



**JUDICIAL REFORM INDEX**  
FOR  
**ALBANIA**

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**VOLUME IV**

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## Introduction

The Judicial Reform Index (JRI) is an assessment tool implemented by the American Bar Association's Rule of Law Initiative (ABA ROLI). It was developed in 2001 by the ABA's Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with the other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. 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 ROLI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA ROLI 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 ROLI 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 ROLI 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 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 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 criterion 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.

## Methodology

In designing the JRI methodology, the ABA ROLI 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* and the *Bangalore Principles on Judicial Conduct*. In addition, these criteria also rely upon norms elaborated in regional documents, such as the *Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”*; the *European Charter on the Statute for Judges*; the *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*; the *Arab Justice Conferences’ Beirut and Cairo Declarations on Judicial Independence*; and the *Caracas Declarations of the Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts*. 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 ROLI 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 ROLI 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 other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or a 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 ROLI 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 ROLI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a “scoring” mechanism was one of the most difficult and controversial aspects of this project, and ABA ROLI debated internally whether it should include one at all. During the 1999-2001 time period, ABA ROLI tested various scoring mechanisms. Following a spirited discussion with members of ABA/CEELI’s Executive and Advisory Boards, as well as outside experts, the ABA ROLI 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 ROLI 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 ROLI has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, ABA ROLI 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. This analysis is based on the examination of all laws, normative acts and provisions, and other sources of authority that pertain to the organization and operation of the judiciary, as well as on information obtained through the key informant interview process that relies on perspectives of at least 35-40 judges, legal professionals, law professors, NGO leaders, and journalists who have expertise and insight into the functioning of the judiciary. 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 assessment criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the JRI assessment process is to help ABA ROLI – and its funders and collegial organizations – determine the efficacy of their judicial reform programs and help target future assistance. Of course, many of the issues raised (such as judicial salaries and improper outside influences) cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA ROLI 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 ROLI offers this product as a constructive step in this direction and welcomes constructive feedback.

## **Acknowledgements**

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association's Central and East European Law Initiative (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI, developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-2003) directed the finalization of the JRI.



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## **Assessment Team**

The Albania JRI 2008 assessment team was led by Kathy Ladun, an American attorney who has previously served as a Legal Specialist with ABA ROLI in Kosovo, and ABA ROLI Albania Field Coordinator Jordan Daci, an Albanian attorney and lecturer in human rights and public international law. The team received strong support from ABA ROLI staff in Washington, including Europe and Eurasia Director Donna Wright, Research Director Simon Conté, Research Coordinator Olga Ruda, and Program Manager Laura Berger. ABA ROLI Legal Analyst Jessie Tannenbaum served as editor and prepared the report for publication. The conclusions and analysis are based on over 40 interviews conducted in Albania in December 2008 and relevant documents that were reviewed through January 2009. Records of relevant authorities and a confidential list of individuals interviewed are on file with ABA ROLI. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

## Executive Summary

### Brief Overview of the Results

The 2008 Judicial Reform Index (JRI) for Albania demonstrates that the pace of judicial reform, with the aim of encouraging the functioning of an independent, transparent, impartial, efficient, and professional judiciary, is slow. Changes, especially with regard to the adoption of a revised Law on Organization and Functioning of the Judiciary in February 2008, which creates the foundation for an objective, merit-driven appointment and evaluation system for judges, are encouraging. However, these accomplishments come up against certain actions by political and judicial bodies over the last two years perceived as political interference in the independence of the judiciary and a dogged perception by the majority of citizens that the judiciary is corrupt.

Of the 30 factors analyzed in the JRI, the correlations assigned for two factors (judicial associations and objective judicial advancement criteria) improved since 2006, while two factors (guaranteed tenure and publication of judicial decisions) suffered a decline. Overall, a total of seven factors, including those relating to training of judicial candidates and sitting judges, judicial jurisdiction over human rights cases, appellate process, budgetary process, judicial immunity, and professional associations, were rated positive in 2008, while 19 factors received neutral correlations. The remaining four factors, including those related to improper influence in judicial decision-making, enforcement powers of the courts, public access to court proceedings, and publication of judicial decisions, continue to carry negative correlations.

### Positive Aspects Identified in the 2008 Albania JRI

- ***New judges appointed to the district courts generally must be graduates of the Magistrates' School (MS)***, which continues to run a highly respected training program for future judges. The formal incorporation of this requirement into the law is universally perceived as a positive development to ensure the entry of a well-trained, prepared, and professional cadre of new judges into the judiciary.
- The MS ***continuing legal education (CLE) program for sitting judges remains active and diverse***, reaching some 80% of judges in 2008. Judicial attendance in the CLE program has been mandatory since 2005 and has been incorporated as a factor under the new evaluation system. However, ***the MS still has to rely on international donors***, since so far it has been unable to achieve its goal of funding the CLE program from the state budget alone and.
- ***The establishment of clear judicial advancement criteria aims to create an objective framework for judicial promotion and hiring***, which counters perceptions that the process is subjective and not transparent. In 2008, the High Council of Justice (HCJ) held its first public meetings of candidates for chief judge positions, and has also started to implement an evaluation system for judges based on thorough, objective criteria. It still remains to be seen how the new system and criteria will be implemented.
- ***Two judicial associations were launched in 2008*** and have proven to be staunch and active advocates for judges' interests, including bringing cases before the Constitutional Court. Previously, judges did not have organized advocacy and lobbying done on their behalf. While some interviewees criticized the need for two associations, it appears that ***the majority of judges are members of one of the associations***.
- The ***number of women on the courts of appeal and the High Court has increased*** since 2006, and, for the first time, ***Albania now has a woman serving as the Chief Judge of the High Court***. This has been identified as part of a positive general trend in the country where professional women, while reporting no overt discrimination, often

express the belief that it is harder for a woman than a man to be hired to a position of authority.

## Concerns Relating to Judicial Corruption

- **Perceptions of corruption in the judiciary remain widespread**, although actual **instances of judges being prosecuted for corruption are very rare**. Nearly half of the judges surveyed believed that corruption in courts was a serious problem, and over 60% of the public reportedly has little or no trust in the judiciary. These perceptions result, to an extent, from a **general misunderstanding of the adversarial legal system**, which leads a party to believe that he/she lost a case due to a judge's corruption rather than the merits of the case. Key players are in agreement that the issuance of better reasoned judgments by judges and a public awareness program to explain the nature of a trial could aid in tackling this misperception.
- **Low salaries for judges and court personnel continue to be an issue**. Opinions differed on whether higher salaries would combat corruption, with some interviewees believing this would remove the temptation of corruption from judges, and others expressing the view that it would make little difference. Nevertheless, all agree that an increase in judicial salaries is warranted where judges, particularly in urban areas, are unable to provide for their family.

## Concerns Relating to Judicial Independence and Accountability

- **The Ministry of Justice (MOJ) and the HCJ each continue to have Inspectorates with overlapping competencies related to disciplining judges and inspecting courts**. While both Inspectorates may investigate complaints against judges, the Minister of Justice remains the sole person authorized to initiate disciplinary proceedings before the HCJ. The MOJ authority, upheld by the Constitutional Court, is perceived by the HCJ as an attempt by the executive to infringe on judicial independence, while the MOJ considers its mandate as essential to upholding the accountability of the judiciary. Meanwhile, **judges feel overwhelmed by the potential scrutiny of inspections and disciplinary investigations**, which is impacting their work.
- Recent actions regarding the disciplining of judges have raised **concerns that the existing disciplinary system can be used as a political tool** and threaten judicial independence. The High Court recently overturned an HCJ decision removing three judges based on how they ruled in a high-profile corruption case, which was still on appeal at the time of the HCJ's decision. The HCJ actions were widely criticized as blatant interference in the merits of a case. This also fueled **judges' fears that they are under undue scrutiny with regard to how they rule on the merits of a case**.
- Also contributing to judges' perception that their positions are not as secure as they should be was an **HCJ decision in September 2007 to fire 24 judges whose courts were closed under a judicial reorganization**. In reviewing this case, the High Court found in favor of the dismissed judges and held that the HCJ's decision was in violation of legally guaranteed indefinite judicial tenure. Nevertheless, **it took a year for the HCJ to reinstate the judges**.
- **Court chancellors, who are directly responsible to the MOJ, have been granted a stronger role** under the new judicial power law, including the power to hire and fire secretaries and other court personnel without consultation with the chief judges. Many judges view this expansion in the chancellor's authority as an infringement on the independence of the judiciary, while the MOJ maintains that a strong chancellor can help fight corruption in the judiciary, or the perception thereof.

## Concerns Relating to Transparency of the Judiciary

- Although anyone has the right to obtain access to final court decisions and other official documents, this right is not always respected in practice. Since **only a handful of courts publish their decisions on the Internet**, an in-person visit to the courthouse is necessary in most cases in order to obtain copies of court judgments. Court personnel may resort to *ad hoc* discretionary practices regarding access to court documents. **Of particular concern is also a recent MOJ order imposing further restrictions on access not only to court judgments but to any court services.** Under this order, a person requesting court services must now show a passport, a biometric identity card, or the identity application number, or risk being turned away.
- **Public access to court proceedings remains problematic for many courts where lack of adequate space is a continuing issue.** In district courts, the majority of hearings are held in judges' offices, which are prohibitively small. Even where space restrictions are not an issue, **public attendance of trials appears to be a practice to which courts are still getting accustomed.** In a positive development, most courts now have electronic or hardcopy postings of the court's schedule available at their entrances, although not all courts are diligent in updating the postings. Media has recently been given access to some high profile cases, although there are still reports of periodic media frustration in dealing with some courts.

## Concerns Relating to Inefficiency of Judicial Proceedings

- Many **judges carry excessive caseloads**, and the quality of their work is compromised with **approximately a dozen scheduled hearings a day.** For courts with heavy backlogs, the HCJ has adopted a system by which judges from less busy courts are temporarily delegated to the busier courts to hear cases there. The system, while addressing the heavy backlog at one court, also reduces efficiency at the delegated judge's home courthouse. Some judges also complained that **one of the versions of an electronic case assignment system is unfair** because it takes into account only the number of cases closed rather than the nature of the cases being distributed.
- Judges are reported to **tolerate rather than confront unnecessary delays in court proceedings**, in particular with regard to failure to appear by parties, witnesses, and attorneys. Deficiencies in the notification system make some judges **reluctant to exercise their contempt and subpoena powers**, and judges have little recourse in the case of a failure to appear by an attorney.



## Albania Background

Albanians are a European nation that descended from ancient Illyrians. The country was a part of medieval Europe, governed at various times before and throughout the Middle Ages by the Romans and the Byzantines. Following its conquest by the Turks in the late 14<sup>th</sup>-early 15<sup>th</sup> century, the country remained part of the Ottoman Empire until 1912. Albania achieved full international recognition as an independent state after World War I. The parliamentary system in Albania was supplanted by a monarchy in 1928, which came under the control of the fascist Italian government in 1939. After the end of World War II, the communist government of Enver Hoxha seized power. The communist regime grew increasingly totalitarian, pursuing for many years a policy of Albania's self-sufficiency and isolation from the rest of the world.

When Albania finally broke with the communist rule in 1991, it was "under the burden of the most vicious Communist regime in Eastern Europe, economic development that resembled sub-Saharan Africa, and disintegrating state institutions." FREEDOM HOUSE, *Albania*, in NATIONS IN TRANSIT 2006: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA [hereinafter ALBANIA NIT 2006]. The government launched a rapid reform program that resulted in remarkable progress in Albania's transition to democracy and a market economy. Nonetheless, the rule of law in Albania remains lacking years following the start of transition, and the government has been unable to gain full confidence of the citizens in the fundamental legitimacy of the new order.

## Legal Context

Albania is a parliamentary republic, whose territory is divided into 12 regions (*qarqe*), which are further subdivided into a total of 36 districts (*rrethe*). Following the collapse of the communist rule in 1991, the country operated on the basis of a packet of interim constitutional provisions, passed in sections by a two-thirds vote of the Assembly (Albania's legislature). In November 1998, following a popular referendum, the interim constitutional provisions were replaced by a new Albanian Constitution. It incorporates, *inter alia*, the principles of the separation of powers and political pluralism; guarantees a number of fundamental human rights; and provides for the rule of law, fair and public trial, an opportunity to be heard, and the presumption of innocence. See *generally* CONSTITUTION OF THE REPUBLIC OF ALBANIA (Nov. 28, 1998) [hereinafter CONST.]. Approval of the Constitution was followed by a series of important laws on the judiciary.<sup>1</sup> Some of these laws replaced existing laws, while others are totally new for Albania.

Albania is governed by a unicameral Assembly (*Kuvendi*), consisting of 140 members elected pursuant to a proportional regional system. The Assembly approved this system in April 2008 to replace the prior mixed system combining elements of majority and proportional systems. The President of the Republic is elected by the Assembly for up to two five-year terms. The President

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<sup>1</sup> For example, LAW ON THE ORGANIZATION AND FUNCTIONING OF THE JUDICIAL POWER (Law No. 8436, *adopted* Dec. 28, 1998, *repealed* by LAW ON THE ORGANIZATION OF THE JUDICIAL POWER IN THE REPUBLIC OF ALBANIA (Law No. 9877, *adopted* Feb 18, 2008); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE CONSTITUTIONAL COURT (Law No. 8577, *adopted* Feb. 10, 2000); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COURT (Law No. 8588, *adopted* Mar. 15, 2000); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE MINISTRY OF JUSTICE (Law No. 8678, *adopted* May 14, 2001); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COUNCIL OF JUSTICE (Law No. 8811, *adopted* May 17, 2001); LAW ON DECLARATION AND AUDIT OF ASSETS, FINANCIAL OBLIGATIONS OF ELECTED PERSONS AND CERTAIN PUBLIC OFFICIALS (Law No. 9049, *adopted* Apr. 10, 2003); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE SERIOUS CRIMES COURTS (Law No. 9110, *adopted* Jun. 24, 2003); and LAW ON THE ORGANIZATION AND FUNCTIONING OF THE NATIONAL JUDICIAL CONFERENCE (Law No. 9399, *adopted* May 12, 2005). These laws, together with the 1996 Law on the Magistrates' School, the 1998 Law on the Creation of the Office for the Administration of the Judicial Budget, the 1995 Code of Criminal Procedure, and the 1996 Code of Civil Procedure constitute the main legal provisions pursuant to which the judicial system functions in Albania.



appoints the Prime Minister who, in turn, forms the Council of Ministers composed of the Deputy Prime Minister and ministers.

The legal system of Albania is based on civil law traditions. In the hierarchy of laws, the Constitution has the highest legal force, while ratified international agreements have superiority over domestic laws and legal acts issued by the Cabinet of Ministers. Judicial decisions do not have a precedential value.

Albania has been a member state of the Council of Europe since 1995. It has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter European Convention on Human Rights] in 1996, which is also incorporated by reference into Albania's Constitution. As a signatory to the Convention, Albania has acceded to the jurisdiction of the European Court of Human Rights [hereinafter ECHR] in Strasbourg, and thus complaints regarding violations of the Convention can be made to the ECHR after all domestic remedies have been exhausted.

## **History of the Judiciary**

During more than four decades of communism, Albania was ruled by an extreme, authoritarian and dictatorial regime. Its judiciary was subjugated to the will of the Communist Party Chairman and Central Committee, as well as other executive authorities. Telephone justice was common, with courts often taking instructions from the executive branch, party leaders, and prosecutors. With the change to political pluralism in 1991 and the passage of the interim constitutional provisions, Albania established at least the ideal of an independent judiciary. As part of this transition, many communist-era judges were removed from office and replaced by judges who had attended only a six-month training course in the law. Through 1996, remnants of the old authoritarian mentality persisted, and the executive branch often imposed on the country's courts. Thereafter, courts gained greater independence, and the principle of separation of powers was further reinforced with the adoption of the Constitution in 1998. The Constitution provides for the High Council of Justice [hereinafter HCJ], which decides on the appointment, promotion, transfer, and disciplinary responsibility of judges, and the National Judicial Conference [hereinafter NJC] charged with selection of the HCJ members from the judiciary. Subsequently in 2005, the Assembly legislated a broader role of the NJC by designating it as a representative body of judges for strengthening judicial independence.

In February 2008, the Assembly introduced further reforms to the judiciary with passage of the new LAW ON THE ORGANIZATION OF THE JUDICIAL POWER IN THE REPUBLIC OF ALBANIA (Law No. 9877, *adopted* Feb 18, 2008) [hereinafter JUDICIAL POWER LAW]. The Law sets forth criteria for judicial appointments and promotion, and provides that new judicial appointments to first instance courts are to be filled by Magistrates' School [hereinafter MS] graduates, with a limited exception related to former judges who wish to return to the bench. The Law abolished military courts and provided for the creation of administrative courts to be regulated by separate law. The competencies of the chief judge and chancellor of the court were also set forth in the law. In particular, the chancellor is put under the supervision of the Ministry of Justice [hereinafter MOJ] and is given the authority, rather than the chief judge, of supervising, hiring, and firing court staff. The Constitutional Court is deliberating over the constitutionality of these provisions in a case brought by one of the country's newly established judicial associations, the National Association of Judges [hereinafter NAJ].

## **Structure of the Courts**

Albania has a three-tiered court system composed of first instance courts, courts of appeal, and the High Court. In addition, a Constitutional Court, which is formally outside the judiciary and is independent of all branches of government, exists to interpret and guarantee compliance with the Constitution.

**First instance courts** (frequently referred to as **district courts**) sit in 21 judicial districts throughout the country and try cases in the first instance. The number of courts was reduced from 29 under a reorganization carried out in September 2007 by a presidential decree. Some district courts include special sections for the adjudication of administrative, commercial, and labor disputes. Hearings in civil cases where the amount in controversy is under ALL 10 million (about USD 94.05)<sup>2</sup> and in criminal cases punishable by less than seven years of imprisonment are conducted by a single judge, while other cases in the district courts are heard by three-judge panels. There are currently 281 judges sitting in Albania's first instance courts.

**Courts of appeal** sit in six different regions in the country (Durrës, Gjirokastra, Korça, Shkodra, Tirana, and Vlora) and try cases in the second instance. These courts hear appeals from first instance courts in three-judge panels and may review issues of both the fact and the law. At present, there are 67 judges sitting on the courts of appeal.

**Serious crimes courts** were established effective January 1, 2004 in an effort to increase the efficiency of the judiciary in addressing the problem of organized crime. These courts have jurisdiction over cases involving the establishment of armed gangs or criminal organizations and the crimes they commit (specifically including illegal trafficking in narcotics), armed robbery, human trafficking, crimes related to terrorism, crimes against humanity, some severe political crimes, and other crimes punishable by at least 15 years imprisonment. The first instance court is the Serious Crimes Court, and the second instance court is the Serious Crimes Appellate Court. Both courts are located in the same courthouse in Tirana and generally hear cases in panels of five judges, although the Serious Crimes Court also hears cases related to precautionary measures, sequestration, and confiscation before a single judge.

The **High Court** is the highest court in Albania. Located in Tirana, it has cassation jurisdiction over decisions of the courts of appeal, deciding issues only of the law but not of fact, as well as original jurisdiction over criminal charges against the President of Albania, the Prime Minister, members of the Council of Ministers, deputies of the Assembly, and judges of the High Court and the Constitutional Court. The High Court consists of 17 judges and is divided into civil and criminal colleges of eight judges each. Cases are heard in five-judge panels. Sitting in joint colleges (i.e., *en banc*), the High Court may issue opinions to unify or change judicial practice.

The **Constitutional Court** has jurisdiction over cases involving the compatibility of international agreements with the Constitution prior to their ratification; compatibility of laws and normative acts of central and local governments with the Constitution and international agreements; conflicts of authority between central and local governments; and final adjudication of individuals' complaints that their constitutional right to due process of law was violated. It also has a significant political role, ruling on the constitutionality of political parties and organizations, as well as their activities; verification of the results of referenda and their constitutionality; and election and dismissal of the President of the Republic. The decisions of the Constitutional Court are binding on all other courts and are not subject to review by any other body. The Court consists of nine judges who hear cases *en banc*.

### **Judicial Administration**

Functions related to the administration of the judicial system in Albania are divided between the HCJ and the MOJ. The **HCJ** is a constitutional body responsible for the protection, appointment, transfer, discipline, removal, evaluation, education, moral and professional evaluation, career, and oversight of first instance and appellate court judges. It consists of 15 members: three *ex officio*, the President of Albania (who serves as Chairman), the Chief Judge of the High Court, and the Minister of Justice; three selected by the Assembly; and nine selected by the NJC. The parliamentary representatives must be jurists who are not judges, with a minimum of 15 years

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<sup>2</sup> In this report, Albanian Leke (ALL) are converted to the United States Dollars (USD) at the approximate rate of conversion when this report was drafted (USD 1.00 = ALL 94.05).

legal experience, while the NJC representatives must have served as judges for a minimum of 10 years. The parliamentary and the NJC representatives are elected for a five-year term.

The **MOJ**, which is part of the executive branch, also performs a number of functions related to the judicial system, through its Directorates of Judicial Organization and of Inspection. These include, *inter alia*: attending to the organization and functioning of the services related to the judicial system and to justice in general; attending to and supervising the activity of the judicial administration; conducting inspections and initiating disciplinary proceedings against judges of first instance and appellate courts; and directing the systems of enforcement of criminal and civil judgments. In performing these functions, the MOJ must respect the principle of the separation of powers and the independence of the judiciary.

In addition, the law provides for the **Office of Administration of the Judicial Budget** [hereinafter **OAJB**], which drafts and administers budgetary funds allocated to courts, ensuring the practical application of judiciary's independence from other branches of government. It is governed by an executive board consisting of the Chief Judge of the High Court (who serves as the Board's chairman), a High Court judge, an MOJ representative, two chief judges from appellate courts, and four chief judges from district courts.

## Conditions of Service

### Qualifications

The basic requirements for appointment as a district court judge in Albania include Albanian citizenship; full capacity to act; a higher legal education; graduation from the MS or being a former judge;<sup>3</sup> no criminal convictions; and high moral qualities and professional abilities. A candidate for a judgeship on the serious crimes court must also show at least five years in the courts of first instance; distinguished professional abilities and high ethical and moral qualities; an assessment of "very good" from the last two evaluations; and no current disciplinary measures. The same additional criteria are required to serve on the courts of appeal, except that instead of five years, candidates must have seven years of experience in the courts of first instance. Appointees to the High Court are required to have at least ten years of experience as judges or at least 15 years of experience as prominent jurists. To serve on the Constitutional Court, a candidate must be a highly qualified jurist with at least 15 years of work experience.

### Appointment and Tenure

Judges of district courts, courts of appeal, the Serious Crimes Court, and the Serious Crimes Appellate Court are appointed by the President of Albania upon the proposal of the HCJ. Judges of first instance courts and courts of appeal have indefinite tenures, while judges of the Serious Crimes Court and the Serious Crimes Appellate Court serve nine-year terms and may be reappointed. All such judges continue in office until they resign, are removed for cause, reach the mandatory retirement age of 65, or, in the case of judges of the serious crimes courts, reach the end of their fixed term.

Judges of the High Court and the Constitutional Court are appointed by the President of Albania with the consent of the Assembly. They are appointed for fixed nine-year terms and do not have the right to be re-appointed. However, a High Court judge may be appointed to a court of appeal after completing his/her term in the High Court. The term of office of judges of the High Court and the Constitutional Court may end prematurely if they are convicted of a crime, do not appear for work for more than six months, reach the mandatory retirement age (65 for the High Court and 70

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<sup>3</sup> The law permits the HCJ to appoint up to 10% of the total number of judges from among former judges who have not graduated from the MS but otherwise meet the appointment criteria.

for the Constitutional Court), resign, or are declared incompetent by a court. In any of these cases, the end of a judge's tenure is declared by the court on which he/she sits.

### ***Training***

Although the qualifications for becoming a judge are more rigorous under current legislation, many judges appointed in 1994 received only a six-month, somewhat cursory, training course. Other judges were appointed after completing a correspondence program in law involving exams in all the required courses in the law faculty, but without regular class attendance. To address concerns that a large segment of the judiciary lacked sufficient legal training, all sitting judges of first instance courts were given an examination to test their professional competency in 1999. Those who refused to take the exam were removed from the bench.

Since 2000, most new district court judges have been graduates of the MS, which offers a three-year program with one year of classroom work, one year of supervised practical training in the courts, and one year of intensive professional internship in the courts under the supervision of a judge.

Effective from May 2005, all judges in Albania are required to participate in continuing legal education [hereinafter CLE] programs offered through the MS. While there is no minimum required duration, judges' participation in these courses is restricted to a maximum of 20 days per year, or 60 days every five years. At this time, the law does not include sanctions for failure to attend CLE programs; however, attendance records are submitted annually to the HCJ and placed into judges' personal files. Attendance at CLE courses is also a category in the new judicial evaluation system introduced by the HCJ.



## Albania JRI 2008 Analysis

While the correlations drawn in this assessment may serve to give a sense of the relative status of certain issues present, ABA ROLI would underscore that these factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis. ABA ROLI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA ROLI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA ROLI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

### Table of Factor Correlations

Judicial Reform Index Factor		Correlation 2006	Correlation 2008	Trend
<b>I. Quality, Education, and Diversity</b>				
Factor 1	Judicial Qualification and Preparation	Positive	Positive	↔
Factor 2	Selection/Appointment Process	Neutral	Neutral	↔
Factor 3	Continuing Legal Education	Positive	Positive	↔
Factor 4	Minority and Gender Representation	Neutral	Neutral	↔
<b>II. Judicial Powers</b>				
Factor 5	Judicial Review of Legislation	Neutral	Neutral	↔
Factor 6	Judicial Oversight of Administrative Practice	Neutral	Neutral	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Positive	Positive	↔
Factor 8	System of Appellate Review	Positive	Positive	↔
Factor 9	Contempt/Subpoena/Enforcement	Negative	Negative	↔
<b>III. Financial Resources</b>				
Factor 10	Budgetary Input	Positive	Positive	↔
Factor 11	Adequacy of Judicial Salaries	Neutral	Neutral	↔
Factor 12	Judicial Buildings	Neutral	Neutral	↔
Factor 13	Judicial Security	Neutral	Neutral	↔
<b>IV. Structural Safeguards</b>				
Factor 14	Guaranteed Tenure	Positive	Neutral	↓
Factor 15	Objective Judicial Advancement Criteria	Negative	Neutral	↑
Factor 16	Judicial Immunity for Official Actions	Positive	Positive	↔
Factor 17	Removal and Discipline of Judges	Neutral	Neutral	↔
Factor 18	Case Assignment	Neutral	Neutral	↔
Factor 19	Judicial Associations	Neutral	Positive	↑
<b>V. Accountability and Transparency</b>				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Neutral	Neutral	↔
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Negative	Negative	↔
Factor 24	Publication of Judicial Decisions	Neutral	Negative	↓
Factor 25	Maintenance of Trial Records	Neutral	Neutral	↔
<b>VI. Efficiency</b>				
Factor 26	Court Support Staff	Neutral	Neutral	↔
Factor 27	Judicial Positions	Neutral	Neutral	↔
Factor 28	Case Filing and Tracking Systems	Neutral	Neutral	↔
Factor 29	Computers and Office Equipment	Neutral	Neutral	↔
Factor 30	Distribution and Indexing of Current Law	Neutral	Neutral	↔

# I. Quality, Education, and Diversity

## Factor 1: Judicial Qualification and Preparation

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

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
<p>Judicial candidates are required to have higher legal education and, with one exception for former judges, to have completed the three-year initial training course at the MS, during which time they are provided a stipend. The curriculum includes a broad course of study. Candidates spend the third year of the program working in a court under the supervision of a judge. The quality and success of this program is widely recognized.</p>		

### Analysis/Background:

Individuals seeking appointment as district court judges in Albania must be Albanian citizens who have full capacity to act, a higher legal education, graduated MS, not been convicted of a crime, and high moral qualities and professional abilities. JUDICIAL POWER LAW art. 11. The requirement that a candidate for a judgeship be a graduate of the MS was put into law for the first time in the revised Judicial Power Law adopted in 2008. However, an exception was also included which permits the HCJ to appoint up to 10% of the total number of judges from among former judges who meet all other requirements for a judgeship. *Id.*

Additional qualifications are required depending on the court to which an appointment is made. Thus, to serve as a judge on the courts of appeal, an individual must demonstrate at least seven years of experience in the courts of first instance; distinguished professional abilities and high ethical and moral qualities; a ranking of “very good” for professional abilities on the previous two evaluations; and no disciplinary measures in effect. *Id.* art. 12. The same requirements apply to candidates for appointment to serious crimes courts, except that they are required to have only five years of prior experience in the courts of first instance. *Id.* In addition, if a judge receives a disciplinary measure other than removal, he/she must wait two years from the time the measure was concluded before competing for a vacancy on the serious crimes courts. LAW ON THE ORGANIZATION AND FUNCTIONING OF THE COURTS FOR SERIOUS CRIMES art. 4 (Law No. 9110, adopted July 24, 2003) [hereinafter LAW ON SERIOUS CRIMES COURTS]. If a judge was removed from office as a disciplinary measure, he/she is barred from competing for vacancies in the serious crimes courts. *Id.*

Appointees to the High Court must have at least ten years of experience as judges or at least 15 years of experience as prominent jurists. LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COURT OF THE REPUBLIC OF ALBANIA art. 3 (Law No. 8588, adopted Mar. 15, 2000) [hereinafter HIGH COURT LAW]. To serve on the Constitutional Court, a candidate must be a highly qualified jurist with at least 15 years of work experience. LAW ON THE ORGANIZATION AND FUNCTIONING OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ALBANIA art. 7.2 (Law No. 8577, adopted Feb. 10 2000) [hereinafter LAW ON THE CONST. COURT].

The quality of education offered by the University of Tirana Law School has come under criticism for outdated teaching methods and minimal course offerings. The Law School currently has approximately 1,200 full-time and approximately 400 part-time students enrolled in its program,

and approximately 30 faculty members. In the fall of 2008, the first class to be enrolled in the 3+2 system set forth under the Bologna Process<sup>4</sup> commenced studies at the Law School. First-year students at the Law School will receive their bachelor's degrees in law after three years of study and may receive a master's degree after two more years of study. Prior law school classes were enrolled under a 4+1 program, where students received their bachelor's degrees after four years of study and a master's degree after one additional year. The Law School has also implemented a system of awarding credits for courses. The curriculum was recently updated to add new subjects including environmental law, formal logic, gender equality and the law, legal sociology, comparative constitutional law, migration law, intellectual property law, cyber law, legal ethics, bankruptcy law, and consumer law. The Law School's curriculum now includes human rights law as a mandatory subject, as well as an optional legal writing and reasoning course.<sup>5</sup> Legal aid organizations have successfully tapped into the student body to staff legal clinics and street law seminars. However, students who take part in these programs, which were described as very popular, receive no academic credit for their work.

In addition to the state university system, only three out of ten private law schools are accredited in Albania. No standard curriculum exists for these schools. By multiple reports, the quality of education which law students receive is highly variable.

The MS is a public budgetary institution based in Tirana. LAW ON THE MAGISTRATES' SCHOOL OF THE REPUBLIC OF ALBANIA art. 1 (Law No. 8136, *adopted* July 31, 1996, *as amended* by Law No. 9414, May 20, 2005) [hereinafter MS LAW]. The mandate of the MS is two-pronged. The School trains candidates for future judge and prosecutor positions in a three-year program and offers CLE to current judges and prosecutors. *Id.* art. 2. See Factor 3 below for the description of the CLE program.

The MS announces annually the number of students who will be accepted as candidates for judicial or prosecutorial positions in the coming year, based on vacancy numbers received from the HCJ and the Prosecutor General. Candidates must have a higher legal education degree, demonstrate a grade point average of 8 on a scale of 5-10, have no criminal record, and sit for an examination. See MS LAW arts. 16, 17; see *also* ADMISSION STANDARDS IN THE SCHOOL OF MAGISTRATES AND THE DECLARATION FOR THE ADMISSION EXAM. The MS accepted eight students each year in 2007 and 2009 into its judicial track; no candidates were admitted in 2008.

The first year of the three-year program is classroom-oriented, with candidates for both judicial and prosecutorial positions taking the same curriculum. Students take courses in constitutional law, administrative law, civil law, civil procedure, family law, international private law, and European law and institutions. Candidates must pass exams on all subjects and are only entitled to sit for an exam one time. INTERNAL REGULATIONS OF THE SCHOOL OF MAGISTRATES OF THE REPUBLIC OF ALBANIA art. 16.5. In the second year, candidates perform internships in judicial chambers or prosecutors' offices. The internship includes a classroom component with lectures on relevant subject matters and mock trials. Candidates also write a thesis during their second year. Finally, in the third year, candidates engage in active practice during a "professional internship," where they try or prosecute cases under the direction of a judge or prosecutor. MS LAW art. 14. During this period, candidates have the same rights and duties as judges and prosecutors. *Id.* art. 21.

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<sup>4</sup> As part of an agreement between the government and the European Union [hereinafter EU], in 2005, the University of Tirana began to implement the Bologna Process, a part of the 1999 Bologna Declaration, which aims at a convergence of higher education standards in Europe. See ABA/CEELI, JUDICIAL REFORM INDEX FOR ALBANIA, VOLUME III at 12 (2006).

<sup>5</sup> While the Law School makes efforts to reform its curriculum to implement the Bologna Declaration, it is hampered by the appalling conditions of the building itself. The entire faculty was forced to move out of the facility in November 2008 due to the serious risk of building collapse. The classes were relocated to rooms in a student dorm, as well as to a high school where the Law School may use the classrooms in the evenings.

Judicial candidates receive compensation equal to 50% of the pay of a district court judge for the first two years of the program, and receive a regular judicial salary for the third year. *Id.* art.14. The pedagogical council, chaired by the School's director and consisting of the faculty, one judge, and one prosecutor, evaluates students at the end of their second and third years. The third-year evaluation examines both the theoretical results and the practical results of the internship. *Id.* art. 20. The council considers evaluation reports submitted by the judges and prosecutors who supervised the candidates' work, which include assessments on the quality of written judgments, the speed of work, and the management of decorum in the courtroom. The council's recommendation is sent to the HCJ, which then reviews the file and submits a proposal for appointment. The evaluation data and the proposal are sent by the school to the President of Albania for making the candidates' final appointments to vacant positions. *Id.* Judicial candidates who successfully complete the program are guaranteed positions as judges, and the state is required to pay their salaries while they await an official appointment. *Id.*

The MS has 22 full time employees, including permanent faculty. The School received a new director in the fall of 2008 when the former longtime director was appointed to the High Court. While donors fund many of the CLE programs, the training program for new judges and prosecutors is fully government-funded. The MS annually submits a proposed draft budget to the Ministry of Finance. Although the MS saw a slight decline in its 2008 budget, the projected 2009 budget shows a 6% increase in funding from the previous year.

Interviewees made uniformly positive remarks about the MS program for judges and prosecutors. New judges thought that the training prepared them well for the challenges of their new positions. Key players in the judicial system noted a positive difference in the ability of new judges and the quality of their work, and attributed it to the fact that an increasing number judges are coming to the bench through this system. Proposals for future programs include an expansion of the training branch to encompass public advocates, bailiffs, and judicial legal assistants. Future plans also include the establishment of a formal department for research and publication. The School already publishes a professional journal, JETA JURIDIKE, on a quarterly basis, which is supported with the EU funds. The aim is to bring this and eventual other publications under a research department funded from the state budget.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>The appointment of judges to first instance courts and appellate courts is based on objective criteria set forth in the law, although the appointment process may be perceived as subject to manipulation. Appointment criteria for the High Court and the Constitutional Court are less rigid and perceived as subject to political influence, although the most recent High Court appointments were eventually carried out in a more transparent and open manner than at any time before.</p>		

### Analysis/Background:

The President of Albania, on a proposal of the HCJ, appoints judges to the district courts, courts of appeal, and both tiers of the serious crimes courts. JUDICIAL POWER LAW art. 12.1. Members of the High Court and the Constitutional Court are appointed by the President with the consent of the Assembly. CONST. art. 136.1; LAW ON THE CONST. COURT art. 7.1.

The HCJ is composed of 15 members, including the President of the Republic, who chairs the body, the Chief Judge of the High Court, the Minister of Justice, three members elected by the Assembly, and nine judges of all levels elected by the NJC. CONST. art. 147.1. The members elected by the Assembly must be jurists who are not judges, with at least 15 years of experience, while the NJC-elected members must be judges with at least 10 years of experience. LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COUNCIL OF JUSTICE art. 4 (Law No. 8811, *adopted* May 17, 2001) [hereinafter HCJ LAW]. These elected members serve five-year terms with no right to immediate re-election. *Id.* art. 6. A vice-chair is elected from among the HCJ members on the proposal of the President. *Id.* art. 12. The vice-chair is the only full-time member of the HCJ and is also responsible for overseeing the day-to-day activities of the Council. *Id.* art. 13.

The HCJ is obligated to announce vacancies for judgeships on the district court, serious crimes court, and courts of appeal in at least two national newspapers and by public radio and television at least one month before the vacancy is to be filled. *Id.* art. 28. The vacancy announcement must be published at least three times before the closing date. *Id.* A five-member special commission of the HCJ, chaired by the vice-chair, examines applications and verifies that candidates have met the legal criteria for the position. *Id.* art. 29; see also REGULATION OF THE COMMISSION OF THE HIGH COUNCIL OF JUSTICE FOR THE EXAMINATION OF CANDIDATES FOR JUDGES AND THEIR TESTING art. 1 (*adopted* Feb. 21, 2003) [hereinafter HCJ REGULATION ON EXAMINATION COMMISSION]. The commission holds a “professional testing” of all candidates, which can take the form of either interviewing the candidate or administering a written test. HCJ LAW art. 29; HCJ REGULATION ON EXAMINATION COMMISSION art. 6.2. Graduates of the MS and judges seeking to be transferred within their level of court are exempt from the testing process. HCJ REGULATION ON EXAMINATION COMMISSION art. 6.6.

As discussed in Factor 1 above, appointments to district courts are generally made by the President of Albania upon recommendation of the HCJ from among the candidates who have successfully completed the post-university MS program. For candidates for the courts of serious Crimes and the courts of appeals that meet the basic age and experience criteria set forth for these positions, the HCJ uses a point system to rank candidates, which takes into account seniority, ongoing work results, as well as scientific and academic activity. JUDICIAL POWER LAW art. 12.4. An open vote on candidates is taken among HCJ members, and an appointment is considered accepted with a majority or a tie vote of the members. HCJ LAW art. 26. The proposal for nomination is then sent to the President along with information on the candidate. HCJ REGULATION ON EXAMINATION COMMISSION art. 12.

While the law and regulation mandates that the HCJ consider objective criteria in judicial selection process, some interviewees criticized the HCJ appointment process as biased and subjective. Colloquially, critics expressed an opinion that, in observing the HCJ meetings, appointments still came down to personal preferences more than objective criteria. Their concerns were that the HCJ did not substantively question candidates nor reveal its reasoning for its selections. Observers urged more reliance on concrete criteria and more substance in open discussions about appointments, which would ultimately quell any perception of the HCJ as a political arm of the political party in power. Such a perception emerged since the President of Albania serves as the HCJ Chairman, while the vice-chair is selected by the HCJ upon nomination of the President.

With regard to the High Court and the Constitutional Court appointments, the year 2008 brought a showdown of sorts between the President of Albania Bamir Topi and the Assembly over the meaning of the Constitution. The Constitution provides that High Court judges are appointed by the President “with the consent of the Assembly.” CONST. art. 136.1. In June 2008, President Topi submitted to the Assembly his list of six candidates to be nominated to the High Court. The Assembly rejected the candidates with the argument that, under the Constitution, the President could not present a list of nominees as a *fait accompli* to the Assembly; rather, the President was required to seek the Assembly’s prior consent on the nominees. In July 2008, President Topi selected six new nominees to the High Court from a short list compiled by an advisory group



which prepared a report on possible candidates. This time, the Assembly approved all of the nominees. Interviewees commented that the constitutional dispute resulted in the most transparent process to date for judicial appointments. The public was kept informed as to what criteria were being applied and what the advisory group was doing.

### 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.***

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
Judges are required to attend CLE courses at no cost to them. Although no minimum number of hours is mandated, attendance at CLE is taken into account in the evaluation process. The MS, which conducts the courses, solicits input from judges annually on the subject matter of courses which they would like to attend.		

#### Analysis/Background:

Participation in CLE is mandatory for judges of first instance courts and courts of appeal. MS LAW art. 23. While no minimum number of CLE hours is set by law, judges may not attend more than 20 days of trainings per year, or more than 60 days during five years. *Id.* However, participation in CLE is one of the criteria examined during the professional evaluation process for judges. See HCJ REGULATION ON SYSTEM OF PROFESSIONAL AND ETHICAL EVALUATION OF JUDGES art. 12 (*adopted* May 11, 2006, as *amended* Feb. 7, 2007) [hereinafter HCJ EVALUATION REGULATION]; see also Factor 15 below. The MS submits attendance reports to the HCJ. HCJ EVALUATION REGULATION art. 29. Under the evaluation system, which is overseen by the HCJ Inspectorate, points are awarded or deducted based on a judge's attendance at CLE. *Id.* art. 12. The MS estimates that nearly 80% of judges participated in CLE in 2007-2008.

The Director of the MS composes a schedule of proposed courses after receiving input from the Chief Judge of the High Court, the Prosecutor General, the MOJ, the HCJ, and the School's pedagogical council. MS LAW art. 23. The proposed training plan is circulated at the beginning of the calendar year among judges, whose opinions are solicited as to any additions or adjustments they think would be useful to the schedule. Once the judges' input is taken into account, the MS finalizes a training schedule, which is circulated to all judges. Judges inform their court chief judges of which sessions they wish to attend. The chief judges then must approve the selections and submit this information to the Director of the MS. *Id.* art. 24. Judges who participate in a CLE course are issued a certificate by the MS, a copy of which is placed into their personal files. *Id.* art. 25.

The MS utilizes approximately 30-40 trainers a year for its courses. A trainer may be recommended to the MS by judges or other legal professionals for a particular course, or trainers may directly propose to the MS a subject to be offered. The School reviews their curriculum vitae, the proposals for the course, and methodology, and then makes a decision. The majority of CLE courses are held in Tirana; however, the MS does conduct several trainings a year in Vlora and Shkodra. Travel expenses are covered for participants, and meals are also often included as part of the budget. While the goal of the MS is to fund the CLE component of its programming from the state budget, in practice, the School still relies on international donors to fund a portion of the programming. Some international donors provide not only funding but also expertise. In the 2007-2008 academic year, the Organization for Security and Cooperation in Europe

[hereinafter OSCE] funded a two-day family law program, described by the MS officials as one of the most popular among judges during that year. United States Agency for International Development [hereinafter USAID] and Chemonics sponsored two-day courses on public procurement. The Council of Europe conducted training of trainers on the European Convention on Human Rights, as well as on improving teaching methodology. Three-day seminars on judicial ethics, funded by the Italian Superior Council of Magistrates, were taught by Italian experts.

Judges uniformly expressed their satisfaction and praise over the CLE program of the MS. They observed that their input is taken into consideration and the course selection is dynamic, interesting, and relevant.

#### Factor 4: Minority and Gender Representation

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>Albania does not maintain statistics on the ethnic and religious composition of the judiciary, but there are no legal barriers to prevent most ethnic and religious minorities from being represented among the pool of judicial nominees or in the judiciary itself. Women make up approximately 38% of the judiciary and are better represented now than in the past in the courts of appeal and on the High Court. Interviewees reported no overt examples of discrimination against minorities or women in the judiciary.</p>		

#### Analysis/Background:

The Constitution provides for equality before the law. CONST. art. 18. Individuals are guaranteed freedom from unjust discrimination on the basis of race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage. *Id.* art. 18.2.

The judiciary does not keep statistics on the ethnic or religious affiliations of judges. Similarly, the MS maintains no statistics on the ethnic or religious backgrounds of its applicants. Although there reportedly are several judges of Greek ethnicity, a determination of the ethnic or religious composition of the courts or the applicant pool is difficult to make. Indeed, even at the state level, such statistics are difficult to obtain. The last census taken in 2001 did not contain any questions on ethnic or religious affiliation, which makes the 1989 population census estimates the last reliable statistical data taken on ethnic and religious composition of Albania's society.<sup>6</sup>

None of the interviewees reported any obstacles or examples of discrimination against minority participation in the judiciary. However, interviewees discussed broader social issues that hinder access to the higher education system in order to explain why certain minority groups (the Roma, in particular) are not more included in societal structures such as the judiciary.

Approximately 38% of all sitting judges in Albania are women. Since 2006, women have made gains in representation on the appellate courts (32.2% vs. 33.3%) and on the High Court (26.7%

<sup>6</sup> According to the 1989 census estimates, ethnic Albanians constituted 95% of the population. The Greeks were the largest minority group, estimated at 3%. Other ethnic groups, including Vlach, Roma, Serbs, Macedonians, and Bulgarians, made up 2% combined. An estimated 70% of the population were Muslim, 20% Albanian Orthodox, and 10% Roman Catholic. See *Albania*, in CIA WORLD FACTBOOK, available at <https://www.cia.gov/cia/publications/factbook/geos/al.html>.



vs. 35.3%). For district courts, the percentage of women judges has decreased slightly since 2006 (40.9% vs. 39.8%). In the legal system in general, women comprise approximately 30% of prosecutors, 50% of attorneys, and 50% of law students.

#### GENDER COMPOSITION OF THE ALBANIAN JUDICIARY

<b>Court Level</b>	<b>No. of Sitting Judges</b>	<b>No. of Female Judges</b>	<b>% of total</b>
<b>Constitutional Court</b>	9	1	11.1
<b>High Court</b>	17	6	35.3
<b>Courts of Appeal</b>	57	19	33.3
<b>District Courts</b>	281	112	39.8
<b>TOTAL</b>	<b>364</b>	<b>138</b>	<b>37.9</b>

*Source:* MOJ; OAJB.

Interviewees reported no instances of gender discrimination in judicial appointments. A popular view expressed was that more possibilities for women exist now, but that it was still much easier for men to get promoted to decision-making positions. Multiple sources observed a positive trend which suggests the situation is changing. Thus, three of the President's six nominees to the High Court in 2008 were women. In addition, Albania for the first time has women serving in the positions of both the Chief Judge of the High Court and the Prosecutor General. Finally, in July 2008, the Assembly passed a law on gender equality which contains a provision encouraging a gender quota for minimum representation in legislative, executive, and judicial bodies. The passage of the law followed adoption of a National Strategy on Gender Equality and Domestic Violence in December 2007. The revised Electoral Code approved by the Assembly in December 2007 provides for a gender quota for the electoral lists.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>The Constitutional Court has the power to determine the ultimate constitutionality of legislation and official acts, and its decisions are enforced. If a court or a judge believes a law to be unconstitutional and there is a direct connection to the pending matter, examination of the issue must be suspended and the question of constitutionality submitted to the Constitutional Court. In practice, this rarely occurs.</p>		

#### Analysis/Background:

The Constitutional Court, which is formally outside the judiciary and is independent of all branches of government, exists to interpret and guarantee compliance with the Constitution. It has jurisdiction over cases involving the compatibility of international agreements with the Constitution prior to their ratification; compatibility of laws and normative acts of central and local governments with the Constitution and international agreements; conflicts of authority between central and local governments; and final adjudication of individuals' complaints that their constitutional right to due process of law was violated. CONST. arts. 124, 131; LAW ON THE CONST. COURT arts. 49-52, 54-56. The Court also has a significant political role, ruling on the constitutionality of political parties and organizations, as well as their activities; verification of the results of referenda and their constitutionality; and election and dismissal of the President of the Republic. CONST. art. 131; LAW ON THE CONST. COURT arts. 57-67. Finally, the Constitutional Court indirectly reviews the compatibility of legislation with the European Convention on Human Rights, as many of the rights and liberties set forth in the Constitution directly parallel those in the Convention and the Constitution specifically states that limitations on rights and freedoms cannot exceed those limits set forth in the European Convention on Human Rights. CONST. art. 17.

The President and Prime Minister, at least one-fifth of deputies, the head of High State Control, and any court may request a proceeding be initiated by the Constitutional Court. In addition, the People's Advocate [hereinafter PA], local government, religious communities, political parties, and other organizations and individuals may file a complaint for consideration by the Court, providing it is for issues related to the complainants' interests. CONST. art. 134. Further, if a judge, in the course of judicial proceedings, believes that an applicable law or provision is unconstitutional, courts or individual judges must refer cases to the Constitutional Court for a ruling on the constitutionality of this law. This referral may be made either upon the application of parties or *sua sponte*. *Id.* art. 131; LAW ON THE CONST. COURT arts. 68-70. Proceedings related to the issue in a court of general jurisdiction are suspended while the Constitutional Court reviews the matter. LAW ON THE CONST. COURT art. 68.

A panel of three Constitutional Court judges initially examines a complaint to determine if it is within the competency of the Court. If any member of the panel disagrees with the majority, the complaint passes to a Meeting of the Judges, which decides by majority vote whether the Court will hear the case. LAW ON THE CONST. COURT art. 31. Cases that are deemed admissible are heard by a plenary session of all nine judges of the Court. *Id.* art. 32. Decisions of the Constitutional Court have general binding force and are final. CONST. art. 132.

In 2007, 222 petitions were filed with the Constitutional Court, of which 45 were accepted for plenary hearing. The majority of the accepted petitions (30) concerned individual claims



regarding due process. Courts filed four petitions seeking a determination on the constitutionality of applicable laws, and an additional four complaints were brought by political parties and other organizations. Members of the Assembly filed two petitions, while the High State Control and the PA each filed one. The remaining three cases concerned rulings on the end of the mandate of certain judges of the Constitutional Court. In 42% of the cases, the Constitutional Court found the legal acts in question unconstitutional. See 2007 STATISTICS OF THE CONSTITUTIONAL COURT, available at <http://www.gjk.gov.al/Statistika%202007.pdf>.

Among the petitions brought by courts in 2008, the Durres District Court challenged a provision criminalizing the issuance of a knowingly unfair final court decision. See CRIMINAL CODE OF THE REPUBLIC OF ALBANIA art. 315 (Law No. 7985, adopted Jan. 27, 1995) [hereinafter CRIM. CODE]. The Durres court argued that this provision was unconstitutional because it violated the guarantees of an independent judiciary, as well as provisions of the European Convention on Human Rights and other international norms. The Constitutional Court agreed, although with strong dissent, and found that the possibility to initiate criminal proceedings against a judge for the issuance of a final decision, while that decision may still be the subject of an appeal, created improper pressure upon judges, which could harm the administration of justice. See Constitutional Court Decision No. 11/2008.

The Constitutional Court also considered a petition filed by the NAJ, which challenged a new Law on the NJC that would have permitted the election of members to the HCJ by a vote by delegates rather than a vote by all judges. The NAJ argued that the Constitution guaranteed judges their right to vote for HCJ members through the NJC. The Court agreed and invalidated the unconstitutional provision. See also Factor 19 below.

The Constitutional Court was brought into a dispute between the Prosecutor General and the Assembly that evolved over the course of two years. In 2006, a parliamentary commission reviewed then-Prosecutor General Theodhori Sollaku's work on 80 cases and concluded there was sufficient evidence to establish a connection to organized crime. As such, the commission proposed that the Prosecutor should be removed. Sollaku filed a petition with the Constitutional Court. The then-President of Albania refused to approve the commission's proposal to remove the Prosecutor General. In December 2006, the Constitutional Court found that the parliamentary commission had exceeded its constitutional mandate when it reviewed the work of the Prosecutor and his decisions, stating that "the Assembly has no competence to check and evaluate the decision of the prosecutors in concrete cases." See Constitutional Court Decision No. 26/2006. The Assembly took no further action with regard to the commission's proposal, but in October 2007, several months after the election of a new President, the ruling majority in the Assembly established a second investigative commission. The commission conducted a review of Sollaku's work and concluded that he had not done enough to tackle organized crime and allowed 22 criminals early release. The Constitutional Court was again petitioned in December 2007 on behalf of the Prosecutor General who challenged the Assembly's authority to review his work. Before the Constitutional Court ruled on the case, the President Albania dismissed Sollaku. In October 2008, the Court found that Sollaku's due process rights had been, at least formally, respected this time. The Court also found that the Assembly's investigative commission had not overreached its authority by reviewing Sollaku's work. A strong dissent was filed by three of the nine judges. See Constitutional Court Decision No. 21/2008.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>The judiciary has the power to review administrative acts; however it lacks the <i>de jure</i> and <i>de facto</i> power to compel the government to act, particularly with regard to the enforcement of judgments. Interviewees expressed varying levels of satisfaction with the process and outcomes of review of administrative acts. A draft law that would establish a separate administrative court system as required by the Judicial Power Law is pending in the Assembly.</p>		

### Analysis/Background:

Under the revised Judicial Power Law, the organization and functioning of administrative courts are to be regulated by a separate law. See JUDICIAL POWER LAW art. 7. As of the writing of this JRI, a draft law that would establish a separate administrative court system, which would decide cases under the existing Administrative Procedure Code, is still pending in the Assembly. In the meantime, the ordinary court system continues to hear administrative cases using the existing Civil Procedure Code, which contains a section on administrative disputes. See CODE OF ADMINISTRATIVE PROCEDURES OF THE REPUBLIC OF ALBANIA art. 18(b) (Law No. 8485, May 12, 1999).

Currently, special sections have been set up to adjudicate administrative cases within 17 district courts in Albania. Unless provided otherwise by law, a plaintiff has 30 days from the date of the announcement of the decision of the administrative body to bring a case before the court. CIVIL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA art. 328 (Law No. 8116, *adopted* Mar. 29, 1996) [hereinafter CIVIL PROC. CODE]. If the administrative body failed to timely consider the complaint, the plaintiff may file a complaint directly to the court. *Id.* Plaintiffs may seek to invalidate or change an administrative act or to challenge a refusal to approve an administrative act. *Id.* art. 324. The plaintiff has the burden of proving why the act should be revoked, abrogated, or amended. *Id.* art. 12. The court may dismiss the case, find the administrative act invalid, or annul an act partially or entirely. *Id.* art. 331. In the case of finding an act invalid or unfounded, the court must produce a reasoned decision. *Id.* art. 332.

In 2007, the district courts examined 2,667 administrative cases. See MOJ, STATISTICAL YEARBOOK 2007 at 148 [hereinafter MOJ YEARBOOK2007]. Certain courts designate judges to be dedicated to administrative cases; others distribute administrative cases among all judges. A frequent complaint heard from both the bench and from the parties was that a new procedural code was necessary to help expedite matters in administrative cases. The Civil Procedure Code deadlines are designed for longer and more complicated cases, whereas administrative disputes often have discrete records and few witnesses.

In practice, advocates who frequently appear in administrative cases before the courts on behalf of indigent clients, usually for pension or welfare benefits, have expressed general satisfaction with the working of the court and the case outcomes. However, individuals who have appeared in administrative cases on behalf of business companies in dispute with the government have indicated that the process can be difficult. In tax, property, customs, or procurement matters, government participation in the case was described at times as slow and obstructive. Furthermore, enforcement of judgments is a problem endemic to the system as a whole, and many decisions against the government bodies go unexecuted. Many judges described their role as complete with the issuance of a final execution order at the end of a case, and asserted that they have little, if any, role in the ultimate enforcement of the order. The Bailiff Service oversees

enforcement, and courts role at that point is limited to hearing appeals from debtors or third parties which challenge the execution of the judgment. See Factor 9 below for additional details about the enforcement process. The ECHR described the problem of non-enforcement of domestic judgments and administrative decisions concerning restitution or compensation to former owners as “a systemic problem.” See *Driza v. Albania* (Decision No. 33771/02, Nov. 13, 2007). Indeed, the first judgment handed down by the ECHR regarding Albania concerned the non-enforcement of a judgment against the municipality of Tirana. See *Qufaj Co. Sh.P.K. v. Albania* (Decision 54268/00, Nov. 18, 2004). In *Qufaj*, the state, claiming lack of funds, failed to execute a judgment awarding compensation to the complainant for losses suffered as a result of a rejected building permit. See also *Marini v. Albania* (Decision No. 3738/02, Dec. 8, 2007), where the ECHR found a violation of the right to a fair trial when a judgment against the state went unexecuted for 10 years due to the inaction of bailiffs and administrative authorities.

## Factor 7: Judicial Jurisdiction over Civil Liberties

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

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
By law and in practice, the judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties, as guaranteed in the Albanian Constitution and the ratified European Convention on Human Rights.		

### Analysis/Background:

The Constitution guarantees fundamental human rights and freedoms for individuals within the territory of the Republic of Albania. See CONST. arts. 15-59. These rights and freedoms include, *inter alia*, equality before law (*id.* art. 18), the right to life (*id.* art. 21), the freedom of expression (*id.* art. 22), the freedom of religion (*id.* art. 24), freedom from torture and cruel or inhuman punishment (*id.* art. 25), the right to liberty (*id.* art. 27), the presumption of innocence (*id.* art. 30), the right to be notified of criminal accusations against oneself and to obtain legal defense in the course of criminal prosecution (*id.* art. 31), the right to privacy of personal information, correspondence, and residence (*id.* arts. 35-37), the right to private property (*id.* art. 41), the right to vote (*id.* art. 45), the freedom of association (*id.* art. 46), the freedom of assembly (*id.* art. 47), the right to strike (*id.* art. 51), the right to social security (*id.* art. 52), and the right to education (see *id.* art. 57). The Constitution also incorporates by reference the European Convention on Human Rights. *Id.* art. 17.2. All organs of public power are required to respect these rights and freedoms and contribute to their realization. *Id.* art. 15.2.

The Constitution further guarantees that the freedom, property, and rights recognized by the Constitution may not be infringed without the due process of law. *Id.* art. 42.1. Everyone is entitled to seek protection of his/her constitutional and legal rights and freedoms before an independent and impartial court, as well as to appeal a judicial decision to a higher court. *Id.* arts. 42.2, 43. In addition, everyone has the right to obtain compensation for damages caused by unlawful actions or failure to act by the state bodies. *Id.* art. 44. Further, as discussed in Factor 5 above, the Constitutional Court is recognized as the exclusive interpreter of the Constitution, which includes determining whether an individual has suffered a violation of his/her constitutional right to due process of law.

An important legal development that took place in 2008 in the area of access to justice was the passage of a new law on legal aid which establishes a structured system to provide legal aid to those in need. See generally LAW ON LEGAL AID (Law No. 10039, adopted Dec. 22, 2008). The

law was drafted as a result of a major cooperative project involving most of the key legal NGOs and human rights organizations working with the judiciary, the prosecutor's office, and the government. This law is expected to increase access to the judicial system and thereby improve judicial protection of individual rights, particularly since it is required that litigants in civil cases and before the Supreme Court be represented by attorneys, which previously placed access to the courts outside the financial reach of many would-be litigants. See CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA art. 437 (Law No. 7905, *adopted* Mar. 21, 1995) [hereinafter CRIM. PROC. CODE]; CIVIL PROC. CODE art. 483.

Generally, interviewees considered that the judiciary's record of protecting basic human rights, including economic and political rights, is continuing to improve. However, interviewees expressed concerns over the civil rights issue of pretrial detention, where the trend is perceived as going in the opposite direction. Interviewees suggested that in cases of pretrial detention, courts, due to political and public relations considerations, err at the expense of civil rights.

The right to liberty figures frequently in criminal cases where pre-trial detention is ordered. An individual deprived of liberty must be brought before a judge within 48 hours for a decision on pre-trial detention. CONST. art. 29. A judge may extend pre-trial detention where "there is a reasonable suspicion" that the accused has committed a crime or that he/she may commit a crime or escape after its commission. *Id.* art. 27.2; see also CRIM. PROC. CODE art. 228.3. Pre-trial detention is to be used as a remedy of last resort. CRIM. PROC. CODE art. 230.

Estimates provided on the number of pre-trial hearings in 2008 in the Tirana Court of Appeals suggest an increase of more than 70% from the previous year, and that most of these hearings concerned pre-trial detention. In practice, the measure appears to be applied much more frequently. The OSCE observed that courts which ordered pre-trial detention failed to assess the proportionality of the criteria and failed to address defense arguments in their decisions, which were basically formulaic orders with stereotyped language. OSCE, ANALYSIS OF CRIMINAL APPELLATE PROCEEDINGS IN ALBANIA 2007 at 74 (2007) [hereinafter OSCE CRIMINAL APPELLATE ANALYSIS]. Observers speculated that some judges may be rubber-stamping these orders so as not to be perceived as weak on crime or corrupt in the media and public. Orders with boilerplate language would be regarded as inadequate by the ECHR, although to date, such an application from Albania has not been ruled on by the Court. See *id.* at 58.

Another mechanism to defend human rights in Albania is through Albania's Ombudsman, known as the PA, a national institution with constitutional status to protect human rights and freedoms in Albania. See CONST. 60. Upon a determination that an individual right may have been violated, the PA initiates an investigation at the request of an interested party, or at its own initiative if the case has public interest implications. See LAW ON THE PEOPLE'S ADVOCATE art. 13 (Law No. 8454, *adopted* Feb. 4, 1999) [hereinafter PA LAW].

One of the PA's important features revolves around his power to have unlimited access to all public institutions including police stations, prisons, and pre-detention centers, for the purposes of investigating a complaint or inspecting a facility. See PA LAW art. 19.1. It is this authority that has resulted in a high public profile for the PA in 2008. One highly-publicized case began during an inspection of the police station in Shkodra, when the PA official reportedly observed marks of violence on a young man being questioned by the police. The individual indicated he had been slapped by the officers to make him testify in a case involving his parents and a murder that took place in 1997, when he was nine years old. The Shkodra police later initiated criminal proceedings against the PA, claiming he jeopardized an investigation. The police dropped the charges after media attention and a public declaration of support for the PA by the Albanian Prime Minister. The PA has filed a complaint with the General Director of State Police for disciplinary procedures to be taken against the interrogating officers. The incident prompted Amnesty International to issue a statement urging judges and prosecutors to institute investigations wherever they have cause to believe torture or ill-treatment is occurring at the hands of the police. See AMNESTY INTERNATIONAL, PUBLIC STATEMENT: ALBANIA: THE ROLE OF THE



PEOPLE'S ADVOCATE AND OTHER HUMAN RIGHTS DEFENDERS IN COMBATING TORTURE AND ILL-TREATMENT IS CRUCIAL (Nov. 25, 2008). Such high-profile cases contribute to the favorable public reputation of the PA. An interviewee observed that the PA's activities over the last three years have produced a cultural shift among the people, from skepticism to the belief that the PA is doing its job to defend their rights.

In 2006, the PA handled 3,609 complaints and opened files on 2,555 of them. Of these, 374 were complaints against the judiciary related to procedural or administrative violations by the courts, and an additional 116 complaints concerned non-enforcement of judgments against the Bailiff's Office. See ANNUAL REPORT ON THE ACTIVITY OF THE PEOPLE'S ADVOCATE, 1 JANUARY-31 DECEMBER 2006 at 7-8 (2007). In 2007, 4,233 complaints were handled and files were opened on 2,792. Of these, 282 complaints related to procedural or administrative violations by the courts, while 154 complaints concerned non-enforcement of judgments. See ANNUAL REPORT ON THE ACTIVITY OF THE PEOPLE'S ADVOCATE, 1 JANUARY-31 DECEMBER 2007 at 6-7 (2008). The PA forwards such complaints to the disciplinary bodies of the Bailiff Service or the courts, that is, the MOJ or the HCJ.

As a state party to the European Convention on Human Rights, Albania has also acceded to the jurisdiction of the ECHR, and which means that complaints regarding violations of the Convention by the Albanian authorities can be made to the ECHR after all domestic remedies have been exhausted. A total of 54 petitions were brought against Albania before the ECHR in 2007. The Court issued five judgments finding at least one violation against Albania in 2007, including violations relating to the right to be free from inhuman or degrading treatment (concerning prison conditions), the right to a fair trial, excessive length of court proceedings, the right to an effective remedy, and the protection of property. ECHR, ANNUAL REPORT 2007 at 138, 142 (2008). In 2008, a total of 75 petitions were brought against Albania, and one judgment was issued finding a violation of the right to a fair trial. ECHR, ANNUAL REPORT 2008 at 128, 130 (Provisional Edition, Jan. 2009).

A law on the enforcement of ECHR judgments has been drafted; however, it has not yet been put up for a vote in the Assembly, and thus, Albania has no mechanism for automatic enforcement of the ECHR judgments. See OPEN SOCIETY FOUNDATION FOR ALBANIA, ALBANIA IN THE STABILISATION AND ASSOCIATION PROCESS: MONITORING REPORT (1 October 2007-15 October 2008) 61 [hereinafter OPEN SOCIETY MONITORING REPORT]. Although no law regulating enforcement of ECHR judgments exists, in practice, ECHR judgments are enforced by the Albanian authorities. Most recently, the Civil Procedure Code was amended to allow the revision of a final court judgment when the ECHR has found that judgment to be in violation of the European Convention on Human Rights. See CIVIL PROC. CODE art. 494.e (as amended by Law. No. 10.052, adopted Dec. 29, 2008).

Judges, to varying degrees, are familiar with the European Convention on Human Rights and other international law norms. The younger generation of judges, in particular, who are graduates of the MS, are familiar with the Convention, whereas more senior judges are generally less so. The MS includes trainings on the European Convention on Human Rights in its CLE curriculum. A study tour to Luxembourg is also planned for a group of High Court judges, where the focus will be EU law. Similarly, among attorneys, the younger generation appears more aware of the need to draft complaints or arguments with the possible end result being a claim to the ECHR. Indeed, a legal aid organization anticipates that certain of its cases, particularly regarding timely access to justice under Article 6 of the European Convention on Human Rights, will end up before the ECHR, and they are careful to prepare and present the case from the beginning in such a way as to create a strong record for the Court.

## Factor 8: System of Appellate Review

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

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
<p>The reversal of judicial decisions exclusively through the judicial appellate process is well-established in law and in practice.</p>		

### Analysis/Background:

It is a well-established legal principle and a practice in Albania that judicial decisions may only be reversed through the judicial appellate process. Everyone is guaranteed the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise. CONST. art. 43. Judicial power in Albania is exercised by the courts of first instance, the courts of appeal, and the High Court. JUDICIAL POWER LAW art. 3.<sup>7</sup>

Albania's six courts of appeal are authorized to hear appeals from district courts in their respective regions. A panel of three judges presides over appellate cases. In a criminal case, a decision may be appealed by either the defendant, the prosecutor, or interested private parties. CRIM. PROC. CODE art. 408, 410, 422. The appellant has 10 days from the day after notification of the decision to file an appeal with the secretary of the district court. *Id.* art. 415. The district court then has 10 days to send the record and the appeal to the court of appeals. *Id.* art. 419. The court of appeals may review questions of both the fact and the law, and need not "restrict itself only to grounds presented in the appeal." *Id.* art. 425.1. Judges on the Court of Appeal for Serious Crimes hear cases in panels of five or three. See LAW ON SERIOUS CRIMES COURTS art. 6; CRIM. PROC. CODE art. 14.3. The proceedings are governed by the Criminal Procedure Code, just as in regular courts of appeal. LAW ON SERIOUS CRIMES COURTS art. 7.

In practice, appellate courts in criminal cases can and do hear new evidence if the panel deems it necessary. When the appellant is the defendant, the court of appeals may not "impose a heavier sentence, a heavier precautionary measure, or acquit under a cause less favorable than that stated in the decision that has been appealed." CRIM. PROC. CODE art. 425.3. When the appellant is the prosecutor, the court may give to the fact a more serious legal qualification, alter the classification or extend the length of punishment, change the precautionary measures and impose any other measure provided by law, overturn an acquittal and declare the defendant guilty, acquit the defendant under a cause different from that stated in the decision subject to appeal, or impose a precautionary measure, or impose, change or exclude a supplementary punishment or precautionary measures. *Id.* art. 425.2. The court of appeal may uphold, modify, or reverse the district court decision. If it orders a reversal, the court may dismiss the case, or annul the decision and remand the case to the district court. *Id.* art. 428.

In a civil case, all decisions may be appealed by either party. CIVIL PROC. CODE art. 452. The appellant has 15 days from the day after notification of the district court decision to file an appeal. *Id.* art. 443. The three-judge panel may consider only the grounds raised in the appeal. *Id.* art. 459. The panel may uphold, modify, or reverse a district court decision, in which case it may dismiss the case or remand it to the district court for a new hearing. *Id.* art. 466.

<sup>7</sup> As explained in Factor 5 above, the Constitutional Court hears matters solely related to interpretation of the Constitution and the compatibility of laws and other acts and norms with the Constitution. Its decisions are final, binding, and not subject to appeal. LAW ON CONST. COURT arts. 75, 80.

The High Court is the highest judicial authority and, as the final appellate body in Albania, serves as a court of cassation for decisions from the courts of appeal. JUDICIAL POWER LAW art. 13. Appeals, called recourses, to the High Court must be made by parties within 30 days of notification of the decision of the lower court. CRIM. PROC. CODE art. 476; CIVIL PROC. CODE art. 435. An appeal may be based on a claim of a substantive or procedural error in the application of the law, or on a decision that lacks proper reasoning. CRIM. PROC. CODE art. 432; CIVIL PROC. CODE art. 478. Cassation complaints are first reviewed by a five-judge panel to determine whether the High Court will exercise its discretion to accept the case for hearing. The panel may reject the complaint and dismiss the case at this stage. CRIM. PROC. CODE art. 480; CIVIL PROC. CODE art. 433. If the request for cassation review is accepted, it will be assigned and heard by either a civil or a criminal five-judge panel, unless otherwise required by law. HIGH COURT LAW art. 15. Joint panels are foreseen where it is necessary to unify judicial practice due to divergent decisions in the lower courts, or when a judge appeals an HCJ ruling of dismissal. *Id.* art. 14. The Court tries cases under the rules of procedure contained in the Criminal and Civil Procedure Codes. *Id.* art. 12. As a result of the cassation review, the High Court may uphold the decision, modify, or reverse it, in which case it may either close the case or remand it for further action to the respective appellate or first instance court. CRIM. PROC. CODE art. 441; CIVIL PROC. CODE art. 485.

The following table summarizes the statistical information on appellate and cassation review of judicial decisions in Albania.

#### NUMBER AND OUTCOME OF APPELLATE PROCEEDINGS IN ALBANIA, 2006-2007

	2006		2007	
	Courts of Appeal	High Court	Courts of Appeal	High Court
<b>Criminal cases</b>				
<b>No. of cases heard</b>	<b>2,629</b>	<b>727</b>	<b>2,334</b>	<b>813</b>
Dismissed	143	12	229	21
Defendant acquitted	9	13	5	0
Remanded	176	94	116	65
Reinvestigated	93	8	2	0
Modified <sup>8</sup>	347	19	300	42
<b>Civil cases</b>				
<b>No. of cases heard</b>	<b>3,577</b>	<b>1,374</b>	<b>4,412</b>	<b>1,453</b>
Overruled and dismissed	252	63	232	48
Remanded	530	241	492	190
Modified	500	45	581	32
Dropped	235	21	189	17

Source: MOJ YEARBOOK 2006, MOJ YEARBOOK 2007.

<sup>8</sup> In a majority of cases, the modification is regarding the sentence imposed.

## 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.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>	<b><i>Trend: ↔</i></b>
<p>The law gives judges subpoena, contempt, and enforcement powers, although they are not sufficiently exercised or respected by the government and the public in general. Judges do not have contempt powers over attorneys. The Bailiff's Service, under the MOJ, is charged with enforcement of judgments, but that process is plagued with delays and cumbersome procedures.</p>		

### Analysis/Background:

Judges have the authority to summon witnesses and to compel the production of documents. See CIVIL PROC. CODE. arts. 128, 223, 224; CRIM. PROC. CODE arts. 157, 191. Witnesses are to be notified of the legal consequences for failure to appear. See CIVIL PROC. CODE art. 129. In civil cases, failure to appear may result in a fine up to ALL 30,000 (approximately USD 319). *Id.* art. 165. In criminal cases, witnesses can be compelled to appear, and failure to do so without cause may be punishable by a fine or imprisonment up to six months. See CRIM. PROC. CODE arts. 164, 310. Judges do not have the authority to take any action in court against attorneys who fail to appear.

Despite having the procedural authority necessary to control their hearings and delays, judges appear to exercise it infrequently. Notification is cited as the number one issue with regard to delays in court proceedings. See EUROPEAN ASSISTANCE MISSION TO THE ALBANIAN JUSTICE SYSTEM [hereinafter EURALIUS], FEASIBILITY STUDY ON MEASURES TO SHORTEN THE DURATION OF COURT PROCEEDINGS 38 (2007). Notification may be carried out by a court representative or the postal system. The postal system is highly inefficient largely due to the lack of formal addresses in the country and the lack of a functioning civil registry. Judges cited the notification problem as a major reason for their reluctance to order fines for failures to appear. They could not be sure if a summons was properly received. Even with notification, witnesses often fail to respond to summons. Reasons for this range from personal security fears, to feeling intimidated by the judicial process, to indifference. Additionally, the courts' failure to reimburse witnesses for expenses incurred in appearing before the courts was cited as a reason for failure to appear.

Many observers also cite the chronic failure of attorneys to appear as a reason for frequent, unnecessary delays, which judges tolerate rather than confront. In civil trials, it usually results in continuances being granted, while in criminal trials, the case may be continued or a new attorney assigned, which prolongs the proceedings as the new attorney must be given adequate time to learn the case. The courts can notify the Albanian Bar Association of alleged misconduct by an attorney. The Bar Association confirmed that it received approximately 30-40 such complaints in 2008, all of which concerned alleged intentional delay of proceedings by attorneys, but that after contacting the attorneys in question, the Association determined that all of the cases involved justifiable delays due to scheduling conflicts in other courts.

Interviewees also commented that, in general, judges often appeared unwilling to exercise their authority in the courtroom. For example, attorneys were allowed to shout or interrupt. Judges permitted parties to put in obviously inadmissible or irrelevant evidence rather than take the time to explain and assert that it should not be admitted. According to interviewees, judges' tolerance towards failure to appear and their failure to take control of hearings contributes to an atmosphere that generates less respect for the judiciary as a whole.

The Bailiff's Service, which operates under the MOJ, is the institution charged with overseeing the execution of civil judgments and penal fines. See LAW ON THE ORGANIZATION AND FUNCTIONING OF THE MINISTRY OF JUSTICE art. 17 (Law No. 8678, *adopted* May 14, 2001) [hereinafter MOJ LAW]. The Service has offices throughout the country. In order to get a judgment enforced, a creditor registers the judgment with the Bailiff's Service and pays a fee, which is a percentage of the judgment and depends on the subject matter of the debt. The bailiff officer is then required to send a notice for voluntary enforcement of the judgment and follow up with a warning for obligatory enforcement of the judgment. As a last resort, the judgment is executed by force with the support of the local authorities.

According to the MOJ, in 2006, the Bailiff's Service had 5,511 executed judgments and 5,160 pending judgments. In 2007, 5,031 judgments were executed and 5,475 were pending. See MOJ YEARBOOK 2006; MOJ YEARBOOK 2007. The Bailiff's Service, however, states that 9,400 judgments were executed in 2007, and 9,600 judgments were executed in 2008. Creditors complain of delays to notify debtors, long and cumbersome procedures, high fees, lack of cooperation from government agencies, and unqualified experts who give inaccurate property appraisals. One report estimates that, in order to enforce a contract, the parties must pass through 39 procedures that last on average 390 days, while incurring costs for process equivalent to 38.7% of the claim. See SPI ALBANIA, IMPROVING AUCTION PROCEDURES FOR IMMOVABLE COLLATERAL UNDER FORECLOSURE 4 (2008). Others noted that they had seen situations where it took three or four years to get a judgment executed, and that judgments against the government were seemingly ignored and unexecuted. The Constitutional Court has ruled that the pattern of non-enforcement of court judgments by the government violates the right to a fair trial. See Constitutional Court Decision No. 6/2006. The ECHR has also ruled against Albania on the same grounds for non-enforcement of judgments. See, e.g., *Marini v. Albania* (Decision No. 3738/02, Dec. 18, 2007); *Qufaj Co. Sh.P.K. v. Albania* (Decision No. 54268/00, Nov. 18, 2004); see also Factor 6 above.

Those in the Bailiff's Service believe it is unfair to put sole blame on bailiff officers for a slow system when there are inherent flaws in the procedural system, where it is sometimes impossible to identify the proper address for the debtor, where inaccuracies in judgments lead to difficulties in determining what the exact collateral at issue is, and where for immovable property, the privatization process sometimes results in uncovering further interested parties who can intervene in court to challenge the execution of a judgment and thus prolong the proceedings.

The one point of agreement among all interlocutors is that the system needs repair. With this aim, a new law instituting a private bailiff's service came into effect in January 2009. See *generally* LAW ON PRIVATE BAILIFF'S SERVICE (Law No. 10031, *adopted* Dec. 11, 2008). The law will result in a two-track system of public and private bailiff's services. The private bailiffs will be licensed private legal entities performing the same function as public bailiffs. The aim is to take some of the pressure off the public bailiff officers and to create a private sector industry for the enforcement of judgments.

### 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.*

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
The judiciary has a meaningful opportunity to advocate for its budget and, once the budget is allocated, exercises control over how the funds are expended.		

#### Analysis/Background:

The Constitution provides for a separate judicial system budget, which is to be proposed and administered by the judiciary itself. See CONST. art. 144. The OAJB is charged with managing this task. JUDICIAL POWER LAW art. 40. A nine-member board, which includes the Chief Judge of the High Court, one High Court judge, two chief judges of appellate courts, four district court chief judges, and an MOJ representative approves a draft budget for submission to the Ministry of Finance [hereinafter MOF]. LAW FOR THE CREATION OF THE OFFICE FOR THE ADMINISTRATION OF THE JUDICIARY BUDGET arts. 9 (Law No. 8363, *adopted* July 1, 1998) [hereinafter OAJB LAW]. The Constitutional Court drafts and administers its own budget, which is submitted for approval to the Assembly. CONST. art. 6.

The process of composing the annual proposed budget for the judiciary begins with input from budget officers, located in each courthouse. These officers, appointed by the MOJ, are in charge of managing that court's funds. Generally, the officer meets with the chief judge and chancellor of the court to put together a list of anticipated expenses and needs for the coming year and sends this proposal to OAJB. OAJB consolidates these proposals and drafts a budget with categories for personnel expenditures, operational expenditures, and investments. With board approval, the budget is submitted to the MOF. The OAJB board chairman and director are given an opportunity to lobby for their budget before the Assembly's Commissions on Legal Issues, Public Administration and Human Rights and on the Economy and Finances. The MOF submits a draft state budget for all institutions to the Council of Ministers, which can amend the draft. The Council of Ministers then submits the budget to the Assembly.

The following table illustrates the difference between the amounts the OAJB requested for the courts and the actual amounts allocated by the government.

#### **REQUESTED AND ACTUAL BUDGETS FOR THE JUDICIARY, 2007-2009 (in millions)**

Line Items	2007		2008		2009	
	Requested	Allocated	Requested	Allocated	Requested	Allocated
Personnel	986,065	986,000	1,054,915	1,015,500	1,222,000	1,222,000
Operational	262,394	200,000	249,808	240,000	274,000	252,000
Investments	178,120	70,000	289,340	60,000	195,000	164,350
<b>TOTAL</b>	<b>1,426,579</b>	<b>1,256,000</b>	<b>1,594,063</b>	<b>1,315,500</b>	<b>1,691,000</b>	<b>1,638,350</b>
USD equiv.	15,168	13,355	16,949	13,987	17,978	17,420

Source: OAJB.

Once the budget is approved, the OAJB board determines the allocation of funds for every level of courts. OAJB LAW art. 9. Individual courts have the authority to reallocate funds within the

budget line items but not across the line items. Thus, money intended for computers could be used for other equipment but not for salaries. Funds can also be reallocated from one court to another, if deemed necessary by the OAJB board.

**TOTAL JUDICIAL SYSTEM BUDGET BY COURT LEVEL, 2007-2009 (in millions)**

Court Level	2007		2008		2009	
	ALL	USD	ALL	USD	ALL	USD
Constitutional	91,000	968	96,000	1,021	98,760	1,050
High	173,300	1,843	246,070	2,626	268,850	2,859
District	831,100	8,836	856,040	9,102	1,123,285	11,943
OAJB	20,600	219	22,980	2,443	46,150	4,907
Total OAJB budget	1,256,000	13,355	1,315,500 <sup>9</sup>	13,870	1,638,350	17,419
<b>Total judiciary budget</b>	<b>1,347,000</b>	<b>14,322</b>	<b>1,411,500</b>	<b>15,008</b>	<b>1,737,110</b>	<b>18,470</b>
<b>% of state budget</b>	<b>0.64%</b>		<b>0.56%</b>		<b>0.67%</b>	

Source: OAJB; Albanian Ministry of Finance website, <http://www.minfin.gov.al>.

Judges uniformly confirmed that sufficient office supplies were readily available in courts. A frequent complaint heard with regard to funding was that more money was needed for information technologies and outdated equipment. In addition, in certain courts, money to pay for fuel for generators and for court automobiles had either not been allocated or was insufficient, which left the courts with no power when electricity went out and with no vehicles to use.

In 2006, the Council of Ministers ordered court fees to go entirely into the state budget. Prior to this, 5% of fees went to the court budget. Presently, there is a void in legislation with regard to court fees. An old tax law, which contained the provisions related to fees in courts, was abolished in July 2008. The new law, which took effect in August 2008, authorizes courts to charge fees but provides that details would be set forth in further regulations. These regulations have yet to be promulgated. This has resulted in a hodgepodge of approaches exercised from court to court. Some courts are reported to be accepting fees based on the old schedule, while others are not charging at all.

**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.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
Despite a modest increase in July 2008, judicial salaries remain insufficient for judges to support their families without recourse to other sources of income. Opinions are mixed on whether insufficient salaries contribute to the perceived widespread corruption within the Albanian judiciary.		

Analysis/Background:

The salaries of judges are set by law as a percentage of the salary of a High Court judge or the Chief Judge of the High Court, plus any additional amount for special work conditions or

<sup>9</sup> This total includes an additional ALL 11,000 million (approximately USD 117 million) allocated to the judiciary in July 2008 to cover a salary increase. See Factor 11 below.

management responsibilities. See JUDICIAL POWER LAW arts. 26-27. The salary of a High Court judge is equivalent to the salary of a government minister, while the salary of the Chairman of the High Court is 20% higher than the salary of a High Court judge. See HIGH COURT LAW art. 22. A judge on the Constitutional Court receives a salary equal to that of the Chairman of the High Court, while the Chief Judge of the Constitutional Court receives 20% more than the salary of a judge on that Court. See LAW ON CONST. COURT art. 17. Judges generally do not receive additional benefits such as housing or transport allowances, although serious crimes courts judges are awarded a special benefit of one additional month's salary for the holiday period. See SERIOUS CRIMES COURT LAW art. 9.

### JUDICIAL SALARY STRUCTURE

Court	Level of Judge	Salary Rate
Constitutional Court	Chief Judge	120% HC Chairman
	Judge	100% HC Chairman
High Court	Chief Judge	120% HC judge
	Judge	100% minister
Tirana Appellate Court	Chief Judge	90% HC Judge
	Judge	70% HC Judge
Serious Crimes Appellate Court	Chief Judge	90% HC Judge
	Judge	80% HC Judge
Other Appellate Courts	Chief Judge	80% HC Judge
	Judge	70% HC Judge
Tirana District Court	Chief Judge	70% HC Judge
	Judge	50% HC Judge
Serious Crimes Court	Chief Judge	70% HC Judge
	Judge	60% HC Judge
Other District Courts	Chief Judge	60% HC Judge
	Judge	50% HC Judge

Source: JUDICIAL POWER LAW arts. 26-27; HIGH COURT LAW art. 22; CONST. COURT LAW art. 17.

### AVERAGE MONTHLY JUDICIAL SALARIES, 2007-2008

Level of Court	2007		2008		% Increase
	ALL	USD	ALL	USD	
High Court	163,025	1,733	166,600	1,771	2.2
Serious Crimes Appellate Court	122,107	1,298	124,950	1,329	2.4
Appellate courts	113,967	1,212	116,620	1,240	2.3
Serious Crimes Court	97,686	1,039	99,960	1,063	2.3
District courts	81,405	866	83,300	883	2.0

Source: OAJB.

On the issue of adequacy of salaries, the response of judges depended upon where they were located. Judges serving in smaller towns were more likely to consider their salaries sufficient to support their families; however, judges in bigger cities uniformly said they struggled to make ends meet given the higher cost of living. The revised Judicial Power Law provides for slightly higher salaries for the chairmen of the Tirana District Court and Appellate Court for special work conditions and management responsibilities. However, regular judges serving in Tirana do not receive any additional amounts by law. See JUDICIAL POWER LAW arts. 26.4, 27.4. In addition, complaints were raised that the salary scale does not take into account tenure on the court, and that the amount was generally insufficient given the amount of work, stress, and safety concerns a judge must endure to carry out his/her duties.

Opinions differed as to whether higher salaries would help combat corruption, which is generally perceived to be high. See Factor 20 below. On one side is the position that higher salaries



would eliminate the need or temptation for a judge to engage in corruption. By contrast, some respondents thought a salary increase would have little effect on the decisions of a corrupt judge. All agreed, however, that the salary must be sufficient to provide a decent standard of living for judges and their families.

**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.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>Judicial buildings are conveniently located and easy to find. Donor-supported programs have resulted in comprehensive renovations to many courthouses in the country; however, the majority of courthouses still lack adequate infrastructure to provide a respectable environment for the dispensation of justice.</p>		

Analysis/Background:

The OAJB is charged with managing funds for the construction and renovation of court facilities. OAJB LAW art. 5. Donor-supported programs have resulted in comprehensive renovations to many courthouses in the country which were previously in poor condition. Many courthouses, however, still do not have adequate infrastructure to provide a respectable environment for the administration of justice.

The Serious Crimes Courthouse, which formally opened in September 2008, is the crown jewel of courthouses in Albania. The facility, built with assistance from the EU Community Assistance for Reconstruction, Development, and Stabilization [hereinafter CARDS] program, is modern, secure, and spacious. The building, which houses both the first instance and appellate courts, has four courtrooms for use by first instance judges and two for appellate judges. The courtrooms contain adequate space for the public gallery. Office space is abundant. OSCE has previously contributed equipment such as computers, printers, and phones to the court, while USAID is assisting in funding the informational signage to be placed in the lobby and on the floors to make navigating the courthouse easier for the public.

By contrast, the conditions in certain district courts have been described as scandalous. Tirana District Court has had difficulty functioning due to the lack of space. Most hearings take place in judges’ offices, and some judges are sharing offices. One interviewee observed that it was impossible to guarantee a fair trial under these conditions. The situation changed in the fall of 2008, when the criminal division was moved into the former building of the Serious Crimes Court, also in Tirana. This gives exclusive use of the building’s seven courtrooms to the 30 remaining judges in the civil division and frees up office space on the floors previously occupied by the approximately 30 judges from the criminal division. However, as of December 2008, the office space had not yet been reallocated.

The Pogradec District Court is also often identified as having one of the worst court buildings in the country. The court has only one courtroom used exclusively for multi-party cases. The facility is cramped and old, with every square inch of space allocated for use. In December 2008, the court’s chief judge and chancellor were informed that a former military building adjacent to the current courthouse was to be reassigned and reconstructed for use by the court, and that the project was expected to be implemented over the next several years.

Common issues that impact even renovated courthouses include inadequate space for attorney-client consultations, cramped clerk's offices, and insufficient storage space for files. A very high caseload and relatively low number of courtrooms also means that judges, particularly in high-volume courts, often conduct hearings in their offices, which themselves are small and cramped. While some courts have separate entrances to the dock for criminal defendants, others do not. Judges have expressed some security concerns about this arrangement, noting that the defendants must pass directly by the bench, albeit with police escort, in order to enter the courtroom.

The High Court has also requested a new building from the government. The current building itself has undergone extensive renovations, including the addition of a new floor. The Court has three courtrooms, but a shortage of office and administrative space. The Constitutional Court building, which also underwent renovation, appears to be in good upkeep, with each judge having his/her own office.

### Factor 13: Judicial Security

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
Security in courts varies from court to court and in some locations, it is inadequate. Judges are entitled to receive special protection upon their request.		

#### Analysis/Background:

State police are responsible for providing security to district and appellate courts in accordance with the orders of the chief judge of the court. See JUDICIAL POWER LAW art. 41. The Council of Ministers determines the criteria and procedures for their deployment. *Id.* A separate, permanent police service provides security to the High Court. HIGH COURT LAW art. 29. The Constitutional Court has the right to deploy police forces to establish order, as approved by the Minister of Public Order. LAW ON THE CONST. COURT art. 15.

If a judge or a member of his/her family is threatened, a procedure is in place to request a full-time security escort. Judges were aware of this measure being invoked and indicated that they had never heard of a request for security in the face of an actual threat being refused.<sup>10</sup> Serious crimes courts judges are entitled under law to personal, family, and property protection, including a bodyguard. See SERIOUS CRIMES COURT LAW art. 9. However, the secondary legislation necessary to implement this provision still has not been passed, although the law was adopted in 2003. As such, the judges do not have personal protection assigned to them unless a threat has been made.

With the exception of the Serious Crimes Courthouse, where security is very visible and strong, security varies from court to court. The Constitutional Court has a guard within the entrance

<sup>10</sup> On February 9, 2009, after the conclusion of research and interviews for this JRI, High Court Judge Ardian Nuni was shot outside his home in Tirana. Judge Nuni was not receiving personal protection at that time; personal protection is provided only to judges who request protection after receiving a threat. Following the incident, Judge Nuni stated that he had not been previously threatened. An investigation into the incident is ongoing; at the time of drafting of his report, it was unclear whether there was a link between the shooting and Judge Nuni's position as a High Court judge.

controlling visitors. The High Court has metal detectors and a separate secured entrance for visitors. Regarding district and appellate courts, the state police are generally deployed outside the entrances to the courts, while inside the building, security officers, without the status of police, are in charge. Not all courts are diligent at carrying out the metal detector screenings and bag inspections. While police are generally present in the courtroom for criminal hearings, and some courts have separate entrances for bringing in criminal defendants from pre-trial detention, security is rarely, if ever, provided during civil hearings. For instance, in the Tirana District Court housing the civil division, where three to four security personnel are assigned to the entire building, doubts were expressed that an adequate response could be launched in the event of a security incident.

The new Judicial Power Law contains, for the first time, job descriptions for chief judges and chancellors of courts. See JUDICIAL POWER LAW arts. 18, 38; see also Factor 26 below. The chief judge is charged with responsibility for “matters of safekeeping and security in court.” *Id.* art. 18. However, concerns have been raised that this conflicts with the expanded competencies given to the chancellor, who now oversees court personnel, which would include security officers. See *id.* art. 38. In particular, in one incident, a judge entered the court to find no security present inside and discovered later that the chancellor had approved time off for the security officer, but no replacement had been secured. While the chief judge of the court has responsibility under the new law for security, an operational decision by the chancellor directly impacts that responsibility. In reality, better communication between the two officials could prevent the situation from repeating itself. However, the incident was relayed as an example of why some believe the expanded powers of the chancellor will lead to conflict in the courts.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↓</b>
<p>Judges in the first instance courts and courts of appeal are appointed for indefinite terms and continue in office until they resign, are removed for cause, or reach the retirement age of 65. Judges of the High Court, the Constitutional Court, and the serious crimes courts are appointed for fixed nine-year terms, and only the latter are entitled to reappointment. The HCJ's dismissal of judges during a court reorganization in 2007 called into question respect for judicial tenure. The High Court reversed the HCJ's decision to dismiss the judges, and only after international pressure did the HCJ reinstate the judges.</p>		

#### Analysis/Background:

Judges of first instance and appellate courts are appointed for indefinite terms and serve until they resign, reach the retirement age of 65, or are removed for cause. JUDICIAL POWER LAW art. 20. Judges on the serious crimes courts are appointed for nine-year terms with the right of reappointment either to their previous position or a vacancy on another court, for which they would be given priority. SERIOUS CRIMES COURT LAW art. 3. Judges on the High Court and the Constitutional Court also serve nine-year terms but with no right to reappointment. CONST. arts. 125.2, 136.3; LAW ON THE CONST. COURT art. 7.2. A High Court judge who has completed serving the nine-year term, upon request, will be appointed as a judge to an appellate court. HIGH COURT LAW art. 24. A judge on the Constitutional Court, upon completion of the mandate, is assigned "to another duty equal or similar." LAW ON THE CONST. COURT art. 18.3. Mandatory retirement age for the High Court judges is 65 years old. See CONST. art. 139. Judges of the Constitutional Court may serve until they are 70 years old. *Id.* art. 127.

In general, judicial tenures as set forth by law are respected in practice. However, when a court reorganization was implemented in September 2007, the number of district courts was reduced from 29 to 21, military courts were closed, and 24 judges were dismissed from their positions. See *Decree of the President of the Republic of Albania on the Establishment of Judicial Districts, Definition of Their Territorial Competencies, and Their Center of Activity* (Decree No. 5350, adopted Jun. 11, 2007). The HCJ implemented the decree, which was appealed to the High Court. The latter held that the MOJ and the HCJ were required to take back the judges because their dismissal was unconstitutional. The HCJ did not immediately execute the decision. One year later, after significant international pressure, the judges were reinstated by the High Court.<sup>11</sup>

A recently adopted lustration law, if implemented, would raise additional concerns with regard to the respect of judicial tenure guarantees. See *generally* LAW ON LUSTRATION (Law No. 10034, adopted Dec. 22, 2008). The law allows a special commission to remove, without recourse to courts, judges and prosecutors who served during the former communist regime. The commission may do so without proving that judges or prosecutors in question were guilty of any crime. See *Albania Enacts Divisive Judicial, Lustration Laws*, BALKANINSIGHT.COM (Jan. 15, 2009), available at <http://balkaninsight.com/en/main/news/15997>. Critics, of which there are many in the international community in particular, argue that it is a violation of due process and

<sup>11</sup> At the time of publication of this JRI, the High Court's decision had not yet been signed or published.



could cause more harm than good. See, e.g., *Council of Europe, United States Criticize Albania's Controversial Lustration Law*, SOUTHEAST EUROPEAN TIMES (Dec. 24, 2008), available at <http://www.setimes.com>. If the law is implemented, some estimates indicate that half of the High Court and the Constitutional Court could, theoretically, be removed. See *id.* Opposition parties have pledged to try and block implementation of the new law.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↑</b>
A new law sets forth detailed requirements for advancement in the judicial system. An evaluation process has been adopted that examines objective criteria such as ability, integrity, and experience; however, it remains to be seen if it will be fully implemented.		

### Analysis/Background:

Judges may be promoted to a position of a chief judge<sup>12</sup> or seek appointment to a higher court. See JUDICIAL POWER LAW arts. 12, 16. Vacancies on first instance and appellate courts are publicly advertised by the HCJ. *Id.* art. 28; see also Factor 2 above, which discusses in detail the necessary qualifications and appointment process to a higher court. In brief, for vacancies on first instance and appellate courts, the HCJ will consider applications from individuals who have met the legally established requirements for the position, will vote by majority for their selection, and will send their proposed candidates to the President of Albania for approval.

Candidates for appointment as chief judge of a court must have worked at least four years as a judge in a court of the same or higher level, have received “very good” as a mark on their last two HCJ evaluations, have organizational and management abilities, no disciplinary measures in force, and not be members of the HCJ. *Id.* art. 16. The position is awarded to the candidate with the most votes taken by a secret ballot of HCJ members. The HCJ then issues a written statement of reasons for the selection. The term of a chief judge is four years, with the right to reappointment. *Id.* art. 17.

Judges may also be transferred between courts, and in this way, seek a more favorable location for themselves. A judge cannot be transferred without his/her consent, unless a judicial reorganization requires it. *Id.* art. 21. If a court is closed, a judge may be transferred to another court of the same or lower level.<sup>13</sup> *Id.* art. 42. If a judge does not consent to transfer in such a case, this will lead to his/her dismissal. *Id.*

Even critics of the judicial advancement process admit that the new Law on Judicial Power is an improvement over the previous law, because it sets forth clear criteria and qualifications for the positions of judge and chief judge at the first instance and appellate levels. The incorporation of evaluation results into the job requirements also responds to observers who viewed the appointment process as subjective and having more to do with whom the judge is acquainted with rather than with what the judge has been able to accomplish.

<sup>12</sup> The position of deputy chief judge was eliminated with the adoption of the revised Judicial Power Law in February 2008.

<sup>13</sup> The 24 dismissed judges mentioned in Factor 15 above were dismissed prior to the current Judicial Power Law's entry into force.

Another positive development in the appointment of chief judges was the fact that the HCJ, for the first time, invited qualified applicants for chief judge positions to public meetings, where they were interviewed by the HCJ members. Also for the first time, the HCJ issued a written decision with reasons for its selection. See OPEN SOCIETY MONITORING REPORT 46-47. However, one observer of the public meeting, while recognizing that these developments are a step in the right direction for transparency purposes, felt that the questioning of candidates for a chief judge position was quite superficial and done without sufficient preparation.

While an appointment to the High Court or the Constitutional Court by a lower court judge would certainly be a promotion, as explained in Factor 2 above, it is not part of the regular judiciary advancement system. Judges to these courts are appointed by the President with the consent of the Assembly.

The HCJ is charged with conducting an evaluation of judges at least once every three years. JUDICIAL POWER LAW art. 13. The HCJ's internal regulations provide for an evaluation of judges to be organized by the HCJ Inspectorate every two years. See HCJ REGULATION ON THE ORGANIZATION AND FUNCTIONING OF THE INSPECTORATE OF THE HIGH COUNCIL OF JUSTICE art. 17 (*approved by* Decision No. 195/2/a, Jul. 5, 2006, *as amended*) [hereinafter HCJ INSPECTORATE REGULATION].

After running a pilot evaluation program in two courts in 2006, in February 2007, the HCJ adopted an amended version of the parameters used in the pilot program as a regulation. See *generally* HCJ EVALUATION REGULATION. The Regulation describes the evaluation procedure and parameters in great detail. The four categories of criteria to be considered during an evaluation are general professional skills, professional judicial and technical skills, organization and applicable skills, and professional commitment skills. See HCJ EVALUATION REGULATION art. 3. Included within the categories are criteria for the ability to take decisions, to manage a lawsuit and prepare files, communication skills, and participation in professional activities. See *generally id.* arts. 4-17. In addition, an evaluation considers the quantity, quality, and schedule of a judge's work. *Id.* art. 17. To this end, the evaluation must include examination of 20-30 decisions of the judge selected randomly, 10 decisions selected by the judge being evaluated, and any decisions reversed by an upper level court. *Id.* art. 27. A statistical table covering the volume of cases handled by the judge is also prepared. *Id.*

Upon being informed by the HCJ Inspectorate that a judge is to be evaluated, the chief judge of the court is charged with preparing the written professional and ethical evaluation for that judge. *Id.* art. 21.1. Once completed, the evaluation and statistical table must be presented to the judge for signature. *Id.* art. 23. The judge must also complete a self-evaluation form for the file. *Id.* art. 24. For district court judges, once the file is complete, it is forwarded to the chief judge of the regional appellate court for his/her written evaluation. Chief judges of district courts are evaluated by their respective appellate court chief judges, who are in turn evaluated by the Chief Judge of the High Court. *Id.* art. 25.

A judge will be evaluated as very good, good, acceptable, or incapable. JUDICIAL POWER LAW art. 13. A judge who receives a mark of "incapable" may be subject to inspection and monitoring of his/her work by the HCJ Inspectorate for no more than two years. HCJ INSPECTORATE REGULATION art. 43. A mark of "incapable" is also grounds to initiate dismissal proceedings. JUDICIAL POWER LAW art. 13. Meanwhile, a judge who receives a mark of "acceptable" should be re-evaluated within one year. *Id.* The HCJ is to keep a permanent list ranking judges by their work results. *Id.* art. 14.

With a very detailed evaluation system now in place, what remains is for it to be fully implemented. The majority of judges interviewed for this JRI had actually gone through the



evaluation process and spoke favorably of it. However, in 2008 the HCJ Inspectorate stopped carrying out evaluations, with the explanation that they lacked the staff to carry it out.<sup>14</sup>

## Factor 16: Judicial Immunity for Official Actions

*Judges have immunity for actions taken in their official capacity.*

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
Judges have immunity for actions taken in their official capacity. A law which would allow judges to be prosecuted for unfair decisions was overturned by the Constitutional Court.		

### Analysis/Background:

Judges are granted broad immunity for actions taken in their official capacity. See CONST. arts. 126, 137. District and appellate court judges may be criminally prosecuted only with the approval of the HCJ. JUDICIAL POWER LAW art. 29.1. A judge may be detained or arrested only if caught during or immediately after the commission of a crime. If the HCJ does not consent to the judge's initial appearance before court within 24 hours, the judge must be released. CONST. art. 137.4; JUDICIAL POWER LAW art. 29.2. Similarly, High Court judges may only be criminally prosecuted with the consent of the Assembly, and Constitutional Court judges may only be criminally prosecuted with the consent of the Constitutional Court. *Id.* arts. 126, 137.1. Judges on both courts may be detained and arrested only if caught during or immediately after the commission of a crime, and must be released within 24 hours if the Constitutional Court does not consent to an initial appearance. *Id.* arts. 126, 137.2.

Judges are also immune from civil liability related to the performance of their professional duties, except as otherwise provided by law. JUDICIAL POWER LAW art. 30. Constitutional Court judges have no legal responsibility for opinions and votes expressed on cases under review. LAW ON THE CONST. COURT art. 16.

In 2008, the Constitutional Court struck down a provision of the Criminal Code which authorized the prosecution of a judge for knowingly rendering an unfair legal decision. See CRIM. CODE art. 315. The provision had been used in a 2004 prosecution of Elvis Kotini, a first instance court judge. The court of appeals upheld Mr. Kotini's conviction for several errors in decisions, including a mathematical error regarding the length of pretrial detention. The HCJ then dismissed him as a disciplinary measure. Mr. Kotini appealed his conviction to the High Court, which overturned it on the basis that his decisions were intermediate and not final as required by the Criminal Code. In 2008, Durres District Court challenged Article 315 before the Constitutional Court on the grounds, *inter alia*, that it interfered with the constitutional guarantees of an independent judiciary. The petitioner argued that Article 315 put undue pressure on judges who would be drafting decisions under the threat of criminal proceedings. The Constitutional Court agreed that the disputed provision put improper pressure on judges, which could harm the delivery of justice. See Constitutional Court Decision No. 11/2008. The Court also observed that other provisions of the Criminal Code, such as those related to abuse of duty (see CRIM. CODE art. 248) and corruption (see *id.* art. 319/a), could be applied to judges, thus ensuring that a judge would not escape criminal responsibility if his/her actions were inappropriate.

No judges have been prosecuted and punished for corruption to date. Many spheres of society would like to see a lessening of immunity protections for judges. Prosecutors feel that their hands

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<sup>14</sup> Subsequently, the HCJ confirmed to EURALIUS that evaluations of judges started up again in January 2009.

are tied because of the requirement of consent before pursuing an investigation into a judge's actions. Interviewees contend that notifying the HCJ of a request to investigate a judge is effectively notifying the judge, which immediately compromises any investigation. One proposal being discussed is to allow for an investigation to gather evidence for an indictment without prior notification of competent bodies, but to require the consent of the competent body before a formal criminal complaint is filed. Judges and the HCJ oppose any restrictions on immunity and argue that such guarantees are crucial for a functioning independent judiciary. The HCJ takes the position that any law that would restrict judicial immunity is unconstitutional. Interestingly, prosecutors recently suffered a blow to their immunity with the passage of a new law on the prosecutor's office, which permits the arrest of prosecutors without the prior consent of the Prosecutor General. Prosecutors have strongly criticized the new law.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>A detailed disciplinary process governed by objective criteria is in place under the new Judicial Power Law. Some judges, however, question whether the disciplinary system is being exercised fairly and feel they are under undue scrutiny with regard to how they rule on the merits of a case. The HCJ's dismissal of three judges for their ruling in a high-profile corruption case, while the ruling was still on appeal, was overturned by the Supreme Court.</p>		

### Analysis/Background:

The HCJ is responsible for deciding on disciplinary measures against judges. CONST. art. 147.4; HCJ LAW art. 2(c). The revised Judicial Power Law expands the grounds for which a judge may be disciplined. Three categories of infractions are defined: very serious, serious, and minor. JUDICIAL POWER LAW art. 32.1.

Very serious violations include: (1) unjustified absence from work for seven days or more, when it may impact constitutional rights of parties or the rendering of justice; (2) repeated and unjustified violations of the mandatory procedural provisions, when it may impact parties' constitutional rights or the rendering justice; (3) refusal to declare property; (4) obtaining, directly or indirectly, gifts or favors given because of duty; (5) failure to make a request to withdraw from trial when it is mandatory under procedural codes; (6) absolute absence of reasoning in a judicial decision; (7) refusal to implement a disciplinary measure; and (8) failure to apply High Court decisions. See *id.* art. 32.2.

Serious violations include: (1) unjustified and repeated delays of procedural actions during the administration of justice, when it may impact parties' constitutional rights or the rendering justice; (2) repeated tardiness in starting a judicial session; (3) interference with the exercise of duty of another judge; (4) failure to respect the rules of solemnity; (5) violation of the norms of ethics at court; (6) use of unbecoming and offensive expressions in the reasoning of a judicial decision; (7) disclosure of secret acts, official documents, data, or registrations; and (8) impeding the functions of the inspectorates. See *id.* art. 32.3.

Minor violations are: (1) tardiness in starting a judicial session; (2) unjustified absence at work for up to three days; and (3) *ex parte* contact with parties during a trial. See *id.* art. 32.4.

If a judge is found guilty of a disciplinary violation, he/she may be subject to the following sanctions: reprimand; reprimand with warning; transfer to a lower court for a period of one to two years; transfer to another court of the same level for one to two years; or removal. *Id.* art. 33.1. For a finding of a very serious violation, removal is imposed. For serious violations, the transfer options are invoked, and for minor violations, either reprimand or reprimand with warning will be imposed. *Id.* art. 33.2. In 2006, the Constitutional Court ruled that the sanction of removal as applied did not meet the constitutionally required standard. The Constitution permits removal of a judge for commission of a crime, mental or physical incapacity, acts and behavior that seriously discredit the position and image of a judge, or professional insufficiency. CONST. arts. 128, 140, 147.6. The language of the new Judicial Power Law attempts to meet that constitutional standard by mandating removal only for “very serious” violations. The NAJ indicated its intent to file a complaint with the Constitutional Court over the transfer sanctions, with the argument that such a sanction damages the judiciary. First, they point out that it is in violation of the law, as judges cannot be transferred without consent unless the transfer is required by a reorganization. Second, according to the NAJ, it is disrespectful to impose a sanctioned judge on a lower court as punishment.

As discussed in Factor 22 below, if either the HCJ or the MOJ Inspectorate finds grounds for a disciplinary action, the file is sent to the Minister of Justice who has the sole authority to initiate a disciplinary proceeding against judges in the HCJ. HCJ REGULATION ON THE DISCIPLINARY PROCEEDINGS AGAINST JUDGES art. 34 (*approved by* HCJ Decision No. 137, Feb. 21, 2003) [hereinafter HCJ DISCIPLINARY PROCEEDINGS REGULATION]. If approved, the request is returned to the HCJ and is recorded in the registry of disciplinary proceedings. *Id.* art. 3. The judge under investigation must receive all materials for the proceedings 10 days before the hearing and is given a 48-hour notice of the hearing date. *Id.* arts. 5, 6. The judge has the right to a lawyer during the proceeding. See JUDICIAL POWER LAW art. 35. The Minister of Justice argues first, followed by the judge or the judge’s attorney, and the HCJ members can then ask questions. HCJ DISCIPLINARY PROCEEDINGS REGULATION art. 8. At the close of arguments, the judge withdraws, and members of the HCJ start discussions. *Id.* art. 9. A majority vote is needed to find in favor of a disciplinary violation. *Id.* art. 10. A tie vote results in a rejection of the claim. *Id.* After the hearing, the HCJ issues a reasoned decision. *Id.* art. 4. Within 15 days of notification of a decision of removal, the judge has the right to appeal to the High Court. For other disciplinary measures, the appeal may be taken to the Tirana Court of Appeals. See JUDICIAL POWER LAW art. 36.

According to the MOJ, no judges were subject to disciplinary sanctions by the HCJ in 2007. In 2008, six judges were removed from their positions for disciplinary violations. As of October 2008, 11 disciplinary cases were pending at the HCJ.

The HCJ came under strong criticism for how the recent judicial removals were carried out, particularly with respect to three military judges delegated to Durres Court of Appeals for hearing a tax fraud case against a high-profile defendant, Mihal Delijorgji. Delijorgji had been convicted of financial fraud by the lower court. The appellate panel reversed the conviction and also reversed a judgment in a related civil damages suit attached to the criminal proceeding. The case was appealed to the High Court. In a separate matter, Delijorgji was under criminal investigation for his role in the March 2008 explosion of an ammunitions depot in Gerdec, which led to the deaths of 26 people. In the meantime, the HCJ requested that the Minister of Justice initiate disciplinary proceedings against the judges serving on the appellate panel, which the Minister did. The HCJ held a hearing and found the judges in violation of the provision of the old Judicial Power Law, in effect while the conduct took place, of the “performance of actions in violation of the regular performance of duty or the failure to perform obligatory procedural actions, when it does not constitute a criminal offence.” See HCJ Decision (Jun. 26, 2008). As a result, the HCJ removed the judges. The judges appealed to the High Court, which ruled in the judges’ favor in January 2009 and ordered the HCJ to reinstate them. The High Court stated that, as long as the challenged decision was under review of a higher court, in this case an appeal to the High Court, disciplinary proceedings should not have been brought.

Interviewees uniformly thought the HCJ overstepped its authority in seeking disciplinary measures against these judges. Their view was that it should be the job of the higher court to determine if a judge incorrectly applied the law. Here, with a case still pending before the High Court, the HCJ essentially ruled that the judges had applied the wrong code provision in reaching their rulings. According to many interlocutors, the HCJ tried to abuse the system to attack the merits of a panel’s decision because the defendant was being implicated in the most tragic event of the year, the Gerdec explosion.

As discussed in Factor 22 below, judges are concerned that the MOJ Inspectorate is an infringement on the independence of the judiciary, but with the HCJ’s action in the Durres case, judges also worry that the HCJ wants to fill the role of the judiciary’s policeman. In the case of the Durres judges, it was the HCJ that brought the request, performed the investigation, and presented the file to the Minister of Justice to approve for proceedings. Within the MOJ Inspectorate, doubts were expressed about the appropriateness of pursuing the action with a still pending appeal, yet the Minister of Justice signed off. One respondent commented that worries about appearing tough on corruption are leading to rash, ill-considered actions that will have a negative impact on the judiciary, as judges fear repercussions for their decisions.

### **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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>A lottery system is used to assign cases to judges. The majority of courts now utilize an electronic lottery system. Judges may be disqualified from hearing a case only for good cause, such as a conflict of interest. Unduly heavy workload is not grounds for disqualification.</p>		

#### Analysis/Background:

The chancellor of the court oversees case assignment through a lottery system in the district courts, the courts of appeal, and the High Court. JUDICIAL POWER LAW art. 15. The majority of courts now have installed an electronic lottery system, at least for civil cases. The Serious Crimes Court of Appeals still uses a manual system while it waits for its software to be installed. The manual lottery is conducted twice a week by the chancellor under the supervision of the chief judge, in the presence of all the judges. Judges thought the results were fair. In other courts in regions with frequent power outages, registration of cases by hand and manual lotteries may also take place as conditions dictate.

As described in Factor 28 below, two electronic case management systems coexist within the Albanian judiciary. Both programs have the capability to assign new cases to judges electronically. The Ark-IT system was initially installed in five district courts, including Tirana, with funding from USAID and the Soros Foundation. As of September 2008, six courts were using the Ark-IT system. EURALIUS, REPORT ON THE STATUS OF THE IMPLEMENTATION OF THE ICMIS SYSTEM IN THE ALBANIAN COURTS 2 (2008) [hereinafter ICMIS IMPLEMENTATION REPORT]. The World Bank-funded Civil Case Management Information System [hereinafter CCMIS] (also called ICMIS) was first installed in the High Court. By the end of 2006, CCMIS had been installed in all other courts in the country (without Ark-IT), initially only for civil cases. In 2008, the software was updated to allow for the input of criminal cases as well. However, as of September 2008, only five courts were using the CCMIS system. Some courts, such as Pogradec District Court, are waiting for IT assistance to get the criminal component of the software up and running. *Id.* at 2.



Judges working under the Ark-IT system were generally satisfied with how case assignments were carried out. The system considers a judge's workload, the type of cases already assigned, and the work speed of the judge. If a judge already has a major labor-intensive case, such as a murder trial, the software works to avoid a new assignment of that type of case. USAID is also funding the installation of computer terminals in entries to courthouses, where the lottery assignment results can be viewed by the public. These are already operational in the Tirana District Court.

In courthouses where CCMIS is running, judges are frustrated with what they perceive as inherent shortcomings in the lottery system. According to judges, CCMIS takes into account the number of cases the judge closes and then randomly distributes the new cases. The result is what many judges perceive as an unfair and burdensome workload. Judges complain that the system should take into account the nature and the past number of cases assigned, not just the number of cases completed. The system would protect against actual and perceived bias in the lottery, but has generated a different set of frustrations among judges. The ICMIS Implementation Report, which surveyed eight stakeholders ranging from IT personnel to the Minister of Justice, further identified extensive technological and support problems with the system. See *generally* ICMIS IMPLEMENTATION REPORT.

Judges cannot recuse themselves from cases because of their heavy workload. They are, however, required to recuse themselves from a case where a conflict of interest exists. See CIVIL PROC. CODE arts. 72-73; CRIM. PROC. CODE arts. 15-17. The conflict of interest may be economic, legal, familial, or "any other event" where partiality may exist. In addition, a judge must withdraw from any case where the judge previously acted as a witness, a prosecutor, or a judge at another stage of the proceedings. CIVIL PROC. CODE arts. 72-73; CRIM. PROC. CODE arts. 15-17. This requirement is causing problems, in particular, with the serious crimes courts, where a panel of three judges hear appeals on pre-trial detention. CRIM. PROC. CODE art. 14.3. If the defendant goes to trial, all the judges who presided over the pre-trial hearing in the first instance and on appeal are disqualified. The court simply does not have enough judges to staff a panel, and will often call on the criminal division of the nearby Tirana District Court to loan judges for the case.

Any party is entitled to seek the disqualification of a judge by filing a request with the court registrar. CIVIL PROC. CODE arts. 74-75; CRIM. PROC. CODE arts. 18-23. In a civil case, if the request is denied and deemed unjust, the court can sanction the requesting party with an order to pay costs and a fine up to ALL 5,000 (USD 53). CIVIL PROC. CODE. art. 76.

## 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.***

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↑</b>
Two voluntary judicial organizations were established in 2008, both of which have been active in promoting and protecting the interest of the judiciary. One association has already won a case before the Constitutional Court with regard to judges' participation in the NJC. Both associations have other cases related to judicial power and benefits pending before the Court. The associations are also very active in advocating their positions on behalf of their members in the public sphere.		

## Analysis/Background:

Judges have the right to create associations to protect their rights and interests, as well as for their professional advancements. See JUDICIAL POWER LAW art. 24.4. In January 2008, Albania went from a country with no voluntary judicial associations to one with two such associations. The NAJ and the Union of Albanian Judges [hereinafter UAJ] both incorporated at approximately the same time.

The impetus for this surge in activism was the passage by the Assembly of a new law on the NJC. The NJC is a quasi-judicial association with the constitutionally mandated task of appointing nine judges to the HCJ. CONST. art. 147.1. The NJC's role also includes defending the independence and defining the direction of the judiciary. See LAW ON THE ORGANIZATION AND FUNCTIONING OF THE NATIONAL JUDICIAL CONFERENCE art. 2 (Law No. 9399, adopted May 12, 2005) [hereinafter NJC LAW].<sup>15</sup> The Chief Judge of the High Court serves as the President of the NJC. Other members of the Conference are the chief judges of the district and appellate courts and other judges elected by Regional Judicial Conferences [hereinafter RJC] established within the regional jurisdiction of the appellate courts. All district and appellate judges are members of their respective RJC. During its annual meeting, each RJC elects from its ranks delegates to the NJC for one-year terms.

The now-repealed new NJC law, which was adopted in 2008, attempted to introduce a representative system to the annual meeting, which had traditionally been attended by all judges. The 2005 NJC Law required the election of the HCJ members to be carried out in plenary session at the annual meeting. The 2008 law proposed that the RJC's nominate delegates to attend and to vote at the meeting. The NAJ, once incorporated, challenged this provision as unconstitutional in a petition before the Constitutional Court. The NAJ argued that the delegate system deprived judges of their constitutional right to elect members to the HCJ. In January 2009, the Court agreed and abrogated the law.<sup>16</sup>

In practice, although the NJC has the mandate to be a spokesman for judges' interests, its focus has been on substantive legal contributions through the work of its commissions. In the past, the NJC has submitted commentary on draft laws through its Commission on Legislative Assistance. The NJC's Ethics Commission, with OSCE support, is currently drafting a commentary on the Code of Judicial Ethics, which can be used as a reference both by judges in their daily practice and by the HCJ in disciplinary hearings. As a result, the new judicial associations have taken up the role of active advocacy on behalf of judges.

Both the NAJ and the UAJ are active advocates before the Constitutional Court. The NAJ also filed an application alleging that sections of the revised Judicial Power Law concerning the authority and position of the chancellor of the court were unconstitutional. As discussed in Factor 26 below, the Law gives the chancellor hiring and firing power over court personnel. See JUDICIAL POWER LAW arts. 37-38. In an oral argument in December 2008, the NAJ argued that removing this responsibility from the chief judge damaged the constitutionally guaranteed independence of the judiciary. The Court has not yet ruled on the matter. Meanwhile, the UAJ challenged a provision of the Judicial Power Law that provides for 30 calendar days of vacation instead of 30 business days, as was the case under the prior law. See *id.* art. 24.

Both associations also engage in public advocacy to promote their positions on the judiciary and on relevant laws. The opinions of the NAJ President on significant laws pending before the Assembly are frequently quoted in the press. The UAJ joined national human rights

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<sup>15</sup> This JRI references the 2005 NJC Law because, as discussed below, the 2008 revised NJC Law was found unconstitutional by the Constitutional Court in January 2009.

<sup>16</sup> The written decision had not yet been published as of the drafting of this JRI.



organizations in an open letter to Albanian leaders in the Council of Ministers and the Assembly, in which they called for judicial reform. The NAJ has sent comments on draft laws to the Assembly's Commission on Legal Issues, and the UAJ members have taken part in roundtables organized by legislative working groups for draft laws.

The NAJ estimates that 100 judges are its members. The membership fee is 500 ALL (USD 5.3) per month. The association has an office in Tirana, and its board meets at least once every two months. The UAJ estimates that it has 60-70 members, and holds monthly board meetings. As for judges who have not yet joined one of the associations, the reason most commonly offered was that two organizations merely served to divide judges at a time when they need to be united. Still others saw the NJC filling this role as an advocate for judges' interests.

## 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.**

<b>Conclusion</b>	<b>Correlation: Negative</b>	<b>Trend: ↔</b>
<p>Although a legal framework is in place to protect the judiciary from outside influence, undue influence upon the judiciary remains a serious concern. Perceptions of judicial corruption are widespread.</p>		

#### Analysis/Background:

The Constitution and other laws guarantee the independence of judicial decision-making and call for any interference in that independence to be punished. CONST. art. 145. Judges are required to withstand outside influence by partial interests, and public and state pressure. See CODE OF JUDICIAL ETHICS Rule 2 (adopted by NJC in Dec. 2000) [hereinafter CODE OF JUDICIAL ETHICS]. A judge is also under an obligation to refrain from influencing another judge in the exercise of his/her duties. See JUDICIAL POWER LAW art. 32.3. It is a crime to engage in the active or passive corruption of judges. See CRIM. CODE arts. 319, 319/a. Active corruption, defined as “promising, proposing or giving directly or indirectly any irregular benefit to a judge [...] in order to carry out or avoid carrying out an action related to his/her position,” is punishable by imprisonment of one to four years and a fine of ALL 400,000 to ALL 2 million (USD 4,253-21,265). *Id.* art. 319. Passive corruption is defined as “asking for or receiving, directly or indirectly, any kind of irregular benefit or a promise of such, by a person who exercises public functions [...], or the acceptance of an offer or promise of an irregular profit, in order for the person who exercises public functions to carry out or avoid carrying out an action related to his/her duties.” *Id.* art. 319/a. A conviction is punishable by imprisonment of three to ten years and a fine of ALL 800,000 to ALL 4 million (USD 8506 – 42,530). *Id.*

Despite the legal framework being in place to protect the judiciary from outside influence, corruption in courts is perceived to be a widespread and serious problem. Interviewees for this JRI assessment offered their opinions that 30%, 50%, even 70% of the judiciary was corrupt, although none reported direct observation of an act of corruption, and most hesitated to say they would report such an act if they witnessed it. Their assessments correspond with the findings of more formal surveys. According to a survey on corruption in Albania conducted by the Institute for Development Research and Alternatives [hereinafter IDRA] and DPK Consulting, over 60% of respondents had little or no trust in the judicial system. See IDRA & DPK CONSULTING, CORRUPTION IN ALBANIA: PERCEPTION AND EXPERIENCE SURVEY 20 (2008) [hereinafter IDRA/DPK CORRUPTION SURVEY]. Individuals cited “facts and applicable law” as the least influential factor to affect the outcome of trials, with monetary consideration and personal connections ranked number 1 and 2. *Id.* at 21. Almost half of the judges surveyed said that corruption in courts was a serious problem. *Id.* at 22. 41% of the surveyed judges reported that they had been approached with bribe offers by litigants, while 55% responded that lawyers had approached them in an effort to influence their decisions. *Id.* At the same time, the public perception of the judiciary improved with regard to the courts’ contribution in the fight against corruption. *Id.* at 14.

Two ongoing criminal corruption investigations against government ministers are being closely watched as a “decisive test for the state of the rule of law in Albania.” OPEN SOCIETY MONITORING REPORT at 57. Former Defense Minister Fatmir Mediu had his immunity lifted and then resigned in order for the prosecutor to pursue an investigation into his involvement with the companies in charge of securing the ammunition depot in Gerdec, which exploded and killed 26 people in

March 2008.<sup>17</sup> Foreign Minister of Public Works and Transportation Lulzim Basha also lost his immunity and is under investigation for improprieties surrounding the contract to build the Durrës-Kukes road. This case has already come before the courts when the district court refused to extend the investigation. The prosecutor appealed the decision to Tirana Court of Appeals and, after the Court of Appeals upheld the original verdict, to the High Court.<sup>18</sup> Observers agree that proper, careful, and transparent judicial handling of these matters is critical at this time in Albanian history, because if a case against a minister is successfully prosecuted in a fair trial, it could restore the faith of the people in the justice system.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>A Code of Judicial Ethics exists; however, issues of enforceability remain. First-year initial training curriculum at the MS includes ethics training. While sitting judges are not required to receive training concerning the Code, ethics courses are part of the regular CLE offerings of the MS.</p>		

### Analysis/Background:

The NJC adopted a Code of Judicial Ethics in December 2000. The Code contains rules on the independence and impartiality of the judge, the performance of judicial functions, and extrajudicial activities. Issues such as conflicts of interest (see CODE OF JUDICIAL ETHICS Rules 3 and 12), *ex parte* communications (*id.* Rule 9), and inappropriate political activity (*id.* Rule 18) are all addressed. As written, enforcement of the code is foreseen through the NJC’s Disciplinary Commission, operating under procedures approved by the NJC Executive Council. See *id.* Rule 27. In practice, the NJC has not established this mechanism and no attempt to enforce the Code against a judge has ever been made by the NJC.<sup>19</sup>

The NJC established an Ethics Commission in 2002. The Commission is intended to serve two functions: to provide advice to judges on ethics issues and to provide advice to the HCJ on ethics issues regarding judges’ conduct. As to the first, judges do not make use of the availability of the Commission to seek advice on ethics. Regarding the second function of the Commission, the HCJ does solicit advisory opinions from the Commission on specific disciplinary matters. See HCJ INSPECTORATE REGULATION art. 21.7. The HCJ provides the Commission with sanitized documents, deleting names and other identifying details, on a case by case basis, and the Commission makes a recommendation in an advisory opinion. While the HCJ is under no obligation to abide by the recommendation, it has made a strong commitment to take the Commission’s opinion into consideration. The advisory opinions are not published. The Commission is currently working with the OSCE on using the advisory opinions as a starting point for drafting a commentary on the Code of Judicial Ethics.

<sup>17</sup> Mediu was formally charged by the Prosecutor’s Office in February 2009 with, *inter alia*, dereliction of duty with regard to the operation of the depot near populated areas.

<sup>18</sup> The judgment was pending at the time of the publication of this JRI.

<sup>19</sup> For information on what disciplinary mechanisms do exist for judges, see Factor 17 above and Factor 22 below.

Any judge who graduated from the MS has studied judicial ethics in the first year of the program, as ethics is a part of the School's first-year curriculum. Graduates also indicated that ethics issues would be discussed as part of the classroom component of the second-year internship program at the MS. Sitting judges are under no obligation to take ethics training. However, judicial ethics is a regular offering in the MS's schedule of CLE trainings. In 2008, the Italian Superior Council of Magistrates sponsored and taught a three-day seminar on judicial ethics for judges from Tirana and Shkodra.

Generally, judges did not demonstrate any detailed knowledge of the Code of Judicial Ethics. Instead, all acknowledged such a Code existed and agreed that they should act ethically, but often defined this solely in terms of maintaining the solemnity of the proceedings, which includes wearing robes and acting appropriately in the courtroom. Judges are far more aware and concerned about whether their behavior may constitute a disciplinary infraction set forth in the new Judicial Power Law or raise concerns during an inspection by the HCJ or the MOJ. See Factor 17 above and Factor 22 below for additional details.

## **Factor 22: Judicial Conduct Complaint Process**

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>The public has the right to and, in practice, does register complaints concerning judicial conduct. The MOJ and the HCJ each continue to have Inspectorates with overlapping competencies.</p>		

### Analysis/Background:

Anyone may register a complaint against the conduct of a judge with the MOJ and the HCJ, both of which have Inspectorates to investigate claims. Any complaints sent to other institutions regarding judicial conduct, such as the PA or the Office of the President, will be forwarded to those two bodies.

If a complaint is registered with the HCJ, the chief inspector initially evaluates the claim to determine if there is a basis for investigation. HCJ INSPECTORATE REGULATION art. 27.1. A claim deemed inappropriate for investigation is filed and a notice is sent to the complainant to explain why no further action was taken. *Id.* art. 27.3. A claim warranting further investigation is assigned to an inspector in the unit to perform a verification. *Id.* art. 27.5. The verification involves an investigation into the facts of the complaint to determine the veracity of the claims. The inspector must inform the judge in question and the chief judge of that court of the claims made in the complaint. *Id.* art. 30.4. In the case of an ongoing trial, the inspector may only verify claims regarding delays or ethical breaches of conduct. *Id.* If the inspector is satisfied that there are grounds to move forward with disciplinary proceedings, the record is forwarded to the Minister of Justice. *Id.* art. 33.1. The Minister of Justice has the sole authority to initiate disciplinary proceedings against judges in the HCJ. See JUDICIAL POWER LAW art. 34.1; HCJ DISCIPLINARY PROCEEDINGS REGULATION art. 1. If a complaint is filed with the MOJ, the MOJ may forward it to the HCJ or it may conduct its own investigation through the Department of Inspection of the MOJ Directorate General on Legal Matters. If the complaint was found to be meritorious, the inspection department requests the Minister of Justice to initiate disciplinary proceedings before the HCJ.

The two Inspectorates have overlapping mandates. Both can investigate complaints against judges and both carry out inspections of the courts to investigate practices and procedures. The

HCJ and judges in general do not believe that the MOJ should be allowed to interfere in the self-regulation of judges in what they perceive as a move to impose executive branch interference on the judiciary. In the MOJ, the predominant view is that the law gives the MOJ the authority to inspect courts, and that the HCJ overstepped its bounds by undertaking not just verifications of individual complaints, but also by launching inspections of courts. The result is a tense relationship between the two bodies. Efforts launched in 2006 to reach a memorandum of understanding, which would have resulted in the drafting of a procedural manual for use by both inspectorates and setting up of a joint electronic registry for complaints, have failed and no agreement was reached. In practice, cooperation between the two entities is at a minimum. The Constitutional Court found that the existence of two Inspectorates was not unconstitutional. See Constitutional Court Decision No. 11/2004.

As the statistics from the HCJ reveal, the public is well-informed of its rights to file complaints against judges. In 2006, the HCJ registered 776 complaints, in 2007 – 787 complaints, and in 2008 – 2,101 complaints. The vast majority involve disgruntled losing parties who appeared before particular judges. While such claims will likely not be pursued, many judges think that such complaints reflect a fundamental misunderstanding of how the courts work and lead to disrespect of the process and the judges themselves. Calls for public awareness campaigns to educate the public on the adversarial nature of a lawsuit are frequently heard from judges in particular, who feel that they are often unfairly targeted by individuals for their rulings. Furthermore, many judges felt that the dual Inspectorate system puts too much pressure on the courts. By some reports, there have been occasions when inspectors from both bodies showed up on the same day to scrutinize court records and procedures. Judges complain that they are under so much scrutiny now with the inspection and disciplinary system that the pressure was impacting their work.

### **Factor 23: Public and Media Access to Proceedings**

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

<b>Conclusion</b>	<b>Correlation: Negative</b>	<b>Trend: ↔</b>
By law, courtroom proceedings are generally open to the public and the media. In practice, their presence is often restricted by the limited space available and, occasionally, by court personnel.		

#### Analysis/Background:

The right to a public trial is guaranteed to everyone. CONST. art. 42.2. By law, court proceedings are generally open to the public and the media. CIVIL PROC. CODE art 26; CRIM. PROC. CODE art. 339. A judge may close proceedings to the public in a civil case to protect state secrets and public order, trade secrets, or “circumstances from the intimate private life” of the parties or other participants. CIVIL PROC. CODE art. 173. In addition, the court can keep out media where it finds that such participation is not to the benefit of the case. *Id.* art. 26. In a criminal case, a judge may close proceedings to the public when it is necessary to protect social morality, to prevent disclosure of a state secret, to protect witnesses or the defendant, to prevent disruptive conduct that would interrupt the hearing, or during the questioning of a juvenile. CRIM. PROC. CODE art. 340. A judge on the serious crimes courts also has the right to close a hearing to the public “in the interest of national security, public order, justice and the protection of participants in the process.” LAW ON SERIOUS CRIMES COURTS art. 7.2. The Constitutional Court may close a plenary session to the public when necessary to protect public morals, public order, national security, the right to private life, or personal rights. LAW ON THE CONST. COURT art. 21.2.

The extent to which the public can actually attend trials varies from court to court. As discussed in Factor 12 above, in district courts, the majority of hearings are held in judges' offices, which are prohibitively small. No one other than the parties can fit in the space. In addition, public attendance of trials, even where space restrictions are not an issue, appears to be a practice to which courts are still getting accustomed. A member of the public that has been given access to the court will likely, at some point, be questioned by police, security, court personnel, or even the judge as to who they are and why they are there. See, e.g. OSCE CRIMINAL APPELLATE ANALYSIS 118.

Another issue is whether the public can find out when and where a hearing is scheduled. In this regard, most courts now have billboards, installed with USAID funding, near the entryways, or in the case of the Tirana District Court, computer terminals, where information on the trial schedule should be posted. Where the courts regularly update the schedule and have made the billboard easily accessible, the system appears to work well. However, in some courts, this is not the case. See *id.* at 119 (noting that the Tirana and Vlora appellate courts do not update the schedules regularly).

Media access to hearings also varies from court to court. Media have been allowed in to cover and film some high-profile cases. The Serious Crimes Court, in particular, is considered very correct and transparent by journalists, who say they are regularly given access to hearings and information there. The Tirana Court of Appeals has an internal regulation, which provides that members of the media may attend hearings only after the guard notifies the presiding judge of their presence. See *id.* Media representatives complain that, in reality, it is very difficult to gain access to hearings in that court.

## 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.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>	<b><i>Trend: ↓</i></b>
<p>Judicial decisions are a matter of public record, but in practice, can be extremely difficult to obtain. The number of courts using the Internet to publish decisions is increasing, but few are publishing complete decisions on a regular basis. Only the Constitutional Court and the High Court publish their decisions regularly.</p>		

### Analysis/Background:

Judicial decisions are required to be “announced publicly.” CONST. art. 146.2. Everyone may request information on an official document without explaining the motives for their request. LAW OF THE REPUBLIC OF ALBANIA ON THE RIGHT TO INFORMATION OVER OFFICIAL DOCUMENTS art. 3 (Law No. 8503, *adopted* June 30, 1999). Authorities are required to make available for review and copying “final decisions on a given case, including concurring and dissenting opinions as well as orders implementing them.” *Id.* art. 9. Copies of official documents that have previously been given to at least one person should be prepared in advance. *Id.*

In criminal cases, the law restricts publication of court decisions where the defendant is a juvenile, a hearing is held *in camera*, or where the case involves state or other protected secrets. See CRIM. PROC. CODE art. 103. Otherwise, any interested party may request, at their own expense, copies, extracts, or certificates of specific documents. *Id.* art. 105.1. If the request is for documents in a preliminary investigation, it needs to be approved by either the prosecutor or the court that issued the decision. *Id.* art. 105.2. In civil cases, at the request of an interested



party, a court can order the publication of a decision in newspapers, if it finds that publication would “serve to the reparation of damage.” CIVIL PROC. CODE art. 30.

In practice, judgments remain difficult to obtain, although courts are slowly moving toward publication of decisions on the Internet. The judgments of the serious crimes courts are available online. The district courts in Tirana, Shkodra, Vlora, Fier, and Kavaja also publish at least excerpts of selected decisions, if not entire decisions, online. See CENTER FOR LEGAL CIVIC INITIATIVES, THE JUSTICE ORGANS COMBATING CORRUPTION 37 (2007); OSCE CRIMINAL APPELLATE ANALYSIS 123. The appellate courts still do not have their own websites, although the Tirana Court of Appeals anticipates it will be online in 2009. However, appellate court decisions are circulated to the district courts in their regions. OSCE found that, in appellate courts in Tirana, Vlora, Shkodra and Durres, “decisions to provide access to [court documents] are often made by the relevant court authorities in each individual case, leading to *ad hoc*, discretionary practices that may affect the right to a fair trial.” OSCE CRIMINAL APPELLATE ANALYSIS 122. Complaints about delays in obtaining decisions, whether online or in person, are common. Reportedly, the Minister of Justice has ordered that an individual requesting copies of court judgments or any other service offered by the courts will not be able to obtain such services unless he/she shows an international passport, a biometric identity card, or a biometric identity application number. See MOJ Order No. 747 (Jan. 28, 2009). Courts are reportedly denying access to their records to persons failing to present the documentation required by the order, despite widespread belief that the order violates both the Constitution and the European Convention on Human Rights.

The High Court and the Constitutional Court are required to publish decisions both in hard copy and online. CONST. arts. 132.2, 142.2; HIGH COURT LAW art. 19; LAW ON THE CONST. COURT art. 26. The Constitutional Court decisions are usually posted to the Court’s website within two days of issuance. The media representatives note that there have been delays in the past. The High Court decisions are circulated to lower courts and prosecutors and are published in the Court’s bulletin, DECISIONS OF THE HIGH COURT. Decisions on the unification of practice are published in the OFFICIAL JOURNAL [hereinafter OJ]. See HIGH COURT LAW art. 19.

In the context of suggested improvements that judges could undertake to combat the perception of corruption in the judiciary, a number of interviewees have noted that judges should be urged to focus more on quality of their decision-writing. A badly written or reasoned decision does nothing to combat the widespread public perception that a losing verdict must be due to corruption rather than to the merits of the case. As judges explained, a decision based on solid facts and elaborating on the applicable law will allow the parties to see why they lost the case.

## Factor 25: Maintenance of Trial Records

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
Minutes of varying reliability, rather than a verbatim transcript, are maintained of courtroom proceedings. A program is underway in courts to transition from handwritten minutes to taking minutes directly into the computer. Minutes are not generally easily available to the public.		

### Analysis/Background:

In criminal cases, the court secretary maintains the minutes of proceedings in full or summarized form. CRIM. PROC. CODE art. 115. A summarized form is permissible if the matter is considered a simple one, or when the mechanism to record verbatim minutes is unavailable. *Id.* art. 120. A

verbatim transcript, however, is required for oral orders of the judge. *Id.* art. 346. The minutes should contain the essential parts of the testimony and the circumstances under which it was made, and must be signed by the secretary. *Id.* arts. 120, 122. In civil cases, the secretary is charged with keeping the record. CIVIL PROC. CODE. art. 77. The minutes must reflect the explanation of the parties, the evidence taken, and any orders announced by the judge. *Id.* art. 172.

Lacking the technology to do otherwise, courts have traditionally maintained the minutes of proceedings by longhand. The longhand version was then placed in the case file. This version is sometimes difficult to read and lacking in detail. See OSCE CRIMINAL APPELLATE ANALYSIS 124. Both case management systems currently used in the court system, Ark-IT and CCMIS, allow for the minutes of court proceedings to be typed directly into the computer. USAID is funding relevant trainings for court secretaries in identified pilot courts and the serious crimes courts, with the aim of expanding the training to all other courts. Nine USAID pilot courts have completely eliminated note-taking by hand. USAID is also financing the placement of computer terminals and monitors in courtrooms, which would allow the gallery to view the minutes as they are being taken.

Record-keeping practice varies court to court. At Tirana District Court, for instance, minutes are recorded either by longhand or by typing. Minutes recorded by longhand are not subsequently typed into the system but are placed into the case file in hardcopy. In Durres Court of Appeal, the standard practice now is to type the minutes directly into the computer, with the exception of certain special preliminary hearings or hearings where the court sits as a first instance court. Apparently, CCMIS is not yet equipped to code and permit intake of these special types of proceedings.

Regarding public availability of trial records, court staff have generally reported that they would make the file available upon request. Attorneys complained that they often require frequent in-person visits to the clerk's office in order to obtain documents from the files of their clients. They do not suspect obstruction but blame the overburdened and outdated archival and filing system in place in most courts. Some courts are overwhelmed with the amount of file boxes which they have to archive and maintain, in particular given the severe space limitations in most courthouses.

## 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.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
Judges have adequate support staff to handle documentation and administrative matters, but do not have support staff to assist in legal research.		

#### Analysis/Background:

Judges on the first instance and appellate courts generally have a secretary available to them to keep the written record of proceedings and maintain the case file. Lower court judges do not have legal advisors to assist in research or other legal tasks. In some courts, like Tirana District Court, each judge is assigned a secretary. In others, there is a type of pool; for example, in Durres Appeals Court, one secretary works for two judges. The Serious Crimes Court recently had the number of their secretaries reduced from one per judge to 10 secretaries per 16 judges, while in the Serious Crimes Appellate Court, each secretary works for two or three judges.

The law provides for each High Court judge to have two legal assistants and an “auxiliary person;” however, due to space and budgetary limitations, each judge has one legal advisor whose experience must be the equivalent of a nominee to the first instance or appellate courts. See HIGH COURT LAW art. 20.

#### NUMBER OF COURT SUPPORT PERSONNEL IN ALBANIA, 2007-2008

Court Level	2007			2008		
	Budgeted No.	Actual No.	Staff/Judge Ratio	Budgeted No.	Actual No.	Staff/Judge Ratio
High	118	96	5.6	118	91	5.4
Appellate	216	214	3.8	197	192	3.7
District	843	816	2.9	842	829	3.0
<b>TOTAL</b>	<b>1,177</b>	<b>1,126</b>	<b>3.2</b>	<b>1,157</b>	<b>1,112</b>	<b>3.1</b>

Source: OAJB.

Each court has a chancellor’s office, a secretariat, an archives office, and a budget office. At this time, not all courts have an IT officer; rather, an IT officer is generally based at one court, usually the court of appeals, and covers all the courts in the region. Chief judges have requested that each court have an IT person based there. The High Court and the Constitutional Court both have public relations offices. In lower courts, this function is generally filled by the chancellor or the chief judge. In practice, the media representatives complain that they have no one to approach at most of the lower courts.

The court chancellor is appointed and discharged by the Minister of Justice. See JUDICIAL POWER LAW art. 37.2. The Law foresees a stronger role for the chancellor in the lower courts, who would function under the direct supervision of the MOJ and without consultation with the chief judge. While the former Judicial Power Law gave the chancellor the duty of overseeing court personnel, the new Law also includes the powers to hire and fire the secretaries and administrative-technical service personnel. *Id.* art. 38. Under the previous system, the chief judge, in consultation with the chancellor, was in charge of the hiring process of court personnel, other than for the MOJ-

appointed budget officer. In some courts, the new structure has had no practical impact; in other courts, chief judges are being notified of, and not consulted on, employment decisions to reduce the number of secretaries. Many judges view this latest expansion of the chancellor's powers as an effort by the MOJ to compromise the independence of the judiciary. Indeed, the NAJ has brought a case before the Constitutional Court challenging the provision on those very grounds. See Factor 19 above. The MOJ's position is that a strong chancellor can help fight corruption in the judiciary, or the perception thereof.

As illustrated by the following table, court staff salaries, which are set by the MOJ, are extremely low in comparison to similarly situated positions in other branches of government.

**BASE SALARIES OF JUDICIAL SECRETARIES IN ALBANIA<sup>20</sup>**

Court Level	2007		2008	
	ALL	USD equiv.	ALL	USD equiv.
High Court	29,133	310	32,893	350
Courts of Appeal	28,980	308	34,440	366
District Courts	27,475	292	32,550	346

Source: OAJB.

Because of the low salaries, retention of court secretaries poses a serious issue. As one judge observed, as soon as a secretary becomes good at her job, she finds employment elsewhere. The public perception of the judiciary as corrupt encompasses not just judges but also court staff, who may be confronted with opportunities for corruption as they handle court files and documents. In an answer to the precarious financial position of court staff, the MOJ has composed a draft law on judicial administration, which would grant some sort of civil service status to court personnel (with the exception of the court chancellor, who would remain answerable to the Minister of Justice). The draft law is already controversial because it further expands the powers of the chancellor vis-à-vis the chief judge. See OPEN SOCIETY MONITORING REPORT 49.

**Factor 27: Judicial Positions**

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>A system for creating new judicial positions exists. To assist certain courts with their high caseloads, the HCJ is increasingly relying on the temporary delegation of judges from one court to another. A recent reorganization of the district courts raised a constitutional issue when 24 judges were dismissed from their positions.</p>		

Analysis/Background:

The President of Albania sets the number of judges for the lower courts by decree, upon a proposal from the Minister of Justice. JUDICIAL POWER LAW art. 8. The Minister of Justice makes a recommendation after having first received the opinion of the HCJ. *Id.* The number of judges on the High Court and the Constitutional Court is set by law. See HIGH COURT LAW art. 1; LAW ON THE CONST. COURT art. 7.

<sup>20</sup> As this JRI assessment was being drafted, the government issued a decision to double the salaries for court personnel, including secretaries. See Council of Ministers Decision No. 20 (*approved* Jan. 14, 2009, *retroactive to* Jan. 1, 2009).

A judge may not be transferred without his/her consent, unless the transfer is due to court reorganization. JUDICIAL POWER LAW art. 20. However, the HCJ does have the authority to temporarily delegate judges to other courts. At the request of a chief judge of a court, the HCJ may temporarily reassign a judge from another court to hear a specific case. *Id.* art. 21.2.

There are currently a total of 355 sitting judges in the Albanian judiciary (excluding the Constitutional Court). This number includes 281 sitting judges on the district courts, 67 sitting judges on the courts of appeal, and 17 judges on the High Court. Most judges interviewed by the assessment team described themselves as overworked and said that a typical day was one with 9-13 hearings. Procedural delays and backlogs are commonplace. For example, in 2007, Tirana District Court, one of 29 at the time, was able to complete only approximately 30% of all criminal cases and 25% of all civil cases filed that year. Similarly, Tirana Court of Appeals, one of six appellate courts, heard only 27% of all criminal appeals and 30% of all civil appeals filed that year. In some cases, the appointment of more judges was seen as the solution to these problems. Other interviewees cited delays in announcing certain vacancies by the HCJ as a contributing factor to the workload.

In addition, the need for judges to recuse themselves from cases where they have served as judges in preliminary proceedings has also created a dearth of available judges on criminal appellate panels. Many judges are disqualified from serving on these panels because they had previously participated in pre-trial detention hearings on the same case. In response to these problems, the HCJ often delegates judges from other courts to hear specific cases, particularly in Tirana. In fact, the HCJ is using delegation more and more frequently as a remedy to address the problem of overburdened courts. EURALIUS has described this phenomenon as the “flying judges” and warned that it is not an efficient remedy to the problem. See EURALIUS, RECOMMENDATION ON DIFFERENT MODELS OF REORGANIZATION OF DISTRICT COURTS 20 (2006) [hereinafter EURALIUS RECOMMENDATION ON COURT REORGANIZATION]. Judges waste time on travel and are more likely to have communication problems as they juggle two courts, all of which will likely impact the quality of their work. See *id.* One judge estimated that he spent up to six days a month serving in Tirana. The judge’s absence from his main court had a detrimental impact on the workload there.

The following table summarizes the statistics on the inflow and backlogs of cases in the Albanian judiciary in 2006 and 2007, as well as the average caseload quotients (defined as the ratio of incoming cases to the number of judges) and case clearance ratios (defined as ratio of completed cases to new filings) at different levels of the judiciary.

**CASELOADS AND BACKLOGS IN THE ALBANIAN COURTS, 2006-2007<sup>21</sup>**

Court Level	2006			2007		
	Civil	Criminal	Total	Civil	Criminal	Total
<b>High Court</b>						
Pending at the start of the year	1,274	644	1,910	1,769	915	2,684
New cases filed	1,869	967	2,836	2,104	805	2,909
No. of cases completed	1,374	727	2,101	1,453	813	2,266
Pending at the end of the year	1,796	884	2,680	2,420	907	3,327
<b>Caseload quotient</b>	<b>189</b>			<b>194</b>		
<b>Clearance ratio, %</b>	<b>74.1</b>			<b>77.9</b>		
<b>Courts of appeal</b>						

<sup>21</sup> Caseload quotients and case clearance ratios presented in this table are calculated by the assessment team based on the information available in MOJ YEARBOOK 2006 and MOJ YEARBOOK 2007. These calculations are based on the following numbers of sitting judges in different court levels for 2006 and 2007, respectively: High Court – 15 judges and 17 judges; courts of appeal – 65 judges and 67 judges; and district courts – 286 judges and 281 judges.

Pending at the start of the year	1,962	716	2,678	2,668	800	3,468
New cases filed	4,255	2,714	6,969	5,200	2,357	7,557
No. of cases completed	3,557	2,629	6,186	4,412	2,334	6,746
Pending at the end of the year	2,638	1,165	3,803	3,456	823	4,279
<b>Caseload quotient</b>		<b>107</b>			<b>113</b>	
<b>Clearance ratio, %</b>		<b>88.8</b>			<b>89.3</b>	
<b>District courts<sup>22</sup></b>						
Pending at the start of the year	n/a	1,810	n/a	6,138	1,810	7,948
New cases filed	n/a	6,230	n/a	42,765	6,388	49,153
No. of cases completed	52,985	7,088	60,073	41,818	6,268	48,086
Pending at the end of the year	6,355	2,011	8,366	7,497	2,066	9,563
<b>Caseload quotient</b>		<b>n/a</b>			<b>175</b>	
<b>Clearance ratio, %</b>		<b>n/a</b>			<b>97.8</b>	

Source: MOJ YEARBOOK 2006; MOJ YEARBOOK 2007.

In 2006, EURALIUS recommended a three-stage court reorganization scheme to improve efficiency and phase out the under-utilized courts in a gradual closure process that could take up to nine years. EURALIUS RECOMMENDATION ON COURT REORGANIZATION 23. In response, in what has been described as “one of the most disputed decisions in the judicial system,” the MOJ, through a presidential decree, shut down eight district courts in September 2007, resulting in a dismissal of 24 judges. See FREEDOM HOUSE, *Albania, in NATIONS IN TRANSIT 2008: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA 70* (2008). In November 2007, EURALIUS assessed that “in just two months after the implementation of Albania’s own reorganization project, workloads increased in central courts, efficiency was reduced and costs increased owing to the frequent traveling of judges, secretaries and case files.” *Id.* A case was also brought to the High Court challenging the dismissal of the judges on the grounds that the Constitution guarantees their indefinite tenure. The Court ruled that the judges should be reinstated; however, it took over a year for the HCJ to execute the judgment. See also Factor 14 above.

## 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.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
Electronic case management systems have been installed in all courts, although with mixed results. Courts using the Ark-IT system report good results, while those using the CCMIS/ICMIS software report system failures, problems with case tracking, and unfair lottery results. A lack of IT support also contributes to problems with electronic case management.		

### Analysis/Background:

Two electronic case management systems coexist in the Albanian judiciary. Since 2002, six district courts (Fier, Kavaje, Mat, Shkodra, Tirana, and Vlora) have been using the Ark-IT system, installed under a program funded by USAID and the Soros Foundation and implemented by the East-West Management Institute. The system is a client application installed at every computer, and can also be accessed through a LAN network. Updates have to be installed in every computer separately. The system provides for initial electronic registration of cases, tracks the

<sup>22</sup> The MOJ Yearbook 2006 did not include data on the numbers of civil cases pending at the start of the year or the new cases filed with district courts.



movement of cases only through that court, not through appellate and High Court proceedings, provides statistics, runs automatic case assignment, and offers templates for court decisions and documents. The courts pay an annual licensing fee for the software. See EURALIUS, RECOMMENDATION ON COURT COMPUTERISATION – WORLD BANK SYSTEM CCMIS AND USAID SYSTEM ARK-IT IN COMPARISON 2 (2006).

In 2000, the World Bank funded the introduction of the electronic case management system, CCMIS (also called ICMIS), in three pilot courts: the High Court, Durres District Court, and Durres Appeals Court, although the Durres courts never successfully implemented the system. The Albanian government selected CCMIS for a national roll out to courts that began in 2006. Initially the system covered only civil cases, but in 2008 it was extended to include criminal cases under an EU-supported tender. CCMIS is a web-based application installed on the server and accessible on a computer via the Internet. Updates may be made to the server. The system provides for registration of cases, tracks movements of cases through the High Court, provides statistics, runs automatic case assignment, and can generate summons. *Id.* at 3. No license fees are necessary, as the Albanian government owns this system.

Users of the Ark-IT system were generally very satisfied with how it works. It can easily generate the statistics required by the MOJ. Judges think the lottery system is fair. The courts in Tirana, Kavaja, Vlora, Shkodra, and Fier have made the system accessible via their websites. Users can access, *inter alia*, court schedules, case assignments, and court decisions online.

By contrast, the installation and use of CCMIS has met with less favorable results. In fact, because of the lack of IT support, only five courts were using the full system as of September 2008. Some courts, such as Pogradec District Court, are still waiting for IT assistance to get the criminal component of the software up and running. See ICMIS IMPLEMENTATION REPORT 2. The MOJ notified the EU that it was not satisfied with the work of the company contracted to oversee the installation and use of the system. Complaints from court users centered on the failure of the system to generate the statistics needed for MOJ, to track cases under procedural law, and to generate fair lottery results.

Electricity outages impact the running of both systems. Operational generators and the fuel to run them could eliminate the necessity of registering cases by hand during outages and later inputting the information into the electronic system.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
In general, Albanian courts are equipped with computers for judges and secretaries to use, although some of the equipment is old. Maintenance and repair of equipment can be a lengthy process.		

### Analysis/Background:

Generally, Albanian courts at all levels are equipped with a sufficient number of computers and other equipment to handle their caseloads in a reasonably efficient manner, although some of the equipment is quite old. As with all judicial expenditures and budgets, the OAJB manages the funds to be used for computers and office equipment.

Judges on the High Court and the Constitutional Court are all provided with computers and printers. The district, appellate, and serious crimes courts in Tirana are well-equipped with computers and other equipment. Overall, the Albanian courts currently have 890 computers in use. All judges have their own computers, although some secretaries share the use of equipment. Many computers are connected to the case management system, which allows judges or secretaries to input decisions directly into the system or to pull up case information directly from their terminals. In 10 pilot courts throughout the country, USAID is supporting training of court staff on how to electronically transcribe the minutes of court hearings.

Maintenance of computers and equipment is an ongoing issue. Budget shortfalls in the courts sometimes result in a lack of funding to complete repairs or arrange replacements of defective equipment. While the High Court has a working Internet connection, internet capability is still not widely available in the lower courts due either to lack of funding or IT issues.

Another ongoing problem for some courts is the frequent electricity outages. The courts may not have working generators at all, or if they do, insufficient funding has been allocated for fuel. The result is twice as much work for court administration, which will first have to complete the case registration process by hand and then later to input the information into the computer system.

**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.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
Judges have up-to-date access to current domestic laws and jurisprudence through a searchable electronic database containing all the laws, as well as judgments of the Constitutional and the High Courts. No nationally recognized system for identifying and organizing changes in the law exists.		

Analysis/Background:

The OJ, which is published monthly, contains laws, the normative acts of the President, the Council of Ministers, ministries, and other central state institutions, as well as ratified international agreements. See CONST. arts. 84.3, 117.1, 122.1. A subject-matter index of laws and other legal acts enacted during the year is published annually. The OJ also publishes all Constitutional Court decisions, as well as High Court decisions which unify or amend court practice. See LAW ON THE CONST. COURT art. 26; HIGH COURT LAW art. 19. Judges receive the OJ monthly and free of charge. In addition, the High Court publishes and distributes its decisions on a monthly basis to the courts.

In addition to the OJ, judges also rely on JURIST, a CD-ROM which contains a searchable, electronic database of legislation, government acts, and High Court decisions. USAID funded the installation of the program, but courts are responsible for maintaining the subscription service for updates. At least one court is reported to have stopped the subscription service due to lack of funds.

The High Court has a library and a research division to assist judges and their legal assistants. District and appellate courts lack the space and resources to provide libraries in their courthouses. Judges often have their own collection of research and source materials, which



they purchase privately and keep in their offices. The MS legal periodical, JETA JURIDIKE, is also circulated to all judges.

Appellate and district court decisions are not published in a formal publication. As discussed in Factor 24 above, some courts are publishing at least a portion of their decisions online. However, appellate court decisions are circulated to the district courts in their regions. It is a common practice for courts to hold a meeting of all judges at least monthly, if not weekly, to review and discuss recent appellate court and High Court decisions, as well as recent interpretations in law.

## List of Acronyms

<b>ABA ROLI</b>	American Bar Association's Rule of Law Initiative
<b>ABA/CEELI</b>	American Bar Association's Central European and Eurasian Law Initiative
<b>ALL</b>	Albanian leke
<b>CARDS</b>	EU Community Assistance for Reconstruction, Development, and Stabilization program
<b>CCMIS</b>	Civil Case Management Information System
<b>CLE</b>	continuing legal education
<b>ECHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>EURALIUS</b>	European Assistance Mission to the Albanian Justice System
<b>HCJ</b>	High Council of Justice
<b>IDRA</b>	Institute for Development Research and Alternatives
<b>JRI</b>	Judicial Reform Index
<b>MOF</b>	Ministry of Finance
<b>MOJ</b>	Ministry of Justice
<b>MS</b>	Magistrates' School
<b>NAJ</b>	National Association of Judges
<b>NJC</b>	National Judicial Conference
<b>OAJB</b>	Office of Administration of the Judicial Budget
<b>OJ</b>	Official Journal
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PA</b>	People's Advocate of the Republic of Albania
<b>RJC</b>	Regional Judicial Council
<b>UAJ</b>	Union of Albanian Judges
<b>USAID</b>	United States Agency for International Development
<b>USD</b>	United States dollars