



JUDICIAL REFORM INDEX

FOR

ROMANIA

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TABLE OF CONTENTS

Introduction	i
Romania Background	
Legal Context.....	1
History of the Judiciary	1
Structure of the Courts	1
Conditions of Service	3
<i>Qualifications</i>	3
<i>Appointment and Tenure</i>	3
<i>Training</i>	3
Assessment Team	3
Romania Judicial Reform Index (JRI) 2002 Analysis	4
Table of Factor Correlations	4
I. Quality, Education, and Diversity	5
1. Judicial Qualification and Preparation	5
2. Selection/Appointment Process.....	6
3. Continuing Legal Education.....	9
4. Minority and Gender Representation	10
II. Judicial Powers	11
5. Judicial Review of Legislation.....	11
6. Judicial Oversight of Administrative Practice	12
7. Judicial Jurisdiction over Civil Liberties	12
8. System of Appellate Review.....	13
9. Contempt/Subpoena/Enforcement	15
III. Financial Resources	16
10. Budgetary Input	16
11. Adequacy of Judicial Salaries.....	17
12. Judicial Buildings	19
13. Judicial Security.....	19
IV. Structural Safeguards	20
14. Guaranteed Tenure	20
15. Objective Judicial Advancement Criteria	21
16. Judicial Immunity for Official Actions	22
17. Removal and Discipline of Judges	22
18. Case Assignment	24
19. Judicial Associations	24

V.	Accountability and Transparency	25
20.	Judicial Decisions and Improper Influence	25
21.	Code of Ethics	27
22.	Judicial Conduct Complaint Process	28
23.	Public and Media Access to Proceedings	29
24.	Publication of Judicial Decisions	30
25.	Maintenance of Trial Records.....	30
VI.	Efficiency	31
26.	Court Support Staff	31
27.	Judicial Positions	32
28.	Case Filing and Tracking Systems	35
29.	Computers and Office Equipment	35
30.	Distribution and Indexing of Current Law	36



Introduction

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

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

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

Assessing Reform Efforts

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

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

Id. at 615.

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

The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By



including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

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

ABA/CEELI's Methodology

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

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

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

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral." *Cf.* Cohen, *The Chinese Communist Party and 'Judicial Independence': 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from "a completely unfettered judiciary to one that is completely subservient"). Again,



as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

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

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

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

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Romania Background

Legal Context

The Romanian legal system has a basis in the Napoleonic Code and other French models. Romanian is a Romance language, and Romania has had long-standing cultural ties to France that have carried over to the legal sphere. French influences are evident in the constitution and the civil, civil procedure, criminal, and criminal procedure codes. In addition, Romania has adopted the French model of judicial qualification and training, establishing a national school of magistrates.

Romania has a population of approximately 22.5 million, making it the second largest country after Poland, among the new democracies in Central Europe. Administratively, the country is divided into forty-one counties (*judets*) and the Municipality of Bucharest, which is the capital and largest city, with a population of two million.

History of the Judiciary

The modern Romanian judiciary originated in the middle of the nineteenth century. Its development was contemporary with the enactment of the modern civil, criminal, civil procedure and criminal procedure codes. The structure of the judiciary follows the French model, with the Ministry of Justice playing a significant role in the administration of the judiciary.

Structure of the Courts

Romania's judiciary operates on four tiers: local courts (*judicatorii*), county courts (tribunals), courts of appeal, and the Supreme Court. In addition to these primary courts, there are also three specialized courts: the Constitutional Court, the Court of Accounts, and military courts. All judges and prosecutors in the general court system are considered "magistrates" and are members of the "magistracy." The Law on Judicial Organization provides the statutory framework for the lower courts, while the Supreme Court, the Constitutional Court, the Court of Accounts, and the military courts are governed by separate legislation.

1. *Judicatorii*

The *judicatorii*, sitting in panels of one, hear low-level criminal and civil cases. Most cases that originate in the *judicatorii*, have an intermediate appeal (*apel*) in the tribunal, and a final appeal (*recurs*) in the courts of appeal. These cases typically involve divorce, separation of goods, property claims, and relatively minor crimes. There are over 2,000 *judicatorii* judges based in 186 courts in cities and towns across Romania.

2. Tribunals

The tribunals hear appeals (*de novo*) from the *judicatorii* and act as a court of first instance for administrative and commercial law cases, including bankruptcies and the more important civil and criminal cases. The tribunals sit in panels of one (if acting as a first instance court) or two or three (if acting as an appellate court). Unlike the *judicatorii*, the tribunals are divided into specialized sections for criminal, civil, commercial, and administrative law cases. Bankruptcy cases are heard by a subset of specialized judges within the commercial section who are called *Sindics*. A tribunal judge must have four years of experience as a magistrate before being appointed to this level. There are over 900 tribunal judges working in courts located in each of Romania's forty-one *judets* and the Municipality of Bucharest. The tribunals also have overall responsibility for preparing budget requests for submission to the Ministry of Justice (MOJ) for all



of the courts, including the court of appeal, within their geographic jurisdiction. Each tribunal has an economic directorate that supports this function.

3. Courts of Appeal

Unlike the other lower courts, the courts of appeal did not exist until the Law on Judicial Organization went into effect in 1993. These courts are divided into four specialized sections, which usually sit in panels of three. They act as courts of first instance for serious criminal and civil matters, and hear appeals from the tribunals. They are also the court of last appeal for cases that originate in the *judicatorii*, as well as for bankruptcies. An individual must have six years experience as a magistrate to be appointed to the courts of appeal. There are approximately 460 courts of appeal judges nationwide in fifteen locations covering two to three *judets* each.

4. The Supreme Court

The Supreme Court is the court of last resort in Romania, hearing appeals from the courts of appeal and certain other cases such as appeals from the military courts and nullification petitions. It also has some first instance jurisdiction for cases in which high-level officials are charged with serious crimes. As with the other courts, the Supreme Court is divided into five specialized sections. It usually sits in panels of three, although for some matters it sits in panels of nine or in plenary. A judge must have twelve years experience to be appointed to the Supreme Court. There are now 106 Supreme Court justices. The Supreme Court has its own line item in the national budget, and it is self-managing.

5. The Constitutional Court

The Constitutional Court is responsible for reviewing whether Parliament has passed laws in accordance with the constitution. It is also charged with supervising the procedures for electing the President and conducting national referenda, overseeing the suspension and impeachment of the President, and deciding on the constitutionality of a political party. The Constitutional Court has nine members, each of whom are appointed (three by the President, three by the Senate, and three by the Chamber of Deputies) for terms of nine years and cannot be re-appointed. The composition of the Constitutional Court is renewed by one third every three years, and each of the qualified public authorities designates an appointee. One must have eighteen years of legal experience to be eligible to be appointed to the Constitutional Court. The Constitutional Court has its own line item in the national budget, and it is self-managing.

6. The Court of Accounts

The Court of Accounts is a special, one level court, charged with ensuring that government funds are spent properly. Appeals from the Court of Accounts are heard first by the courts of appeal and then by the Supreme Court.

7. Military Courts

The Romanian judiciary includes a separate system of military courts that have structural analogues to the regular court system (*i.e.*, military tribunals, equivalent to the civil *judicatorii*, military territorial tribunals, corresponding to the civil tribunals and military courts of appeal, corresponding to the courts of appeal), which hear any matter involving military personnel. Because the police are considered a part of the military, cases involving police brutality are heard in the military courts. The court having first instance jurisdiction will depend on the rank of the officer charged. Cases that begin in the military tribunal have their final appeal with the military court of appeal. Cases that begin at higher levels may be appealed to the criminal section of the Supreme Court. Budgetary and management issues for the military courts are handled by the Ministry of Defense.



8. Governance

The Ministry of Justice administers the lower courts, overseeing budgetary and personnel matters. The Supreme Court and Constitutional Court are largely self-managing.

Created in 1993, the **Superior Council of the Magistracy (SCM)** is responsible for recommending appointments to the judiciary and the procuracy. It also serves as a disciplinary council for judges, but not for prosecutors.

Although voluntary judges' associations do exist, the Romanian judiciary does not include any self-governing body such as a judicial council composed exclusively of judges.

Conditions of Service

Qualifications

In order to become a judge in Romania, an individual must meet certain minimum criteria. These include being a resident and a citizen only of Romania, holding a law degree, having a good reputation and no criminal record, speaking Romanian, and being physically and mentally able to hold office. Individuals applying to become members of the judiciary directly from university must also be graduates of the **National Institute for Magistrates (NIM)** or pass the Magistrates' Entrance Exam.

Constitutional and Supreme Court judges must meet the minimum criteria and also have respectively eighteen and twelve years of experience.

Appointment and Tenure

The Minister of Justice appoints probationary (trainee) judges. Once these judges have completed their training and passed a final qualification examination, they may be appointed to full judgeships by the President of Romania on the recommendation of the SCM.

Judicial tenure varies among the different types and levels of courts. *Judecatorii* and tribunal judges are appointed to serve until they reach the age of sixty-five. Courts of appeal judges may serve terms that run up until they reach the age of sixty-eight. Supreme Court judges serve six-year terms. Constitutional Court judges serve nine-year terms.

Training

Individuals entering the bench directly from university must attend and graduate from the National Institute of Magistrates prior to beginning service. Practitioners with five years experience may be appointed directly to the bench without undergoing any additional training.

Assessment Team

The Romania JRI Assessment Team consisted of Mark K. Dietrich, a former CEELI liaison to Romania (1993 – 94), and also included CEELI's two current staff attorneys, Luminita Nicolae and Ion Georgescu. The conclusions and analysis are based on interviews that were conducted in Romania in October 2001, as well as information that Mr. Dietrich gathered when he was in Romania as a member of a World Bank legal assessment team in April – May 2001. The report was updated as of May 2002 to reflect significant legal developments since the main review in October 2001. ABA-CEELI Washington staff members Scott Carlson, Angela Conway, and Amanda Gilman served as editors. Records of the interviews conducted and of the documents reviewed are on file with ABA/CEELI.



Romania JRI 2002 Analysis

The Romanian JRI 2002 analysis reflects that Romania, since the end of the communist era in 1989, has taken some important steps towards building a more independent and accountable judiciary. However, serious problems remain including the ability of executive power to interfere in judicial management and decision-making, a paucity of resources allocated to the judiciary, a perception of widespread judicial corruption, and the failure of the court system to efficiently handle its ever increasing caseload. While the factor correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

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



I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

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

Conclusion	Correlation: Neutral
<p>All judges in Romania have formal university level legal training. Law graduates who pursue a judicial career directly after their undergraduate studies (and therefore do not have any experience practicing before the courts) must attend the National Institute of Magistrates for two years. At the NIM, students receive additional training concerning important aspects of substantive and procedural law, but there is little emphasis on the role of the judge in society, cultural sensitivity, or judging skills generally. Lawyers who have at least five years experience may be appointed directly to the bench without undergoing any additional training.</p>	

Analysis/Background:

All judges and candidates for the judiciary in Romania must be graduates of Romania’s law school faculties. LAW ON JUDICIAL ORGANIZATION, No. 92 of 1992, O.G. 197/1992 and O.G. 259/1997 art. 46 [hereinafter LAW ON JUDICIAL ORGANIZATION]. As in most civil law countries, the basic law degree is awarded after four years of undergraduate level coursework, which covers basic topics such as criminal law and procedure, civil law and procedure, etc. There is no specialized training for those students considering careers as judges. Again, as in many civil law countries, this means that many judges are quite young, making their education and training even more important.

Candidates to the judiciary do not need to have any experience as practitioners before the courts, and in fact, because most elect to follow a judicial career immediately after law school, most do not. Those who do follow the judicial track after law school must attend the NIM before receiving their full appointment to the bench or pass an entrance exam (discussed below). *Id.*

Through 2000, when the NIM introduced a two-year program, the NIM’s curriculum covered only nine months. The first year of the new curriculum is spent in the classroom. The classroom training is structured around the review of actual case files from the courts. During the second year of the program, judges are assigned to courts around the country. ABA-CEELI, Judicial Reform Index Interview in Romania (Oct. 2001) [hereinafter JRI Interview].

The current curriculum includes courses in constitutional law, civil law and procedure, criminal law and procedure, administrative law and finance, commercial law, human rights, ethics, judicial psychology, family law, labor law, environmental law, intellectual property, consumer rights, computer skills, and foreign languages. The curriculum does not include specific courses on the role of the judge in society, cultural sensitivity, court management, writing, relations with the media, or judicial demeanor, although some of these topics are covered in the substantive courses, as well as in the second year, spent working in the courts.

The NIM has received substantial support from the donor community, including EU/Phare, ABA/CEELI, and others. EU/Phare provided courses on various European Law topics and funding to furnish the NIM’s new premises. Students have also received training on European Law and the European Convention on Human Rights through a program with the Netherlands



Helsinki Committee and the Dutch Judicial Training Center. Other foreign lawyers have also provided ad hoc training on a variety of issues. The NIM is also supported through the state budget.

Judges may also be appointed directly from the ranks of the legal profession. In order to qualify, these individuals must have at least five years of legal experience. They do not receive additional training of any kind before they assume their duties. LAW ON JUDICIAL ORGANIZATION art. 65. As the established judicial training facility, it would be logical and appropriate for the NIM to create a mandatory short and intensive training program for these new judges, which would update them on new developments in the law and educate them on basic judging skills.

Whether the judges are well qualified is another issue. Indeed, one of the frequent complaints made by lawyers concerning the Romanian judiciary is that the judges are too young and lacking in life and professional experience. Others counter that the young judges study modern commercial law and human rights issues in school and have a better understanding of cases in these areas.

Factor 2: Selection/Appointment Process

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

Conclusion	Correlation: Neutral
Judges who are appointed after their graduation from the NIM must pass an examination that is objectively administered. However, law graduates who have at least five years of practical experience may be appointed to the bench without passing any qualification examination or undergoing any vetting regarding their professional skills and reputation. Political and personal connections reportedly play an important role in the appointment of such judges.	

Analysis/Background:

The President of Romania appoints the judges of the basic court system on the recommendation of the Superior Council of the Magistracy.

To be eligible for appointment to the magistracy, a person must be a resident and a citizen only of Romania, hold a law degree, have no criminal record, have a good reputation, speak the Romanian language, and be physically and mentally able to hold office. *Id.* art. 46.

Assuming that the judicial candidate meets these basic requirements, there are three ways of entering the magistracy: by graduating from the NIM and passing a required examination; by serving, after passing an examination, a two-year probationary period in a *judecatorie* and then passing a final qualification examination (this method is not currently being used); or by being a lawyer with at least five years experience (in which case passage of an examination is not required). *Id.* arts. 46, 65. These means of access to the magistracy are described in more detail below.

a) Appointment through the NIM

According to the Law on Judicial Organization, the NIM “[i]s the main way of recruiting magistrates.” *Id.* art. 76. Admission to the NIM is based on an examination organized by a

board of examiners, as approved by the Minister of Justice. Admission to the NIM is reportedly competitive, with more than twenty applicants per slot. Starting in 2001, admission standards include the requirement of a high graduation mark from the law faculty (at least 8.50). The NIM had seventy-two students in 1997, 101 in 1998, and 109 in 1999. As of October 2001, there were 146 students enrolled at the NIM, of whom about 40 will become prosecutors and 100 judges, and of whom 90 are in the one year program and 56 who are attending the new two-year curriculum. Students at the NIM receive a stipend from the state while they are attending the NIM. *Id.* art. 78.

At the conclusion of their studies, the students sit for an examination before a joint board of examiners made up of three members of the NIM's training staff and three magistrates appointed by the Minister of Justice. *Id.* art. 82; JRI Interview. Graduates of the NIM who pass the examination are then appointed as probationary magistrates by the Minister of Justice. Students who have attended the NIM for up to eighteen months may take the final qualification examination to become full magistrates after a six-month probationary period. LAW ON JUDICIAL ORGANIZATION art. 83 AS MODIFIED BY EMERGENCY ORDINANCE ON AMENDING AND SUPPLEMENTING OF THE LAW NO. 92/1992 ON JUDICIAL ORGANIZATION, No. 179, NOV. 11, 1999, art. 32 [hereinafter LAW ON JUDICIAL ORGANIZATION AMENDMENTS]. Probationary judges who have attended the NIM for over eighteen months may take the final qualification examination immediately. NIM graduates agree to serve as judges for five years.

b) Provisional Appointment to the *Judecatorii*

Although this method is not currently in use, the law also provides that law graduates who have not attended the NIM may be appointed to the *judecatorii* on a provisional basis after passage of a preliminary examination and then receive full tenure after a two-year probationary period. During the first six months of their probation, these judges can perform only limited functions, after which they must take an oral examination organized by a board of examiners appointed by the president of the court of appeal having jurisdiction over their court. After that examination, the president of the court of appeal recommends to the Minister of Justice and the president of the *judecatorie* whether the probationary judge may participate in full trial activities. The Minister of Justice may order a probationary judge removed from office if he or she has failed this examination twice. LAW ON JUDICIAL ORGANIZATION arts. 51 – 55.

At the conclusion of the two-year probationary period, judges must sit for a final qualification examination, organized by the MOJ each year. The board of examiners is composed of two members of the Supreme Court, two representatives of the General Prosecutor, two professors from an accredited law faculty, and a representative of the MOJ. The examination is both oral and written, based on rules approved by the Minister of Justice as proposed by the SCM. The SCM is ultimately responsible for certifying the results of the examination. *Id.* arts. 58 – 62. A candidate who has passed the examination, but whose nomination is not forwarded to the President of the country by the SCM, may appeal the matter to the Supreme Court. *Id.* art. 64.

c) Direct Appointment

Lawyers, notaries, and certain other legal professionals may be appointed to the *judecatorii* without attending the NIM or taking a qualification examination if they have been working in their profession for at least five years. *Id.* art. 65. More experienced legal professionals may likewise be appointed to higher courts without passing an examination. *Id.* art. 67.

According to the SCM's annual report, between July 2000 and June 2001, 45 judges were appointed through the direct appointment method. Some view this method as susceptible to misuse because it does not provide for a transparent process for vetting candidates. Reportedly, under this method, the Minister of Justice may recommend a single individual, rather than a slate of candidates, to the SCM in response to an opening. The SCM reportedly receives the names of candidates for appointment on the same day that it interviews the



candidates and meets to make a decision. It therefore does not really have a meaningful opportunity to investigate the professional background of the recommended candidate. JRI Interview. This violates the rules of the SCM, which call for it to receive relevant documentation fifteen days in advance of its meetings. The MOJ reports, on the other hand, that recently the SCM has delayed decisions on some candidates in order to make its own investigations. It is worth underscoring that the Minister of Justice proposes the candidates, and that, although he or she may not vote on the nomination, the Minister remains present throughout the discussion and the voting, which is open. No parliamentary commission plays a role in considering the suitability of such candidates, and the candidates' names are not publicly released until appointment is confirmed by the SCM, which meets in secret. As long as those who seek appointment to the judiciary through this method are not required to pass an objective and stringent qualification examination and/or undergo some form of public vetting, there will remain substantial potential for abuse in this method of appointment.

Appointment to the Constitutional Court is a more openly political process, as is customary for the position. The Constitutional Court has nine members, each of whom are appointed for terms of nine years and cannot be re-appointed. Three judges are appointed by the President, three by the Senate, and three by the Chamber of Deputies. The composition of the Constitutional Court is renewed by one-third every three years, and each of the qualified public authorities designates an appointee. CONSTITUTION OF ROMANIA, O.G. 233/1991 art. 140 [hereinafter CONST.] In order to be appointed, one clearly needs to have a political connection to Parliament or the President. As in other civil law countries, however, it is also important to have strong academic credentials, and many of the members of the Constitutional Court sit on the faculty of the University of Bucharest Law School. Of the four members appointed in 2001, however, none teach at the University of Bucharest Law School (although some have other academic credentials), and all had strong political connections to the dominant political party. As a result, there was public concern about the integrity of the appointment process in a few specific cases. The process for presidential appointments is devoid of transparency, public debate, or professional vetting. In contrast, parliamentary nominees are discussed by the legal committees of the two houses, which issue reports on their findings. However, the parliamentary votes on the candidates are secret.

Appointment to the Court of Accounts is also largely political. Judges are appointed by Parliament to six-year terms upon the recommendation of the budget and finance committees of both houses of Parliament. LAW ON THE ORGANIZATION AND OPERATION OF THE COURT OF ACCOUNTS, No. 94 of 1992, O.G. 224/1992, and O.G. 116/2000 art. 104 [hereinafter LAW ON THE COURT OF ACCOUNTS].

As mentioned above, the SCM does have a significant role in the appointment process. It also serves as a disciplinary council for judges. The composition of the SCM is anticipated to change under a recently passed ordinance. It calls for an increase in the number of SCM positions from fifteen to seventeen and for the SCM to be composed as follows: three judges from the Supreme Court, six judges from the courts of appeals, two judges from the tribunals, two prosecutors from the General Prosecutor's office, three prosecutors from the prosecutor's offices attached to courts of appeals, and one prosecutor from the prosecutor's offices attached to tribunals, all nominated by the magistrates themselves and then appointed by Parliament to a four-year term. The magistrates themselves nominate the candidates for appointment to the SCM at general assemblies of judges. Currently several of the allotted SCM positions are vacant. The President of the Supreme Court presides over meetings when the SCM is sitting as a judicial disciplinary authority. Meetings of the SCM regarding appointments, promotions, and transfers are presided over by the Minister of Justice, who does not have the right to vote. See LAW ON JUDICIAL ORGANIZATION art. 87; GOVERNMENT EMERGENCY ORDINANCE ON AMENDING AND SUPPLEMENTING THE LAW NO. 92/1992 ON JUDICIAL ORGANIZATION, NO. 20 OF 2002, O.G. 151/2002. Some judges complain that the SCM is insufficiently independent from the MOJ because it can only react to recommendations by the Minister of Justice and because the Minister controls the agenda and can dominate the proceedings.

In addition, one judge pointed out that nominations to the SCM are based on the recommendations of the presidents of courts which results, accordingly, in the nomination of higher level judges; it would seem preferable for the SCM to include a broader diversity of judges amongst its membership.

Factor 3: Continuing Legal Education

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

Conclusion	Correlation: Neutral
Although Romania has made some progress in instituting a program of continuing legal education for judges, it has not become sufficiently standardized, and it remains largely reliant on donor community support for its implementation.	

Analysis/Background:

The Law on Judicial Organization provides that magistrates must attend training programs every five years at the NIM, at other domestic or foreign academic institutions, or as organized by the courts of appeal. LAW ON JUDICIAL ORGANIZATION art. 119. Despite this legislative mandate, continuing legal education (CLE) for judges in Romania is currently in an unclear and transitional phase. In previous years, the MOJ organized training sessions for sitting judges, which were criticized for not being professionally prepared and not sufficiently addressing the needs of judges. In 2000, responsibility for conducting CLE programs was supposedly transferred to the NIM, although the training department of the MOJ still exists and conducts periodic trainings. It is unclear whether the NIM or the MOJ training department is in fact responsible for CLE for judges. However, both the NIM and the MOJ training department reported that they have insufficient funds to conduct such trainings, and they must rely on donor support.

In 2001, the NIM and the MOJ—with the support of the donor community—organized about 20 programs, each of which trained approximately 30 judges, meaning that 600 out of Romania's approximately 3,500 judges received some form of continuing training. The topics were selected based on a questionnaire distributed to the courts of appeal, the tribunals, and the *judicatorii*. Topics selected included: modifications to the code of civil procedure, judicial arbitration, narcotics trafficking, trafficking of women, organized crime, economic crime, corruption, family violence, leasing contracts, franchising contracts, bankruptcy, international adoption, environmental law, human rights, and European Union law. In addition, some local courts have held ad hoc training sessions, and some of the local associations of judges also conduct their own training programs, with the support of the donor community.

The importance of CLE for judges was underscored by one judge who noted that the courts usually receive no preparation for the implementation of new laws. In other words, in some circumstances a new law may go into effect on a Friday, and a judge may be called to apply it the following Monday. There is no effort to gradually introduce the laws or prepare judges to enforce them, resulting, at best, in the uneven application of new legislation.



Factor 4: Minority and Gender Representation

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

Conclusion

Correlation: Neutral

Although hard statistics are not available, Romania's ethnic minorities are apparently under-represented in the judiciary. Although women make up more than fifty percent of the judiciary, there is some evidence to suggest that they are proportionally under-represented in leadership positions.

Analysis/Background:

Romania has significant numbers of Hungarian and Roma ethnic minorities. Hungarians, largely located in Transylvania, make up 7.1% of the population, and Roma make up an estimated 1.8%. CENTRAL INTELLIGENCE AGENCY, *Romania*, in THE WORLD FACT BOOK (2001). Several interviewees indicated that ethnic Hungarians are well-represented in the judiciary and that the level of ethnicity within the judiciary was not a serious concern. No statistical data is available, but anecdotal information suggests otherwise. None of the individuals interviewed for this project, for example, could identify a single person of Roma ethnicity in the judiciary. Likewise, none of the presidents of the fifteen courts of appeal is an ethnic Hungarian. Only one of one hundred persons admitted to the NIM in 2000 was an ethnic Hungarian, and none was Roma. One of the nine members of the Constitutional Court is an ethnic Hungarian.

The following chart, reflecting statistics provided by the MOJ in 2001, shows the number of men and women in the judiciary in Romania at that time:

	Men	Women	Total
Courts of Appeal	172	290	462
Tribunal	304	671	975
Judecatorii	600	1,400	2000
Probationary Judges	51	84	135

JRI Interview

Clearly, women outnumber men in the Romanian judiciary. However, according to a report issued by the International Helsinki Foundation, women occupied only forty-four percent of the leadership positions of the judiciary in 1999. HELSINKI FOUNDATION, *WOMEN 2000: AN INVESTIGATION INTO THE STATUS OF WOMEN'S RIGHTS IN THE FORMER SOVIET UNION AND CENTRAL AND SOUTH-EASTERN EUROPE* 359 (2000). The relative absence of women in leadership positions is supported by other anecdotal evidence. Although the Supreme Court is approximately sixty percent female, its president is a man. In 2001, four of the fifteen court of appeal presidents were women (by May 2002, this had increased to eight). There are no female members of the Constitutional Court. On the other hand, the General Secretary (head) of the SCM from 1997 – 2001 was a woman, although there was only one other woman among the SCM's fifteen members. Many women do have the position of president of individual court sections. JRI Interview.



II. Judicial Powers

Factor 5: Judicial Review of Legislation

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

Conclusion	Correlation: Neutral
<p>The Romanian Constitutional Court decides on the ultimate constitutionality of legislation, although its decisions may be reversed by a two-thirds vote of Parliament. Parliament has not exercised this power, and Constitutional Court decisions are generally enforced. However, the Supreme Court has issued at least one decision that ran counter to a Constitutional Court opinion, thereby obscuring lines of authority in the judicial system.</p>	

Analysis/Background:

The Constitutional Court reviews whether Parliament has passed laws in accordance with the constitution. Other powers include: supervising the procedures for electing the President and conducting national referenda, overseeing the suspension and impeachment of the President, and deciding on the constitutionality of a political party. CONST. art. 144. Draft laws adopted by the Parliament, but not yet signed into law by the President, may be referred to the Constitutional Court for review by the President of the country, the President of either chamber of Parliament, the government, the Supreme Court, or fifty deputies or twenty-five senators. *Id.* The Constitutional Court also reviews the constitutionality of laws and ordinances raised by the courts. Any party in a case can argue that certain laws are not in accordance with the constitution, and the court is then obliged to refer the issue to the Constitutional Court. Citizens do not otherwise have the right to bring a complaint directly to the Constitutional Court. *Id.*

The Parliament, on the basis of a two-thirds vote of each chamber, may override the Court's declaration that a law is unconstitutional. CONST. art. 145(1); *see also* LAW ON THE ORGANIZATION AND OPERATION OF THE CONSTITUTIONAL COURT, No. 47 of 1992, O.G. 101/1992 and O.G. 187/1997 [hereinafter LAW ON THE CONSTITUTIONAL COURT]. PARLIAMENT has not exercised this power, which applies only to laws that the court considers *a priori* (before their final promulgation and implementation). The executive power has complied with Constitutional Court decisions.

The Constitution states that a Constitutional Court decision is binding on that case and for every similar case (but not retroactively). CONST. art. 145. Nevertheless, the Supreme Court has issued at least one decision (No. 1813/1999) that ran counter to a Constitutional Court opinion requiring magistrates to renew their orders to hold criminal defendants in pre-trial detention every thirty days. The lower courts have split, some complying with the Constitutional Court decision, while others are not. JRI Interview. The MOJ reports that it is working with the courts and the legislature to harmonize practice in this area.



Factor 6: Judicial Oversight of Administrative Practice

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

Conclusion	Correlation: Positive
The Romanian judiciary has the power to review administrative acts and to compel the government to act where a legal duty to do so exists.	

Analysis/Background:

Romania has adopted an act that enables the courts to review administrative decisions and to compel officials to act in the face of “administrative silence.” See LAW ON ADMINISTRATIVE PROCEDURE, No. 29 of 1990, O.G. 122/1990. The tribunals, courts of appeal, and Supreme Court each have administrative sections that have jurisdiction over these types of cases, and the government agencies generally comply with their decisions. One lawyer reported that he had success challenging government financial authorities in court. Other interviewees, however, expressed concern that judges may be hesitant to find against the government in high profile administrative actions.

An important ancillary note here is that Romania has recently adopted a law regarding access to government-held information akin to the Freedom of Information Act (FOIA) in the United States. See LAW ON FREE ACCESS TO THE INFORMATION OF PUBLIC INTEREST, No. 544 of 2001, O.G. 663/2001. The power of the court system to compel compliance with this law will need to be monitored in the coming months and years.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

Conclusion	Correlation: Neutral
Although the judiciary has exclusive jurisdiction over most cases concerning civil rights and liberties, prosecutors may issue preliminary arrest and search warrants. In addition, cases relating to police brutality are heard by the military courts. Not all such cases are subject to review by a civilian court.	

Analysis/Background:

The Romanian judiciary has jurisdiction over most matters concerning civil rights and liberties, but there are at least two areas of concern.

First, prosecutors, not judges, are responsible for issuing preliminary search and arrest warrants. However, these decisions can be reviewed by a judge and, pursuant to a controversial Constitutional Court decision (unevenly applied, as discussed above), a judge must review arrest warrants for defendants held in detention every thirty days. Constitutional Court Decision 60/1994 [1995] O.G. 57/1995; see also Criminal Procedure Code arts. 140 – 41.



Second, cases involving police brutality and other police abuses go to the military courts because the police, as a part of the Ministry of the Interior, are considered a part of the military. If the matter relates to a very low ranking officer, the case will go to a military tribunal (equivalent to a civil *judecatorii*), and the final appeal will be heard by the military court of appeal, meaning that no civil authority will have an opportunity to pass judgment on the matter. Military territorial tribunals serve as courts of first instance for matters concerning higher-level officers. Final appeals in these cases may be taken to the Supreme Court, which does mark a change from prior practice in so far as a civilian court now has ultimate review of military court decisions. LAW ON THE ORGANIZATION OF MILITARY COURTS AND PROSECUTOR'S OFFICES, No. 54 of 1993, O.G. 160/1993 and O.G. 209/1999 [hereinafter LAW ON THE MILITARY COURTS]; LAW ON AMENDING AND SUPPLEMENTING THE LAW ON SUPREME COURT OF JUSTICE No. 56/1993, NO. 153 OF 1998, O.G. 267/1998. This system has been criticized by Romanian and international human rights groups. These concerns include that military prosecutor's investigations of police abuses are long and often do not result in a conclusion or prosecution. See U.S. DEPARTMENT OF STATE HUMAN RIGHTS REPORT (2000).

Factor 8: System of Appellate Review

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

Conclusion	Correlation: Negative
<p>Final judicial decisions of both criminal and civil cases that would not otherwise be subject to appeal may be considered by the Supreme Court through a special procedure called "nullification" that may be commenced only on the initiative of the Prosecutor General or by the Prosecutor General upon request of the Minister of Justice.</p>	

Analysis/Background:

In both Romanian civil and criminal procedure there are two ordinary appeal procedures. These are the intermediate appeal (*apel*) and final appeal (*recurs*). In most cases, a court decision is considered to be final and binding only after a case has gone through both levels of appeal. For some cases, considered to be less complicated, only one level of appeal is provided. In addition to these ordinary procedures, the law provides for two extraordinary appeals. These are an "appeal in the interest of the law" and nullification.

The General Prosecutor may bring a case to the Supreme Court "in the interest of the law" when there are inconsistent decisions by the courts. The Supreme Court hears these matters *en banc*. LAW OF THE SUPREME COURT OF JUSTICE, No. 56 of 1993, O.G. 159/1993 and O.G. 56/1999 art. 26 [hereinafter LAW OF THE SUPREME COURT]. The Supreme Court's decisions in these cases are binding precedent for future similar cases, but they do not change the outcome of the previously decided cases. These decisions are published in the *Monitorul Oficial* (Official Gazette). In 2001, the Supreme Court heard three cases "in the interest of the law." See, e.g., Supreme Court Decision 2/2001 [2001] O.G. 230/2001.

The second type of extraordinary appeal—nullification—occurs at the conclusion of ordinary appellate procedures and after a case has been "closed." At this time, the General Prosecutor, by him/herself or the Minister of Justice acting through the General Prosecutor, can request the Supreme Court to "nullify" a final decision rendered by a court. The Supreme Court hears such cases in a panel of nine or *en banc* if a normal decision of the Supreme Court is being reviewed. LAW ON THE SUPREME COURT arts. 24, 26.



The claim for nullification must be filed within one year of the final appeal in a civil case. CIVIL PROCEDURE CODE, O.G. 177/1993 art. 330 AS MODIFIED BY EMERGENCY ORDINANCE ON AMENDING AND SUPPLEMENTING THE GOVERNMENT EMERGENCY ORDINANCE NO. 138/2000 ON AMENDING AND SUPPLEMENTING THE CIVIL PROCEDURE CODE, NO. 59 OF 2001, O.G. 217/2001 [hereinafter EMERGENCY ORDINANCE 59/2001]. In a criminal matter, the General Prosecutor must commence the procedure within one year if it is against the interests of the defendant, but there is no deadline if the procedure is being commenced in the interests of the defendant. CRIMINAL PROCEDURE CODE, O.B. 145-146/1968, O.B. 58-59/1973, O.G. 78/1997 art. 411 [hereinafter CRIM. PROC. CODE]. Until recently, the nullification process had to be based on one of two relatively narrow arguments, either that the magistrate who heard the case was subsequently convicted of a crime in connection with the challenged decision, or the matter was determined outside the competence (jurisdiction) of the court. A recent Emergency Ordinance added that the General Prosecutor may use this instrument where “a court ruling was an essential infringement of the law which triggered a wrong adjudication of the case on the merits, or where the court judgment was obviously groundless.” EMERGENCY ORDINANCE 59/2001. In other words, a process to annul a decision may be initiated on the grounds that a decision has been made on essentially wrong facts or on essentially wrong law. This provision had been in force prior to 1997, but was removed by a decree amending the Civil Procedure Code that year.

The use of the nullification procedure was criticized by the European Court of Human Rights in Strasbourg in *Brumarescu v. Romania*, 7 EUR. CT. H.R. (1999). Brumarescu’s parents had owned a house in Bucharest that was nationalized in 1950. The Brumarescu family had rented part of the house to the Mirescu family, which was able to buy their apartment in the building from the “State” in 1974. Brumarescu brought a case in the *judecatorie* in 1993 to declare the nationalization of the building in 1950 null and void. In a decision rendered on December 9, 1993, the court agreed, no appeal was made and a final judgment was entered. The prosecutor general, acting on a request made by Mirescu, brought a nullification application to the Supreme Court in early 1995. The Supreme Court nullified the *judecatorii* decision, and the property was re-classified as state owned.

After further proceedings in Romania, Brumarescu brought an action before the European Court of Human Rights on the grounds that the Romanian Supreme Court had denied him access to a court with the power to enable him to recover possession of his house. The Strasbourg court concurred, finding that by setting aside:

[A]n entire judicial process which had ended in . . . a judicial decision that was ‘irreversible’ and thus *res judicata*

. . .

[T]he Supreme Court of Justice infringed [T]he principle of legal certainty. On the facts of the present case, that action breached [Brumarescu’s] right to a fair hearing under Article Six, section one of the Convention.

Brumarescu at 17.

A concurring opinion emphasized this finding:

In the circumstances of the present case, the applicant had the right to go before a court to have the dispute between himself and the State determined. He also availed himself, in the proper manner, of his ability to have a judgment with the status of *res judicata* executed, and of the consequent restoration of the ownership of his property. But his right to a court became illusory when the Procurator-General and the Supreme Court intervened, applying Article 330 of the Code of Civil Procedure, and effaced the judgment of the first-instance court and its beneficial consequences. When a legal system accords a court the power to issue final judgments but then allows its decisions to be annulled by subsequent procedures, not only does legal certainty suffer, but also the very existence



of that court is called into question since, in essence, it has no power at all to definitively determine a legal issue.

Id. at 24.

The nullification procedure in Romania is troubling not only because it undermines the concept of judicial finality, but also because it is exercised by the Prosecutor General, and it is therefore likely to be used only in politically sensitive cases. However, one lawyer argued that it was important to have this process available in commercial cases because, pursuant to the revisions to the civil procedure code that went into effect in May 2001, litigants in those cases are entitled now to only one level of appeal. JRI Interview; see EMERGENCY ORDINANCE 59/2001. Moreover, it is appropriate and necessary to have some means of reopening criminal cases when subsequent exculpatory evidence is uncovered. But the circumstances under which such instruments are used should be narrowly defined. The fear is real that the process will be used mostly in politically sensitive cases or in cases where the litigant has connections to the administration.

It is noteworthy that nullification processes and cases in the interest of the law are heard by the Supreme Court, which because it enjoys only six-year, renewable terms, is arguably more susceptible to political influence than the lower courts where judges serve until retirement.

Factor 9: Contempt/Subpoena/ Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion	Correlation: Neutral
Although enforcement has been a long-standing problem in Romania, new powers and the creation of a new, private, enforcement organization are starting to result in improvements in this area.	

Analysis/Background:

The failure of witnesses and parties to appear in court has long plagued the judiciary in Romania and contributed to delayed resolution of cases. Until recently, if a key participant did not appear on the hearing date, the hearing was simply put off to another day. The government has sought to address this issue by revising the civil procedure code to increase fines against lawyers and parties who failed to appear and empowering the judge to issue a bench warrant. EMERGENCY ORDINANCE ON AMENDING AND SUPPLEMENTING THE CIVIL PROCEDURE CODE, No. 138/2000, O.G. 479/2001, effective May 1, 2001. Judges are reportedly using the increased power to fine litigants and others. However, they have not been able to successfully use the police to bring in missing witnesses and parties.

Regarding enforcement, Romania has essentially privatized the judicial executors, responsible for enforcing judgments, along European models. As with notaries, the private executors, who must be law school graduates, will now be licensed and monitored by the MOJ and be paid a percentage of what they collect. LAW ON JUDICIAL EXECUTORS, No. 188/2000, O.G. 559/2000. The new system became operational in May 2001, and it is reportedly resulting in improved enforcement of judicial decisions. One reported problem, however, is that there are not yet enough executors. This means that they may charge very high rates for their services and prioritize larger judgments to the detriment of those seeking to enforce relatively minor awards.



III. Financial Resources

Factor 10: Budgetary Input

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

Conclusion	Correlation: Negative
The Romanian judiciary lacks the ability to meaningfully influence the amount of money it is allocated. It also has very limited control over the funding it receives.	

Analysis/Background:

The MOJ manages and controls the budgets of the *judecatorii*, the tribunals, and the courts of appeal. See LAW ON JUDICIAL ORGANIZATION art. 150. Tribunals are responsible for preparing the budgets of each of the courts, including the court of appeal that sits within their geographic region. *Id.* art. 133. The tribunals have accounting offices to assist them in this function; the other courts do not. Each tribunal essentially compiles budget requests (which are prepared more as statements of material needs rather than budget figures) and then submits them to the financial division of the MOJ. The MOJ then submits its budget, including funds for the courts, to the Ministry of Finance, which typically cuts back on the MOJ's budget request. The final budget is ultimately approved by the government and the Parliament. JRI Interview.

Although an official figure indicating the percentage of the national budget allocated to the court system was not available, according to the MOJ in 2001, the judiciary received approximately one and one-half percent of the national budget. This amount covers the courts, the MOJ itself, and the prison system. The following chart, based on figures provided by the MOJ, shows the historical trend.

Year	MOJ Percentage of State Budget
1935	4.08
1938	3.5
1939	3.51
1940	3.84
1995	0.55
1996	0.56
1997	0.61
1998	0.66
1999	0.96
2000	1.3

JRI Interview

The MOJ is directly responsible for capital expenditures, such as for building acquisitions and repairs. The tribunals are responsible for oversight of smaller expenditures, as well as for paying personnel. Individual courts lack any real purchasing authority and have little discretion to purchase necessary supplies or to hire additional personnel. One court of appeal judge reported that each month judges submit requests for funding for items such as postage, but that those requests are not always granted.



Unlike the lower courts, the Supreme Court has a direct line item in the national budget and manages its own resources, although the MOJ provides some administrative support. The Supreme Court prepares and votes on its budget, which it then submits to the Ministry of Finance. LAW ON THE SUPREME COURT art. 65. The Constitutional Court follows essentially the same procedure. LAW ON CONSTITUTIONAL COURT arts. 49-54. Although the head accountants for the Supreme Court and the Constitutional Court attend government debates concerning the budget, they rely largely on the Minister of Justice to articulate their needs. Nevertheless, the Supreme Court and Constitutional Court, which have better offices, more support staff and more equipment, seem to be better funded than the lower courts. In the 2001, the Supreme Court received approximately 0.06% of the national budget.

The former President of the Constitutional Court reported that he lobbied directly and successfully in Parliament for funding for his court. In 2001, the Constitutional Court received 0.02% of the national budget.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families, and live in a reasonably secure environment without having to have recourse to other sources of income.

Conclusion	Correlation: Neutral
Although judicial salaries are considered high compared to many other jobs, judges were not given salary increases in 2001 along with other government officials and members of Parliament.	

Analysis/Background:

In order to counter corruption and increase the prestige of the profession, in 1997 Romania increased salaries for judges, and at one point, the presidents of the courts of appeal were being paid more than the President of the country. ORDINANCE ON AMENDING AND SUPPLEMENTING THE LAW NO. 50/1996 ON THE SALARIES AND OTHER BENEFITS OF THE PERSONNEL FROM THE BODIES OF THE JUDICIAL AUTHORITY, No. 9 of 1997, O.G. 177/1997, approved by LAW 104/1999, O.G. 273/1999. Pensions were also increased, and they are considered to be quite good. However, in November 2000, prosecutors received a scheduled pay increase, while the increase for judges was delayed until April 2001. Other benefits provided to judges, such as discounted travel and book purchases, have been unevenly applied or rescinded. Judicial salaries are no longer considered competitive with those of the other branches of government since salaries for mayors, prefects, and MPs were increased in 2000. ORDINANCE ON AMENDING AND SUPPLEMENTING THE LAW NO. 50/1996 ON THE SALARIES AND OTHER BENEFITS OF THE PERSONNEL FROM THE BODIES OF THE JUDICIAL AUTHORITY, No. 83 of 2000, O.G. 425/2000, approved by LAW 334/2001, O.G. 370/2001. Salary increases for judges are, however, planned for 2002. The following chart shows the average gross salaries for the different levels of judges for 2000:

Court Level	Average Gross Salary
<i>Judecatorii</i>	\$480
Tribunals	\$523
Courts of Appeal	\$593
Supreme Court	\$976

JRI Interview



In addition, Constitutional Court judges have salaries equivalent to the President of the lower chamber of Parliament. JRI Interview.

Whether salaries are sufficient to attract and retain qualified judges is an open question. Young law graduates are reportedly attracted to the NIM and to becoming a judge because of the job security and the benefits. Judicial salaries are considered to be good for young law school graduates. Accordingly, there were 3,843 applicants for 146 places in the NIM in 2000. Nevertheless, there are currently approximately seventy-five vacancies in the judiciary, and, as in many countries, judges frequently leave the bench for a more remunerative private practice. The following charts show the ages of judges at the various levels, based on statistics provided by the MOJ to the EU:

Judecatorii

Age Range	Number of Judges
20 – 30	953
30 – 40	641
40 – 50	394
50 – 60	147
60 – 70	14

Tribunals

Age Range	Number of Judges
20 – 30	77
30 – 40	311
40 – 50	360
50 – 60	167
60 – 70	22

Court of Appeals

Age Range	Number of Judges
20 – 30	5
30 – 40	91
40 – 50	163
50 – 60	146
60 – 70	50

JRI Interview

Most judges do not hold any jobs other than their official one. Some do teach in law faculties, which, according to the Law on Judicial Organization, is the only other job they are allowed to have. Judges are permitted to receive compensation for written publications, and some do supplement their income in this way.

Factor 12: Judicial Buildings

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

Conclusion	Correlation: Negative
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Courthouses are for the most part centrally-located, but many are in disrepair, too small, and do not provide a respectable environment for the dispensation of justice.	
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Analysis/Background:

Courthouses are usually in a central location and easy to find. Although Romania has committed some significant resources to rebuilding its courthouses (between 1990 and 2000, according to the MOJ, 121 buildings were either acquired or repaired), many courthouses remain in very bad condition and do not provide a good environment for the dispensation of justice. The courthouses generally do not have public information officers or any guides that inform the public on how to use the courts, filing procedures, etc. However, the Third Sector *Judecatoria* in Bucharest has recently developed such guides as part of a pilot project. Documents and files are difficult to obtain. Offices for judges—even in renovated buildings—are generally insufficient, and several judges must share an office, even in the higher courts.

The main courthouse in Bucharest is in disrepair and several people observed that it would probably collapse with the next earthquake. The dark halls are crowded with judges, lawyers, and litigants, and judges work four to five in an office. Clerks likewise work in crowded offices, with case files piled high around them. There are few computers or copying machines. In short, although it was clearly once an impressive building, it is no longer suitable for its purpose. The building is being closed and will be renovated; depending on funding, the MOJ hopes to re-open it in 2006.

The building for the court of appeal in Bucharest is on the edge of town, and it is difficult for the judges, lawyers, and litigants to reach. The court of appeal has been promised a new, centrally-located building, which will become available in mid-2003.

The Supreme Court recently moved into a renovated building, but the staff do not feel that it has enough courtrooms, especially large ones. Three to four Supreme Court justices share an office. The accessibility of the Supreme Court is also an issue of concern because it hears cases only in Bucharest, requiring lawyers and litigants to travel across the country to attend hearings.

Factor 13: Judicial Security

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

Conclusion	Correlation: Negative
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The Ministry of the Interior and Ministry of Justice are charged with protecting judges, but they have allocated minimal resources for this task, resulting in several incidents where judges have been attacked both in and outside of their courthouses.	
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Analysis/Background:

Judges do not have sufficient protection from physical threats, although the Law on Judicial Organization provides that the MOJ and the Ministry of the Interior must provide magistrates protection if they are threatened. LAW ON JUDICIAL ORGANIZATION art. 91. Security in the courts appears to be minimal, with few guards and no metal detectors in any of the courts, except the Constitutional Court and the Supreme Court. Some judges in Brasov, involved in high profile cases, were attacked in front of their homes. The press also has reported on two recent attacks on judges. See MONITORUL, May 29, 2001; ADEVARUL, May 31, 2001. According to the MOJ, protection for the courts is still based on a governmental decree from 1993 (No. 593/1993) which established 6,555 security positions for the courts and 1,450 positions for the protection of judges and prosecutors and their families in cases when they have been threatened. Given the passage of almost 10 years and the reported attacks, it may be appropriate for Romania to revisit these allocations. In the meantime, the MOJ and the Ministry of the Interior are working to provide greater protection to judges and prosecutors. (See MOJ ORDER No.226/C/7.02.2002 for the implementation of a protocol signed between the MOJ and the Ministry of Interior regarding the protection of magistrates).

IV. Structural Safeguards

Factor 14: Guaranteed Tenure

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

Conclusion	Correlation: Negative
<p>Supreme Court judges are appointed for relatively short six-year, renewable terms, which may make them more susceptible to political influence. Constitutional Court judges are appointed for nine-year, non-renewable terms. Other judges are essentially not removable until they retire or resign.</p>	

Analysis/Background:

Supreme Court justices are appointed for six-year, renewable terms, while lower court judges are appointed until their retirement, at the age of 65, 68, or 70, depending on the position. CONST. art. 124; LAW ON JUDICIAL ORGANIZATION art. 68. Supreme Court judges who were formally lower court judges with life tenure may return to their “protected” seats in a court of appeal if they are not re-appointed to the Supreme Court. Constitutional Court judges are appointed for nine-year, non-renewable terms. CONST. art. 140.

The fact that not all judges in the system have life tenure is problematic. Of course, constitutional court judges in most countries do not have such protection. Lower court judges in the general court system have the protection of essentially life terms whereas the judges of the Supreme Court—who also have the power to reconsider cases previously closed, at the initiative of the General Prosecutor and through the “nullification” procedure—do not. This system creates an opportunity for political interference and influence on the judicial system. Indeed, it was reported that the appointments to the Supreme Court do track political affiliation. For example, some of the judges not re-appointed by the prior government in 1998 when their terms expired have returned to office under the current administration. JRI Interview.



Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

Conclusion	Correlation: Neutral
An objective system exists for the advancement of judges from one level to the other, although some observers feel that this system is not always objectively applied. A more serious problem may exist with the appointment of court presidents, which is a largely political process, tracking the results of the national elections every four years.	

Analysis/Background:

To be eligible for advancement within the system, a judge must have served certain minimum periods in the lower courts: four years to be appointed to the tribunal, six years to the courts of appeal, and twelve years to the Supreme Court. LAW ON JUDICIAL ORGANIZATION art. 66; LAW ON THE SUPREME COURT art. 13. However, it should be noted again that because a judge may join the *judicatorie*, after a four-year legal training and two years at the NIM, a tribunal judge may still be as young as twenty-eight. In order to advance from one level to the next, the judge must write and submit a scholarly paper to the MOJ and then pass a MOJ-administered oral examination. In addition, judges must have received good performance evaluations from their superiors. LAW ON JUDICIAL ORGANIZATION art. 66; MOJ REGULATION ON ORGANIZATION AND CONDUCTING OF THE EXAMINATION FOR PROMOTION IN AN EXECUTIVE POSITION VACANCY OR IN THE LOCATION FOR COURTS AND PROSECUTOR'S OFFICES ATTACHED TO COURTS, O.G. 18/2002.

These evaluations, made at the end of each year, cover matters such as the rate of reversal, the quality of the opinion writing, and the number of cases processed by each judge. The president of each court prepares the evaluations, which are then signed by the president of the relevant court of appeal and submitted to the MOJ. The results of the examination and the evaluations may be contested and subsequently reviewed by the courts of appeal, the Minister of Justice, and the SCM. Acting on the recommendation of the Minister of Justice, the SCM orders advancements.

A couple of aspects of this process are of concern. First, the oral nature of the examination may make it subject to manipulation. It may be preferable to administer a purely blind, written test. Second, it was reported that the annual evaluations by the court presidents can also be subjective. Finally, the problems associated with the SCM, as discussed above in Factor 2, are also applicable in the context of judicial promotions.

The method by which judges are advanced to leadership positions in the courts is also concerning. Court presidents—who wield much power within their courts through their ability to assign cases, allocate resources, and recommend promotions—are appointed by the SCM on the recommendation of the MOJ every four years. The potential for politicized changing of the leadership positions is high. After the 1996 elections, for example, eighty court presidents were replaced. Romania could address this issue with the adoption of some other method for selecting the court presidents, such as by a secret vote by their peers, as is done in the Constitutional Court. Alternatively, the mandate of court presidents could be extended to six years so that it does not so closely track the four-year electoral cycle of the other branches of government.



Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Neutral
Although judges enjoy secure tenure, they may be prosecuted by the General Prosecutor with the prior permission of the Minister of Justice.	

Analysis/Background:

“Judges appointed by the President shall be irremovable, according to the law.” CONST. art. 124. In practice, this means that judges cannot be removed from office without their consent. The law does not otherwise provide for judicial immunity. However, judges may only be prosecuted for criminal actions if the General Prosecutor has obtained the permission of the Minister of Justice to do so. See LAW ON JUDICIAL ORGANIZATION art. 91. The Minister thus is endowed with another instrument of control over the judiciary, and one that he/she has exercised on several occasions, albeit not for overtly political purposes. According to a recent Open Society Institute Report, the General Prosecutor requested permission to investigate six judges in the first six months of 2000. The MOJ granted permission three times. OPEN SOCIETY INSTITUTE, JUDICIAL INDEPENDENCE IN ROMANIA, MONITORING THE EU ACCESSION PROCESS 394 (2001) [hereinafter OPEN SOCIETY REPORT]. Clearly, Romania should be able to prosecute corrupt judges, but it may be preferable for another body (perhaps the SCM) to determine when a judge should be stripped of his or her immunity.

Constitutional Court judges are irremovable during their term. CONST. art. 143. They have immunity.

Factor 17: Removal and Discipline of Judges

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

Conclusion	Correlation: Negative
The SCM is charged with disciplining judges in Romania. Although the rules that provide the basis for judicial discipline are relatively clear, the process is not transparent, and there is no opportunity for public or press observation, even if the judge under investigation requests it. Another concern is that the SCM does not have its own investigative staff. Thus it relies on the judicial inspectors of the MOJ and the judge-inspectors from the courts of appeal, and it responds only to matters brought to its attention by the MOJ. Finally, some judges feel that the MOJ uses its inspectors in order to harass or intimidate judges.	

Analysis/Background:

The SCM handles the removal or other punishment of judges when criminal conduct is not involved. See LAW ON JUDICIAL ORGANIZATION art. 88. The President of the Supreme Court presides over meetings when the SCM is sitting as a judicial disciplinary authority. Disciplinary proceedings are conducted under the rules of the SCM. See RULES OF THE SUPERIOR COUNCIL OF MAGISTRACY, O.G. 442/1998 arts. 31-34. However, the procedure is not particularly transparent.

LAW ON JUDICIAL ORGANIZATION art. 126. The basis for SCM action is violation of standards contained in the Law on Judicial Organization. *Id.* art. 122.

According to the Law on Judicial Organization, disciplinary actions against judges may include:

- Reproof or reprimand;
- Salary decrease for one to three months;
- Transfer to another court for one to three months;
- Suspension from office for up to six months;
- Removal from the magistracy.

Id. art. 123.

The SCM hears about nine to ten disciplinary cases per year. In 2000, it considered thirteen cases and disciplined seven judges, removing two. The others received lighter punishments, such as warnings, suspension, salary cuts, or transfers, or the cases were dismissed. Final decisions by the SCM may be appealed to the Supreme Court. While an appeal is pending, judges retain their positions. The appeal process may take as long as one to two years in some cases. Judges who are removed do not lose their pensions. JRI Interview.

It is noteworthy that the SCM does not have its own staff, but relies on the MOJ Inspector's Directorate to assist with disciplinary matters. There are approximately fifteen inspectors who investigate ethical complaints, mismanagement of courts, undue delays in the rendering of decisions, and other breaches of procedural norms. Reportedly, they most frequently look into management issues such as how files are distributed within the court, how long cases have been pending, and how judges are drafting their opinions. The MOJ inspectors submit their findings to the Minister, who then decides whether they should be referred to the SCM. Many judges and lawyers feel that this system makes the SCM overly reliant on the MOJ because it can only respond to matters that the MOJ refers to it. As also discussed in Factor 20, several judges opined that the MOJ uses inspectors to intimidate judges, citing extensive inspections conducted in Targu Mures and Craiova. The MOJ strongly denies these allegations.

Each court of appeal also has a cadre of judicial inspectors. See LAW ON JUDICIAL ORGANIZATION arts. 18, 125. About three to eight judicial inspectors, who are also magistrates and appointed by the SCM, work at each court of appeals. They may look into the activities of the court of appeal or any lower court within its jurisdiction. They may review how the magistrates and clerks interact with lawyers and the public, how the judges prepare themselves for cases, how courts are managed, and how judges write their opinions, but they are not supposed to influence specific decisions. There is some discussion of giving the presidents of the courts of appeal some disciplinary powers (*e.g.*, to give warnings) based solely on recommendation of the inspectors without having to go to the SCM.

The Supreme Court does not have any judicial inspectors, and it does not prepare annual reviews of its members.

As noted above, a judge may be prosecuted by the Prosecutor General, with the permission of the Minister of Justice. A magistrate is suspended from office on the commencement of a criminal action, and he or she is removed from office if convicted. LAW ON JUDICIAL ORGANIZATION art. 92.



Factor 18: Case Assignment

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

Conclusion	Correlation: Negative
<p>The assignment of cases in most courts is handled by the president of the court. The lack of a simple, random procedure for the assignment of court cases adds to the perception that the judicial system in Romania is easily corrupted.</p>	

Analysis/Background:

Court presidents usually assign cases, and current legislation requires only that they distribute the workload evenly. The system has been criticized because the possibility exists for corrupt lawyers, judges, and court presidents to collude to assign cases to pliable judges. In addition, presidents may assign more difficult cases to judges who are in disfavor. The former president of the court of appeal in Timisoara sought to address this issue by assigning cases to panels according to the first letter of the last name of the first litigant, thereby introducing an element of chance. Until recently, this was apparently the only court in Romania where cases were assigned randomly, and many of the judges and lawyers reportedly oppose it. JRI Interview. The MOJ recently promulgated a transitory regulation, which will allow the Third Sector *Judecatoria* in Bucharest to utilize a similar case assignment procedure. There seems to be little reason why all courts in Romania should not assign cases on a random basis.

Factor 19: Judicial Associations

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

Conclusion	Correlation: Neutral
<p>Romania has an Association of Magistrates that includes both judges and prosecutors and whose president is a vocal advocate on behalf of the magistracy, but the Association does not engage in any regular programming. A second organization, the Union of Judges, consists of judges only, but to date its activities have been limited to training functions. These two organizations reportedly work, on occasion, at cross-purposes. The judiciary in Romania does not include any other self-governing bodies, with the exception of the SCM, which does not represent fully the interests of judges and is dominated by the MOJ.</p>	

Analysis/Background:

There are two associations whose membership includes judges in Romania. The first, the Association of Magistrates, was established in 1992. The membership of the Association of Magistrates includes both judges and prosecutors. It does not engage in many typical association activities, such as publication of newsletters, conducting training programs, or engaging in public education or lobbying on behalf of its membership. It has a president, a general secretary, and a vice-president, but it does not have any professional staff. Although the organization claims some 3,000 members, it is unclear how many are paying dues. Despite these concerns, the President of the Association of Magistrates, a judge from the court of appeal



in Bucharest, has emerged as an advocate on behalf of the judiciary in Romania who is frequently cited in the press and meets regularly with Ministry of Justice officials to argue for greater judicial powers and protections. The Association of Magistrates is a member of the European Association of Judges and the International Association of Judges. It does not receive any donor support within Romania.

The Union of Judges consists of six regional associations of judges and one affiliate association, which were created with ABA/CEELI support in the mid-1990s. The Union's primary activity has been conducting training programs. It does not engage in public education or lobbying on behalf of its members. It has 500 – 600 members. Again, the collection of dues is sporadic. It is a member of another European association of judges, the Association of European Magistrates for Democracy and Freedom (MEDEL).

It is notable that the judiciary in Romania does not include any other self-governing body. Many other countries in transition, for example, have created congresses or councils of judges with certain administrative authority, which might be useful in Romania as well. The SCM, because it is presided over by the Minister of Justice, lacks its own budget and staff, and includes prosecutors, is not a true self-governing body for the judiciary.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

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

Conclusion	Correlation: Negative
Judges in Romania may be subject to pressure from other branches of government and private interests. Presidents of courts are frequently cited as the means by which such pressures are applied to junior judges.	

Analysis/Background:

Judges in Romania are subject to a broad variety of pressures that may affect their independent decision-making. These pressures are both public and private.

At the outset, it should be noted that the structure of the Romanian justice system, in which both judges and prosecutors are considered members of the magistracy, presents certain issues. As members of the magistracy (with the exception of certain courts), both judges and prosecutors sit on the bench at the same level, while defense lawyers sit below. In addition, as noted above, the powers of the judges and prosecutors concerning the oversight of investigations and arrests are sometimes blurred. Although judges and prosecutors do not sit in judgment together, the lack of a clear dichotomy in their roles raises problems - at least of perception - relating to the separation of powers.

In addition, the power of the MOJ to supervise the activities of judges through the deployment of MOJ inspectors also gives rise to separation of powers concerns. Specifically, some believe that the MOJ has used its inspectors to control the judiciary. One example given was that in February and March 2001, the MOJ sent letters to the courts relating to the handling of bankruptcy and property ownership disputes. In one letter, the MOJ reminded the courts of the "social problems" that judicial decisions relating to tenancy rights were causing and stated that



the General Inspection Body, judicial inspectors, and other Ministry of Justice staff would be reviewing the decisions of all the courts in this area. JRI Interview. Further, the MOJ has reportedly dispatched its investigators to one court in Tirgu Mures five or six times between April and October 2001, and on one occasion kept the judges at the court, collecting information, until 3:00 AM. It was also reported that MOJ inspectors were recently sent to Craiova in an effort to hasten the resignation of the president of a court there. Although judges may have secure tenure, the reviews of court presidents and the use of inspectors may have a “chilling” effect on their independence, because those reviews will impact the judge’s salary and advancement. The MOJ strenuously denies that inspections are conducted for any improper purposes, and points out that no disciplinary procedures were initiated as a result of these investigations.

A more broad form of undue influence by the executive occurs when the executive power criticizes specific judicial decisions, apparently in an effort to influence the course of future appeals and decisions. In 1995, for example, many judges objected to public comments by the President relating to property return cases. When a new President took office in 1996, he also made public comments on property return cases, in effect countermmanding the directives of his predecessor. It is troubling that some courts reportedly tailor their decisions to follow the publicly stated policy of the executive. On another occasion, a judge was reportedly summoned to the MOJ to explain the light sentence he had given to the labor leader Miron Cosma, charged with leading the attack of the miners on Bucharest in 1991. This judge ultimately resigned under the pressure. More recently, the Prime Minister stated his intention, subsequently withdrawn, not to comply with a judicial decision that contradicted an ordinance on international adoptions. JRI Interview.

A recent report by the Open Society Institute concluded:

The decisions taken by many of Romania’s judges reflect the fact that many continue to operate as they did under the communist regime, particularly in their unwavering defense of State interests and their dutiful submission to the bureaucratic chain of command. For example, in cases in which State civil liability or claims to State property are at issue, most judges find little redress. Many of the judges who served the previous political regime remain on the bench (particularly in the higher courts), which has done little to improve public opinion about the judiciary. Moreover, judges often consult their respective court president prior to taking decisions.

OPEN SOCIETY REPORT at 354.

Additional government practices that raise concerns about executive interference in the judiciary include the practice of changing the presidents of courts following national elections, the presence of the Minister of Justice on the SCM when it is considering judicial appointments and promotions, and the process of nullification.

Private influences also present a problem in Romania. According to the World Bank’s recent report on corruption, judges and prosecutors are seen as the second most corrupt public officials, after customs officers. On the other hand, the World Bank report found actual instances of corruption (e.g., knowledge of payments to judges) to be quite low. In any event, the perception of a corrupt judiciary presents a very serious a problem. According to the MOJ, trust in the judiciary decreased from 56% in 1996 to 25% in 2000.

The press has reported on several corruption cases in 2001. For example, one judge on the tribunal in Bihor was accused of bribery, disappeared, tried in absentia, and sentenced to an eleven-year term. ZIUA, July 25, July 26, and Aug. 17, 2001; EVENIMENTUL ZILEI, Dec. 2001, Mar. 2002. In another case, the president of the criminal section of the court of appeal in Cluj was convicted of corruption and influence peddling, and sentenced to four and one-half years in prison. ZIUA, July 12, 2001.



Factor 21: Code of Ethics

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

Conclusion	Correlation: Neutral
<p>The Law on Judicial Organization required the SCM to draft and adopt a code of conduct, and the SCM recently did so. The Law on Judicial Organization and the codes of criminal and civil procedure also cover many ethical issues, including conflicts of interest and political party activity. However, <i>ex parte</i> communications do not appear to be prohibited. In addition, judicial training concerning ethics has been, to date, insufficient.</p>	

Analysis/Background:

As required by the Law on Judicial Organization, in October 2001, the SCM drafted and adopted a code of judicial conduct, which the MOJ has recently promulgated. The code states that it is intended to serve as a guide for institutions with responsibility for overseeing judicial conduct. LAW ON JUDICIAL ORGANIZATION AMENDMENTS art. 120; MAGISTRATES CODE OF ETHICS 2001 [hereinafter ETHICS CODE]. The code provides, among other things, that magistrates:

- May not be members of political parties or engage in public activities of a political nature;
- Should not manifest any prejudice based on a party's race, sex, religion, etc.;
- Must attend professional training at least once every five years;
- Must maintain the dignity of the profession;
- Must declare their assets.

See ETHICS CODE arts. 6, 11, 19, 21, 30.

However, it remains unclear, how the code will be enforced. The code states that it is not intended to serve as a basis for disciplinary liability except in cases of serious violations. It also notes that establishing additional institutions to apply the code is beyond the scope of the code itself.

Other laws also address judicial conduct. The Law on Judicial Organization provides as follows:

- Magistrates are forbidden to be affiliated with political parties;
- Magistrates are forbidden to hold other positions, except for academic teaching positions;
- Magistrates may not provide advice on matters pending in the courts, nor express their opinions on pending matters. Magistrates may, however, represent themselves, their parents, and their spouses in litigation;
- Magistrates must maintain the secrecy of their deliberations;
- Magistrates must not compromise the dignity of their office;
- Magistrates must not be absent without leave and must perform their responsibilities in a timely manner.

See LAW ON JUDICIAL ORGANIZATION arts. 110, 111, 115, 117, 118, 122.

The criminal procedure code and civil procedure codes also describe the circumstances under which a judge should be recused for a conflict of interest and the procedure by which a party may move to have a judge removed from hearing a case. See *generally* CRIM. PROC. CODE arts. 46-54; CIV. PROC. CODE arts. 24-36.



Another law requires judges to submit statements on their assets at the beginning and end of their terms. However, these submissions are not publicly accessible and typically are not verified. LAW ON DECLARATION AND CONTROL OF THE FORTUNE OF THE SENIOR PUBLIC OFFICIALS, MAGISTRATES, PUBLIC SERVANTS AND OTHER PERSONS IN MANAGEMENT POSITIONS, No. 115 of 1996, O.G. 263/1996.

No law or regulation seems to prohibit *ex parte* communications.

Training on judicial ethics is limited and is thus of concern. Ethics is not included as a separate course in law school, and the NIM only addresses it in a limited way as part of another course. CLE programs for judges on ethics are infrequent, and they are usually held only at the request of, and with funding from, the donor community. With funding from the Netherlands Helsinki Committee, eight teachers associated with the NIM have been trained in the Netherlands on judicial ethics. In turn, they have conducted four programs on ethics for prosecutors and judges.

Factor 22: Judicial Conduct Complaint Process

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

Conclusion	Correlation: Neutral
Lawyers and the public may register complaints with the MOJ or the presidents of courts. However, knowledge of, and recourse to, these procedures remains limited, and most investigations of judicial misconduct do not seem to be based on such complaints. They are more often the result of investigations commenced, <i>ex officio</i> , by the judicial inspectors.	

Analysis/Background:

The Division of Public Relations at the MOJ is charged with receiving complaints from the public and lawyers concerning judicial conduct. According to statistics provided by the MOJ, the department received 14,264 complaints in 1998; 17,837 in 1999; and 19,589 in 2000. Between January 1, 2001 and October 19, 2001 it received 25,623 complaints. JRI Interview. Most complaints concern delays in resolving criminal investigations, difficulties in enforcing decisions, and inappropriate conduct on the part of judges and staff. Regarding the substance of the cases, most related to the rights of tenants in property return matters, recent revisions to the civil procedure code, and dealings with law enforcement officers. Once a complaint is received at the MOJ, it is reviewed by one of nine staff counselors, who typically refers the matter back to the court. Approximately one-third of the complaints are referred to other divisions of the MOJ, including to the inspectors, of which there are only fifteen. JRI Interview.

Individuals may also complain to the president of a court. Although there is no standardized practice for handling these complaints, the president will generally meet with the judge and the complainant to try to resolve the issue.

The procedure for handling complaints is not efficient. Moreover, the tracking of those complaints, in order to see which ones have been acted on and how, needs improvement.



Factor 23: Public and Media Access to Proceedings

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

Conclusion	Correlation: Neutral
<p>The law allows court proceedings to be closed under some broadly defined circumstances, giving rise to some concerns. However, those provisions have not been frequently exercised. Court proceedings are generally open, and important cases receive media coverage, although relations between the media and the judiciary are strained.</p>	

Analysis/Background:

According to the Constitution, “[p]roceedings shall be public, except for the cases provided by law.” CONST. art. 126. In exceptions that may potentially infringe on this provision, the civil procedure code and the criminal procedure code provide that the proceedings may be closed if an open hearing will threaten public order, morality or the parties. CRIM. PROC. CODE art. 290; CIV. PROC. CODE art 121. However, these provisions reportedly have not been abused in practice.

Although the media does have basic access to court proceedings, journalists wishing to record court proceedings must obtain the permission of the presiding judge. MOJ rules expressly provide for media access to court files. Other non-litigants must demonstrate a legitimate interest in the case in order to gain access to the files.

In terms of accommodation, most courts are large enough for the public and the press. However, the Supreme Court’s courtroom is not large enough to comfortably fit all of its members and observers when it is hearing cases *en banc*. The Constitutional Court room can hold about fifty people.

More broadly, relations between the courts and the media are strained. Reportedly, many judges have filed libel cases against reporters, including one case in Oradea where two journalists wrote about corruption in the courts. Not surprisingly, the judges won their case. For their part, journalists generally only report on judges in negative ways and there is a notable absence of sophisticated analyses of judicial operations and decisions. Few courts have press officers or personnel experienced in public relations. More could and should be done to improve the level of discourse between judges and journalists as the current situation serves only to undermine public confidence in both professions.



Factor 24: Publication of Judicial Decisions

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

Conclusion	Correlation: Neutral
Important judicial decisions are published and subject to academic scrutiny. However, the level of academic review is reportedly very uneven. In addition, the coverage of judicial affairs by the mainstream press is poorly-informed and politically-driven.	

Analysis/Background:

Constitutional Court decisions are published in the *Monitorul Oficial*, and they are also included in commercially available legal databases. The court also publishes a compilation of its decisions annually. The Supreme Court and some courts of appeal and tribunals, publish their important decisions on an annual basis. The specific focus of these publications, as well as the form and publisher, varies from court to court.

Pursuant to an ordinance issued in 1998, lower court judges only wrote opinions in civil or commercial cases if one party requested it or sought an appeal. This ordinance was rescinded in December 2000, and now all judges must issue written opinions. Judges must always write opinions in criminal cases. Lower court decisions are not usually published. ORDINANCE ON AMENDING AND SUPPLEMENTING THE CIVIL PROCEDURE CODE, NO. 13 OF 1998, O.G. 40/1998, repelled by EMERGENCY ORDINANCE ON AMENDING ARTICLE IX OF THE GOVERNMENT EMERGENCY ORDINANCE NO. 138/2000 ON AMENDING AND SUPPLEMENTING THE CIVIL PROCEDURE CODE, NO. 138/2000 AND ON REPELLING GOVERNMENT ORDINANCE No. 13/1998 ON AMENDING AND SUPPLEMENTING THE CIVIL PROCEDURE CODE, 290 OF 2000, O.G. 706/2000.

Various organizations also publish law reviews that comment on developments in the law and on important judicial decisions. The only reported criticism is that the quality of this commentary is uneven. *Dreptul*, published by the Union of Jurists with a circulation of about 1,000, is perhaps the best-known publication of this nature.

Factor 25: Maintenance of Trial Records

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

Conclusion	Correlation: Negative
Court transcripts are not maintained, but a judge-dictated summary is reduced to writing.	

Analysis/Background:

There are no court reporters in Romania. Rather, judges typically summarize the testimony of a witness. The court clerk records the summary by hand or by typing it, and the witness then signs the summary. This is a slow process, and it frequently results in case records that are unclear.

During the time that a case is active, access to the court's files on the case is typically limited to parties to the case and their attorneys. Judges do have the discretion to grant access to other



individuals who can demonstrate that they have an interest in the case. Once a decision has been issued in a case, any member of the public may access the files. However, archives are typically understaffed, and the process of obtaining the files can be time consuming and difficult.

VI. Efficiency

Factor 26: Court Support Staff

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

Conclusion	Correlation: Negative
The clerical staff in Romania is insufficient given the workload, and clerks are poorly-trained.	

Analysis/Background:

Observers feel that there is insufficient human resource support provided to judges in Romania. Judges do not generally have any secretarial support. In addition, there are too few clerks in the system, their use is inefficient, and they are poorly trained. According to information provided by the MOJ to the EU in June 2001, there are 2,244 clerks in the lower court system, broken down as follows:

Court	Judges	Clerks	Ratio
Judecatorii	2,149	1,503	0.66
Tribunals	937	519	0.53
Courts of Appeal	455	222	0.47

JRI Interview

Clerks must pass a basic exam—covering things like typing skills—and must not have a criminal record. Most do not have any training beyond high school, although some have been trained in computer skills through ad hoc programs. Romania has created a School for Clerks that is just beginning its activities. The School is intended to train new clerks and sitting clerks. Approximately forty clerks will be admitted into each class for six to nine months of training. Attending the School will not be mandatory, and presidents of courts will still be able to hire applicants for clerical positions directly. The government will provide some scholarships to the school. Students who attend the School must agree to work as clerks for a minimum of five years.

The Supreme Court may be in a better position in this regard than the other courts. Supreme Court justices are aided by assistant magistrates, who are also considered judges. The chief assistant magistrate has the rank of a judge on the court of appeal, drafts decisions and has an “advisory vote” in the deliberations.



Factor 27: Judicial Positions

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

Conclusion	Correlation: Neutral
<p>The Romanian court system does not efficiently handle the cases submitted to it. There is debate over whether this is because of the lack of qualified judges, or because of other inefficiencies. However, Romania has created many new judicial positions since 1990.</p>	

Analysis/Background:

As the following chart indicates, the size of Romania's judiciary has increased significantly over the past several years:

	1995	1996	1997	1998	1999	2000
Judecatorii	1,690	1,833	1,994	2,144	2,170	2,137
Tribunal	696	704	781	798	879	923
Courts of Appeal	420	326	355	366	430	451
Total	2,806	2,863	3,130	3,308	3,479	3,511

JRI Interview

This growth is especially striking considering that there were a total of 1,500 lower court judges throughout the country in 1990, and Romania should be commended for allocating resources towards increasing the size of the judiciary. However, there are currently approximately eighty vacancies in the lower courts.

Despite this increase in the number of judges, cases continue to be slowly resolved and individual caseloads remain high. The problem is that the number of cases filed in the Romanian system has also consistently increased over the years. Western European judges familiar with this system reported that there were four or five times more cases filed in Romanian courts than in comparable French or German districts, and that 60% of them concerned property disputes. In a district with 450,000 residents, 20,000 new cases may be filed in one year, compared to 5,000 in other countries. JRI Interview. The following charts reflect the number of cases filed:

Judecatorii

	Penal Cases Filed	Penal Cases Resolved	Civil Cases Filed	Civil Cases Resolved
1990	80,454	66,169	492,817	382,116
1993	222,752	16,610	1,004,094	719,823
1996	271,374	196,593	1,082,594	783,975
1999	243,881	199,787	947,415	789,190
2000	239,182	196,535	970,724	830,628



Tribunals

	Penal Cases Filed	Penal Cases Resolved	Civil Cases Filed	Civil Cases Resolved
1990	23,009	20,013	71,655	61,614
1993	40,849	32,939	117,037	75,142
1996	59,171	47,049	256,990	180,933
1999	87,138	76,759	319,815	258,835
2000	85,159	75,189	340,966	278,416

Courts of Appeal

	Penal Cases Filed	Penal Cases Resolved	Civil Cases Filed	Civil Cases Resolved
1990	n/a	n/a	n/a	n/a
1993	3,994	2,089	14,491	4,345
1996	12,954	11,380	63,523	46,715
1999	29,921	27,916	96,498	81,925
2000	28,693	27,028	110,558	98,033

JRI Interview

The caseload is also heavy in the Supreme Court, where 25,519 cases were filed in 2000. The following chart shows the breakdown by section:

Penal	Civil	Commercial	Administrative	Other	Total
5,189	6,476	9,457	4,304	93	25,519

In addition, in 2000, the Supreme Court had 11,094 cases carried over from the previous year, meaning that it had 36,613 cases on its docket in 2000, of which it resolved 20,591, and carried 16,022 over into 2001.

The high number of cases filed in the courts causes delays in the system and damages the quality of the decision-making.

In terms of delays, according to statistics provided by the MOJ, most criminal cases in the lower courts are resolved within six months. The following charts provide the overall statistics regarding duration of cases in 2000:

Total penal cases	0-6 months	6-12 months	1-2 years	2-3 years	Over 3 years
298,752	265,019	26,742	5,866	905	220

Total civil cases	0-6 months	6-12 months	1-2 years	2-3 years	Over 3 years
879,475	762,789	79,135	29,944	4,375	3,232

Although most cases are resolved within six months, the resolution of some cases does take much longer. In civil matters, it was reported that revisions to the civil procedure code introduced in May 2001, including one allowing only for one level of appeal in certain cases, are reportedly improving efficiency. However, a person who files an appeal with the Supreme Court will likely wait a year for a hearing date.



The real problem of delay may come with the enforcement of decisions, which may take up to four years. Enforcement of judgments may be improving with the privatization of court executors, discussed above. JRI Interview.

In terms of quality, both judges from the tribunal and the Supreme Court estimated that they hear seventy to eighty matters daily. While many of these may be procedural hearings (e.g., requests for postponements), the judges are still handling the substance of forty to fifty matters daily, some of them quite complex. The weight of the caseload handled at that rate is likely to have a deleterious effect on the quality of the decision-making. At the court of appeal in Bucharest judges hear twenty-eight to thirty-four cases per day, a lower, but still overwhelming number.

Other factors contribute to the inefficiency of the Romanian judiciary. Presidents of courts and judges spend too much time working on management rather than judicial concerns. A 1999 report on court administration prepared for ABA/CEELI by Markus Zimmer and Robert St. Vrain determined that:

The administrative burdens placed on presiding judges [court presidents] verge on being oppressive . . . On average, the presiding judges of the *judecatoria* [sic] spend 90% of their working day handling administrative matters that include assigning new and remanded cases; instructing the day's "duty judge" in the registry office on current matters; reviewing the large proportion of cases that are appealed; responding to complaints from the bar, the public, other judges, and court staff on a myriad of matters; supervising building renovations; and answering correspondence from other courts or the Ministry. The upshot is that presiding judges, typically the most experienced and capable judges in their courts, are relegated to spending most of their time performing administrative functions. This diversion of their professional expertise to administrative management deprives the legal system of their extensive experience and training and, instead, tasks them with administrative and management functions for which they have not been prepared.

MARKUS ZIMMER & ROBERT ST. VRAIN, ADMINISTRATIVE AND MANAGEMENT REFORM IN THE ROMANIAN COURT-IMPLEMENTATION PLAN, 12-13 (ABA-CEELI) (1999) [hereinafter ZIMMER REPORT].

Other judges spend valuable time reviewing complaints and other case filings when they are submitted, certifying copies of documents and ensuring that the proper stamp taxes (needed for filing) have been paid. Judges also spend a significant amount of time assisting litigants who are proceeding *pro se*. Judges are also charged with registering property ownership, a task that used to be in the hands of notaries. Judges seconded to the local chambers of commerce also register companies.

Although some of these responsibilities could be shifted to clerical staff, clerks—as discussed above—are at this time ill-prepared to take on such additional duties. Another factor contributing to the burden placed on the Romanian judiciary is an under-use of arbitration, negotiation, and alternative dispute resolution mechanisms.



Factor 28: Case Filing and Tracking Systems

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

Conclusion	Correlation: Negative
The case filing system in Romania contributes significantly to the delays in the court system.	

Analysis/Background:

The filing system in Romania is antiquated and inefficient. Most courts still rely on manually maintained case registers that include chronological logs, alphabetical logs, and numerical logs. The Zimmer Report concluded “[i]mportant case data elements are entered repeatedly by hand in different formats in different registers, resulting in data redundancy that is extremely labor intensive and costly to produce” ZIMMER REPORT at 3. The Zimmer team recommended that Romania convert from a register system to a docket system, finding that “[t]he gains in employee productivity, administrative efficiency, and public service have the potential to be staggering by current standards.” *Id.* at 4.

The filing system also is characterized as being “too circuitous.” Files are constantly on the move from the archives to the judges, to the statistics office, to the archives, and then to the interested parties. Some files or entire dockets are lost and others are stolen. One pending proposal would address this problem by giving individual judges responsibility for case files from the time that a case is registered through the issuance of a decision. Each judge would be held accountable for the file assigned to him or her and only in extraordinary cases would the file be transferred to another judge.

Factor 29: Computers and Office Equipment

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

Conclusion	Correlation: Negative
The Romanian judicial system has an insufficient number of computers and other equipment.	

Analysis/Background:

The following statistics provided by the MOJ reflect the amount of computer equipment available to the court system:

	Courts of Appeal	Tribunals	Judecatorii	Total
Servers	15	27	0	42
Work stations	90	157	394	641
Legislative databases	15	41	0	56

JRI Interview



The numbers show that the Romanian judiciary, considering its size, has an inadequate number of computers and other equipment. The available numbers do not tell the entire story, however. For example, one court of appeal judge reported that she must share one computer with fifteen colleagues, and that they do not have a printer, so it can be used only for conducting research.

Factor 30: Distribution and Indexing of Current Law

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

Conclusion	Correlation: Negative
A system does exist by which judges receive current domestic laws, but each court typically receives only one copy of the relevant publication. Access to jurisprudence is limited.	

Analysis/Background:

Laws are printed in the *Monitorul Oficial* and the MOJ sends at least one copy to each court. The courts must usually then copy or otherwise share the copy of the *Monitorul Oficial*.

Unfortunately, the laws change so frequently that it is difficult to remain up-to-date. Copies of the *Monitorul Oficial* and the published codes are dog-eared, marked up, and revisions are pasted into the relevant issues or books. The MOJ maintains a computer database of the laws (and others are commercially available) but few judges, especially in the regions beyond Bucharest, have computers or access to these databases. In courts where databases do exist, they are often not kept current. Some of the commercially available databases include *Legis*, *Lex Expert*, *Lege*, and *Superlex*.

A similar problem relates to “jurisprudence.” As in most civil law countries, judges do not rely on precedent, but they do look to higher court decisions for guidance, which they refer to as jurisprudence. Constitutional Court decisions are published in the *Monitorul Oficial*, and so they are generally available, but reviewing a law will not always indicate that its status has been affected by a Constitutional Court decision. Some of the computer databases, on the other hand, do provide this linkage. In addition, although the Supreme Court publishes its opinions, they are sometimes not issued for a lengthy period of time.

The courts of appeal also submit issues to the MOJ that they believe the lower courts need guidance on. The MOJ prepares commentaries based on these submissions, including copies of the most important decisions made in the area, and disseminates them to the courts.

Finally, courts can purchase some commentaries and other legal materials on their own, but the budgets for these purposes are extremely low. The court of appeal in Brasov, for example, estimated that it could spend about \$10 per year on such materials.