



# **JUDICIAL REFORM INDEX**

FOR

# **ALBANIA**

*February 2004*

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# **VOLUME II**

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## Introduction

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

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

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

## Assessing Reform Efforts

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

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

*Id.* at 615.

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

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

Larkins, *supra*, at 615.

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

## **ABA/CEELI's Methodology**

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

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

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

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

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

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

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

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

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

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

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



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

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

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## **Assessment Team**

The Albania JRI 2004 Analysis assessment team was led by Thomas F. Cope and benefited in substantial part from the efforts of Donna Wright, Aida Cenaj, Denisa Fekollari, Zyhrada Kongoli, and Adela Kore. The conclusions and analysis are based on interviews conducted in Albania in January and February 2004 and relevant documents reviewed at that time. ABA/CEELI Washington staff members Julie Broome, Sokol Shtylla, and Andrew Solomon served as editors. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

## Albania Background

### Legal Context

Albania is a parliamentary republic, whose territory is divided into twelve regions (*qarqe*), which are further subdivided into a total of thirty-six districts (*rrethe*). Following the collapse of 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. 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.

### 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 in 1998 the principle of separation of powers was further reinforced with the adoption of the Constitution. The Constitution provides for the High Council of Justice, which decides on the transfer of judges, as well as on their disciplinary responsibility, and the National Judicial Conference, as a general meeting of all judges to strengthen judicial independence.

### 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 outside the judiciary and is independent of all branches of government, exists to interpret and guarantee compliance with the Constitution. Military first instance courts and a military court of appeal function within the regular court system. These courts try members of the armed forces, prisoners of war, and others for crimes under the Military Criminal Code.

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<sup>1</sup> For example, Law 8436 dated 28.12.1998 "On the Organization of the Judicial Power"; Law 8577 dated 10.02.2000 "On the Organization and Functioning of the Constitutional Court"; Law 8588 dated 15.03.2000 "On the Organization and Functioning of the High Court"; Law 8678 dated 14.05.2001 "On the Organization and Functioning of the Ministry of Justice"; Law 8811 dated 17.05.2001 "On the Organization and Functioning of the High Council of Justice"; Law 9049 dated 10.04.2003 "On Declaration and Audit of Assets, financial obligations of elected persons and certain public officials"; and Law 9110 dated 24.07.2003 "On the Organization and functioning of the Serious Crimes Courts." 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.

**First instance courts** (sometimes referred to as district courts) sit in twenty-nine judicial districts throughout the country and try cases in the first instance. Five of these courts also include military first instance courts or panels. Hearings in civil cases are conducted by a single judge or a three-judge panel, depending on the issues involved, and in criminal cases by a single judge or, when a sentence of more than five years is possible, by a three-judge panel.

**Courts of appeal** sit in six different regions of the country 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 fact and law. The Military Court of Appeal, located within the Tirana Court of Appeal, hears appeals from the military courts, also in three-judge panels.

Serious crimes courts were established effective 1 January 2004 in an effort to increase the efficiency of the judiciary in addressing the problem of organized crime. Specifically, 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, and other crimes punishable by at least fifteen years imprisonment. Presently there are two such courts, both located in Tirana. The first instance court is the **Serious Crimes Court**, and the second instance court is the **Serious Crimes Appellate Court**. Both courts hear cases in panels of five judges.

The **High Court** (formerly called the Court of Cassation) is the highest court in Albania. Located in Tirana, it has recourse jurisdiction over decisions of the courts of appeal, deciding issues only of law but not of fact, and original jurisdiction over criminal charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, deputies of the Assembly, judges of the High Court, and judges of the Constitutional Court. The High Court consists of seventeen judges and is divided into civil and criminal colleges of eight judges each. Cases are heard in five-judge panels. Criminal panels also hear military cases. 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*.

## Conditions of Service

### Qualifications

To be appointed to a first instance court, a court of appeal, the Serious Crimes Court, or the Serious Crimes Appellate Court, a candidate must be an Albanian citizen, possess full legal capacity, hold a law degree, have no criminal record, have a "good reputation," and be at least twenty-five years of age. In addition, he or she must have either: (1) graduated from the Albanian School for Magistrates; (2) worked for more than three years as a professor in a law faculty or the Magistrates School, as a deputy of the Assembly, as a legal adviser to the Assembly, the President of the Republic, or the Council of Ministers, or as a specialist with the Ministry of Justice, the High Court, or the General Prosecutor's Office; (3) graduated from a qualifying postgraduate legal training program abroad; or (4) worked for at least five years as a judge, assistant judge, public prosecutor, advocate, or notary and pass a professional competency examination within six months after appointment to the bench. At this time, the vast majority of

first instance court judges being appointed are graduates of the Magistrates School. In addition to these requirements, to be appointed to a court of appeal, the Serious Crimes Court, or the Serious Crimes Appellate Court, candidates must also have worked for at least five years as a judge in first instance courts and have demonstrated “high ethical, moral and professional standards in the exercise of their duties.”

High Court judges are appointed from among highly qualified legal professionals with at least fifteen years of work experience, or from among judges with at least ten years on the bench. Appointments to the Constitutional Court are made from among highly qualified professionals with at least fifteen years of experience in the legal profession.

### ***Appointment and Tenure***

Judges of first instance courts, courts of appeal, the Serious Crimes Court, and the Serious Crimes Appellate Court are appointed by the President of the Republic on the proposal of the High Council of Justice. Judges of first instance courts and courts of appeal serve for indefinite terms, and judges of the Serious Crimes Court and the Serious Crimes Appellate Court have nine-year terms and may be reappointed. All such judges continue in office until they resign, are removed for cause, reach the retirement age of sixty-five, or, in the case of judges of either 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 the Republic with the consent of the Assembly. They are appointed for nine-year terms and do not have the right to be re-appointed. Their term of office shall end prematurely if they are convicted of a crime, do not appear for work for more than six months, reach the mandatory retirement age (sixty-five for the High Court and seventy for the Constitutional Court), resign, or are declared incompetent by a court. In any of these cases, the end of a judge’s term is declared by the court on which he or she sits.

### ***Training***

Although the qualifications for becoming a judge are more rigorous under current legislation, many judges appointed from 1992 through 1996 had completed only a six-month intensive course in the law. 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. In 1999, 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. Those who refused to take the exam were removed from the bench. Judges with fewer than five years of work experience and who did not graduate from the Magistrates School are required to participate in continuing education activities. The Magistrates School also organizes optional continuing education programs for all other judges.

Since 2000, most new first instance court judges have been graduates of the Magistrates School, which offers a three-year program with one year of classroom work, one year of supervised training in the courts, and one year of intensive professional practice in the courts under the supervision of a judge.



## Albania JRI 2004 Analysis

Albania has made important progress in judicial reform during the past two and one-half years. However, several recent events, such as the Assembly's refusal to implement a Constitutional Court decision and the possibility that a judge will be criminally prosecuted for an "unfair decision," represent threats to the independence of the judiciary. Furthermore, the JRI analysis of reform factors reveals a substantial range of factors requiring further attention. While the factor correlations may serve to give a sense of the relative gravity of certain issues, these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis and in comparison with the Albania JRI 2001. ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments.

### Table of Factor Correlations

Judicial Reform Index Factor		Correlation 2001	Correlation 2004	Trend
<b>I. Quality, Education, and Diversity</b>				
Factor 1	Judicial Qualification and Preparation	Neutral	Neutral	↔
Factor 2	Selection/Appointment Process	Positive	Positive	↔
Factor 3	Continuing Legal Education	Negative	Neutral	↑
Factor 4	Minority and Gender Representation	Neutral	Neutral	↔
<b>II. Judicial Powers</b>				
Factor 5	Judicial Review of Legislation	Positive	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	Negative	Neutral	↑
Factor 12	Judicial Buildings	Neutral	Neutral	↔
Factor 13	Judicial Security	Negative	Negative	↔
<b>IV. Structural Safeguards</b>				
Factor 14	Guaranteed Tenure	Positive	Positive	↔
Factor 15	Objective Judicial Advancement Criteria	Negative	Negative	↔
Factor 16	Judicial Immunity for Official Actions	Positive	Neutral	↓
Factor 17	Removal and Discipline of Judges	Neutral	Neutral	↔
Factor 18	Case Assignment	Neutral	Neutral	↔
Factor 19	Judicial Associations	Neutral	Negative	↓
<b>V. Accountability and Transparency</b>				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Negative	Negative	↔
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Negative	Negative	↔
Factor 24	Publication of Judicial Decisions	Negative	Negative	↔
Factor 25	Maintenance of Trial Records	Negative	Neutral	↑
<b>VI. Efficiency</b>				
Factor 26	Court Support Staff	Negative	Neutral	↑
Factor 27	Judicial Positions	Neutral	Neutral	↔
Factor 28	Case Filing and Tracking Systems	Neutral	Neutral	↔
Factor 29	Computers and Office Equipment	Negative	Neutral	↑
Factor 30	Distribution and Indexing of Current Law	Neutral	Neutral	↔

## I. Quality, Education, and Diversity

### Factor 1: Judicial Qualification and Preparation

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>Formal university-level legal training is now required of all judicial candidates, but the education provided by Albania's law schools is often regarded as inadequate. The Magistrates School's three-year training program, completed by almost all new judges now being appointed, provides training and courtroom experience. Experience practicing before tribunals is not required for judicial appointment.</p>		

#### Analysis/Background:

All judges must have formal university-level legal training before taking the bench. However, many interviewees said that the education provided to full-time students in Albania's public law faculties (presently Tirana, Shkodra, and Vlora) is often substandard. Rote memorization is emphasized, with little attention paid to practical skills, such as legal reasoning, research, writing, and argumentation. Indeed, practical experience is limited to one month in the fourth year spent in a lawyer's office, prosecutor's office, or other government offices. To provide an alternative to this education, a private law faculty was established in Tirana in 2003. Another shortcoming of legal education is that many judges and other legal professionals completed law school as correspondence students—a program that many have been seen as failing to afford adequate legal education. No new correspondence students have been admitted since 1997, but those previously enrolled will be permitted to complete the program over the next several years.

The vast majority of new first instance court judges appointed after 1999 have also completed the three-year program of the Albanian School for Magistrates. The number of entering students (10 judicial students were admitted in 2003 and 13 in each of the two prior years) is limited to the High Council of Justice's determination of first instance court vacancies, and admission to the Magistrates School is competitive, based on grades, a blind-graded written test, and an oral examination before a five-member panel. LAW ON THE MAGISTRATES SCHOOL OF THE REPUBLIC OF ALBANIA arts. 16, 17, Law No. 8136, 21 FLET. ZYRT. 755-62 (1996) [hereinafter LAW ON THE MAGISTRATES SCHOOL]; INTERNAL REGULATIONS OF THE SCHOOL OF MAGISTRATES OF REPUBLIC OF ALBANIA arts. 5, 6, 12 (27 Mar. 1998) [hereinafter REGULATIONS OF THE MAGISTRATES SCHOOL]. During the first year, students complete academic course work in basic substantive and procedural areas of the law, as well as judicial ethics. LAW ON THE MAGISTRATES SCHOOL art. 14(a); REGULATIONS OF THE MAGISTRATES SCHOOL art. 16.1. The second year is devoted to specialized, practical training in court practice under the direction of a supervising judge. LAW ON THE MAGISTRATES SCHOOL art. 14(b). Although the role of the judge in society and cultural sensitivity are not formal courses either in the law faculties or the Magistrates School, the role of the judge in society is discussed as part of the second year curriculum at the Magistrates School. The third year consists of a professional internship, in which students who receive satisfactory evaluations from the academic council of the Magistrates School are temporarily appointed to first instance courts, where they function as judges, trying minor cases under the supervision of experienced judges. *Id.* arts. 14(c), 19. After the third year internship, the academic council

evaluates the students and recommends them for permanent appointment as first instance judges. *Id.* art. 20.<sup>2</sup>

Significantly, Magistrates School students are paid 50% of a first instance judge’s salary in each of their first two years, and then a full first instance judge’s salary during the third year and continuing through permanent appointment. *Id.* arts. 18, 20, 21. This provides an economic incentive to appoint graduates of the Magistrates School, rather than bypass them in favor of candidates without such training. (Categories of such other candidates are listed in Factor 2 below.) See also REGULATION OF COMMISSION OF HIGH COUNCIL OF JUSTICE FOR EXAMINATION OF CANDIDATES FOR JUDGES AND THEIR TESTING art. 10 (21 Feb. 2003) [hereinafter REGULATION ON EXAMINATION OF JUDICIAL CANDIDATES] (preference in appointment given to Magistrates School graduates). Indeed, the appointment of Magistrates School graduates to the bench is almost *pro forma*, with the only question being the particular court where they will serve.

Many interviewees said that the Magistrates School has done much to increase the knowledge and professionalism of judges. Graduates of the school stated that the education they received there was far superior to that in the law faculty. One interviewee pointed out that the Magistrates School strengthens judicial independence, because a new judge is no longer indebted to someone for his or her appointment, but is appointed based on his or her own efforts. Another interviewee described the Magistrates School as “one of the most successful institutions in Albania.”

To address the severe shortage of trained judges after the communist era, six-month intensive legal training programs were offered to aspiring judges in 1993. As a result, many judges were appointed with only six months of legal training. As one six-month judge explained, he had not had the necessary political connections with the communist party to enroll in the law faculty. Because of concerns about the qualifications of these judges, all judges with less than ten years of experience were required to pass a one-time competency examination in 1999. Three judges failed, and thirty-two did not take the examination and were removed from the bench. Several interviewees commented that what six-month judges may have lacked in formal legal education they have acquired through experience. All judges with less than five years on the bench who are not graduates of the Magistrates School must satisfy a mandatory continuing education requirement. See Factor 3 below.

There is no requirement that judicial candidates have practiced before tribunals.

## 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: Positive</b>	<b>Trend: ↔</b>
<p>The appointment of judges, particularly those who graduated from the Magistrates School, appears to be based largely on objective criteria. While political or personal influence is possible in some first instance court appointments, this appears to be the exception rather than the rule.</p>		

<sup>2</sup>It should be noted that article 20, passed before adoption of the Constitution, incorrectly states that the High Council of Justice, rather than the President of the Republic, appoints judges to first instance courts.

## Analysis/Background:

Judges of first instance courts, courts of appeal, the Serious Crimes Court, and the Serious Crimes Appellate Court are appointed by the President of the Republic on the proposal of the High Council of Justice (HCJ). CONSTITUTION OF THE REPUBLIC OF ALBANIA art. 136.4, Law No. 8417, 28 FLET. ZYRT. 1073-1112 (1998) [hereinafter CONST.]; LAW ON THE ORGANIZATION AND FUNCTIONING OF THE SERIOUS CRIMES COURTS art. 3.2, Law No. 9110, 78 FLET. ZYRT. 3487-91 (2003) [hereinafter LAW ON THE SERIOUS CRIMES COURTS].

The HCJ consists of fifteen members, at least ten of whom are judges: the President of the Republic, the Minister of Justice, the Chairman of the High Court, three jurists elected by the Assembly, and nine judges of all levels elected by the National Judicial Conference. CONST. art. 147.1; LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COUNCIL OF JUSTICE arts. 3-4, Law No. 8811, 9 FLET. ZYRT. 205-16 (2002) [hereinafter LAW ON THE HCJ]. Although the members elected by the Assembly need not be judges, only jurists, the Assembly has elected judges to the HCJ. As a result, all but two members of the present HCJ are judges. The President of the Republic serves as its chairman. CONST. art. 147.2; LAW ON THE HCJ art. 11. He thus plays two roles in the appointment of judges: he chairs the council that proposes candidates for judicial appointment and then decides whether to appoint them.

The Albania JRI 2001 reported a potential concern about the President's dual role. Two recent changes, effective May 2002, may help to eliminate the potential for such concerns. First, the President of the Republic cannot vote in the HCJ on proposals for the appointment of judges. LAW ON THE HCJ art. 25.3. Second, the Law on the HCJ now provides for a full-time Deputy Chairman, who is responsible for day-to-day administration of the HCJ. *Id.* arts. 12-13. An active, full-time Deputy Chairman may make it less likely that members will defer to the President of the Republic.

The procedure for appointment begins when the HCJ announces a judicial vacancy in at least two national newspapers and by state radio and television. LAW ON THE HCJ art. 28.1(a). Applications from candidates are reviewed by a five-member commission of the HCJ, chaired by the Deputy Chairman, which verifies that they satisfy the legal requirements for appointment. *Id.* art. 29.(1)-(3); REGULATION ON EXAMINATION OF JUDICIAL CANDIDATES arts. 1, 3. These requirements are summarized in the following two paragraphs.

To be appointed to a first instance court or court of appeal, a candidate must be an Albanian citizen, possess full legal capacity, hold a law degree, not have a criminal record, have a "good reputation," and be at least twenty-five years old. LAW ON THE ORGANIZATION OF THE JUDICIAL POWER IN THE REPUBLIC OF ALBANIA art. 19, Law No. 8436, 33 FLET. ZYRT. 1265-75 (1998), as amended by Law No. 8546, 31 FLET. ZYRT. 1210-12 (1999), Law No. 8656, 24 FLET. ZYRT. 1256-58 (2002), Law No. 8811, 9 Flet. Zyr. 205-16 (2002), and Law No. 9111, 78 FLET. ZYRT. 3491-92 (2003) [hereinafter LAW ON JUDICIAL ORGANIZATION]. In addition, the candidate must have either: (1) graduated from the Magistrates School; (2) worked for more than three years as a professor in a law faculty or the Magistrates School, as a deputy of the Assembly, as a legal advisor to the Assembly, as President of the Republic, as a member of the Council of Ministers, or as a specialist in the Ministry of Justice (MOJ), the High Court, or the General Prosecutor's Office; (3) graduated from a qualifying postgraduate legal training program abroad; or (4) worked for at least five years as a judge, assistant judge, public prosecutor, advocate, or notary and pass a professional competency examination within six months after appointment. *Id.* arts. 19.3, 20. As noted in Factor 1 above, although it is possible for non-graduates of the Magistrates School to be appointed to first instance courts, this rarely occurs in practice now. Thus, the vast majority of first instance court appointments since 2000 satisfy the objective criterion of graduation from the Magistrates School.

In addition to the requirements for first instance court judges, candidates for appointment to an appellate court, the Serious Crimes Court, and the Serious Crimes Appellate Court must also

have worked for at least five years in first instance courts and “demonstrated high ethical, moral, and professional standards.” LAW ON JUDICIAL ORGANIZATION art. 24; LAW ON SERIOUS CRIMES COURTS art. 4.1. For appointment to the serious crimes courts, these general requirements include specific prohibitions against anyone removed from judicial office for misconduct or subjected to other disciplinary measures not completed at least two years before appointment. LAW ON THE SERIOUS CRIMES COURTS art. 4.2-.3.

After confirming that candidates satisfy the requirements for judicial appointment, a five-member commission of the HCJ (chaired by the Deputy Chairman) conducts an oral examination of the candidates.<sup>3</sup> LAW ON THE HCJ art. 29.4; REGULATION ON EXAMINATION OF JUDICIAL CANDIDATES arts. 6, 9. The commission then provides the following information to all members of the HCJ on each candidate eligible for appointment:

- university and post-university achievements;
- years of experience as a lawyer;
- quality of the candidate’s work;
- studies, publications, and specializations;
- reputation for ethics; and
- any other evidence demonstrating the candidate’s superiority over other candidates.

REGULATION ON EXAMINATION OF JUDICIAL CANDIDATES art. 5.4. With this information, the HCJ meets to select a candidate for appointment. LAW ON THE HCJ art. 30.1. The President of the Republic then decides whether to appoint the candidate proposed by the HCJ; he is not required to give reasons for his decision. If the President does not appoint the nominee within 30 days, the HCJ will propose a second one and if necessary a third. If the President does not appoint the third nominee, the HCJ announces the vacancy and begins the process again. REGULATION ON EXAMINATION OF JUDICIAL CANDIDATES art. 13.

Although there was some disagreement among interviewees about the extent, if any, to which political influence affects the selection and appointment process, most believe that it is unimportant. The Magistrates School, whose graduates constitute the majority of such appointees, is credited with this result, at least as to first instance court appointments. However, some suspicion was voiced about whether political considerations or personal connections sometimes influence the particular court to which a Magistrates School graduate is appointed. In theory, graduates are allowed to select from among the vacancies based on their class standing.

The HCJ has no role in the appointment of judges to the High Court and the Constitutional Court. Instead, the President of the Republic appoints judges to those courts with the consent of the Assembly. CONST. arts. 136.1, 125.1; LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COURT OF THE REPUBLIC OF ALBANIA art. 4, Law No. 8588, 7 FLET. ZYRT. 274-80 (2000) [hereinafter LAW ON THE HIGH COURT]; LAW ON THE ORGANIZATION AND FUNCTIONING OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ALBANIA art. 7.1, Law No. 8577, 4 FLET. ZYRT. 101-22 (2000) [hereinafter LAW ON THE CONSTITUTIONAL COURT]. Although some interviewees thought political influence was more likely in appointments to these courts compared to first instance courts, personal influence appears to be more important. See Factor 15 below.

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<sup>3</sup> No examination is required for first instance court candidates who graduated from the Magistrates School; those who merely request to be transferred from one first instance court to another; court of appeal candidates who were judges of the High Court, the Constitutional Court; or an international court; or those who merely request to be transferred from one court of appeal to another without changing their specialization. REGULATION ON EXAMINATION OF JUDICIAL CANDIDATES arts. 6.6, 9.2-.3.

### 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: Neutral</b>	<b>Trend: ↑</b>
Continuing legal education is mandatory only for some judges. Nevertheless, most judges participate in continuing education. Because no state funding goes to continuing education, it is largely donor driven.		

#### Analysis/Background:

Since 1996, the Magistrates School has been responsible for providing continuing legal education to judges, without cost to them. LAW ON THE MAGISTRATES SCHOOL arts. 2, 23, 24. Continuing education of up to three months over a five-year period is required for judges who did not graduate from the Magistrates School and have fewer than five years on the bench (now estimated at about 25% of the judiciary). *Id.* art. 23. The Magistrates School also organizes optional continuing education programs for other judges. *Id.* art. 24. A draft law has been prepared that would make continuing education mandatory for all judges.

Thus far, the Magistrates School has focused primarily on the initial training of aspiring judges and prosecutors, with continuing education as a second priority. Continuing education programs have thus far been largely donor driven and therefore tend to reflect the interests of donors. For example, all seminars for the 2003/2004 program were funded by international partners of the school, who proposed the topics for thirty-nine of the forty-three seminars planned. COUNCIL OF EUROPE CURRICULA COMMISSION, ANNUAL ASSESSMENT 2003, at 4 (6 Feb. 2004). However, the continuing education program is not solely the result of donor initiative. The Magistrates School develops a needs assessment, based on questionnaires from judges and consultations with other legal professionals and government officials, to identify subjects for continuing education

The Magistrates School has a very high level of participation in its continuing education program. Approximately 80% of Albanian judges attend its seminars, and most judges attend two or three seminars per year. Seminars are two to three days in duration, and at the conclusion of each seminar participants are asked to fill out evaluation forms. Although most interviewees praised the continuing education program of the Magistrates School, one noted that not much time is devoted to teaching case management skills, which he said many judges need.

Certificates of participation in both mandatory and optional continuing education are included in the judges' personnel files. LAW ON THE MAGISTRATES SCHOOL art. 25.

## 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 do not appear to be any barriers to prevent ethnic and religious minorities from being represented in the pool of judicial nominees or in the judiciary itself. An increasing number of women serve as judges, but they are thus far found primarily in first instance courts and to a lesser extent in courts of appeal.</p>		

### Analysis/Background:

The Constitution guarantees freedom from unjust discrimination on bases such as race, ethnicity, religion, and gender. CONST. art. 18.2. However, the lack of statistics regarding the ethnic and religious composition of the judiciary makes it difficult to determine the extent of ethnic and religious representation in either the pool of judicial nominees or the judiciary itself. Nevertheless, interviewees pointed out that Albanian society is generally tolerant of ethnic and religious differences and, as a result, the ethnicity or religion of judges is not an important issue. Furthermore, they were unaware of significant barriers to minority participation in the judiciary. As for ethnic and religious representation in the pool of nominees, the competitive entrance examination for the Magistrates School is open to all law graduates. However, statistics are not kept on the background of the applicants.

Although statistics on gender are also unavailable, a reasonably well balanced number of women and men now graduate from the law faculties, attend the Magistrates School and are appointed as judges. It is estimated that more than 40% of Albanian judges are now women. The situation varies from court to court and among different levels of courts. For example, women comprise 5 of 17 judges (29%) in the Elbasan First Instance Court; 7 of 20 judges (35%) in the Shkodra First Instance Court; 10 of 19 judges (53%) in the Fier First Instance Court; more than 60% of the judges in the Tirana First Instance Court; 1 of 7 judges (14%) in the Durres Court of Appeal; 3 of 6 judges (50%) in the Shkodra Court of Appeal; and 6 of 17 judges (35%) in the High Court. None of the Constitutional Court judges are women. At highest levels of the judiciary, therefore, men still significantly outnumber women.

## 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 constitutionality of laws and official acts. Although the Court's decisions have generally been enforced, the Assembly failed to comply with its decisions in at least one recent case.</p>		

Analysis/Background:

The Constitutional Court is the highest authority responsible for interpreting and implementing the Constitution. CONST. art. 124.1; LAW ON THE CONSTITUTIONAL COURT art. 2. Its decisions are binding and not subject to review by any other body. CONST. art. 132.1. The Court has jurisdiction over issues involving 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 for violation of their constitutional right to due process of law, following exhaustion of other remedies. *Id.* art. 131. 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. *Id.*

Both individuals and organizations may request a ruling directly from the Constitutional Court. *Id.* arts. 134.1, 134.2. Constitutional issues may also arise in the course of lawsuits in the regular courts and, if a judge holds that a law conflicts with the Constitution, he or she must suspend the proceeding and refer the issue to the Constitutional Court for a decision. *Id.* art. 145.2. However, it appears that litigants raise constitutional issues only rarely. Some lawyers erroneously believe that constitutional issues may only be raised in the Constitutional Court.

While there is generally a problem with the enforcement of court judgments in Albania (see Factor 9 below), the government has for the most part complied with Constitutional Court decisions, albeit reluctantly at times. A significant recent exception was the Court's 2002 decision on the dismissal of Prosecutor General Arben Rakipi. The Court held that the dismissal by the Assembly and the President occurred without an opportunity for Raikipi to defend himself. The Court held that this violated the European Convention on Human Rights (ECHR) and that he should be reinstated and afforded an opportunity to present a defense. Decision No. 76, 25.04.2002, 13 FLET. ZYRT. 395-7 (2002). However, the Assembly has thus far failed to comply with the Court's decision, despite efforts by the Council of Europe's Venice Commission to secure compliance with the decision.

**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>
Although courts have jurisdiction to review administrative acts, the government is often slow to implement court decisions and citizens do not make full use of their administrative and judicial remedies.		

Analysis/Background:

The courts have jurisdiction to review administrative acts and to annul or declare them invalid. CODE OF CIVIL PROCEDURE OF THE REPUBLIC OF ALBANIA arts. 324, 331, Law No. 8116, 9-11 FLET. ZYRT. 343-479 (1996), *as amended by* Law No. 8491, 20 FLET. ZYRT. 621-22 (1999) and by other legislation [hereinafter CIV. PRO. CODE]; CODE OF ADMINISTRATIVE PROCEDURES OF THE REPUBLIC OF ALBANIA art. 18(b), Law No. 8485, 19 FLET. ZYRT. 578-616 (1999) [hereinafter ADMIN. PRO. CODE]. To handle such cases, administrative law sections have been established in some first instance courts. See CIV. PRO. CODE art. 320(a).

According to several interviewees, judicial review of administrative decisions can be slow, often requiring several years. First, there can be delays in getting a decision from the second instance administrative agency, which is a prerequisite to filing a lawsuit. *Id.* art. 137.3. Second, hearings are postponed when the state fails to appear. Third, a successful appeal results in a judgment against the state, and governmental bodies are reluctant to implement court decisions in administrative and other cases. See Factor 9 below. According to one interviewee, the majority of decisions are not implemented, in part because the budget includes limited funds for satisfying judgments against the state. A further problem is that, although procedures are simple enough that ordinary people can seek review of administrative acts or omissions without the assistance of a lawyer, many citizens are said to be unaware of their rights to seek such review and thus do not avail themselves of administrative or judicial remedies.

## 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>
The court system has ultimate jurisdiction over cases involving human rights and fundamental freedoms set forth in the Constitution and the European Convention on Human Rights.		

### Analysis/Background:

The Constitution affords all persons in Albanian territory specified fundamental human rights and freedoms and also makes the European Convention on Human Rights (ECHR) directly applicable. CONST. arts. 15-59. All organs of public power are bound to respect and promote these rights and freedoms. *Id.* art. 15.2 The Constitutional Court has jurisdiction over specified constitutional issues, summarized in Factor 5 above, and serves as the final interpreter of the Constitution. CONST. art. 124.1. Nevertheless, adjudication of most alleged human rights violations initially takes place in the regular court system, where few litigants reportedly base arguments on the ECHR and judges cite it infrequently in their decisions.

Albania ratified the ECHR and recognized the right of individual petition on 2 October 1996. During 2003, twenty-four applications were lodged against Albania in the European Court of Human Rights. There have been many trainings on the ECHR in Albania, but interviewees disagreed about whether they affect the day-to-day work of judges. One reason suggested for a lack of impact is that ECHR case law is in English and French, languages that many Albanian judges do not read.

One interviewee admitted that it was difficult to know how effective the courts were at protecting human rights and others pointed out that there have been few such cases. However, other interviewees contended that the situation has improved compared to several years ago. One reason cited for the improvement is the activity of the People's Advocate, who is responsible for "safeguard[ing] the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration or third parties acting on their behalf." LAW ON THE PEOPLE'S ADVOCATE art. 2, Law No. 8454, 5 FLET. ZYRT. 152-62 (1999).

## 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>
It is well established in law and practice that judicial decisions may be reversed only through the appellate process.		

### Analysis/Background:

By law, “judicial power is exercised only by the courts, in conformity with the Constitution and powers given by law.” LAW ON JUDICIAL ORGANIZATION art. 1. A judicial decision is subject to review only by an appeal or recourse to a higher court. *Id.* art. 16. The Constitution guarantees the right to appeal a judicial decision to a higher court, except when it specifically denies this right. CONST. art. 43. Courts of appeal hear appeals from first instance courts in three-judge panels. LAW ON JUDICIAL ORGANIZATION art. 7. The Serious Crimes Appellate Court hears appeals from the Serious Crimes Court in five-judge panels. LAW ON THE SERIOUS CRIMES COURTS arts. 2.2, 6. The High Court is the highest appellate body in Albania and has recourse jurisdiction over decisions of the courts of appeal. LAW ON JUDICIAL ORGANIZATION art. 13. It hears cases in five-judge panels or, when required by law, in joint colleges. LAW ON THE HIGH COURT arts. 13, 14. The principle that judicial decisions may be reversed only by higher judicial bodies remains well understood and is respected in practice.

## 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>Conclusion</b>	<b>Correlation: Negative</b>	<b>Trend: ↔</b>
The judiciary has subpoena and enforcement powers, but its contempt powers are limited. Available sanctions are not often used or are inadequate to curb abuses. Civil judgments, particularly money judgments against the government, often go unsatisfied.		

### Analysis/Background:

Judges have the power to summon witnesses and to require production of documents and other forms of evidence. CIV. PRO. CODE arts. 128-129 (summons), 223-224 (documents or other evidence); CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA arts. 157.1 (witness obliged to appear), 191 (documents), Law No. 7905, 5-7 FLET. ZYRT. 159-295 (1995), *as amended* [hereinafter CRIM. PRO. CODE]. Witnesses who do not comply can be forced to appear and, in civil proceedings, may be fined up to 30,000 lekë (about \$ 285.70).<sup>4</sup> CIV. PRO. CODE art. 165; CRIM PRO. CODE art. 164.1.

Interviewees consider the nonappearance of witnesses to be a significant problem that delays court proceedings. Moreover, it is reported to be extremely difficult to subpoena witnesses, particularly in criminal cases. If the witness lives in the city where the court is located, the process

<sup>4</sup> Conversions of Albanian lekë to U.S. dollars are based on the February 2004 rate of exchange of 105 lekë = \$1.00.

typically begins with notification by a clerk. If the witness resides outside the city, notice is sent by mail. In either event, if the witness fails to appear, the next step is to send the police to bring the witness to court. Frequently in civil trials, the parties themselves bring witnesses to court. Often summonses are not properly delivered, either through the fault of court staff, logistical difficulties (such as lack of addresses), or insufficient resources. When a witness fails to appear and there is a question about whether the summons was properly served, courts have little option but to postpone the proceeding and reissue the summons. Even when a summons was properly served, courts rarely fine a witness for failing to appear. Another problem, particularly in criminal cases, is that when defense attorneys request continuance of a hearing it is usually granted. This can be very disruptive to witnesses, who may be reluctant to attend the subsequent hearing.

In addition to these difficulties with properly summoning witnesses, procedures for notifying parties of hearings can be ineffective. In a recent study of court administration in the Tirana First Instance Court and the Tirana Court of Appeal, those surveyed reported that they had to spend considerable time checking with the court to determine when hearings in their cases were scheduled. ALBANIAN COALITION AGAINST CORRUPTION, MONITORING OF THE COURT CLERK ACTIVITY AT TIRANA DISTRICT COURT AND COURT OF APPEAL OF TIRANA 14, 33 (2003) [hereinafter TIRANA COURT ADMINISTRATION REPORT].

Another reported cause of delay is that lawyers fail to attend hearings. When this happens, judges can only report the incident to the bar, which reportedly fails to discipline lawyers for such conduct. Judges lack the contempt powers found in common law systems, but they do have authority to order persons disturbing the “order and quietness” of a civil court session to leave the courtroom. CIV. PRO. CODE art. 178. However, without court personnel to remove the person disturbing the court, this authority can be somewhat hollow. Nevertheless, participants in civil cases (but not lawyers) who do not obey court orders may be fined up to 30,000 lekë (about \$285.70). *Id.* art. 168. Similarly, in criminal trials, judges may expel those who “hinder the normal performance of the hearing” and fine them up to 10,000 lekë (about \$95) if they refuse to obey. CRIM. PRO. CODE art. 341. Authority to impose sanctions for frivolous motions is limited. For example, a party who submits an improper request for recusal of a judge can be held liable for court costs for the hearing and fined up to 5,000 Albanian lekë (about \$48). CIV. PRO. CODE art. 76. Parties are said to be willing to pay this small amount for the benefit from the resulting delay.

For a variety of reasons, the enforcement of civil judgments remains extremely difficult and problematic. See generally ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, LEGAL SECTOR REPORT FOR ALBANIA 69-79 (2004) [hereinafter OSCE LEGAL SECTOR REPORT]; JOS UITDEHAAG & FRANK WALTERSON, COUNCIL OF EUROPE & EUROPEAN COMMISSION, HOW BEST ALBANIA COULD USEFULLY DEVELOP AND STRENGTHEN THE ENFORCEMENT OF COURT DECISIONS IN CIVIL AND COMMERCIAL CASES (20 Jan. 2003). Bailiffs, who are under the jurisdiction of the Ministry of Justice (MOJ), often lack the resources to enforce a judgment. Judgment creditors therefore often have to work with bailiffs, providing them with information and other assistance to enforce a judgment. According to one interviewee, the process can take several years to complete. Another interviewee reported that 5,000 court judgments entered in 2003 were not enforced. According to another estimate, fewer than half of all judgments are enforced. OSCE LEGAL SECTOR REPORT 80. It is said that when a judgment is entered in favor of the government, it is invariably enforced, but when a judgment is entered against the government, enforcement is slow in coming. Payment of money judgments is a low priority for the government and therefore insufficient funds are budgeted for this purpose. One result of the large number of un-enforced judgments is that there are reportedly some 60 cases from Albania before the European Court of Human Rights claiming violations of article 6 (right to a fair trial) of the ECHR.

### 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 influence the amount of money that is allocated to it and has control over its own budget and the expenditure of funds through the Office for Administration of the Judicial Budget.		

#### Analysis/Background:

The Constitution provides for a special court budget, drafted and administered by the courts themselves. CONST. art. 144. In 1998, the Office for the Administration of the Judicial Budget (OAJB) was established to exercise these rights on behalf of the courts. LAW FOR THE CREATION OF THE OFFICE FOR THE ADMINISTRATION OF THE JUDICIARY BUDGET arts. 1, 3, Law No. 8363, 16 FLET. ZYRT. 537-40 (1998) [hereinafter LAW ON THE OAJB]. A board of eight judges and one representative of the Ministry of Justice (MOJ), chaired by the Chairman of the High Court, manages the OAJB. *Id.* art. 6. The board approves draft budgets, based on information on the needs of the courts collected by the OAJB. *Id.* arts. 9(a), 3(a). Each budget includes salaries for judges and other court personnel, operating costs, capital expenditures, and a reserve fund of up to 2% of the court budget. *Id.* art. 5. The board approves the transfer of appropriated funds to the courts, as well as the use of the reserve fund. *Id.* art. 9(b), (c). The Ministry of Finance and Council of Ministers ultimately decide on the size of the proposed budget for the judiciary that is presented to the Assembly, but through the OAJB the judiciary can influence the process both in the Ministry of Finance and thereafter in the Legal and Budgetary Commissions of the Assembly.

The following table shows the level of funding for the judiciary in recent years and reflects an increasing percentage of the total state budget devoted to the judiciary.<sup>5</sup>

<b>Year</b>	<b>Amount in Lekë</b>	<b>Amount in USD</b>	<b>Percentage of State Budget</b>
<b>2001</b>	929,958,000	8,856,743	0.56%
<b>2003</b>	1,005,413,000	9,575,362	0.69%
<b>2004</b>	1,260,000,000	12,000,000	0.83%

LAW ON THE STATE BUDGET FOR 2001, Law No. 8718, 46 FLET. ZYRT. 2049-53 (2000); LAW ON THE STATE BUDGET FOR 2003, Law No. 8983, 88 FLET. ZYRT. 2597-601 (2002); LAW ON THE STATE BUDGET FOR 2004, Law No. 9165, 108 FLET. ZYRT. 4631-34 (2003).

In general, the amount of funds appropriated is sufficient for the courts to operate, although sometimes they cannot pay for experts, telephone service, and equipment when they need them.

<sup>5</sup> As published, LAW ON THE STATE BUDGET FOR 2002, Law No. 8847, 58 FLET. ZYRT. 1847-50 (2001) does not include a detailed breakdown of the budget. This precludes reporting on the amounts appropriated for the judiciary and the Constitutional Court in 2002.

The Constitutional Court drafts and administers its own budget. LAW ON THE CONSTITUTIONAL COURT art. 6. The following table shows the level of funding for the Constitutional Court in recent years:

Year	Amount in Lekë	Amount in USD	Percentage of State Budget
2001	68,181,000	649,343	0.04%
2003	97,000,000	923,809	0.07%
2004	91,030,000	866,952	0.06%

LAW ON THE STATE BUDGET FOR 2001, Law No. 8718, 46 FLET. ZYRT. 2049-53 (2000); LAW ON THE STATE BUDGET FOR 2003, Law No. 8983, 88 FLET. ZYRT. 2597-601 (2002); LAW ON THE STATE BUDGET FOR 2004, Law No. 9165, 108 FLET. ZYRT. 4631-34 (2003).

### 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>
Increases in judicial salaries over the past few years make it easier to attract and retain qualified judges and to enable judges to support their families in a reasonably secure environment.		

#### Analysis/Background:

Salaries of all judges are now specified as a percentage of the salary of a High Court judge or of the chairman of the High Court. Previously, the Council of Ministers decided on the salaries of the judges of first instance and appellate courts. See LAW ON JUDICIAL ORGANIZATION arts. 39/1, 39/2, as amended by law No. 9111, 78 FLET. ZYRT, 3491-2 (2003); LAW ON THE SERIOUS CRIMES COURTS, annex no. 1; LAW ON THE CONSTITUTIONAL COURT art. 17.1-.2. The salary of a High Court judge, in turn, is equal to that of a government minister, and the chairman's salary is twenty percent higher than that of other judges on the court. LAW ON THE HIGH COURT art. 22. *Id.* A minister's gross monthly salary is presently 150,000 lekë (about \$1,429). Council of Ministers Decision No. 711, "On the Salaries of Budgetary Institutions," 62 FLET. ZYRT. 1936-38 (2001). The following table summarizes the present salary structure for judges in Albania:

Court	Level of Judge	Salary	Monthly Salary
Constitutional Court	Chairman	120% HC chairman	\$2,058
	Judge	100% HC chairman	1,715
High Court	Chairman	120% HC judge	1,715
	Judge	100% minister	1,429
Tirana Appellate Court	Chairman	90% HC judge	1,286
	Deputy Chairman	80% HC judge	1,143
	Judge	70% HC judge	1,000
Serious Crimes Appellate Court	Chairman	90% HC judge	1,286
	Deputy Chairman	80% HC judge	1,143
	Judge	75% HC judge	1,072
Other Appellate Courts	Chairman	80% HC judge	1,143
	Deputy Chairman	75% HC judge	1,072
	Judge	70% HC judge	1,000

<b>Tirana First Instance Court</b>	Chief Judge	70% HC judge	1,000
	Deputy Chief Judge	65% HC judge	929
	Judge	50% HC judge	714
<b>Serious Crimes Court</b>	Chairman	70% HC judge	1,000
	Deputy Chairman	65% HC judge	929
	Judge	60% HC judge	857
<b>Other First Instance Courts</b>	Chief Judge	60% HC judge	857
	Deputy Chief Judge	57% HC judge	815
	Judge	50% HC judge	714

LAW ON JUDICIAL ORGANIZATION arts. 39/1, 39/2; LAW ON SERIOUS CRIMES COURTS, annex no. 1; LAW ON THE CONSTITUTIONAL COURT art. 17.1-.2. The salaries and benefits of judges cannot be reduced, thereby protecting them against retaliation for an unpopular decision. See CONST. art. 138; LAW ON THE CONSTITUTIONAL COURT art. 17.3.

Judicial salaries have increased several times over the past decade, but there was no consensus among interviewees about whether they are adequate now. When the Albania JRI 2001 was prepared, interviewees believed that judges of the High Court and Constitutional Court (who are also entitled to non-pecuniary benefits such as the use of a state automobile and driver) were adequately compensated, but judges of first instance courts or courts of appeal were not. Now, interviewees tend to include court of appeal judges and perhaps even first instance court judges in the category of judges who are adequately compensated. Although some judges may still seek to augment their incomes by accepting bribes and other illicit sources of income, fewer can now justify such conduct by inadequate judicial salaries. See Factor 20 below regarding corruption in the judiciary.

## 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. Although many courts have recently been renovated, those that have not yet been renovated provide a poor environment for the dispensation of justice. Many first instance courts lack sufficient numbers of courtrooms, with the result that hearings are often conducted in judges' offices.</p>		

### Analysis/Background:

Prior to 1997, almost all courthouses in Albania were old, dilapidated, and in a general state of disrepair. SCOTT CARLSON, WORLD BANK, A STUDY OF THE JUDICIAL SYSTEM IN THE REPUBLIC OF ALBANIA 21 (1997). Although the buildings were conveniently located and easy to find, courtrooms were inadequate and trial court sessions often took place in judges' offices. During the civil unrest in 1997, ten first instance courts were destroyed and an additional three were looted or partially destroyed. *Id.* at 27-28. Since then, a number of reconstruction and renovation projects have been undertaken, many with donor assistance. State funds for building or repairing courthouses are included in the budget for the judiciary and are allocated by the Office for Administration of the Judicial Budget (OAJB) but such funds remain insufficient. LAW ON THE OAJB arts. 5(c), 9(c).

Among the court buildings that have been renovated are those of the Elbasan and Shkodra first instance courts, the Tirana Court of Appeal, the High Court, and the Constitutional Court. Nevertheless, additional work is still needed. Many courthouses still lack sufficient numbers of

courtrooms, with the result that hearings in civil cases are frequently held in judges' offices. For example, the Tirana First Instance Court remains too small for its caseload,<sup>6</sup> with seven courtrooms for fifty judges. As a result, some four-fifths of the hearings in the Tirana First Instance Court are conducted in judges' offices. TIRANA COURT ADMINISTRATION REPORT 25. Furthermore, because most judges in that court share an office with another judge, two separate hearings can sometimes be conducted in an office at the same time. Many other first instance courts face a similar shortage of courtrooms. For example, in Elbasan there are two courtrooms for seventeen judges; in the Fier first instance court, five for nineteen judges; and in the Vlora first instance court, four for sixteen judges. The situation for courts of appeal is better. In the Durres and Shkodra courts of appeal, for instance, there are sufficient courtrooms for each three-judge panel.

### Factor 13: Judicial Security

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

<b>Conclusion</b>	<b>Correlation: Negative</b>	<b>Trend: ↔</b>
Security within courthouses is often regarded as inadequate. Threats and intimidation of judges are common in some areas, but frequently go unreported. Resources are insufficient to protect judges and their families.		

#### Analysis/Background:

The State Police, under the Ministry of Public Order, is responsible for providing security for the courts. Decision of the Council of Ministers No. 112, "On the Protection and Security of the Important State Buildings" (8 Mar. 2001).

However, the vast majority of judges interviewed regarded security within the courthouses as inadequate. The Tirana First Instance Court, for example, has only two police to guard the door—"so-called guards," as one interviewee described them. The Elbasan First Instance Court presently has only one. Although metal detectors have been installed in renovated courthouses, many courthouses lack them. Several interviewees commented on the need for personnel to assist in maintaining order and provide security during hearings. Ironically, this can be more of a problem in civil cases, since in Tirana at least special personnel are assigned to transport criminal defendants to and from courtrooms and to maintain order. Many courtrooms throughout the country have cages to confine criminal defendants. Threats and intimidation are common in some areas, but are often not reported. Several judges interviewed admitted to having felt unsafe in their offices and courtrooms.

Judges also have the right to special protection for themselves, their families, and their property in exceptional circumstances. LAW ON JUDICIAL ORGANIZATION art. 38.1. However, in practice, such protection is rarely requested. Concerns have been voiced, moreover, about whether the protection provided is sufficiently comprehensive to protect judges and their families. Protection is required more often in criminal cases, particularly outside the courthouse. One judge reported that she had been threatened twice in criminal cases. In one instance, the family of the defendant followed her after the hearing and threatened her with harm. Even in ordinary civil cases, disgruntled litigants sometimes threaten the judge with remarks like, "We'll see." One judge recounted an incident when he postponed a hearing because one party did not appear. This

<sup>6</sup> More than 20% of all first instance cases are handled by the Tirana First Instance Court. TIRANA COURT ADMINISTRATION REPORT 12.

angered the party who had appeared and he refused to leave the judge's office where the hearing was to have been held.

Security is an obvious concern for the serious crimes courts. These courts are to be located in buildings near, but separate from, other courts and have enhanced security. LAW ON SERIOUS CRIMES COURTS art. 11.3. Presently, however, the Serious Crimes Court has been given the top floor of the Tirana First Instance Court building, and the Serious Crimes Appellate Court is located in the Tirana Appellate Court building. Judges of these courts are entitled to special protection for themselves, their family, and their property. *Id.* art. 9. However, the necessary legislation to implement this requirement has not yet been enacted. See *id.* art. 10.

## 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: Positive</b>	<b>Trend: ↔</b>
Judges of 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 retirement age. Judges of the serious crimes courts, the High Court, and the Constitutional Court are appointed for fixed nine-year terms.		

#### Analysis/Background:

Judges of first instance courts and courts of appeal are appointed for indefinite terms and serve until they resign, are removed for cause, or reach retirement age (sixty-five years). LAW ON JUDICIAL ORGANIZATION arts. 25, 27. Judges of the serious crimes courts are appointed for fixed terms of nine years and may be reappointed. LAW ON THE SERIOUS CRIMES COURTS art. 3(1), 3(3). Judges of the Constitutional Court and the High Court are also appointed for nine-year fixed terms, but do not have the right to be reappointed. CONST. arts. 125.2, 136.3. However, a High Court Judge has the right to be appointed to a court of appeal after completing his or her term in the High Court. LAW ON THE HIGH COURT art. 24. Guaranteed tenure for judges is respected in practice.

### 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: Negative</b>	<b>Trend: ↔</b>
Criteria for appointment to courts other than first instance courts are vague and, beyond specified work experience requirements, are largely subjective. There is a widespread belief that advancement of judges through the judicial system sometimes results from personal connections, rather than merit.		

## Analysis/Background:

Judicial advancement can take a number of different forms: appointment as chairman or deputy chairman of one's court; transfer to a more desirable court on the same level; or appointment to a higher court.

The High Council of Justice (HCJ) appoints the chairmen and deputy chairmen of the first instance courts, courts of appeal, the Serious Crimes Court, and the Serious Crimes Appellate Court. CONST. art. 136.3; LAW ON THE HCJ art. 2(e); LAW ON THE SERIOUS CRIMES COURTS arts. 2.1, 3.1. However, criteria for appointment of chairmen and deputy chairmen are not specified in law or elsewhere. *See id.*

Judges often seek transfer to a more desirable judicial district on the same level of court as a form of advancement. The same procedures and criteria applicable to initial appointment (see Factor 2 above) govern transfers, except that the HCJ itself decides on transfers, without the need for further action by the President of the Republic. CONST. art. 147.4; LAW ON THE HCJ art. 2(c); REGULATION ON EXAMINATION OF JUDGES art. 11.

Judges are appointed to courts of appeal, the Serious Crimes Court, and the Serious Crimes Appellate Court on a competitive basis by the President of the Republic on the proposal of the HCJ. CONST. 136.4; LAW ON THE SERIOUS CRIMES COURTS art. 3.2. To qualify for appointment to these courts, candidates must have worked for at least five years in first instance courts and have demonstrated "high ethical, moral, and professional standards." LAW ON JUDICIAL ORGANIZATION art. 24; LAW ON SERIOUS CRIMES COURTS art. 4.1. For the serious crimes courts, anyone removed from judicial office for misconduct or subjected to other disciplinary measures not completed at least two years before cannot be appointed. LAW ON THE SERIOUS CRIMES COURTS art. 4.2-3.

Appointment to the High Court and the Constitutional Court is not necessarily part of the normal advancement through the judicial system. Judges of these courts are appointed by the President of the Republic with the Assembly's consent. CONST. arts. 136.1, 125.1; LAW ON THE HIGH COURT art. 4; LAW ON THE CONSTITUTIONAL COURT art. 7.1. High Court judges are appointed from among prominent lawyers with at least fifteen years of work experience or judges with at least ten years of judicial experience. LAW ON THE HIGH COURT art. 3. Appointments to the Constitutional Court are made from among lawyers with high qualifications and at least fifteen years of work experience in the profession. CONST. art. 125.2; LAW ON THE CONSTITUTIONAL COURT art. 7.2. Appointees to both courts need not be from the judiciary, but in practice they often do have prior judicial experience.

Although some lawyers believe political considerations are important for judicial advancement, many interviewees said that politics generally do not play a significant role in such decisions. Rather, they argued, having connections with people who can influence advancement decisions is more useful. Furthermore, judges are sometimes said to feel an obligation to provide preferential treatment in court matters to those who were behind their appointment or advancement.

It is not easy to determine whether interviewees' concerns accurately reflect the advancement process, but the perception that decisions are not made solely on the basis of objective criteria suggests the need for greater objectivity and transparency in the process. As a body independent of the executive and legislative branches and the majority of whose members are judges, the HCJ could play a more effective role in the judicial advancement process for all courts except the High Court and the Constitutional Court (for which it has no authority) by measures that could go a long way to increasing the objectivity of the process, as well as the public's perception of its objectivity. The HCJ could, for example, adopt more detailed advancement criteria, increase the transparency of its decisions, improve the professional evaluation process, and use the results of that process in advancement decisions.

The Inspectorate of the HCJ performs a professional evaluation of judges at least once every two years, based on the quality of their work, case load, time for deciding cases, reputation, and legal publications. LAW ON JUDICIAL ORGANIZATION art. 45; LAW ON THE HCJ art. 16.1(d), (dh). The first such evaluation was completed in 2002, and the second is planned for 2004. The results of these evaluations could be useful in making decisions on judicial advancement. However, the methodology employed in 2002 resulted in similar evaluations for the vast majority of judges, making it difficult to differentiate among them. DANIDA PROGRAMME, STUDY OF THE JUDICIAL INSPECTORATE OF THE HIGH COUNCIL OF JUSTICE 40 (Aug. 2003) [hereinafter STUDY OF THE HCJ INSPECTORATE] (all but one judge placed in the two middle categories; one judge in the highest; none in the lowest). In November 2003, the HCJ decided to develop a new system for professional evaluation based on international norms, in consultation with Council of Europe experts.

## Factor 16: Judicial Immunity for Official Actions

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↓</b>
All judges are generally immune from detention, arrest, and criminal prosecution and from civil liability for their official actions. However, judges can be prosecuted under the Criminal Code for knowingly making an “unfair” decision.		

### Analysis/Background:

No judge can be detained or arrested, except in the commission of a crime or immediately after its commission. CONST. arts. 126, 137.2, 137.4. Lower court judges can be prosecuted for crimes only with the consent of the High Council of Justice (HJC); High Court judges can be prosecuted only with the Assembly’s consent; and Constitutional Court judges can be prosecuted only with the consent of the Constitutional Court. *Id.* arts. 126, 137.1, 137.3. In addition, judges are not liable in civil proceedings for matters relating to the exercise of their professional duties, except when otherwise specifically provided by law. LAW ON JUDICIAL ORGANIZATION art. 37; LAW ON THE CONSTITUTIONAL COURT art. 16.1 (Constitutional Court judges have no legal responsibility for opinions and votes in cases under review). No law subjecting judges to civil liability for their official acts was found, nor were interviewees aware of any recent violation of such immunity.

An ambiguous provision of the Criminal Code exposes judges to prosecution for rendering an unfair legal decision. Specifically, article 315 of the Criminal Code, enacted in 1995, provides, “Giving a final court decision which is known to be unfair is punishable by three to ten years of imprisonment.” It may well be, as one interviewee suggested, that the purpose of this provision was to punish judges who make decisions as a result of bribery, although bribery is punishable under article 319 of the Criminal Code. In any event, it has the potential to make significant inroads into judicial immunity, and indeed a criminal investigation—the first of its kind—is underway against Elvis Kotini, a former First Instance Court judge from Tirana for allegedly violating this provision. The case against Kotini was reportedly brought by prosecutors in Elbasan.

## 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>Although the judicial discipline process has improved greatly, a lack of transparency in the High Council of Justice, as well as vague removal criteria, create the possibility for disciplinary removal without sufficient evidence of misconduct.</p>		

### Analysis/Background:

Except for High Court and Constitutional Court judges, for whom specific provisions and procedures discussed below apply, a judge cannot be removed from office unless he or she resigns, reaches retirement age (sixty-five), is convicted of a crime, is found physically or mentally incapacitated or professionally incompetent,<sup>7</sup> engages in prohibited activities such as political activities, or is subject to disciplinary measures. LAW ON JUDICIAL ORGANIZATION art. 27. Disciplinary measures may be imposed for the following:

- Actions legally incompatible with a judge's function;
- Disclosure of confidential information, including secrets of an investigation or the court's deliberations;
- Unjustified absence from work;
- Grave or repeated failures to perform duties, including "compulsory procedural actions;"
- Failure to comply with the "rules of solemnity;"
- Indecent or immoral actions; and
- Unjustified failure to comply with disciplinary measures. *Id.* art. 41.

The decision to commence a disciplinary proceeding lies with the Minister of Justice, who must notify the High Council of Justice (HCJ) of the violations alleged and propose a disciplinary measure. *Id.* art. 44; LAW ON THE HCJ art. 31; REGULATION ON DISCIPLINARY PROCEEDING OF JUDGES arts. 1, 2 (21 Feb. 2003) [hereinafter REGULATION ON DISCIPLINARY PROCEEDINGS]. Possible disciplinary measures range from reprimand, through temporary salary reduction or suspension from office, to removal from office. LAW ON JUDICIAL ORGANIZATION art. 42; LAW ON THE HCJ art. 34. The Inspectorate of the HCJ determines whether a disciplinary violation occurred and also investigates any defenses made by the judge. LAW ON JUDICIAL ORGANIZATION art. 44; LAW ON THE HCJ art. 16.1; REGULATION ON THE ORGANIZATION AND FUNCTIONING OF THE INSPECTORATE OF THE HIGH COUNCIL OF JUSTICE art. 3.3 (19 Mar. 2003) [hereinafter REGULATION ON THE HCJ INSPECTORATE]. After a hearing at which the judge is allowed to participate with legal counsel, the HCJ decides by majority vote whether to impose the disciplinary measure proposed by the Minister of Justice. LAW ON JUDICIAL ORGANIZATION art. 44; LAW ON THE HCJ art. 33; REGULATION ON DISCIPLINARY PROCEEDINGS arts. 8, 10. Voting is open, unless the disciplinary proceeding is against a member of the HCJ, in which case voting is by secret ballot. REGULATION ON DISCIPLINARY PROCEEDINGS art. 10. If the HCJ rejects the proposed disciplinary measure, the Minister of Justice may propose a different one. *Id.* art. 11.3. If the HCJ rejects the second proposal, the disciplinary proceeding is closed. *Id.* Any decision to remove a judge from office may be appealed to the High Court. CONST. art. 147.6. According to interviewees, judges invariably exercise this right.

<sup>7</sup> Professional incompetence is to be established through an evaluation of professional ability of judges, based on quality, work-load, speed of judgment, reputation and publication of legal articles. LAW ON JUDICIAL ORGANIZATION arts. 27, 45.

To improve the transparency of its proceedings somewhat, the HCJ has begun issuing a press release when it renders a decision to discipline a judge. Some judges, however, have urged it to publish such decisions in full so that they will be available to the public. Publication of decisions could enhance the credibility of the HCJ and engender greater public confidence that disciplinary decisions are based on sufficient evidence. This is especially important in view of the concern expressed by several interviewees that the HCJ could order a judge removed merely on the basis of an erroneous decision or decisions, absent other evidence of wrongdoing. A Constitutional Court decision in 2001 held that the HCJ should not normally concern itself with whether a judge's decision is incorrect, except when the decision is related to a violation discrediting the judge or the prestige of the judiciary; in a subsequent decision in 2003, the court held that in exceptional cases the HCJ can consider the content of a judge's decision to determine whether he or she committed an ethical violation. STUDY OF THE HCJ INSPECTORATE 74-75.

The number of judges ordered removed by the HCJ has been steadily declining. In 1999, thirty were ordered removed; in 2000, eleven; in 2001, six; in 2003, three and from January through May 2004, two.

As explained under Factor 22 below, both the HCJ and the Ministry of Justice (MOJ) have inspectorates that investigate complaints of judicial misconduct. On January 15, 2004, the High Court began a proceeding in the Constitutional Court, arguing that it is unconstitutional to discipline a judge based on work of the MOJ's inspectorate. One interviewee, on the other hand, took the position that the HCJ, a body primarily composed of sitting judges, faces a conflict of interest when called upon to discipline other members of the judiciary. In his view, the MOJ's inspectorate performs a useful function.

The term of a High Court judge or Constitutional Court judge ends when he or she is sentenced for commission of a crime, fails to appear for work without reason for more than six months, reaches the age of retirement (sixty-five for High Court judges and seventy for Constitutional Court judges), resigns, or is declared incompetent by a final judicial decision. CONST. arts. 127.1, 139.1. The end of his or her term must be declared by the judge's own court. *Id.* arts. 127.2, 139.2. In addition, judges of these courts may be dismissed by a two-thirds vote of the Assembly for "violation of the Constitution, commission of a crime, mental or physical incapacity, or acts and behavior that seriously discredit the position and reputation of a judge." *Id.* arts. 128, 140. Before the Assembly's decision is effective, however, it must be reviewed by the Constitutional Court, which orders the judge's removal if one or more of the constitutional grounds exists. *Id.*

**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>
By law, all cases are assigned by lottery, within the applicable subject matter division of the court. Judges may only be removed from cases for good cause.		

Analysis/Background:

Except for the Constitutional Court, which hears cases *en banc*, cases are assigned to judges by a lottery organized by the chancellor of the court and monitored by the court chairman. LAW ON JUDICIAL ORGANIZATION art. 15; Ministry of Justice Order No. 1830, "On Approval of Regulation on Organization and Functioning of Judicial Administration," arts. 5.3, 8.4, 11.1, 17 FLET. ZYRT. 517-

31 (2001). In the Tirana First Instance Court, this is done daily, and in other courts once or twice a week. While interviewees reported that assignment by lot is employed in the vast majority of cases, some believe that the process is occasionally manipulated in significant or politically sensitive cases. In a recent study, 80% of those surveyed (including lawyers, parties, witnesses, and members of the public) did not know how cases in the Tirana First Instance Court were assigned to judges. TIRANA COURT ADMINISTRATION REPORT 17 (2003). Thus, apart from the question of whether cases are invariably assigned by lot, the judiciary could do more to make the public aware that cases are assigned by an objective method.

Judges are required to withdraw from a case only for certain well-defined reasons, including a conflict of interest. CIV. PRO. CODE arts. 72-73; CRIM. PRO. CODE arts. 15-17. In addition, any of the parties may request that a judge withdraw from a case. CIV. PRO. CODE arts. 74-75; CRIM. PRO. CODE arts. 81-23. If such a request is denied in a civil case, the party may be required to pay court costs and may be fined up to 5,000 lekë (about \$48), when the request was “unjust.” CIV. PRO. CODE art. 76. If withdrawal of the judge occurs, the case is then assigned to another judge by lot. One interviewee noted that it is uncertain whether judges are comfortable withdrawing on their own initiative, since that could make it obvious they did not want to do favors for their friends. Such requests are rare.

### 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: Negative</b>	<b>Trend: ↓</b>
<p>The National Judicial Conference is an organization of judges dedicated to promoting the interests of the judiciary. It holds annual meetings and elects judges to the High Council of Justice. Due in large part to uncertainty about its legal status, the National Judicial Conference has proved to be ineffective as a judicial association.</p>		

#### Analysis/Background:

The Constitution provides that nine members of the High Council of Justice (HCJ) are judges “elected by the National Judicial Conference,” an organization that did not exist when the Constitution was adopted in 1998. CONST. art. 147.1. The National Judicial Conference (NJC) was founded a year later, in December 1999, as a voluntary<sup>8</sup> professional association of judges with objectives such as protecting human rights, promoting the rule of law, strengthening judicial independence, and enhancing the status of judges, in addition to electing judges to the HCJ. CHARTER OF THE NATIONAL JUDICIAL CONFERENCE OF ALBANIA, *as amended*, arts. 1-2 (2001) [hereinafter NJC CHARTER]. An earlier organization, the National Judges Association, had become inactive in 1995 largely out of fear of repression by the executive branch, and the NJC took over many of its functions. However, the NJC’s legal authority for doing so is questionable, as there is no law that provides for its establishment, structure, and governance.

Whether the NJC is a constitutional body or merely an association is uncertain. If it is a constitutional body, its only specific legal authority is to elect nine members of the HCJ. If, on the other hand, it is an association, it should register as a legal entity with the Tirana First Instance Court and adopt governing documents that specify its authority. Because it is not registered, the NJC cannot open a bank account. Monthly membership dues of 200 lekë (about \$2) go unpaid.

<sup>8</sup> Although the NJC is a voluntary association, all judges are members *ex officio*. See NJC CHARTER arts. 4, 7.

This lack of financial support by the NJC’s members is further illustrated by their rejection of the Executive Council’s attempt to increase dues to 500 lekë per month at their meeting in January 2004. The NJC’s annual meeting in December 2003 had urged establishment of a separate budget for the NJC within the state budget.<sup>9</sup> Its activities have largely been funded by ABA/CEELI, East-West Management Institute, the U.S. Department of Justice Office of Overseas Prosecutorial Development Assistance and Training (OPDAT), and other donors. To alleviate uncertainties about the NJC’s legal status and authority, there has been discussion about proposing legislation to clarify these issues.

The NJC has held five annual national meetings and has convened at least two extraordinary sessions to elect judges to the HCJ. The NJC now has six committees, including a Disciplinary Commission, but they have not been particularly active. Although one judge thought the NJC has done a good job of protecting the interests of judges, most interviewees disagreed with that assessment. There was no consensus on whether the solution lays in better defining the role of and strengthening the NJC or forming a separate independent association to protect and promote the interest of judges.

## V. Accountability and Transparency

### Factor 20: Judicial Decisions and Improper Influence

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

<b>Conclusion</b>	<b>Correlation: Negative</b>	<b>Trend: ↔</b>
<p>The perception of high levels of judicial corruption seriously undermines public confidence in the judiciary. Undue influence from senior judges and other forms of political pressure seem to be less prevalent. A new financial disclosure law provides an opportunity to increase public confidence in the judiciary.</p>		

#### Analysis/Background:

Judicial corruption and improper influence on judicial decisions seriously undermine public confidence in the judiciary. Interviewees willing to admit the existence of bribery said that it is far more common than other forms of undue influence. Senior judges may occasionally influence the decisions of other judges, but less often now than in the past. Political influence is also said to be uncommon, which is consistent with the number of cases in which the government is a party and loses. Political influence is more likely to occur, it was suggested, in cases with significant political implications. It has also been suggested that government officials may occasionally attempt to influence cases, not on political grounds but for personal gain.

A recent study by the Albanian Coalition against Corruption found that the public considers the judiciary to be one of the three most corrupt institutions in Albanian society, along with customs officials and deputies of the Assembly. However, according to this study, almost three times as many respondents believe that corruption is prevalent than have actually experienced it. This is only the most recent in a series of surveys demonstrating the public’s lack of confidence in the integrity of judges. See STUDY OF THE HCJ INSPECTORATE 92. Some judges admitted that bribery of judges does occur, at least occasionally, and a larger proportion of the non-judges interviewed believed that it occurs, sometimes as a result of personal experience. One lawyer, for example, recounted an incident when a judge said that the other side had offered to pay a bribe of a certain

<sup>9</sup> The NJC currently receives funding from the Office for the Administration of the Judicial Budget.

amount and inquired whether the lawyer's client would be willing to pay more. Several interviewees said that bribery is more likely to occur in property cases.

Part of the difficulty of addressing corruption in the judiciary is a reluctance to admit its existence. Several judges responded to questions about corruption by noting that it is a crime, no judges have been convicted of that crime, and therefore corruption doesn't exist. By its very nature, of course, corruption is difficult to prove. Neither party to the transaction has any incentive to reveal its existence, with the result that there is usually little direct evidence of improper influence. However, indirect evidence could come from comparing a judge's assets with his or her sources of income.

In 2003, the Assembly enacted a new, potentially significant financial disclosure law, replacing the largely ineffectual law of 1995. LAW ON THE DECLARATION AND AUDIT OF ASSETS AND FINANCIAL OBLIGATIONS OF ELECTED PERSONS AND CERTAIN PUBLIC OFFICIALS, Law No. 9049, 31 FLET ZYRT. 1005-105 (2003) [hereinafter LAW ON DECLARATION OF ASSETS]. Under the prior law, the Inspectorate of the High Council of Justice (HCJ) was responsible for verifying the accuracy of judges' declarations, but reportedly lacked sufficient resources to do so. REGULATION ON THE HCJ INSPECTORATE arts. 3.7, 7; STUDY OF THE HCJ INSPECTORATE 92-93. The new law applies to government officials and certain civil servants, including judges, prosecutors, and enforcement officials, as well as their families (spouses and adult children) and related persons (natural and juridical persons with which a reporting person has or has had property relations). LAW ON DECLARATION OF ASSETS arts. 1(d), 21, 2.4. By 31 March of each year, they must file declarations stating their assets, the sources of their assets, and their financial obligations, as of 31 December of the prior year. *Id.* art. 4. Declarations are also required when taking office and for two years after leaving office. *Id.* arts. 8, 9. If a person with immunity who was obligated to make a declaration fails to do so, the Inspector General, who is responsible for administering the law, is to notify the Assembly and the superior organ of the person failing to report (presumably the HCJ in the case of most judges). *Id.* art. 5. The Inspector General also has authority to request that related persons make declarations and to audit declarations. *Id.* arts. 7, 21. However, it appears that a full audit would be required only when there are problems or irregularities in the assets or other information declared or when "irregularities in the justification of sources" of more than one million lekë (about \$9,500) in annual declarations or 2 million lekë in other declarations. *Id.* art. 25.1. When there are irregularities of more than 2 million lekë in an annual declaration or 3 million lekë in other declarations, the assets are considered to have been gained unlawfully, and the Inspector General will notify the HCJ, as well as the prosecutor's office. *Id.* arts. 15(b), 28. This law has the potential to increase public confidence in the judiciary on the issue of corruption, but only if the Inspector General has sufficient resources and the will to require declarations of all judges and related persons, and to investigate their accuracy vigorously, which did not occur under the prior law. The first annual declarations were due 31 March 2004.

It is often said that corruption is the inevitable result of inadequate judicial salaries. Recent increases in salaries largely eliminate that as a justification for corruption. See Factor 11 above. Interviewees identified several other causes of corruption. The most obvious is that judges want a better life than they can afford by simply living off their salaries. There the problem is not circumstances or the laws, but the judge him or herself, and the HCJ must refuse to tolerate such behavior. Another cause is the private bar, not only because lawyers are said to be intermediaries in bribing judges, but also because bribery can be a way to overcome limited advocacy skills. Several interviewees said that the knowledge and skills of some lawyers are so deficient that they engage in courtroom histrionics, such as shouting at other lawyers, and pay bribes. Another reported that lawyers sometimes ask their clients for money to bribe a judge, but do not use it for that purpose. If the lawyer wins, he or she keeps the money, but if the lawyer loses, he or she returns it to the client, saying that the judge refused to accept it. The perception that corruption is widespread can be self-perpetuating. One judge described a naïve plaintiff who came to her office to ask how much she had to pay for a more rapid decision. The judge explained that a hearing could not be held any sooner because of procedural requirements.



Another form of undue influence based on non-material benefit is the obligation some judges are said to feel toward those who were responsible for their appointment. Now that first instance court judges are appointed principally from Magistrates School graduates, that phenomenon will likely become less significant. It is common for friends, colleagues, and relatives to try to influence judges to rule in their favor, a kind of social pressure not limited to the judiciary. *Ex parte* communications are common and generally not regarded as inappropriate, either by lawyers or judges.

**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: Negative</b>	<b>Trend: ↔</b>
Although a judicial code of ethics exists, its status and enforceability are problematic. Furthermore, sitting judges are not required to receive training on it.		

Analysis/Background:

The National Judicial Conference (NJC) adopted a Code of Judicial Ethics in December 2000. The code contains twenty-nine rules addressing general issues such as conflicts of interest, *ex parte* communications, and inappropriate political activity. NATIONAL JUDICIAL CONFERENCE, CODE OF JUDICIAL ETHICS rules 3 (conflicts of interest), 12.c (same), 9 (*ex parte* communications), 18 (political activity) (2000). It requires all judges to comply with its rules and makes them accountable to the NJC’s Executive Council, through the NJC’s Disciplinary Commission, for any violation. *Id.* rules 26-27. Violations may result in a reprimand. *Id.* rule 28. To date, however, the Disciplinary Commission has not yet examined any alleged violation of the code, and no judge has been reprimanded for violating the code. The Disciplinary Commission’s inactivity is further illustrated by its failure to present a report for the NJC’s 2003 annual meeting. See NJC CHARTER arts. 12.4 (each commission to provide annual report to the Executive Council), 8 (Executive Council to report on the NJC’s activities at the annual meeting). A more significant concern regarding the effectiveness of the code is the uncertainty about whether the NJC is a constitutional body or merely an association. See Factor 19 above. Absent clarification of the NJC’s authority by legislation or otherwise, it lacks clear legal authority to adopt a binding code of ethics and punish its violation. Nor is it certain that violation of the code could be a basis for the High Council of Justice to discipline a judge.

Only judicial candidates who graduate from the Magistrates School are required to have any training in the code. Students must pass a one-semester course on judicial ethics, which includes training on the code, before appointment to the bench. However, there is no requirement that sitting judges or judges who did not graduate from the Magistrates School receive training in the code. Nevertheless, in 2004 the Magistrates School will offer a continuing judicial education seminar on issues in professional responsibility, including the code.

## 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 can and does register complaints with the High Council of Justice regarding judicial misconduct. Nevertheless, the High Council of Justice's inspectorate lacks sufficient resources, and complaints are often not investigated or responded to.</p>		

### Analysis/Background:

Anyone may file a complaint against a judge with either the High Judicial Council (HCJ) or the Minister of Justice. LAW ON THE HCJ art. 16.1(a). When a complaint is filed with the HCJ, it is registered and then sent to its Chief Inspector, who assigns the complaint to one or more inspectors for investigation. REGULATION ON THE HCJ INSPECTORATE art. 4.1-.3. If the investigation confirms that there is a basis for disciplinary proceedings, the Chief Inspector prepares a report for submission to the Minister of Justice. *Id.* art. 4.6-.7. When a complaint is initially filed with the Minister of Justice and he or she determines that it should be investigated (following an investigation by the Ministry of Justice inspectorate), the Minister of Justice sends the complaint to the HCJ, which then decides whether to request its inspectorate to conduct an investigation. *Id.* art. 5. Concern has been expressed about the lack of a clear demarcation between the authority of the HCJ and the Ministry of Justice (MOJ) and their respective inspectorates. See, e.g., OSCE LEGAL SECTOR REPORT 28-31. Judges often describe the issue as one involving the principle of separation of powers and argue that subjecting judges to the MOJ inspectorate infringes on judicial independence. STUDY OF THE HCJ INSPECTORATE 23; see also Factor 17 above. Another problem with current arrangements for dealing with complaints is that either the HCJ or the Minister of Justice can decide unilaterally against further action on a complaint, thus making it potentially difficult for even a meritorious complaint to result in a disciplinary proceeding. See Factor 17 above regarding such proceedings.

Although a process exists for registering complaints, many incidents of judicial misconduct may go unreported. Albanians are said to be reluctant to file complaints concerning harms or injustices inflicted on them by the government. STUDY OF THE HCJ INSPECTORATE 13. Nevertheless, approximately 300 complaints are filed annually with the HCJ, 95% by citizens. The vast majority are filed by litigants dissatisfied with judicial decisions, and only 5% or fewer relate to disciplinary matters. None of the lawyers interviewed had filed a complaint against a judge, and all but one said they did not believe filing one would have led to discipline of the judge.

## 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>
<p>Subject to several broad and vague exceptions, court proceedings are required to be open to the public and media. In practice, many high profile cases are open, but citizens sometimes encounter considerable difficulty in gaining access to hearings in other cases. Lack of courtroom space and the absence of written procedures hinder public access in some courts.</p>		

**Analysis/Background:**

By law, court proceedings are generally open to the public. CIV. PRO. CODE arts 26, 173; CRIM. PRO. CODE arts. 339, 340, 437; LAW ON THE CONSTITUTIONAL COURT art. 21. However, proceedings in civil cases may be closed to protect public order or to prevent disclosure of a state secret, a legally protected trade secret, or “circumstances from the intimate private life” of the parties or other participants. CIV. PRO. CODE art. 173. The Civil Procedure Code also gives judges discretion to exclude the media when “such participation is not to the benefit of the case.” CIV. PRO. CODE art. 26. Criminal trials may be closed to protect social morality, prevent disclosure of a state secret (upon request of a competent authority), to protect witnesses or the defendant, to prevent conduct from disrupting proceedings, or when necessary during the questioning of juveniles. CRIM. PRO. CODE art. 340; *see also* LAW ON SERIOUS CRIMES COURTS art. 7.2 (hearings may be closed to the public “in the interest of national security, public order, justice, and the protection of participants in the process).”

As noted in Factor 12 above, insufficient numbers of courtrooms often force judges to hold hearings in their offices. The limited size of many offices can pose a practical obstacle to public or media attendance. Furthermore, until about a year ago, when judges’ names were posted on the doors to their offices in the Tirana First Instance Court, it was extremely difficult for members of the public to find a judge’s office. TIRANA COURT ADMINISTRATION REPORT 15. In practice high profile cases are held in larger courtrooms in the presence of the public and the media. The media have even been permitted to televise some court sessions, and they are generally able to gain access to cases that they have interest in covering.

The degree to which the public can actually attend hearings varies from court to court. Many but not all courts post public notices of judicial proceedings. The Tirana First Instance Court has a computer terminal at the entrance that enables parties, as well as members of the public, to learn where hearings are held. A lack of written procedures for admission of the public and media to most court buildings sometimes causes security personnel to be suspicious of members of the public who want to attend court proceedings. In one study, 27% of those surveyed reported that they were not allowed to attend hearings in the Tirana First Instance Court when they were not parties. TIRANA COURT ADMINISTRATION REPORT 25.

**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>Conclusion</b>	<b>Correlation: Negative</b>	<b>Trend: ↔</b>
Judicial decisions are a matter of public record, but in practice it can be extremely difficult for someone who is not a party to obtain the decision in a case. Only opinions of the High Court and the Constitutional Court are published.		

**Analysis/Background:**

In theory, court decisions are a matter of public record. The Constitution requires all judicial decisions to be announced publicly. CONST. art. 146.2. However, decisions of first instance courts and courts of appeal are rarely if ever published. A court trying a civil case can order publication of its final decision in one or more newspapers when requested to do so by an interested party if publication of the decision “serves to the reparation of damage.” CIV. PRO. CODE art. 30.

In practice, it can often be difficult even for parties to obtain copies of decisions. For example, almost 90% of those surveyed in a study reported that they had to make multiple requests before receiving a copy of a decision from the Tirana First Instance Court, and serious delays were also reported in obtaining Tirana Court of Appeal decisions. TIRANA COURT ADMINISTRATION STUDY 18, 36. For nonparties, obtaining a decision can be more difficult. There appear to be few effective internal procedures for public access to court decisions and it may often be necessary to obtain permission from the court chairman. Indeed, several interviewees said that it is easier to obtain copies of decisions from one of the parties' lawyers than from the court. Lawyers from outside Tirana reported few difficulties in obtaining copies of judicial decisions.

Publication of High Court decisions, including minority opinions, is required by law. CONST. art. 142.2. Decisions of the joint colleges<sup>10</sup> unifying or changing court practice are published in the *Official Journal*, and all other decisions of the High Court are published in the court's periodical bulletin, *Decisions of High Court*. See LAW ON THE HIGH COURT art. 19 (joint college decisions). Constitutional Court decisions, including minority opinions, must be published in the *Official Journal*. CONST. arts. 132.2. There reportedly can be delays in publishing decisions in the *Official Journal*. Current issues of the *Official Journal* are available to the public through the state's Official Publications Center, but older issues are often out of print and difficult to obtain.

## 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>
<p>A verbatim transcript of court proceedings is not maintained, and although the handwritten minutes of proceedings are reportedly accurate, they can be difficult to read. With the court chairman's permission such records could be made available to the public.</p>		

### Analysis/Background:

A verbatim transcript of court proceedings is not kept. Instead, court secretaries take notes in longhand summarizing testimony and major developments, including the final decision in the case. The final decision should be handwritten by the judge. In civil cases, the minutes of proceedings are to include "the explanations of the parties, the evidence taken, as well as the orders announced by the court." CIV. PRO. CODE art. 172. The Criminal Procedure Code includes similar, though more detailed, requirements.<sup>11</sup> See CRIM. PRO. CODE arts. 345-347, 368. For example, it provides that the secretary shall sign the minutes, the chairman of the panel shall confirm their accuracy, and parties may request the inclusion of statements. *Id.*

Interviewees for the Albania JRI 2001 "overwhelmingly cited the lack of complete and accurate court records as one of the biggest problems facing the administration of justice." Interviewees for the Albania JRI 2004, on the other hand, had a generally more favorable view of the minutes taken by court secretaries. This may in part reflect the recent hiring of law graduates as court secretaries in some courts. See Factor 26 below. The majority of interviewees said that the

<sup>10</sup> Judges of the High Court are divided into two colleges, civil and criminal. Joint colleges are combined sessions of the judges of both colleges.

<sup>11</sup> The Criminal Procedure Code also includes provisions authorizing verbatim or summarized minutes, together with audio or video recording of the proceedings. Crim. Pro. Code arts. 115-122. However, these provisions are not used because the necessary equipment is not available.

minutes were accurate and contained sufficient information. However, several interviewees commented that they are sometimes difficult to read. This is consistent with a study in which almost 30% of those surveyed reported that records of court proceedings in the Tirana First Instance Court were illegible. TIRANA COURT ADMINISTRATION REPORT 21. The goal of the USAID-funded Albanian Pilot Court Administration Project, implemented by East-West Management Institute, is to improve the legibility of trial records in up to five pilot courts. Equipment and training will be provided to enable court secretaries to type the minutes on a computer and then print them on a high speed laser printer so that the parties can receive a copy at the conclusion of the hearing. Thus far, the project has been implemented in the Tirana First Instance Court. Implementation in other courts will depend on an evaluation of the project in that court, as well as funding availability.

The lack of written procedures results in some uncertainty about procedures for making records of court proceedings available to the public. When asked, judges either said they would make them available on request or that the permission of the court president would be required first.

## 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 generally have adequate numbers of support staff, but the lack of legal advisors and a shortage of administrative staff in some first instance courts and courts of appeal hampers the work of the judges.		

#### Analysis/Background:

Judges of first instance courts and courts of appeal generally have a secretary to keep the written record of court proceedings and perform other clerical and administrative tasks. They do not, however, have legal advisors to perform research or assist in other legal tasks.

Judges of the High Court, on the other hand, do not have secretaries. Instead, each judge has a legal advisor, that is, a lawyer who assists in research and drafting. Judges are entitled to a second legal advisor, and as one judge noted, a second advisor could enable High Court judges to include more legal doctrine in their decisions. Unfortunately, the courthouse lacks sufficient office space for more than one legal advisor per judge.

In general, interviewees agreed that the number of court administrative personnel is adequate, but that they are poorly paid and therefore susceptible to corruption. Despite that, the quality of court secretaries seems to be improving. Three interviewees noted that many new court secretaries are now graduates of the law faculty. Nevertheless, lack of training is a problem for many court support staff. They receive no training prior to commencing work, and on-the-job training has thus far been limited. This situation is expected to improve, because in 2003, the Ministry of Justice (MOJ) entered into a memorandum of understanding with the Magistrates School to train court administrative staff. One interviewee pointed out the need for additional court employees to assist in maintaining order during hearings and to call witnesses to testify. She reported that a 45-minute hearing was interrupted seven times by visitors opening the door of the courtroom with various inquires, and she had to send her secretary out of the courtroom to call witnesses.

## 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 exists to create new judicial positions as needed. However, it does not appear that existing judgeships are distributed optimally throughout the country.</p>		

### Analysis/Background:

The number of judges in each court is determined by a decree of the President of the Republic, on the proposal of the Minister of Justice and after consultation with the High Council of Justice (HCJ). LAW ON JUDICIAL ORGANIZATION art. 12. Although statistics on backlogs of cases in the lower courts are unavailable, backlogs generally do not appear to pose a significant problem. Although a few cases can take as long as four years to be decided, according to one interviewee, most are decided in a month or two.

The problem is that judges in some courts are overworked compared to their colleagues in other districts. For example, in 2001, the average annual caseload per judge for first instance courts was 131, ranging from 58 in Tropoja to 243 in Skrapar. OSCE LEGAL SECTOR REPORT 15. The average annual caseload per judge in the Tirana First Instance Court was 151, about 15% above the average for all first instance courts. For courts of appeal, the average annual caseload per judge was 190, ranging from 59 in Shkodra to over 240 in Tirana. *Id.* In response to the Tirana Court of Appeal's request for an additional four judicial positions, the HCJ transferred a judge from the Vlora Court of Appeal and proposed that the President create an additional three positions. DECISION NO. 149 OF THE HIGH COUNCIL OF JUSTICE (10 Dec. 2003). However, as of the writing of this report, no decree of the President creating the additional positions has been published.

Unfortunately, constitutional limitations restrict the extent to which judicial positions can be allocated to match caseloads. Because judges have guaranteed tenure and cannot be permanently transferred without their consent,<sup>12</sup> judicial positions can be reallocated only when they are vacant or the judges consent to transfer. CONST. arts. 138, 147.5 (judges may not be transferred without their consent, "except when the needs of reorganization of the judicial system dictate this"). Thus, while a system exists to create new positions, it does not adequately address the need to shift or eliminate existing positions in response to the relative workloads of courts.

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<sup>12</sup> On the proposal of the Minister of Justice, the HCJ may delegate judges from one court to another for up to three months a year. LAW ON JUDICIAL ORGANIZATION art. 28.

## 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>
<p>The manual case filing and tracking system found in most courts is functional, but it does not ensure that cases are handled in a reasonably efficient manner. Locating case files or decisions by the name of the plaintiff or defendant remains difficult. However, a number of initiatives to develop automated case tracking and management systems are presently underway.</p>		

### Analysis/Background:

For the most part, Albanian courts use a manual case filing and tracking system. One judge described the system for first instance civil cases as follows. When a complaint is filed in the chancellor's office, it is not registered immediately. After the lottery assigning the case to a judge (see Factor 18 above), the chancellor of the court attaches the name of the judge to the complaint and returns it to the plaintiff, who takes it to the judge to review its adequacy. After the judge confirms that it is adequate, he or she assigns a date for the first court session, and the plaintiff then takes the complaint to the chief secretary for registration. The case is indexed by case number and date of filing, but not by the names of the parties. A case file is prepared and given to the judge handling the case. Generally no list of the contents of the file is prepared, although one judge said that he himself prepares such a list in complicated cases. Although functional, the existing system has significant limitations. For example, interviewees complained that it is difficult to find a decision. Furthermore, it is difficult with the manual system to share information among different courts and law enforcement agencies, and there is often considerable delay in transmitting the record when an appeal is taken. Transmitting the record from the Tirana First Instance Court requires more than three months in 55% of cases. TIRANA COURT ADMINISTRATION STUDY 20.

There are several initiatives to develop computerized case tracking and management systems. The Tirana First Instance Court has a system developed by Ark IT, with funding from the Open Society Foundation–Albania, which will soon enable selected law firms to file online. The case management system is linked to a public webpage ([www.gjykatatirana.gov.al](http://www.gjykatatirana.gov.al)) where citizens can find the status of cases, decisions, and other information about the work of the court. The World Bank is developing a system for civil trials, which will be piloted in the Durres First Instance Court, Durres Court of Appeal, and the High Court. Once these systems are fully operational and implemented, improved efficiencies are expected.

## 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>
<p>Although considerable progress has been made in computerization, additional computers, as well as copiers and other equipment are needed in some courts. Infrastructure needs, such as ensuring a reliable source of electricity, additional telephone lines, and local area networks, must also be addressed.</p>		

Analysis/Background:

Most, if not all, courts now have at least some computers and other equipment, thanks to state funding and donor initiatives. For example, each judge in the Fier First Instance Court, the Shkodra Court of Appeals, and the High Court has a computer. Nevertheless, computers, photocopy machines, and other basic equipment are still needed in some courts. In the Elbasan First Instance Court, however, all seventeen judges reportedly have received new computers paid for by World Bank funds. Previously, only five of the seventeen judges had computers (one of which was the personal property of one of the judges).

Infrastructure limitations can limit the effectiveness of such equipment. Many courts experience significant periods throughout the working day when electricity is unavailable, and not all courts have generators. An uninterruptible power supply is therefore an important accessory for reliable computer operation, but few computers have one. Most judges do not have telephones in their offices, which limits their potential access to the Internet. In the Elbasan First Instance Court, for example, there is only one telephone line, in the office of the chairman. Finally, even in courts where all judges have computers, they frequently are not connected to a local area network (LAN), thus limiting the ability of judges to send e-mails to each other or share data within a court. As a result, court computers are often used only for word processing. Thanks to a USAID-funded model court project, all judges in the Shkodra Court of Appeals now have telephones and computers linked by a LAN. The LAN and telephone system in Shkodra is reportedly based on the extensive system in the Tirana District Court, which is believed to be the best equipped court in the country.

**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>
<p>Judges receive copies of the <i>Official Journal</i>, which includes laws and decisions of the Constitutional Court and the High Court, in a timely manner. Decisions of courts of appeal are not published, and some ministerial orders do not make their way to judges or into the <i>Official Journal</i>. A system for identifying changes to the laws exists, but there is no system to integrate changes into a single text.</p>		

Analysis/Background:

All judges are entitled to receive free copies of *Fletorja Zyrtare* (the *Official Journal*), law reviews, and law journals. LAW ON JUDICIAL ORGANIZATION art. 38.2. Published monthly by the state Official Publications Center, the *Official Journal* contains laws, decisions of the Council of Ministers, Constitutional Court decisions (which are also posted on the court's website), some High Court decisions, and other official documents. However, many regulations, court procedures, ministerial orders, and internal rules of procedure of ministries and other bodies are not submitted to the Official Publications Center and thus are not published in the *Official Journal*. In addition, significant decisions of the courts of appeal are not published in the *Official Journal* or elsewhere, nor are they generally distributed to judges.

The *Official Journal* is delivered by mail to judges throughout the country and, although publication may sometimes be delayed by a few weeks and delivery to some regions can be slow, judges generally receive current laws and jurisprudence in a reasonably timely manner.

Judges also receive *Tribuna Juridike* (*Juridical Tribune*) and the quarterly magazine published by the Magistrates School, *Jeta Juridike* (*Juridical Life*). From time to time, they may also receive codes or compilations of laws published with donor support.

Although the *Official Journal* provides judges with new laws, access to older laws in force can be difficult. Apart from the High Court and Tirana Court of Appeals, courts generally do not have law libraries. A subscription to “Jurist,” an electronic legal database, is too expensive for many judges. Furthermore, the comprehensive compilation of Albanian laws is out of print. Beyond the publications they receive on an ad hoc basis, judges must rely upon borrowing law books from colleagues who happen to have them.

An index of laws has been maintained since the transition to democracy in 1991. Although it is useful in identifying laws by subject matter and tracking changes to legislation, amended laws are not incorporated into a single unified text. As a result, reviewing the provisions of a law that has been amended several times can be time consuming.

Several interviewees commented on the paucity of scholarly writing on Albanian law. To address this issue, the Magistrates School is publishing four books, on private international law, mediation and arbitration, intellectual property, and court and case management. Other books are planned in the future. Also, in 2002, East West Management Institute (EWMI) coordinated the development and distribution to judges throughout Albania of a CD ROM with all laws passed by the Assembly since 1990. This resource is reportedly being updated to include recent laws as well as all governmental decisions published in the *Official Journal* since 1990.