovdiv	1,010	1: 709
Razgrad	306	1: 498

⁶ Source – annual report of the SBC for 2003, available at <http://vas.lex.bg/advpregled.html&y=631&b=632&p=496> (in Bulgarian only).

Rousse	308	1: 864
Silistra	104	1: 1,365
Sliven	162	1: 1,349
Shumen	163	1: 1,254
Smolyan	87	1: 1,610
Sofia	4,494	1: 321
Stara Zagora	374	1: 991
Turgovishte	94	1: 1,465
Varna	1,003	1: 461
Veliko Turnovo	194	1: 1,511
Vidin	158	1: 823
Vraza	158	1: 1,538
Yambol	115	1: 1,357
TOTAL	11,283	1: 703

With respect to ethnic minorities, there is a widespread belief that ample attorneys of Turkish descent are available in areas having substantial ethnic Turkish populations. As noted earlier in Factor 15, Roma are greatly underrepresented in the attorney profession generally, but the few that are members of the bar tend to live where other Roma live. There are numerous domestic and international NGOs that serve members of the Roma minority, and some of them provide assistance with legal matters. It was also reported that Roma communities tend to follow internal, quasi-judicial methods of resolving disputes. There are, of course, ethnic Bulgarian attorneys available to represent minorities in these areas.

Factor 19: Legal Services for the Disadvantaged

Attorneys participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

Conclusion	Correlation: NEGATIVE
A public defender system exists in Bulgaria, but it is flawed and leaves gaps in the provision of legal assistance to the poor. These gaps are not being filled sufficiently by legal clinics, NGOs or the bar.	

Analysis/Background:

The basic right to counsel is enshrined in the CONSTITUTION. For example, Article 30.(4) of the CONSTITUTION declares that “[e]veryone shall be entitled to legal counsel from the moment of detention or from the moment of being charged.” Article 56 further states that “[e]veryone shall have the right to legal defense whenever his rights or legitimate interests are violated or endangered”, and that he “shall have the right to be accompanied by legal counsel when appearing before an agency of the state.” Article 122.(1) provides that both physical and legal persons “shall have the right to legal counsel at all stages of a trial.”

The CONSTITUTION does not explicitly mention the issue of providing legal counsel for persons unable to pay for one. However, Article 5.(4) treats properly ratified international agreements as part of the domestic legislation of the country, superseding any contrary domestic legislation. Therefore, certain international agreements are binding law in Bulgaria and the right of indigents to counsel is guaranteed through these agreements. For example, Bulgaria is a signatory to the

International Covenant on Civil and Political Rights, G.A. Res. 2200A(XXI), 21 U.N. GAOR Supp. No. 16 at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171 (1966), ratified by Bulgaria Mar. 23, 1978 [hereinafter “ICCPR”], which provides that a person accused of a criminal offense shall have the right to legal counsel “in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” ICCPR art. 14.3.(d). The country is also a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S No. 5, 213 U.N.T.S. 222 (1950), ratified by Bulgaria July 31, 1992 [hereinafter “CPHRFF”]. Article 6, para. 3(c), of the CPHRFF provides that a person charged with a criminal offense has the right to be given free legal assistance if he/she lacks sufficient means to pay for it and the interests of justice so require. The European Court of Human Rights [hereinafter “ECHR”] has further extended the right of free legal aid to civil matters, where the procedure involved is so complex as to require legal assistance to insure effective access to the courts within the meaning of Article 6, para. 1. *Airey v. Ireland*, 2 Eur.Ct.H.R.Rep. 305 (1979). There is no record that this case has been applied to a Bulgarian citizen, and there is certainly no mechanism in place for offering, or funding, legal counsel in complex civil cases in this country.

In addition, Article 38.(1).1-2 of the ATTORNEYS ACT provides that an attorney “may” provide free legal aid and assistance to persons entitled to support funds or having financial difficulties. The predecessor statute had a similar provision, but used the word “shall” rather than “may”. Attorneys thus have the right, though not the obligation, to perform free legal services for the economically disadvantaged, and may do so without fear of discipline. *Id.* art. 132.5.

Despite the encouragement offered by the ATTORNEYS ACT, there does not appear to be a tradition, or organized delivery system, for *pro bono* representation of economically disadvantaged persons in Bulgaria. The SBC may wish to consider whether it is feasible to establish such a system, together with participation goals or standards for individual attorneys, as a means of addressing the gaps presently existing in the provision of legal services to indigents.

The minimum fee provision of Article 36.(2) can also act as a deterrent to legal services for persons who do not qualify for free legal assistance under Article 38.(1). This is particularly true in some rural areas where the amounts set by the MINIMUM FEE TARIFF are considered expensive. There is, of course, some tension between the objectives of Factor 13 (adequate remuneration for attorneys) and those of this Factor (universal access to legal representation).

It should be noted that Article 36.(4) of the ATTORNEYS ACT has introduced to Bulgaria the concept of a contingency fee, an unusual arrangement by European standards. It is available only in non-criminal cases where a pecuniary interest is involved. This is a positive development that should improve access to legal services for persons suffering tort or contract damages, but unable to pay the going rate for qualified legal representation. Less positively, it appears that even a contingency fee is subject to the Article 36.(2) requirement that it must not be less than that specified in the MINIMUM FEE TARIFF, which limits its usefulness. Potential plaintiffs would probably not benefit from a contingency fee agreement unless some recovery were virtually assured and engaging competent counsel would otherwise have required payment of substantially more than the minimum fee. Perhaps as Bulgarian attorneys become more experienced and comfortable with contingency fees, they may be willing to support legislation that would eliminate the minimum fee provision in such cases.

In the case of civil matters, Article 38.(2) of the ATTORNEYS ACT requires the losing party to pay the fees of an attorney providing free legal services to poor litigants, in an amount set by the court, but not below the MINIMUM FEE TARIFF. See *also*, CIVIL PROCEDURE CODE, art. 64. The chairperson of the court may also waive court fees for indigent persons under Article 63.(1).(b) of the CIVIL PROCEDURE CODE. Attorneys have expressed concern about the magnitude of court fees, particularly as raised by the MOJ not long ago, and this provision offers relief in the narrow circumstances of a financially distressed party. Recent action by the SAC overturned the MOJ’s increase in court fees, SAC Dec. No. 295 (Jan. 16, 2004), but even the reinstated levels can be a barrier to access for many prospective litigants.

In criminal matters, Article 70.(1) of the PENAL PROCEDURE CODE requires the participation of defense counsel where the accused is a minor, is physically or mentally unable to defend himself/herself, is charged with an offense that could result in a sentence of at least 10 years imprisonment, does not speak Bulgarian, has a co-defendant with conflicting interests and his/her own counsel, is absent for the hearing, or “is unable to pay attorney fees, wants to have counsel and the interests of justice so require.” In the cases of non-waivable mandatory counsel, the “respective body” (the investigating magistrate or the judge, depending on the stage) is required to appoint an attorney as defense counsel. *Id.* art. 70.(3). Public defenders must also be appointed in civil matters where the defendant cannot be located. CIVIL PROCEDURE CODE, art. 16.(5). The PENAL PROCEDURE CODE, incidentally, has its own “loser pays” rule, Articles 167 – 170, which would require a defendant found guilty to reimburse the court for his or her public defender fees, among other costs; predictably, poor defendants are usually unable to make payment.

A discussion of the appointment and payment of public defenders is included under Factor 13. Generally, the public defender system in Bulgaria is not viewed very favorably. Judges criticize it because there are often delays in getting a name from the Bar Council and the nominated attorney is not always qualified to handle the matter. (Judges formerly had the right to appoint the public defender without the Bar Council’s designation, but that led to a perception that corruption sometimes played a role in selections, as well as the phenomenon of attorneys sitting around courtrooms hoping to be appointed. The SBC led the effort to place appointments in the hands of Bar Councils.) Attorneys are unhappy because the fees, specified by the court and payable out of the judicial budget, are often set below the amounts specified in the MINIMUM FEE TARIFF and are then delayed in actual payment. For these and other reasons, there is a pilot project in Veliko Turnovo and a draft law under consideration by the MOJ providing for public defenders that would be registered under a national bureau and funded by a separate line item under the state budget.

However, presently, an indigent person is not entitled to have counsel appointed in a civil or administrative proceeding or in a non-litigation counseling situation, and there is no taxpayer funding for such counsel. While the civil litigation “loser pays” rule provides some help, it doesn’t get the disadvantaged party an attorney in the first place and it doesn’t do any good if that party loses. Even in criminal cases, public defenders are not always requested or appointed, and persons interviewed during the LPRI visit estimated that 20 – 30% or more of criminal defendants are tried without legal counsel.

Some legal assistance is provided to indigent persons by legal clinics affiliated with a few law schools, particularly on family law and certain administrative matters. These clinics have been very effective to the extent they are able to offer services, but their overall impact is limited by their numbers and funding. They are not yet fully accepted by law school faculties⁷ or members of the local bar, and are dependent on grants from international donors for their existence and operations. The long term sustainability of legal clinics will depend on their ability to gain access to governmental support and tuition payments, which in turn will require recognition of their substantial contributions to both the state’s interest in offering legal services for the indigent and law schools’ interests in advancing practical legal education. Assistance is also available in selective human rights cases from NGOs such as the Bulgarian Helsinki Committee and the Bulgarian Lawyers for Human Rights Foundation, but those entities have limited resources and of necessity focus on the most egregious cases having precedential potential. They also rely on funding from international supporters.

⁷ Prior to the publication of this assessment, the legal clinic of the Bourgas Free University was formally incorporated into the law school curriculum with students given credit for participation.

Factor 20: Alternative Dispute Resolution

Attorneys advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

Conclusion	Correlation: Neutral
<p>Bulgaria has suitable arbitration laws and tribunals in place, including a long-standing arbitration court which is named in many business agreements between companies, but attorneys differ in their views of <i>ad hoc</i> arbitration and do not regularly advise their clients of that option. Mediation and conciliation are relatively new, and a draft law on mediation (passed in December 2004) had not been enacted and implemented at the time of the LPRI assessment.</p>	

Analysis/Background:

Bulgaria has a long and interesting tradition of arbitration dating back to 1896, when rules were adopted for the predecessor of the Court of Arbitration of the Bulgarian Chamber of Commerce and Industry [hereinafter “BCCI”]. Even during the communist era, the BCCI Arbitration Court functioned as a voluntary venue for private matters and one of the mandatory forums for resolution of contractual and other civil law disputes between economic organizations in Soviet-bloc countries. In 1988, Bulgaria became one of the first nations to enact a statute derived from the U.N. Commission on International Trade Law Model Law on Arbitration, U.N. Doc. No. A/40/17 (1985), available at <http://www.uncitral.org/english/texts/arbitration/ml-arb.htm>, (last visited Nov. 12, 2004). The statute, the Law on International Commercial Arbitration, prom. SG 60 (Aug. 5, 1988), last amended SG 102 (Nov. 1, 2002) [hereinafter “ARBITRATION LAW”], initially applied only when one of the parties was a foreign person or entity, but was later amended to include disputes between Bulgarian citizens and businesses. In 2002, a typical year, the BCCI Arbitration Court resolved 36 international cases and 147 domestic disputes, reportedly more than any arbitration tribunal in neighboring countries. The international cases in 2002 primarily involved European persons and entities, but there were also parties from North America (four), Asia (three) and elsewhere. Bulgaria is a signatory to both the Convention on Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517, 330 U.N.T.S. 3 (1958), and the European Convention on International Commercial Arbitration, 484 U.N.T.S. 364 (1961). Disputes are most commonly referred to the BCCI Arbitration Court pursuant to contractual clauses in business agreements, but some are resolved through *ad hoc* arbitration. In 1999, the tribunal expanded its services to include conciliation in domestic and international disputes of a private law nature. Apart from that recent BCCI initiative, there appears to be little conciliation activity as such taking place, at least formally, in the country. Additionally, the BCCI has recently begun a formal training program for arbitrators and is considering contracting with a French center to prepare new arbitrators. It is also working on an ethical code for arbitrators and conciliators, and its rules already contain certain general standards concerning impartiality, avoidance of conflicts of interest, and confidentiality.

While the BCCI Arbitration Court is the oldest and most widely used tribunal of its nature in the country, there are at least seven others in Sofia and two each in Varna and Plovdiv. One of the Varna arbitration courts focuses on sea disputes.

Arbitration and mediation are also used to resolve collective labor disputes pursuant to the Settlement of Collective Labor Disputes Act [hereinafter “SETTLEMENT OF LABOR DISPUTES ACT”], prom. SG 21 (Mar. 13, 1990), last amended SG 25 (Mar. 16, 2001). Article 4.a of the most recent amendment established a legal entity known as the National Institute for Reconciliation and Arbitration under the Ministry of Labor and Social Policy, based in Sofia, governed by a board having representatives of employer groups, employee organizations and the

state. This Institute did not become operational until 2003, so it lacks a meaningful track record. It is expected to provide valuable mediation and voluntary arbitration services to reduce work stoppages and improve working conditions in the country. European Foundation for the Improvement of Living and Working Conditions, "Bulgaria: Dispute-resolution Mechanism Introduced," at <http://www.eiro.eurofound.eu.int/2004/01/feature/bg0401103f.html>, (last visited Nov. 12, 2004).

Other legislation also addresses alternative dispute resolution [hereinafter "ADR"] in Bulgaria. For example, Article 20 of the recent Law for Public Procurement, prom. SG 28 (Apr. 6, 2004), last amended SG 53 (June 22, 2004), establishes an arbitration court to hear and resolve disputes in this subject area, but it is not (as of the time of this LPRI Assessment) operational. (After the LPRI interviews, the Council of Ministers published a regulation governing its procedures and organizational structure. Regulation for the Arbitration Court at the Public Procurement Agency and Statute for the Arbitration Court at the Public Procurement Agency, Decree No. 259, prom. SG 87 (Nov. 5, 2004)). In addition, Article 365 of the CONTRACTS LAW, addresses settlement agreements in contract disputes. Furthermore, Article 9 of the CIVIL PROCEDURE CODE authorizes voluntary arbitration of property disputes, though it expressly excludes real estate, support matters and labor relations. These exclusions thus limit the jurisdiction of the BCCI Arbitration Court and the other arbitration tribunals in the country.

Perhaps because of its long history, commercial arbitration appears to be well accepted by commercial attorneys and *jurisconsultants*, who routinely include arbitration clauses in their business agreements between companies. The BCCI Arbitration Court is often designated as the forum for arbitration under these clauses, and attorneys seem reasonably satisfied with its procedures and fairness. Foreign clients, however, frequently insist on a tribunal located outside the country in the belief they will be treated more favorably there; the International Chamber of Commerce in Paris and the London Court of International Arbitration are commonly specified.

Ad hoc arbitration seems to have a mixed reception among attorneys, and their views presumably translate into their advice to clients. Some attorneys favor arbitration as a simpler, faster and often cheaper way to resolve the dispute. They note that arbitration is a one-step procedure, compared to the three instances possible through the courts, and offers finality to the parties. An appeal of an arbitration award must be made directly to the SCC, and the award may be set aside only under certain extreme circumstances. ARBITRATION LAW, art. 47. They also believe that arbitrators tend to be more competent and experienced than judges, especially in certain specialized areas. Other attorneys feel more comfortable in court, believing that with three instances their chances of having a fair judge and outcome are increased accordingly. In arbitration, they say one can have a biased arbitrator and be unable to overturn his or her decision; the process resembles a black box or lottery and the process stops there. The courts are more predictable and their decision-making more transparent than an arbitration tribunal. They also note that, with arbitration available only in Sofia, Plovdiv and Varna, resolution of disputes arising elsewhere in the country is more convenient using the local courts. The attorneys favoring arbitration occasionally ascribe less noble motives to their pro-court colleagues, suggesting the latter prefer the court system because it offers more fee-earning opportunities, or because they and their clients like the delays the courts provide, or because they have good relationships with judges. The bottom line seems to be that some, but by no means all, attorneys recommend *ad hoc* arbitration to their clients, and that those who do are predominantly based in Sofia, Plovdiv or Varna.

At the time of the LPRI interviews, the draft version of the MEDIATION LAW was under consideration by the National Assembly and expected to pass.⁸ The new MEDIATION LAW places responsibility for certification and training of mediators and determination of detailed procedures under the auspices of the MOJ. Under the MEDIATION LAW, mediation is an option

⁸ Subsequently, the Law on Mediation was passed by the Parliament on December 2, 2004.

not only in civil disputes, but also in selected criminal cases, with the consent of the victim. Even without formal legislative underpinnings, mediation took place frequently in Bulgaria. The U.S. Agency for International Development (USAID) is actively encouraging and supporting mediation programs around the country. Additionally, the UBJ operates a Center for Mediation in Sofia as part of its activities in support of the legal system, and court-referred mediation is also provided for in appropriate cases by the Bulgarian Association for Alternative Dispute Resolution under a pilot project in Plovdiv.

Some attorneys are wary of mediation, partly because of its relative novelty. Some respondents were also troubled by the fact the new MEDIATION LAW does not require that mediators be lawyers, though one member of the drafting team defended that feature on the ground mediation is a multidisciplinary profession, which involves social work and psychology, as much as law. A few attorneys are afraid that mediators who are attorneys will attempt to steal their clients. These concerns should largely dissipate as the new MEDIATION LAW takes effect, the details are fleshed out by the MOJ, and attorneys become more experienced with the process and outcomes of mediation.

V. Professional Associations

Factor 21: Organizational Governance and Independence

Professional associations of attorneys are self-governing, democratic, and independent from state authorities.

Conclusion	Correlation: POSITIVE
The organized bar is fully self-governing, democratic and independent from state authorities, and other associations that include attorneys appear to be free of governmental interference as well.	

Analysis/Background:

As set out more fully in the Bulgaria Background section of this report and the analysis under Factor 1, the CONSTITUTION provides in Article 134.(1) that the bar shall be “free, independent and self-governing.” The ATTORNEYS ACT puts the necessary structure in place to make this standard a reality. Attorneys belong to Attorneys’ Colleges in their respective districts, and meet in General Assemblies to elect a Bar Council, a Disciplinary Court and a Supervisory Council, as well as the chairpersons of the Bar Council and Disciplinary Court. *Id.* arts. 80 – 85 and 100. Under Article 82 there are provisions for fair notice of the meeting, a quorum, voting in person or by proxy, decisions by a simple majority, and open voting except for the election of Bar Council members which is done by secret ballot. Detailed procedures are spelled out in Articles 99 – 110 to insure that elections are fully free, fair and transparent. One-third of the members of the Attorneys’ College can cause any issue to be added to the meeting agenda and can also cause an extraordinary General Assembly to be convened. *Id.* arts. 81.(3) and 83.(1). The General Assembly also elects delegates to the National General Assembly of Attorneys, with representation proportionate to the number of attorneys in the various Attorneys’ Colleges. *Id.* arts. 82.6 and 112.(1). Any member of the Attorneys’ College is entitled to see the decisions and minutes of the General Assembly, and can appeal any decision to the SBC. *Id.* arts. 84 and 85.

The National General Assembly of Attorneys meets and elects the members and chairpersons of the SBC and the SDC, as well as the members of the SSC, under comparable procedures

described in Articles 111 – 116. Any delegate may challenge the validity of an election by appealing to the SCC.

Any attorney may stand for election to these bodies, subject to certain experience requirements and term limits. Bar Council members must have at least 10 years' record of legal service, unless insufficient qualifying attorneys are in the Attorneys' College; in that case, the minimum experience is five years. *Id.* arts. 86.(3) and (4). The chairperson of the Bar Council must have at least 15 years' experience in the bar, though that is reduced to 10 years if no candidate qualifies. *Id.* art. 91. (The ATTORNEYS ACT counts any legal service for Bar Council and Control Council members at the local level. However, it requires experience at the bar for the members of the national governing bodies as well as for the members of the local disciplinary courts. Similar experience levels (but as attorneys) are imposed on the members and chairpersons of the Disciplinary Courts, *Id.* art. 96). Terms of office run three years, and none of these bar officials may be elected to more than two consecutive terms in the same body. At the national level, members and chairpersons of the three Supreme bodies must have at least 15 years of record service in the bar; they serve four year terms with a maximum of two consecutive terms. *Id.* arts. 114.(2) and 115.(1).

All of the decisions of the local and national bodies, other than the supervisory councils, are required to be made by majority vote under established, fair and open procedures. *Id.* arts. 86 – 88, 119 – 120, 140 and 142.(1). The detailed procedures for supervisory councils in the exercise of their special roles are not prescribed by the ATTORNEYS ACT.

The LPRI assessment did not uncover any evidence or suspicion that these elections and proceedings function any differently in reality than they are supposed to work under the law. There was no indication that the MOJ or any other governmental agency or official has, or has attempted to take, a role in the election and operation of the governing units of the bar. There have been no reported incidents of financial pressure, administrative burdens, physical threats or other interference by the government or its representatives directed at these bodies. Even the judiciary's involvement is minimal, limited to the SCC's hearing appeals of admission decisions, disciplinary cases involving bar officials, actions of the National General Assembly of Attorneys, refusals to register civil law and attorneys' partnerships, and denials of applications by foreign lawyers to act as an attorney in Bulgaria. *Id.* arts. 7.(5), 10.(5), 53.(2), 61.(4) and 130.(2).

As noted in the Bulgaria Background section, under Organizations of Legal Professionals, there are other associations operating in the country. They are not limited to attorneys, and have purposes and activities both different from and narrower than those of traditional bar associations. Those NGOs dependent on international donors for funding obviously face some pressure to meet their benefactors' objectives and standards, but this does not mean that their internal procedures in pursuit of those goals are necessarily undemocratic. Based on the LPRI assessment, it seems fair to say that none of these organizations, even those that regularly challenge the government's human rights practices, appears to face interference or intimidation from the state.

No consideration has been given to the governance and independence of groups that do not include attorneys, such as the various associations of magistrates, notaries and other legal professionals.

Factor 22: Member Services

Professional associations of attorneys actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

Conclusion	Correlation: NEUTRAL
<p>The SBC and local Bar Councils effectively promote the interests of attorneys. Efforts to raise ethical standards and professional qualifications of members have historically been uneven, but new initiatives should produce improvement in both areas.</p>	

Analysis/Background:

The organized bar in Bulgaria provides services to members through the SBC and the 27 local Bar Councils. Under the ATTORNEYS ACT, the duties and powers of the SBC include, among others, internal governance and administrative matters; organization and operation of the training center and CLE programs for attorneys; planning and administration of a bar examination; giving opinions on draft legislation and proposing improvements in existing laws; issuance of the minimum fee tariff; and adoption and enforcement of the Code of Ethics. *Id.* arts. 8, 28, 36, 121 and 122. The SBC has carried out, or is in the process of carrying out, all of these statutory duties to a greater or lesser extent. Acting through its chairperson, the SBC also serves as a strong advocate for the interests of individual attorneys and of the bar as a whole. When attorneys are subjected to improper searches, unfounded accusations by governmental officials or other interference with the exercise of their professional rights, the SBC can be expected to step in and serve as a vigorous advocate for the attorneys involved. It holds periodic national work conferences at which issues of concern to attorneys and the legal system are raised and discussed and strategies are planned.

The SBC played a very active role in the planning, drafting and enactment of the ATTORNEYS ACT, and has also participated in the legislative and administrative processes when other laws or regulations affecting attorneys are under consideration or need improvement. Examples include its recent effort to limit the reach of anti-money laundering legislation, its success in giving attorneys blanket clearance to receive classified information pertaining to their cases, its attempts to change MOJ ORDINANCE 28's limitation on document access to attorneys holding powers of attorney for the parties, and its input on a new MOJ regulation on judicial administration. It has diligently pursued legislation to establish a separate health insurance fund for attorneys, and aided a successful effort to persuade the SAC to overturn the MOJ's recent increase in court fees. The SBC's lobbying led to the transfer of the power to select public defenders from the courts (where there were concerns of improper influence) to the Bar Councils, and it tried without success to persuade the SJC and the Ministry of Finance (MOF) to make public defender fees a separate line item in the judicial budget. It purchased its own building in Sofia, made several interest-free loans to Bar Councils to enable them to purchase their offices, and provided occasional financial assistance to individual attorneys in dire circumstances or suffering serious illnesses. It also maintained active relationships with different international attorney organizations, and provided representatives to participate in a number of regional and European conferences and forums.

The SBC is becoming more involved in the development and improvement of professional standards, but at the time of the LPRI visit most of these efforts were in their planning or early implementation stages. The SBC has worked diligently to put together a bar examination for its first application in December 2004, and this examination should help improve professional standards by filtering out poorly prepared law graduates. The SBC has historically sponsored, or co-sponsored, a number of seminars to improve the professional knowledge and skills of

attorneys, but they have been sporadic and have lacked a systematic approach. The attorneys' training center, which is still in the planning stage, should serve as a useful vehicle for the creation and operation of a comprehensive and regular CLE program for attorneys. The SBC does maintain a highly regarded library for members of the bar, and publishes a monthly newsletter (*Attorneys Review*) containing recent legal developments, including court decisions, and other information of interest to attorneys. Because of its other immediate obligations under the new ATTORNEYS ACT, the SBC does not plan to adopt a Code of Ethics until mid-2005. It will be important, of course, that the new ethical standards be clear and complete and that they be rigorously and fairly enforced.

At the district level, each Bar Council has a number of member service responsibilities under the ATTORNEYS ACT, aside from its roles in the areas of admission, discipline and administration. If an attorney does not receive the appropriate respect or cooperation from a court or administrative body, the Bar Council (upon request of the attorney or on its own motion) is supposed to investigate the matter and, if appropriate, seek disciplinary action against the offending judge or official. *Id.* art. 29 and 30. It is also required to "defend the professional rights, honor and dignity" of the members of its Attorneys' College; to oversee its members in the performance of their duties; to be on the alert for unauthorized practice of law by non-attorneys; to mediate disputes between attorneys and between attorneys and their clients; and to conduct CLE and other activities for its members to improve their professional qualification. *Id.* art. 89.5 – 9, and 11. The Bar Council also has the statutory function of supplying names of attorneys to local courts for service as public defenders. *Id.* art. 44.

As one might expect, the degree of Bar Council activity in these areas varies from district to district, with more member services usually available in the larger cities. In Sofia, for example, there is a substantial (if not well maintained) library and active CLE lecture program for attorneys. Smaller or more remote Attorneys' Colleges often lack both, or if a library exists it may contain only a few newsletters and laws and they may be out of date. As a general rule, the Bar Councils do appear to intervene when requested on behalf of members whose rights are violated or abused by court or governmental officials.

ABA/CEELI has a Model Local Bar Council [hereinafter "MLBC"] program in Bulgaria that monitors and supports the activities of the Bar Councils for six Attorneys' Colleges of different sizes and regions. As part of this program, ABA/CEELI developed a list of 15 questions covering different areas of advocacy and promotion of the interests of attorneys and provision of technical assistance to members. In its initial survey, it found that most of the selected Bar Councils organize meetings with heads of courts, prosecutors and other institutions to promote the rights and interests of attorneys; some, but not all, maintain cooperative relationships with other lawyer groups such as the UBJ, BLHRF and local law faculties; most provide input (typically through the SBC) on existing and proposed legislation affecting attorneys; only one offered opinions, again via the SBC, on draft normative acts that do not directly affect attorneys; most keep lists of attorneys interested in serving as public defenders; most monitor unauthorized practice, though they found detection and prevention difficult; none organizes public awareness campaigns concerning the rights of citizens and the role of attorneys in defending them; almost all say they mediate disputes between attorneys or between attorneys and their clients (though one felt it was not the right of the Bar Council to evaluate the quality of services performed by attorneys); none did anything to develop professional standards (believing that to be the responsibility of the SBC); half maintain libraries of various descriptions; all have subscriptions to one or two electronic legal databases that are made available to members; all have computers, printers and office equipment for attorney use (in at least some cases, these items were supplied by ABA/CEELI as part of the MLBC program so this situation may not be applicable to all Bar Councils); all organize or co-sponsor seminars on an *ad hoc* basis; and one or two organize excursions and vacations for members, while another reportedly owns a recreational center for free use by attorneys. As a general matter, it would be reasonable to assume that this mix of Bar Council involvement is fairly representative of Bar Councils as a whole. ABA/CEELI plans to use the MLBC program to establish standards and suggest activities for consideration by all Bar Councils.

Both the SBC and the local Bar Councils are funded by attorney entrance fees and monthly membership dues. Some Bar Councils believe their financial support is inadequate, at least for some of the services (such as international exchange programs and some CLE activities) they would like to provide. The general view among attorneys, however, seems to be that funding is sufficient and possibly excessive for the extent of services historically offered to members. As the ambitious plans of the SBC and mandates of the ATTORNEYS ACT are carried out, members should see a significant upgrade in services available to them. This upgrade may carry with it additional charges, at least in the form of user fees.

As pointed out elsewhere, the UBJ, a voluntary organization of all components of the legal profession and not just attorneys, also provides services to its members. These services include publication of two magazines on legal topics, sponsorship of occasional seminars, and legislative activity in areas affecting the legal profession as a whole.

Factor 23: Public Interest and Awareness Programs

Professional associations of attorneys support programs that educate and inform the public about its duties and rights under the law, as well as the attorney's role in assisting the public in defending such rights.

Conclusion	Correlation: NEGATIVE
While certain human rights groups and their attorneys engage in public awareness campaigns, the organized bar as such does not do so.	

Analysis/Background:

There is nothing in the ATTORNEYS ACT that makes public education and awareness the explicit responsibility of the SBC or the local Bar Councils. However, it could be implied with respect to Bar Councils under their duties to defend the rights of members, watch out for unauthorized practice, and “organize public defense”. *Id.* arts. 89.5, 8 and 15. To the extent that public awareness includes enlightenment about the role of attorneys in protecting and asserting the rights of citizens, it could also be viewed as promoting the use of legal services and thus advancing the interests of attorneys.

In any event, neither the SBC, nor any of the local Bar Councils, engages in campaigns or other activities to increase the awareness among citizens of their freedoms, or educate them on the role of lawyers in defending them. The SBC, which is presently occupied with other urgent matters, believes that this is what attorneys throughout the nation do every day as they represent their clients. It also believes public education is unnecessary, since citizens are already fully knowledgeable of their rights. Decisions of the ECHR involving Bulgaria are promptly and widely publicized in the mass media, and both the BHC and the BLHRF are very active at informing the public about their rights. These groups not only bring the lawsuits that generate media attention but also hold frequent seminars, give lectures, write articles, provide media interviews, hand out brochures and publish newsletters on these topics. Still, the BHC and BLHRF are by no means equivalent to the organized bar, and in fact their educational efforts could lead the public to believe that defending rights is something done by these two groups, not attorneys generally.

Principle 4 of the UN PRINCIPLES states that “[g]overnments and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.” If the Supreme Bar

Council and its local counterparts were to initiate active outreach campaigns of this nature, as their schedules permit, they would improve the state of civil liberties in Bulgaria and promote the reputation, importance and potentially the economic level of the bar.

Factor 24: Role in Law Reform

Professional associations of attorneys are actively involved in the country's law reform process.

Conclusion	Correlation: NEUTRAL
The SBC is active and effective in law reform efforts that impact attorneys directly or indirectly, but needs to become involved in reform of normative laws affecting the public generally.	

Analysis/Background:

Article 122.(1).11 of the ATTORNEYS ACT states that the SBC shall “give opinions on draft legislation and prepare proposals aiming at the improvement of the legislation in force.” In addition, Article 122.(1).12 obligates the SBC to propose to the SCC and SAC chairpersons “the adoption of interpretative decisions” and provide opinions on them. The Judicial System Act, prom. SG 59 (July 22, 1994), last amended SG 70 (Aug. 10, 2004) further provides for the participation of the chairperson or another member of the SBC in the general meetings of the judicial college of the SCC, *Id.* art. 85.(4) and the general meetings of the judges of the SAC, *Id.* art. 96.(2) to express opinions on interpretative decisions.

The SBC thus has the authority and the responsibility to take an active part in the drafting and interpretation of legislation in furtherance of the law reform process. From all indications, it has been very active in this area. Certainly, its principal and most obvious legislative initiative over the past few years was the ATTORNEYS ACT. In pursuit of that landmark statute, the chairperson organized and monitored working groups that studied and drafted sections of the proposed law, arranged for its sponsorship and introduction in the National Assembly, testified and lobbied actively before that body, and saw it through to passage. As noted under Factor 22, the SBC was also directly involved in the effort to limit the reach of the anti-money laundering law, the opposition to the MOJ’s attempt to increase court fees, the amendment to the law protecting classified information to allow attorneys access to relevant classified documents, the draft law on mediation’ and the MOJ regulation on judicial administration. It also monitors and makes recommendations on other laws and regulations affecting the attorney profession or the legal and judicial systems, such as the taxation and social security laws relating to practicing attorneys, the health insurance fund, the PENAL PROCEDURE CODE and the CIVIL PROCEDURE CODE.

One area where the SBC is not active, but aspires to be once its immediate tasks are completed, is the drafting and reform of normative legislation that affects the public as a whole, rather than the bar or the legal and judicial systems. These would include such topics as labor, environmental, education, housing, family, taxation, business and commercial laws, among many others. Expansion of its legislative activity into these areas would probably be facilitated by organizing sections or committees within the bar that correspond to the different substantive areas and consist of attorneys who have established their interest and competence in those areas. These volunteer groups would have the knowledge and experience to propose, discuss and recommend reforms in their respective specialties. Their activities and recommendations should be coordinated and approved by the SBC to insure they are compatible with each other and with the interests of the profession.



Other groups of legal professionals are also involved in law reform efforts. Again, they tend to be confined to topics of particular interest to their purposes and memberships. In the case of the BHC and BLHRF the focus is on human rights and in the case of the UBJ legal and judicial systems.

List of Acronyms

ABA/CEELI:	The American Bar Association's Central European and Eurasian Law Initiative
ADR:	Alternative Dispute Resolution
BCCI:	Bulgarian Chamber of Commerce and Industry
BHC:	Bulgarian Helsinki Committee
BJA:	Bulgarian Judges Association
BLHRF:	Bulgarian Lawyers for Human Rights Foundation
BPA:	Bulgarian Prosecutors Association
CCBE:	Council of the Bars and Law Societies of the European Community
CIB:	Chamber of the Investigators of Bulgaria
CLE:	Continuing Legal Education
COE:	Council of Europe
ECHR:	European Court of Human Rights
JRI:	Judicial Reform Index
LPRI:	Legal Profession Reform Index
MLBC:	Model Local Bar Councils
MOES:	Ministry of Education and Science
MOF:	Ministry of Finance
MOI:	Ministry of the Interior
MOJ:	Ministry of Justice
NAAA:	National Agency for Assessment and Accreditation
NGO:	Non-governmental Organization
NUBP:	National Union of Bulgarian Prosecutors
SAC:	Supreme Administrative Court
SBC:	Supreme Bar Council
SDC:	Supreme Disciplinary Court
SCC:	Supreme Court of Cassation
SG:	State Gazette (number)
SJC:	Supreme Judicial Council
SSC:	Supreme Supervisory Council
UBJ:	Union of Bulgarian Jurists