



**JUDICIAL REFORM INDEX**  
**FOR**  
**BULGARIA**

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**VOLUME III**

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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.

## **Acknowledgements**

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association's Central and East European Law Initiative (ABA/CEELI) (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-2003) directed the finalization of the JRI. Assistance in research and compilation of the JRI was provided by Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI.

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## **Assessment Team**

The Bulgaria JRI 2006 Analysis assessment team was led by Daniel FitzGibbon, a former ABA/CEELI liaison and legal specialist who has served in Russia and other countries in eastern Europe, North Africa and the Middle East, including three prior projects in Bulgaria. Other members of the team were Hristo Ivanov, a Sofia attorney; Zornica Zafirova, a Legal Assistant in ABA/CEELI's Sofia office; and Violetta Kostadinova, Todor Dotchev and Bilyana Gyaourova-Wegertseder, Staff Attorneys in ABA/CEELI's Sofia office. The team received strong support from the ABA/CEELI staff in Sofia and Washington, including Bulgaria Country Director Marc Lassman, Rule of Law Liaison Joanna Jacobs, and Program Officer Lucy Gillers. ABA/CEELI's Judicial Reform Focal Area Deputy Coordinator Olga Ruda served as editor and prepared the report for publication. The conclusions and analysis are based on interviews that were conducted in Bulgaria in March 2006 and relevant documents that were reviewed at that time. Records of relevant authorities and a confidential list of individuals interviewed are on file with ABA/CEELI. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

## Executive Summary

### Brief Overview of the Results

Of the 30 factors analyzed in the 2006 Judicial Reform Index (JRI) assessment for Bulgaria, the correlations determined for seven factors advanced from 2004 to 2006, while none of the other factors suffered a decline. The factors that were rated positive in 2004 continued to be positive in the current assessment, and were joined by three other factors upgraded to positive in 2006, bringing to ten the number of factors receiving the highest grade. Eighteen factors received neutral correlations in this report, including four that had received negative grades in 2004. Only two factors continue to carry negative ratings, the most significant of which is Factor 20 relating to the independence of judicial decision-making and the confidence the legal professionals and the general public have in the judicial system. The correlations for a total of 16 factors were below positive in both 2004 and 2006 and were not upgraded in the current assessment. These conclusions indicate there is still much work to be done, although the analyses of some of these factors reveal encouraging signs of progress and awareness of the need for improvement. Quite often, the initiation of a pilot project or the laying of a foundation for a particular reform is a cause for optimism; at the same time, the fact that the reform is still not fully in place and operational after 15 years under a democratic constitution is an offsetting source of concern.

As of the March 2006 assessment team's visit, the Bulgarian judicial system was undergoing rapid change in a number of areas, including training, evaluation criteria, administrative control, automation, and the amendment of all procedural codes. Some of these changes were driven by preparations for the European Union (EU) accession anticipated in January 2007, while others were motivated independently by advocates of reform, modernization, and reorganization. As a general matter, the flurry of new laws and other changes had not yet translated into significant improvements in most of these areas, but the overall direction of movement was positive.

### Positive Aspects Identified in the 2006 Bulgaria JRI

- An encouraging development over the past two years has been the emergence of the **National Institute of Justice (NIJ)** and specifically its **initial training program for junior judges**. The quality of its curriculum, faculty and interactive methodology is reflected in the virtually unanimous praise of its recent graduates by persons interviewed. While there are features of the judicial preparation and appointment process that continue to draw criticism, the NIJ's initial six-month training program is certainly a bright spot in the judicial picture. The NIJ's continuing legal education activities are still fairly limited, however, and it will be a special challenge to ensure that all sitting judges are adequately trained in both the EU law and the major domestic procedural codes now under revision.
- Many judges are beginning to appreciate the value of **media awareness and public education**, and have instituted measures in their courts to improve the flow of information to society. Steps taken include employment of media attaches in selected courts to serve as liaisons to media representatives, assistance with media access to and understanding of court proceedings, and initiation of several court websites with background and scheduling information, as well as selected case decisions.
- **Judicial salaries and benefits** have risen in recent years to the point where they appear sufficient to attract and retain qualified persons to the judiciary, improve the prestige of the profession, and negate one excuse sometimes proffered for judicial corruption.
- Two areas that have consistently received positive comments and correlations are **constitutional review of legislation** and **administrative review of both individual and normative acts of governmental entities**. The Constitutional Court is highly respected

for its competence, efficiency, and independence. The Supreme Administrative Court (SAC) continues to earn compliments for its strength, automation, and transparency.

- Acting through the Supreme Judicial Council (SJC), the judiciary still appears to have the **power to propose and implement its own budget**. Recent amendments to the Bulgarian Constitution gave the Ministry of Justice (MOJ) certain drafting authority with respect to the judicial system budget and control over the physical assets of the judiciary. While these changes have provoked some concern and their interpretation and application will be watched closely, it would seem that the SJC has retained the most important powers in this administrative area.

## Major Concerns Identified in the 2006 Bulgaria JRI

- The Bulgarian judiciary continues to suffer from a strong **public perception that decisions are often based on improper influences**, whether through bribery, personal or family connections, intervention by higher ranking judges or other means. The validity of this perception is by no means clear, but vigorous measures need to be taken to reverse it before there is additional erosion of public confidence in the legal system. A controversial organic feature of the judiciary is the fact that prosecutors and investigators, as fellow magistrates, are members of the SJC and its commission acting on appointments, evaluation, promotion and discipline of judges. This and other circumstances suggest an **unhealthy institutional influence by the prosecution**, especially, over the careers and thus potentially over the decisions of individual judges.
- A number of the concerns noted in this JRI assessment flow from apparent deficiencies in the **strategic planning, vision, and direction of the judicial system**. The SJC and the MOJ have historically shared responsibilities over different aspects of the system, with periodic shifts between these entities and occasional confusion over roles. In the interests of judicial independence, overall responsibility should rest with the SJC. Its members all have other full-time, important responsibilities, however, and its administrative staff is busily engaged with day-to-day assignments and obligations. Consideration should be given to a restructuring of the SJC to improve its capabilities in this vital area.
- **Case delays** are the source of significant and recurring complaints about the judicial system. There is no shortage of apparent causes for these delays, including the three-instance process of trial, appeal and cassation review, shortage of courtrooms to permit hearings to take place, excessive caseloads at various courts and levels, difficulties assuring the appearances of parties and witnesses at court proceedings, and highly formalized procedures at all stages of the legal process. On the bright side, these complaints have prompted calls for reforms in a variety of areas that may yet produce tangible results.
- Many new judges receive **direct appointments** to the bench each year without going through a competition, having the benefit of the NIJ's initial training program, or obtaining proper orientation and mentoring. As a separate but related concern, the standards and procedures for **evaluation and promotion** of judges were in a state of flux at the time of the assessment team's visit. The SJC had passed a temporary rule a year before, but its actual and consistent implementation was the subject of some complaints and it was about to be superseded by a new regulation with presumably new criteria and forms.
- While the SJC approved a **code of ethics for judges** developed by the Bulgarian Judges Association, the document is a very short and general set of broad statements and does not constitute the clear and comprehensive guidance needed to regulate behavior adequately. The new code appears to lack wide acceptance among judges,

and little or no effort has been made to educate sitting judges on its terms and application or to inform the public of its existence and provisions. Its effectiveness as a legal basis for disciplinary sanctions remains uncertain.

## Other Concerns Identified in the 2006 Bulgaria JRI

- A long-standing concern has been the absence of objective and transparent criteria for **assignment of cases** among judges within a court. Too often, it has been a matter within the prerogative of the court chairperson, with the potential for improper or inequitable outcomes. An encouraging step has been the adoption of an MOJ court administration regulation mandating random case assignment, but its force has been weakened by inconsistent application among courts and frequent, nontransparent overrides by court chairpersons.
- **Enforcement of court decisions** is still a difficult and time-consuming proposition, as procedures remain cumbersome and debtor-friendly. Collection of monetary judgments against governmental units is especially slow and uncertain. Changes to the Civil Procedure Code were under discussion at the time of this report that would improve the process significantly. Another encouraging sign was a law passed in 2005, not yet implemented at the time of the on-site visit, providing for the creation of private enforcement agents to supplement the present efforts of public bailiffs in this area.
- **Public access to court decisions**, especially in first-instance courts, **and case records** continues to be a troubling issue in Bulgaria. Granted that files relating to highly personal matters, juvenile cases, national security, or business confidentiality generally deserve protection, present restrictions go well beyond those categories. Exceptions are sometimes granted, but not pursuant to uniform, state-wide standards. Access to court records should improve as the courts are moving toward greater **automation**, but there is still a long way to go. Computers are widely available and legal databases are operational, but the installation and application of case management software have been very slow and erratic.
- While the number of **judicial disciplinary proceedings** increased considerably from 2004 to 2005, they remain well below the numbers typically experienced in other democratic societies. There are various possible explanations, but an obvious concern is that court chairpersons in their proposals and even the SJC in its decisions may be too protective of their professional colleagues. The result, in any case, is a lack of public confidence in the objectivity and effectiveness of the disciplinary process.



## Bulgaria Background

### Legal Context

The Republic of Bulgaria is a parliamentary democracy, governed by a parliament (the *Narodno Sabranie*, or National Assembly), president, council of ministers, prime minister, judiciary, local officials, and a Constitutional Court.

Legislative authority rests with the 240 members of the National Assembly, which is elected for a term of four years. The National Assembly's chairperson proposes the agenda for each session. In addition to its general authority to pass laws, the Assembly is specifically directed to pass the state budget, establish tax rates, declare war, ratify treaties, schedule presidential elections, elect and dismiss the Prime Minister, and, on the motion of the Prime Minister, elect members of the Council of Ministers. Before it becomes law, legislation requires two votes before the Assembly. Following a vote of no confidence in the government, which requires a majority of the members of the Assembly, the government must resign. The right to initiate legislation belongs to every member of the National Assembly and the Council of Ministers.

Officially the head-of-state, the President has limited powers in domestic affairs. He represents the state in international relations and is the commander-in-chief of the armed forces. He appoints the high command of the army and ambassadors. When Bulgaria is under imminent threat, he may declare war. He may veto bills, but that veto may be overridden by a vote of more than half of the members of the National Assembly. The President appoints the chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court, and the Prosecutor General on a motion by the Supreme Judicial Council. The President is elected for a five-year term and may serve only two terms.

The Council of Ministers acts as a cabinet. It is composed of the Prime Minister, Deputy Prime Ministers and the Ministers. While the Prime Minister has overall responsibility for the operation of the government, the Council of Ministers is charged with executing the state's domestic and foreign policy, insuring the public order and national security, and exercising guidance over the state administration and the armed forces. Among other things, the Council draws up the state budget and presents it to the National Assembly. Like the Council itself, individual ministers may issue regulations in their fields of competence.

The judicial branch is composed of judges, prosecutors, and investigators, all of whom are deemed magistrates. All courts have related prosecutor offices. Prosecutors, who report through the prosecutorial hierarchy in the courts ultimately to the Prosecutor General, conduct investigations, bring criminal charges, oversee the enforcement of criminal and other penalties, and take part in civil and administrative cases as required by law. Investigators conduct investigations in those cases specified by statute. While certain budgetary, oversight and administrative functions are shared with or controlled by the Ministry of Justice [hereinafter MOJ], the judiciary is largely overseen by the Supreme Judicial Council [hereinafter SJC], composed of judges, prosecutors, investigators, and appointees of the National Assembly. The Constitutional Court, which is not a part of the judiciary, rules on constitutional issues.

Regional governors, who implement state policy, are appointed by the Council of Ministers. At the local level, municipal councils and mayors are elected every four years.

A Grand National Assembly, composed of 400 elected representatives, may be convened upon a vote of two-thirds of the National Assembly. The Grand National Assembly may create a new constitution, designate changes to the territory of the state and pass constitutional amendments affecting the form of state structure or the form of government. Less sweeping amendments to the Constitution may be approved by a three-fourths (in certain circumstances two-thirds) vote of the National Assembly.

The provisions of the Constitution apply directly, without need of legislative implementation. Treaties appropriately ratified are also applied directly and supersede domestic legislation.

At the time of the assessment team's visit in March 2006, Bulgaria was in the midst of considering, enacting or implementing major changes in or additions to its Constitution and the body of laws and procedural codes. Most of these modifications were driven by a desire to meet requirements for accession to the European Union [hereinafter EU] as anticipated on January 1, 2007, but others were motivated by independent purposes. The volume and speed of these revisions created widespread concern within both the judiciary and the legal profession concerning their capacity as institutions to absorb and implement them, as well as the EU laws and jurisprudence, on a competent and timely basis. Because of the fluid nature of the law during the period of the onsite interviews and preparation of the report, the assessment team decided generally to incorporate all laws and amendments officially adopted on or before April 1, 2006, and refer where relevant to prospective changes under consideration at that date.<sup>1</sup>

Also by way of clarification, this report uses the English terms (i) "attorney" to refer to an *advokat* who has been admitted to an attorneys college and is entitled to practice law on a regular and independent basis for multiple clients, (ii) "lawyer" to describe a *jurist* who has completed his/her legal education, subsequent practical internship and final MOJ examination to attain that title, and thus to include all members of the legal profession such as magistrates, attorneys, in-house counsel and notaries, (iii) "chamber" to mean a college, department or section within a court, which may be further split into "divisions," and (iv) "chairperson" to refer to the chief judge and administrative manager of a court or of a chamber within a court.

## History of the Judiciary

A Communist-led government came to power in Bulgaria following the end of World War II. People's tribunals were established by the communists and used to eliminate thousands of opponents of the new regime. Many non-communist judges, prosecutors, investigators, and law professors were purged or killed. The judicial council, which had advised the MOJ on personnel issues, was abolished; the concept of an independent judiciary was rejected; and the Communist Party took control of judicial appointments. The courts were seen as part of the larger effort to consolidate and support a socialist system. To promote the communist ethos, comrades' courts were later introduced in all enterprises. Most judges, especially high-level court judges, were members of the Communist Party. Generally, Communist Party members, especially party leaders, were beyond the reach of the courts and essentially operated above the law.

After the fall of the communist regime in 1989, a Grand National Assembly in 1991 crafted a new constitution, *promulgated in* STATE GAZETTE [hereinafter SG] No. 56 (July 13, 1991), *last amended* SG No. 27 (Mar. 31, 2006) [hereinafter CONSTITUTION], thus setting in motion a sweeping process of changes to the Bulgarian legislation. The Judicial System Act, *promulgated in* SG No. 59 (July 22, 1994), *last amended* SG No. 86 (Oct. 28, 2005) [hereinafter JSA], the basic statute that governs the courts and the judiciary, was passed three years later.

In recent years, the government has moved forward to address many of the concerns pertaining to the judiciary, preparing an action plan, a related strategy and legislative amendments. There

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<sup>1</sup> After April 1, 2006, there have been significant changes to the Judicial System Act (JSA), as well as the Administrative Procedure Code, the Criminal Procedure Code, and other relevant legislation. However, as these changes have only recently been enacted, the assessment team could not evaluate their practical impact. Nevertheless, for the sake of accuracy, we will state in footnotes where there have been relevant amendments made to the JSA (adopted May 12, 2006), as the specific revisions of the other legislation do not have as significant a bearing on this JRI.

have been multiple revisions to the JSA and the Constitution intended to address various reform issues, though some changes have had the unintended consequence of slowing reform. Since the Constitution was adopted in 1991, control over the budget, administration and facilities of the judicial system has passed from and to the SJC and the MOJ as a result of legislation, Constitutional Court decisions and recent constitutional amendments. These shifts have not only impeded the smooth execution of important operational tasks but also obscured the roles of these entities in the leadership, strategic planning and direction of the judicial system as a whole.

Judicial reform is a widely debated subject in Bulgarian society and is recognized as a crucial issue in, and condition to, the country's anticipated accession to the EU. The very vigor of this debate is a sign of real strength in Bulgaria's political and judicial system. In this regard, a common concern expressed by numerous interviewees was that there seems to be insufficient emphasis on centralized coordination, strategic planning and general direction for reform of the judicial system as a whole. The SJC would be the logical constitutional entity to carry out this responsibility, and it certainly takes care of various aspects from time to time, but it tends to focus on narrow and immediate concerns rather than long-range, strategic issues. In fairness, the fact the SJC's membership consists entirely of people with important and busy full-time jobs elsewhere does not allow them to do much more than react to present tasks and emergencies and work their way through the current meeting's agenda. The SJC typically meets once a week, and its commissions also meet weekly; special meetings are often added to deal with other issues. While the SJC has an administrative staff that has grown in numbers and is organized into directorates, these employees also seem preoccupied with immediate tasks and lack the time, experience and professional qualifications to generate, evaluate and institute coordinated, wide-ranging strategic initiatives. It would therefore seem worthwhile for the leadership of the judiciary and other reform-oriented groups and individuals to consider a better organizational model for the SJC than exists under the present system.

The MOJ also has expertise and staffing that can support these initiatives, but it would be better for responsibility and control to rest with the judiciary to preserve the independence of this branch and maintain the proper balance of power. In some countries, a judges association might serve as a catalyst for strategic reform, but the Bulgarian Judges Association lacks the funding, resources and staffing to carry out this function.

## **Structure of the Courts**

### ***Courts of General Jurisdiction***

In 1998, Bulgaria instituted a three-tier court system for civil and criminal cases. This system is composed of: trial courts, which may be either regional or district courts; interim appellate courts, either district courts or courts of appeals; and a cassation court, the Supreme Court of Cassation [hereinafter SCC]. Regional court decisions may be appealed to the relevant district court and, finally, to the SCC. If the original trial takes place in a district court, its decisions are reviewable by the relevant court of appeals, and ultimately by the SCC. The second instance is, in effect, a second trial court. Original trial court decisions may be appealed on any ground. The appellate court may hear new evidence, including evidence existing but not mentioned at the original trial and evidence that came into existence after the lower court ruling.<sup>2</sup> Cassation review in the SCC is more limited in scope, focusing on conformity with the law.

As of February 28, 2006, there were 1,841 sitting judges at all levels of general jurisdiction courts in the Bulgarian judiciary.

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<sup>2</sup> Pending amendments to the Civil Procedure Code would forbid the introduction of new evidence on appeal unless approved by the court pursuant to specific standards.

**Regional courts**, the lowest level trial courts, handle all trials not expressly referred by law to another court (e.g., the district courts). There are 112 such courts with a total of 871 judges, as of February 28, 2006. The civil and criminal cases they hear are typically adjudicated by one judge, although crimes bearing lengthy sentences may be heard by one or two judges and up to three lay assessors. Decisions of regional courts may be appealed to the district courts.

**District courts** function as both first and second instance courts. There are 28 district courts in the country, including the Sofia City Court, which covers the capital city. District courts are typically divided into criminal, civil, commercial, and administrative chambers.<sup>3</sup> Acting as first instance courts, they hear certain civil and commercial cases where the claim exceeds 10,000 leva (US\$ 6,250<sup>4</sup>), as well as grave criminal cases. First instance civil and commercial cases are decided by a single judge; criminal cases may be heard by one or two judges along with as many as three lay assessors, depending on the gravity of the crime. The administrative chamber, acting in first instance, hears claims involving individual acts (such as tax determinations) of lower level governmental agencies and officials. The first instance decisions of the district courts, except in administrative cases, may be appealed to the courts of appeals, and, if necessary, to the SCC. District courts also hear appeals from regional court decisions in three-judge panels. In all, 729 judges sit on district courts in the Republic.

There are also five **military courts** that have the status of district courts and try cases involving military personnel in first instance. Combined with the military court of appeals discussed below, the military courts have a total of 41 judges.

**Courts of appeals** hear appeals from trials (except in administrative cases) that originate in district courts. The courts of appeals sit in three-judge panels and have civil, commercial, and criminal chambers. There are six courts of appeals, including one which hears appeals of judgments reached by the lower military courts; the five civilian courts have in the aggregate 112 judges. The decisions of the courts of appeals may in turn be appealed to the SCC.

The **Supreme Court of Cassation**, the third and final instance, with 88 judges, hears appeals from the district courts, when they act as second tier appeals courts, and from the courts of appeals. While under present law the SCC must hear every appeal filed, proposed amendments to the Civil Procedure Code would limit its review role, in civil cases only, to cases deemed sufficiently significant by the second instance court (which determination would also be appealable to the SCC). The SCC is divided into civil and criminal chambers, and cassation appeals are heard by panels of three judges. If constitutional issues arise, the SCC does not have the power to decide them but can suspend proceedings in the case and refer these questions to the Constitutional Court. Relevant civil or criminal chambers of the SCC, acting in a plenary session, issue interpretive rulings to ensure the uniform and precise application of the law by the lower courts.

### **Administrative Law**

Challenges to administrative acts may first be made to the government body making the act and then to the superior administrative organ. Certain penal decrees imposed by administrative bodies may be appealed to the regional court in first instance and thereafter to the district court in cassation and final instance. Court appeals of individual acts (tax determinations and other administrative decisions directed at specific persons or entities) and normative acts (secondary legislation) of municipal councils and lower ranking state agencies are filed with the administrative chambers of the district courts. Their decisions may be appealed to the **Supreme Administrative Court** [hereinafter SAC], a body having 77 sitting judges, without going through a

<sup>3</sup> See below under “Administrative Law” for pending changes to the law that would affect the existence and jurisdiction of the administrative chambers of district courts.

<sup>4</sup> All dollar figures used in this report are based on the prevailing currency conversion rate during the assessment visit of 1.60 leva = \$1.00 US.

court of appeals. The SAC hears appeals from district courts in three-judge panels, and further appeals may be taken on a cassation basis to five-judge panels within the SAC.<sup>5</sup>

Initial appeals of administrative acts issued by senior executive officials or government agencies are made directly to the SAC. In the case of administrative acts other than secondary legislation, the cases are considered by three-judge panels as courts of first instance and are then reviewable for cassation by five-judge panels within the SAC. Appeals of secondary legislation are heard directly by five-judge panels and are not subject to further appeal.

Like the SCC, the chambers of the SAC issue interpretive rulings to rectify incorrect or contradictory rulings of lower judicial bodies. The SAC also may refer constitutional issues to the Constitutional Court for resolution.

### ***Constitutional Law***

The ***Constitutional Court***, a body consisting of 12 judges, is not part of the judiciary. Nevertheless, it does have the power of judicial review, gives binding interpretations of the Constitution, rules on the compliance of legislation and international treaties with the Constitution, determines certain legal powers of the branches of government, acts as the trial court for Presidential impeachments, and considers legal challenges to parliamentary and presidential elections. Constitutional issues arising in a case may generally be referred to the Court only by the SCC, the SAC, or the Prosecutor General. Lower court judges presented with what they believe to be a constitutional issue must notify the SCC or the SAC, which may refer the matter to the Constitutional Court. Similarly, prosecutors and investigators presented with constitutional issues notify the Prosecutor General, who may refer the issue to the Constitutional Court. The President, the Council of Ministers, the SCC, the SAC, the Prosecutor General, or one-fifth of the members of the National Assembly also may bring more abstract or general constitutional questions, which have not arisen within a particular case, before the Court. Pursuant to a new constitutional provision, the state ombudsman may also refer a legislative act of the National Assembly that allegedly violates citizen rights and freedoms to the Court for constitutional review.

### ***Judicial Administration***

The Constitution grants general authority over the courts to the ***Supreme Judicial Council*** (SJC). The SJC is composed of 25 members, including the presidents of the SCC and the SAC and the Prosecutor General as *ex officio* members. Half of the remaining positions are filled by candidates elected by the National Assembly. The other half are elected by the magistrates themselves, with six chosen by the judges, three by the prosecutors, and two by the investigators. SJC members must have at least 15 years' professional experience as lawyers, including at least five years as a magistrate (i.e., judge, prosecutor, or investigator) or a law professor. They serve five-year terms and may serve a second term, but this may not immediately follow their first term. The Minister of Justice chairs the SJC meetings but does not have the right to vote.

The SJC nominates the presidents of the SCC and the SAC, as well as the Prosecutor General. The President, who appoints these judicial leaders, cannot reject a second nomination of the same individual. The SJC also determines the number and geographic jurisdiction of courts; establishes the number of magistrates; determines their pay; appoints, promotes, demotes and dismisses magistrates as provided by law; approves the ethics code for judges; handles magistrate discipline; lifts magistrates' immunity; submits the draft budget for the judiciary to the

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<sup>5</sup> Amendments to the Administrative Procedure Act were pending as of April 1, 2006, which, if enacted, would create lower level administrative courts that would presumably hear cases now tried before the regional courts and the administrative chambers of district courts, as well as certain cases now tried in first instance by three-judge panels of the SAC. It is expected that these courts would not be operational until 2007.

Council of Ministers and administers the judicial budget; coordinates magistrate training and qualification; and makes tenure decisions involving magistrates.

As a result of a new constitutional amendment, the MOJ has regained a role in certain of these functions, including proposing the draft judicial system budget and submitting it to the SJC; managing the assets of the judicial system; making proposals for appointment, promotion, discipline, and other career decisions of magistrates; participating in the organization of magistrate qualification; and examining the initiation, movement, and closing of court cases.

## **Conditions of Service**

### ***Qualifications***

Judges must be Bulgarian citizens who: (i) graduated from a law school; (ii) completed a three-month internship in the judiciary; (iii) have not been convicted of an intentional crime; and (iv) possess “the required moral integrity and professional capacity,” assessed in accordance with the judges’ rules of professional ethics. Those seeking judgeships out of law school serve as junior judges for two years before being appointed as full members of the bench. Lawyers with a minimum of two years’ experience as prosecutors, investigators, attorneys, or a variety of other official legal positions may be appointed directly to the bench, without first serving as a junior judge. Individuals may also be appointed directly to higher posts in the court system following longer service in the legal system, within or outside of the judiciary. Lawyers with “high professional standing and moral integrity” and at least 15 years of professional experience are eligible to serve as judges on the Constitutional Court.

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

As previously noted, the SJC appoints judges. Junior judges (entry-level positions) are appointed based on a competition. In the case of direct appointments of judges based on two years’ minimum service as lawyers, the chairpersons of the relevant higher-level courts make nominations for direct appointment to the lower courts under their respective jurisdictions; competitions are not required, although some courts hold them anyway.

After completing five years of service (including their time, if any, as junior judges) and obtaining a positive evaluation by the SJC, judges are granted “irremovable” status until they resign, retire at the age of 65, or are dismissed. They may be dismissed only for serious criminal activity, persistent and actual inability to perform official duties for more than one year, a grave breach or systematic dereliction of their official duties, or actions damaging the judiciary’s prestige.

The 12 judges of the Constitutional Court are appointed four each by the National Assembly, the President, and, sitting in a joint meeting, the SCC and the SAC. Constitutional Court judges are appointed for nonrenewable nine-year terms. They may be removed only if they are sent to jail for an intentional crime, are unable to discharge their duties for over a year, or assume certain incompatible offices (such as outside business or professional activity or elective office).

### ***Training***

The National Institute of Justice [hereinafter NIJ], a state-funded entity operating under the supervision of the SJC and its own managing board, provides a six-month initial training program for junior judges appointed to the bench (and other junior magistrates) within the NIJ’s facility. Following this experience, junior judges are sent to the district court having jurisdiction over their assigned regional court for another 18 months, during which time they serve as members of three-judge panels trying cases along with more senior district court judges. At the conclusion of that internship period, they are sent to their assigned courts as full judges.

Those judges who are appointed directly based on at least two years' service as a lawyer do not go through the NIJ initial training program and, instead, are sent directly to their assigned courts and to work. The NIJ offers several seminars on basic substantive topics over the course of the year that are targeted toward directly appointed regional and district court judges, but they must fit these programs into their busy case schedules.

The NIJ also offers continuing legal education [hereinafter CLE] seminars for judges and other magistrates, and some courts discuss recent cases and other developments at their periodic general meetings of judges.

## Bulgaria JRI 2006 Analysis

As a general matter, Bulgaria is continuing its progress toward judicial reform despite some difficulties and delays over responsibility for strategic planning and administration of the system and over integration of information technology in the courts. The development of the National Institute of Justice (NIJ) and its initial training program for junior judges, greater openness and media outreach within the judiciary, and widespread awareness of the need to address deficiencies in court procedures and automation are all encouraging signs. Nonetheless, the judicial system continues to struggle with certain structural impediments, inadequate facilities and technology, and public perceptions of corruption and improper influence. It should be noted that the factor correlations and conclusions in the Bulgaria JRI 2006 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Bulgaria JRI 2004. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA/CEELI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

### Table of Factor Correlations

Judicial Reform Index Factor		Correlation 2004	Correlation 2006	Trend
<b>I. Quality, Education, and Diversity</b>				
Factor 1	Judicial Qualification and Preparation	Negative	Neutral	↑
Factor 2	Selection/Appointment Process	Neutral	Neutral	↔
Factor 3	Continuing Legal Education	Neutral	Neutral	↔
Factor 4	Minority and Gender Representation	Neutral	Neutral	↔
<b>II. Judicial Powers</b>				
Factor 5	Judicial Review of Legislation	Positive	Positive	↔
Factor 6	Judicial Oversight of Administrative Practice	Positive	Positive	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Positive	Positive	↔
Factor 8	System of Appellate Review	Neutral	Neutral	↔
Factor 9	Contempt/Subpoena/Enforcement	Negative	Neutral	↑
<b>III. Financial Resources</b>				
Factor 10	Budgetary Input	Positive	Positive	↔
Factor 11	Adequacy of Judicial Salaries	Neutral	Positive	↑
Factor 12	Judicial Buildings	Neutral	Neutral	↔
Factor 13	Judicial Security	Neutral	Neutral	↔
<b>IV. Structural Safeguards</b>				
Factor 14	Guaranteed Tenure	Positive	Positive	↔
Factor 15	Objective Judicial Advancement Criteria	Neutral	Neutral	↔
Factor 16	Judicial Immunity for Official Actions	Positive	Positive	↔
Factor 17	Removal and Discipline of Judges	Neutral	Neutral	↔
Factor 18	Case Assignment	Negative	Neutral	↑
Factor 19	Judicial Associations	Neutral	Neutral	
<b>V. Accountability and Transparency</b>				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Neutral	Neutral	↔
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Positive	Positive	↔
Factor 24	Publication of Judicial Decisions	Negative	Neutral	↑
Factor 25	Maintenance of Trial Records	Negative	Negative	↔
<b>VI. Efficiency</b>				
Factor 26	Court Support Staff	Neutral	Neutral	↔

Factor 27	Judicial Positions	Neutral	Positive	↑
Factor 28	Case Filing and Tracking Systems	Neutral	Neutral	↔
Factor 29	Computers and Office Equipment	Neutral	Neutral	↔
Factor 30	Distribution and Indexing of Current Law	Neutral	Positive	↑

## 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>University-level legal training is required but its quality is uneven and problematic. While junior judges undergo a competition, a well-regarded six-month initial training program, and an 18-month district court internship, all while paid, other judges can be appointed directly to the bench without taking any of these steps and with little or no relevant experience as practitioners.</p>		

#### Analysis/Background:

Article 126(1) of the JSA provides that among the requirements to be eligible for appointment as a judge are “graduation in law from a higher educational establishment” and “completion of the required post-graduation work experience and attainment of licensed competence to practice law.”

The basic law on university-level education in Bulgaria is the Higher Education Act, *promulgated in* SG No. 112 (Dec. 27, 1995), *last amended* SG No. 103 (Dec. 23, 2005), which sets out the rights and obligations of higher schools. It provides that higher education is the responsibility of both the National Assembly and the Council of Ministers, with the latter group specifically charged with setting the state requirements for earning degrees in the specialties of the regulated professions. *Id.* art. 9(3)(5). The act also provides for a National Agency for Assessment and Accreditation [hereinafter NAAA]. *Id.* art. 11. The NAAA conducts periodic evaluations of both institutions (universities) and their respective programs (law schools, among others) in a wide range of areas to ensure they meet the standards established by law. *Id.* arts. 75-83.

Specific requirements for law schools, including admission procedures, mandatory and elective courses and their minimum hours, are contained in the Ordinance on the Unified State Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer,” *adopted by* Council of Ministers Decree No. 75 (Apr. 5, 1996), *last amended* SG No. 69 (Aug. 23, 2005) [hereinafter *Legal Education Ordinance*]. Under this ordinance, the law school’s program must run at least 10 semesters, with no fewer than 3,500 hours of instruction, and must include 19 specified disciplines with certain minimum hours for each. Required courses, which constitute a little over half of the minimum total hours for graduation, must with certain exceptions be taught by lecturers having scientific rank in the respective disciplines. Lectures must constitute at least half of the hours of instruction. Other courses may be electives (which must include six designated topics) chosen by the law school and optional subjects. Beginning after the second year, students must participate in practical study consisting of at least 14 days of work in executive or judicial bodies under a university program in coordination with the MOJ. Under a 2005 amendment, legal clinics are specifically authorized, and participating students who pass an examination may opt out of the 14-day government internship. After completing the course work, students must take a state written and oral examination and, upon passing, receive a diploma with the professional qualification of “lawyer” and a master of laws degree.

Law graduates then serve an unpaid three-month practical internship in the judiciary, and must thereafter pass another oral examination administered by the MOJ. JSA art. 163.<sup>6</sup> At that point, the individual acquires licensed competence to practice law.

There is a common perception, even among law professors, that the quality of legal education offered in Bulgaria is at best uneven and generally inadequate. Only 17 years ago, the country had just one law school; it now has 10, one of which is in a technical university (though that school has only fifth-year students and its accreditation expires at the end of the year). Of the 10 existing law schools, seven are state-funded and three are private. This proliferation in law schools is widely perceived as at least one cause of the dilution in both faculty and student talent, severe challenges to the accreditation process, a dramatic increase in the number of students taking practical internships and a resulting decline in training and supervision, and a flood of new lawyers into the profession. In addition, much of the legal education is theoretical in nature, isolated from society and administered to “passive” students in the form of large-group lectures. There is little if any focus on case studies, professional skills, and practical knowledge. All of the required courses are important substantive and procedural topics, but there is nothing that would encourage schools to offer elective or optional courses in such practice-oriented areas as legal research and writing, trial advocacy, or moot court. Legal ethics is neither an obligatory course nor a required available option, and the absence of ethical instruction may be felt in the discussion of other factors in this JRI. While the 2005 amendment to the Legal Education Ordinance validates and implicitly encourages legal clinics that can help students learn courtroom practices and other real world topics, their existence and activities are dependent upon the initiative of individual students and professors at different schools. Legal clinics that are in place sometimes struggle for acceptance from faculties and practicing attorneys, and often lack regular funding sources to assure their continuation after EU accession and withdrawal of current donors. Even the three-month practical internship in the judiciary after law school graduation represents a reduction from the 12-month training period in place through 2002. The post-internship oral examination administered by the MOJ is generally perceived as far too easy, with virtually everyone given a passing grade. These deficiencies were observed during the 2004 JRI, and there is little evidence of improvement over the past two years.

The JSA provides for the position of “junior judge,” an individual otherwise qualified to be a judge who is appointed on the basis of a national competition for a two-year term (which may be extended by six months). See arts. 127a, 147. Successful competitors are assigned to a district court or military court, but must first undergo a six-month initial training program under the auspices of the NIJ, the successor to a nongovernmental organization called the Magistrates Training Center. As appointed junior judges, these persons receive their normal salaries and benefits during their NIJ training; they do not pay tuition for their schooling but are required to cover their own room and board. Similar arrangements exist for junior prosecutors and junior investigators, who join junior judges for their NIJ training.

The NIJ's initial training program presumes that junior judges have adequate grounding in theoretical subjects and concentrates instead on acquisition of practical professional knowledge and skills, familiarity with areas of immediate relevance to their work (including rights and duties, ethical rules, media relations, and associated disciplines such as psychology, forensic medicine and accounting), exposure to the working environment in the judiciary, and creation of team spirit and collegiality among the three branches of magistrates. Because of their special relevance in Bulgaria today, the NIJ teaches courses in such areas as EU law and the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter EUROPEAN CONVENTION ON HUMAN RIGHTS]. The NIJ stresses interactive, adult learning techniques such as small group discussions, moot court exercises, and role-playing. Teaching is provided by six full-time trainers, all of whom are magistrates currently on leave from their courts. The NIJ also has a computer lab with 16 computers to be used for legal research and word processing. The three categories of junior magistrates are separated for some of their training to enable them to focus

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<sup>6</sup> The internship requirement was recently amended to last six months instead of three months.

on topics and skills of particular relevance to their chosen professions. Mid-term and final examinations are given to the junior judges, and the results are shared with their respective court chairpersons. According to one source, the pass rate on these examinations is 100%.

The first class of 143 junior magistrates, which included 43 junior judges, graduated from the NIJ in 2005. The class of 2006 consists of 90 students, including 28 junior judges. The NIJ presently has capacity for only one class each year.

Following this initial training period, a junior judge undergoes an 18-month assignment as a member of a three-judge panel deciding cases in his/her appointed district court. During this period, the judge not only observes real trial proceedings but actually takes his/her turn as reporting judge for the panel and receives (in varying degrees in different courts) mentoring and supervision to develop his/her professional skills and knowledge.<sup>7</sup> Once the judge has completed a year of service (six months in the NIJ and another six months in the district court), he/she may be seconded to serve as a regional court judge. In any case, once the 18-month assignment is over, absent a six-month extension, the judge loses his/her “junior” status and assumes the position of regional court judge. JSA art. 148.

Despite the NIJ's relative infancy and the inevitable startup complications, virtually all respondents had positive comments to make about the NIJ's initial training program for junior judges and about the subsequent performance of its graduates. They are considered to be better qualified than their predecessors and are receiving favorable reviews from some senior judges, attorneys and others who are not easily impressed. The success of the NIJ in preparing junior judges for their responsibilities is one of the more encouraging developments in the judicial system since 2004.

Of course, the NIJ and the junior judge program still have areas in which further progress can be made. Several observers questioned the wisdom of assigning competition winners to court positions before they take their six-month initial training, arguing that trainees would be more motivated to study hard at the NIJ if they were allowed to choose their assignments in order of their NIJ graduation rank. Under the present system, junior judges count against judicial positions on their courts even while they are in the NIJ and unavailable to try cases. Six months is also considered by some to be far too short a period for judicial training, especially in light of problematic law school education and in comparison to some other European judges' institutes. Much more could be done in the way of specialized training of judges at the NIJ, perhaps separating them entirely from prosecutors and magistrates and, even within the ranks of the junior judges, allowing them to concentrate in the fields of commercial, administrative, civil, or criminal law. Even though Bulgaria is expected to have lower administrative courts in the near future, with specialized commercial courts on the distant horizon, the NIJ teaches the same subjects to all junior judges and has no plan to change its approach.

The JSA still allows regional court judges to be appointed directly by the SJC after two years of legal service, bypassing junior judge status and avoiding both competition and the six-month initial training program at the NIJ. See art. 127.<sup>8</sup> A special exception even allows the SJC to waive this service requirement entirely. This route to the judiciary, which is still used for a substantial number of appointments, is defended on the ground that it allows unexpected vacancies to be filled promptly by experienced legal professionals, without waiting for a junior judge competition and the subsequent training and internship periods. District court judges can be directly appointed with five years of legal experience, while court of appeals judges need eight years and SCC/SAC judges need 12 years. For this purpose, legal service includes not only magistrate or even attorney experience but also work as a police investigator for the Ministry of

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<sup>7</sup> Amendments to the JSA now provide for the appointment of a mentoring judge for every junior judge.

<sup>8</sup> The JSA now requires all judges to be appointed after a competition. Except for junior judges, all other new appointments and promotions are still not required to undergo the NIJ training.

the Interior [hereinafter MOI]. *Id.* Judges so appointed are immediately placed in service on the bench with little or no specialized training, orientation, mentoring or supervision. Directly appointed magistrates are supposed to go through a qualification improvement course lasting at least 10 days immediately after assuming office. *Regulation of the National Justice Institute* art. 41, *adopted* Oct. 1, 2003 [hereinafter *NIJ Regulation*]. Unfortunately, however, while the NIJ offers several five-day programs geared to the initial qualification of directly appointed regional and district court judges, these courses are not offered frequently, are limited as to time, space and subject matter, and do not provide anything remotely comparable to the junior judge training experience. Moreover, since these newly appointed judges carry full caseloads, they typically find it difficult to take several days off to participate in one of these special seminars. While some of these judges are no doubt competent, knowledgeable and motivated, others are not so highly regarded. Given the fact that judges can be, and are, appointed directly to the bench without having had strong law school educations, relevant practical experience or the NIJ's initial training regimen, it is not surprising that many of them are not properly prepared for their roles.

On an encouraging note, there are reports that the SJC and the NIJ are considering the adoption of a mentoring project that would pair new judges, whether former junior judges or persons directly appointed to their positions, with experienced judges who would serve as their mentors and provide them with practical advice and guidance as they proceed into their new careers.

## Factor 2: Selection/Appointment Process

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>Most new judges are now appointed by way of a national competition which, while having its imperfections, is generally objective and well regarded. One concern is that the competition focuses almost exclusively on academic ability at the expense of other important qualities. More troubling is the fact that judges can still be, and routinely are, appointed directly to the bench to fill vacancies, sometimes based on non-objective criteria, without going through the competition.</p>		

### Analysis/Background:

Article 129(1) of the Constitution provides that judges and other magistrates shall be appointed by the SJC. The recent constitutional amendments added article 130a, which empowers the MOJ, among other things, to make proposals for appointment of magistrates.

To be eligible for appointment as a judge, an individual must be a Bulgarian citizen with the following qualifications:

- a degree in law from a university;
- completion of the required three-month post-graduation internship in the judiciary and attainment of licensed competence to practice law;
- no prison sentence for an intentional crime, even if rehabilitated; and
- “the required moral integrity and professional capacity,” determined by reference to the applicable rules of professional ethics.

JSA art. 126.

As noted above under Factor 1, many judges are first appointed as junior judges following a competition in accordance with articles 127a-d of the JSA.<sup>9</sup> The competition is announced by the SJC and advertised in the SG, specifying the number, type, and location of open positions, as well as the date, time, and place of the competition. The SJC selects a separate five-person competition committee for each branch of the magistracy, one member of which must be a law professor, which organizes and conducts the competition. *SJC Regulation No. 2 Laying Down the Conditions and Procedures for Carrying Out Competitions for Magistrates* ch. III, adopted July 14, 2004, promulgated in SG No. 65 (July 27, 2004). The first phase of the competition is a four-hour written examination on a mock case, which is graded anonymously on a six-point scale. Grading is done by two independent assessors, and if their scores are more than one point apart, a third assessor is brought in to determine the final grade. Those receiving at least a 4.50 are then admitted to the oral component, which is conducted as an interview in which three legal topics are discussed. Candidates are given an opportunity to present their professional and personal qualities during the interview. Scoring of the oral component is done by all committee members using the same six-point scale. Candidates are then ranked by their combined scores for the position for which they applied, with ties broken by recourse to the candidates' law school grade point averages and state examination marks. Appointments are made by the SJC in the resulting order of rank. Unsuccessful competitors may challenge the results before the SJC and may appeal the SJC's decision to the SAC. *Id.* chs. IV-VI; JSA arts. 127b-c. The newly appointed junior judges then go on to attend the NIJ's six-month initial training program, and then serve as members of three-judge district court panels until, in most cases, they complete two years as junior judges and become regional court judges.

The national competition for aspiring junior judges is universally regarded as a positive development for the system, replacing a pre-2002 process whereby court chairpersons hand-picked judges for their courts. By many accounts, some judges selected under the old system were chosen more for their personal connections or political affiliations than for their academic merit and overall competence. The 2005 competition attracted over 1,000 candidates for 29 junior judge positions, and the winners are now undergoing training at the NIJ.

There are some complaints about the competition, of course, and not just from unsuccessful applicants. Several observers pointed out that the competition focuses exclusively on academic abilities and offers little or no opportunity to measure the candidate's diligence, work habits, integrity, reputation, or judicial temperament. One source noted that the cutoff for the written phase is too low and, as a result, too many candidates are passed on to the oral phase. This overloads the interviewing process and makes it more difficult for the committee to give each interviewee and his/her grade the attention they deserve. Another source commented that certain courts and localities are less popular than others, and that assigning judges based on scores without regard to their location preferences can end up disrupting the less attractive venues; the unhappy judges will try to transfer elsewhere or resign, leading to more turnover. Yet another respondent stated that the oral phase of the competition is not, by its nature, conducted on an anonymous basis, leaving room for possible bias in the grading process. Without exception, though, persons who met with the assessment team endorsed the competition concept, if not all of the details of its execution.

A continuing concern, however, is the fact that, as explained in Factor 1 above, judges can still be directly appointed by the SJC without having to go through the competition and thus without receiving the NIJ training and district court apprenticeships provided for junior judges.<sup>10</sup> By one account, during approximately the same period that the 143 junior magistrates appointed by

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<sup>9</sup> This competition system now applies to regional and district court appointments, with appellate court and SCC/SAC appointments coming as the result of a professional records review and an oral interview.

<sup>10</sup> The JSA now requires all appointments to the bench to be made after a competition. However, it remains to be seen how these amendments will be implemented and whether the issues raised herein will be addressed.

competition in 2004 were selected and trained, 30 other judges and prosecutors were appointed directly to their offices and placed in service. EUROPEAN COMMISSION, BULGARIA 2005 COMPREHENSIVE MONITORING REPORT at 9 (Oct. 25, 2005). Typically, the SJC appoints these judges based on the recommendation of the court chairperson. At least some direct appointments may be motivated by personal or political considerations, and one respondent alleged that appointments sometimes go even to applicants who tried and failed the competitions. A little over a year ago, the SJC was rocked by criticism after an SJC member's son, who had been appointed a regional court judge without competition, was promoted to a district court judgeship after only a year on the bench. This led to a vigorous response by the Bulgarian Judges Association [hereinafter BJA], which included a highly publicized critical petition signed by 92 judges complaining about the promotion and the related issue of direct appointments. See, e.g., Dachkova, *Judges Putsch Against Appointments by Connections*, SEGA, Dec. 7, 2005, available at <http://www.segabg.com/online/article.asp?issueid=2046&sectionid=16&id=0000101>.

The primary justifications offered for these direct appointments are (i) the belief that this option accommodates the appointment of experienced individuals with law degrees to judgeships, and (ii) the need to fill vacancies in the courts, without waiting for another competition to be held and another group of junior magistrates to be trained and to complete their district court internships. One person commented, however, that the existence of so many vacancies is the result of poor planning by those responsible for managing the judiciary. Part of the problem here may be that the responsibility for strategic planning for the judicial system and its many components has never really been entirely clear since 1991, with some pieces shifting from and to the MOJ and the SJC as a result of JSA amendments, Constitutional Court decisions and, most recently, amendments to the Constitution. Several observers asserted that there is little or no strategic planning going on at all. The principal concern with these appointments, though, is not their possible reflection on management of the judicial system but the fact they can be, and allegedly sometimes are, based on subjective, personal, or political considerations. This concern is compounded by the lack of training, mentoring and supervision these directly-appointed judges receive in their new positions.

It should be noted that, even before national competitions were established for prospective junior judges, several major courts held their own advertised competitions and continue to do so today when direct appointments are needed to fill vacancies. In addition, the National Assembly is reportedly considering a series of amendments to the JSA which, if and when enacted, would make some alterations to the practice of direct appointments. Specifically, under these amendments, when a vacancy arises in the judiciary it would be announced publicly, magistrates would be able to submit their own applications independently, a court chairperson or other person who proposed a candidate would have to compile information on all other candidates from the ranks of the magistracy, and a competition would be conducted for an initial appointment to the judiciary where there is no candidate from within the judiciary. Another amendment would require initial appointees in the judiciary to complete a special qualification course under a training program approved by the SJC. At the time of the assessment team's onsite visit, it was uncertain whether these proposed amendments would become law.<sup>11</sup>

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<sup>11</sup> Ultimately, the JSA was amended to require open competitions for promotions. Court chairpersons no longer have the right to nominate candidates for promotion, and eligible candidates have the right to participate in all competitions.

### 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>
<p>CLE for judges is not mandatory and is difficult to schedule due to heavy caseloads and limited NIJ capacity. On the other hand, the NIJ's activities in this area have grown dramatically over the past two years, courses are provided without charge to judges, and working judges have significant input into the selection of topics. CLE participation is taken into account in the five-year tenure determination and promotion decisions.</p>		

#### Analysis/Background:

Under article 35f(1) of the JSA, responsibility for the “training and improvement of qualification” of both junior and regular magistrates has been assigned to the NIJ. The NIJ is a state-funded entity managed by a board consisting of four representatives from the SJC and three designees of the MOJ, and is a secondary spender of funds budgeted to the SJC. Following initial appointment to the judiciary, magistrates “shall go through a continuing education course according to relevant qualification programs adopted by the [SJC].” *Id.* art. 35g(6) The SJC is supposed to carry out its oversight responsibilities with respect to the NIJ by approving, among other things, its “programs for maintaining and increasing the qualification” of the junior and regular magistracy. *Regulation for the Work of the Supreme Judicial Council and its Administration* art. 7, promulgated in SG No. 54 (June 23, 2004), last amended SG No. 37 (Apr. 29, 2005) [hereinafter *SJC Work Regulation*]. The recent amendments to the Constitution also obligate the MOJ to “take part in the organization of the qualification of the judges, prosecutors and investigators.” See art. 130a.

There is no requirement that judges take CLE courses or other measures to maintain and improve their professional skills and knowledge. On the other hand, when evaluating a judge for irremovability after five years and for promotion in rank or position, one of the factors to be considered is the judge’s “participation in training courses and programs, scientific conferences, etc.” JSA art. 30b(4).7. Further, magistrates and other members of the judiciary are entitled to participate without charge in continuing qualification courses, and their participation shall be taken into account when they are considered for irremovability and promotion. *NIJ Regulation* arts. 43-35. The SJC’s list of 10 benchmarks for evaluation of judges includes the ambiguous “acknowledgments, qualification and educational degrees.” *SJC’s Temporary Rules on the Order of Performance Evaluation of Judges, Prosecutors and Investigators* art. 15, adopted Jan. 26, 2005 [hereinafter *SJC Temporary Evaluation Rules*]. A draft ordinance on evaluations recently submitted by a working group to the SJC, and reportedly under serious consideration by that body, would likewise take into account “participation in training courses and programs, scientific conferences or others” during the appraisal process.

The NIJ’s CLE activities really began in earnest only in 2005. During that year, the NIJ held a total of 65 CLE courses for 1,148 judges, with the average course running about 3 days. In December of that year, the NIJ published a calendar of seminars scheduled for 2006 and offered magistrates the opportunity to sign up for them. This calendar is updated over the course of the year as new developments occur and new programs are scheduled. Most of the seminars take place in Sofia, but several are presented on multiple occasions in different cities over the course of the year. Topics have included both domestic and EU laws and jurisprudence, both of which have heightened importance in the current year. There have been or are pending numerous

amendments to Bulgarian laws, all of its procedural codes and even its Constitution, and these events have raised considerable consternation, as well as interest for CLE therein, among judges and other members of the legal profession. The NIJ has already held courses on the new Criminal Procedure Code, and plans to schedule seminars on the other codes when they are enacted. Judges are also being exposed to commercial law issues, and the NIJ is prepared to provide specialized administrative law training for judges assigned to the lower administrative courts contemplated by pending legislation. Training in EU laws and jurisprudence takes on a special resonance with the likelihood of Bulgaria's accession to the EU next January. Many respondents expressed concern about the limited knowledge judges have of the EU law and their lack of preparedness for accession. The NIJ has published a compact disc on this subject and will send copies to all judges. It has also scheduled seminars on EU issues.

In selecting topics for CLE programs, the NIJ sends questionnaires to the courts, compiles responses, sets priorities and submits its recommendations to its Program Council for comment. It then passes the final proposal to the NIJ Managing Board for approval. The subjects are thus based largely on the expressed needs and wishes of judges working in the courts on a daily basis. In certain cases, foreign donors provide funding for programs on specific topics and, as might be expected, the NIJ is not blind to their preferences. Guest lecturers, both from Bulgaria and from outside the country, provide the CLE instruction, as the six NIJ staff trainers are fully occupied conducting the initial magistrates training.

While the NIJ would like to improve CLE participation by judges, it recognizes that CLE is not mandatory and that if it were, the NIJ does not have the capacity to serve everyone. The typical judge has to deal with a heavy caseload, and must obtain the permission of his/her court chairperson to be absent from work to attend a CLE seminar; some chairpersons are more supportive of CLE than others. The NIJ is not the only source of CLE for judges, as there are programs of varying quality offered by local courts, for-profit providers, and other entities. Nonetheless, the NIJ is the principal organ through which these programs are offered and, while it still has a long way to go, it has made remarkable progress in the past two years.

For 2005, the budget allocated to the NIJ was 1,298,700 leva (US\$ 811,688). See 2005 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT, *promulgated in* SG No. 115 (Dec. 30, 2004). For 2006, the NIJ budget rose to 2,334,000 leva (US\$ 1,458,750). See 2006 STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT, *promulgated in* SG No. 105 (Dec. 29, 2005). The NIJ also receives some foreign donor support. Under the recent amendments to the Constitution, article 130a, the MOJ has greater input into the judicial system draft budget and takes part in the qualification of magistrates, but it is presently unclear what, if any, effect this change will have on the funding or management of the NIJ. EU accession could also impact the availability of both government and foreign funding of this Institute. Ensuring the continued viability and expansion of the NIJ after accession and the departure of non-EU donors is one of the most important legal reform issues facing Bulgaria.

#### **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>
Bulgaria does not maintain records on the ethnicity or religious composition of the judiciary, but recent statistics and interviews demonstrate that the majority of judges are women. However, women are not as well represented in leadership positions at the highest levels of the judicial system.		

## Analysis/Background:

Article 6 of the Constitution states that “[a]ll citizens shall be equal before the law. Abridgement of neither rights nor any privileges shall be permitted on the basis of race, nationality, ethnic identity, sex, origin, religion, education, beliefs, political affiliation, personal and social status, or property status.” In 2003, the National Assembly passed the Protection against Discrimination Act, *promulgated in* SG No 86 (Sep. 30, 2003), *last amended* SG No. 105 (Dec. 29, 2005) (with further amendments pending at April 1, 2006). It contains a general bar on direct or indirect discrimination on the basis of (among other things) gender or ethnicity (see art. 4), requires equal standards of evaluation, promotion and access to training (arts. 14-15), and encourages hiring aimed at balancing workforces by gender and ethnicity (art. 24). In the specific case of the magistracy, performance evaluation must be “conducted in compliance with the principles of the rule of law, equity, transparency, reputation in a legal society and fair professional development.” *SJC Temporary Evaluation Rules* art. 3.

According to the 2001 census, 9.4% of the Bulgarian population identified themselves as ethnic Turks, while another 4.7% called themselves Roma. See National Statistical Institute, *Population at 1/3/01 by Districts and Ethnic Groups*, available at <http://www.nsi.bg/Census/Ethnos.htm> (last visited Apr. 12, 2006). As there are no official statistics regarding the numbers of Turkish and Roma ethnic minorities on the bench, the information obtained is anecdotal. The general view was that there are few minority judges, with those of Turkish descent better represented than Roma, especially in certain regions. In neither case are their shares in the judiciary remotely close to their proportions in the general population. This is especially true of Roma, who suffer both social and economic disadvantages in the Bulgarian society. Many persons believe that poverty, substandard schools, and other impediments deprive Roma children of adequate primary and secondary education, and thus do not properly prepare them for a university education, much less the academic requirements of the judiciary. Moreover, there appear to be no special efforts underway by governmental units or universities to attract and promote young Roma persons for higher education and professional careers. One source did report, however, that there were several Roma students attending a major law school in the country, so there is hope of improved representation among judges in the future.

Gender appears to be a different story entirely, as by all accounts women constitute a majority of the judges in Bulgaria. While official current statistics were not available, respondents from different courts reported that women comprised anywhere from over 50% to 90% of sitting judges in those courts. According to ABA/CEELI’s calculations, about 65% of all judges are women. Looking back to the 2004 JRI, data provided at that time revealed that two-thirds of all judges were women, and that their share was actually higher at the upper tiers of the judicial system. Looking to the future, it is worth noting that 63% of the junior judges in the NIJ initial training class of 2005 were women, that 82% of the current class of junior judges are women, and that there are at least as many women in law schools as there are men.

One area where women do not fare as well as men is in court leadership positions, but there appears to have been some progress in the past two years. Looking again at the 2004 JRI, it was reported that women held roughly 46% of the court chairperson positions at the regional and district court levels, but none of these positions at the court of appeals or SCC/SAC levels. As of January 1, 2006, women held 63 out of 153 court chairperson positions (41%), including four court of appeals chairpersons and nine district courts chairpersons. The present membership of the SJC consists of 18 men and seven women; while female representation on that key body is disproportionately low, it is worth noting that two of the women judges now hold chamber and deputy chairperson positions at the SCC and the SAC, respectively.

## 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: Positive</b>	<b>Trend: ↔</b>
<p>The Constitutional Court, which has the power to determine the ultimate constitutionality of legislation, continues to be highly regarded as an independent, efficient and competent body. While its decisions are not always popular, they are routinely respected and enforced.</p>		

#### Analysis/Background:

The Constitution assigns the power of constitutional review of legislation and official acts to the Constitutional Court, a body of 12 judges selected in equal shares by the National Assembly, the President and a joint general meeting of the judges of the SCC and the SAC. See art. 147. Judges serve for terms of nine years, and may not be reappointed to their positions. *Id.* This lengthy term and the impossibility of reappointment serve to protect the independence of this important organ. Eligibility for membership on the Constitutional Court is limited to “jurists of high professional standing and moral integrity who have practiced law for at least 15 years.” *Id.* It is therefore theoretically possible that none of the judges on the Court would have had prior judicial experience before taking his/her position, though it seems unlikely the SCC and the SAC judges would elect as their representatives persons from outside of the judiciary. In reality, the present composition of the Constitutional Court consists of seven former judges (including former chairpersons of the SCC and the SAC), four former law professors, and one former attorney. During their terms of office, Constitutional Court judges may not serve in certain incompatible roles such as public office holder, political party member, professional practitioner or businessperson. *Id.*

The Constitutional Court is independent from the executive, legislative and judicial branches, and its judges are neither members of the judiciary nor magistrates subject to the authority of the SJC. CONSTITUTIONAL COURT ACT art. 1, *promulgated in* SG No. 67 (June 16, 1991), *last amended* SG 114 (Dec. 30, 2003) [hereinafter CC ACT]. The Court has its own budget, and the compensation of its members is established by formulas linked to salaries of the President of the Republic and the chairperson of the National Assembly. Upon completion of his/her term, a judge may begin receiving full retirement benefits regardless of whether he/she shall have reached retirement age. *Id.* arts. 3, 10.

The Constitutional Court’s principal areas of jurisdiction for this purpose are its authority to provide binding interpretations of the Constitution (which is done in the abstract, as opposed to a concrete fact pattern or dispute) and, when duly petitioned, to determine the constitutionality of any law and other acts of the National Assembly and the President. CONSTITUTION art. 149. The Court’s jurisdiction also lies in competence disputes between various organs of government, consistency of signed but unratified treaties with the Constitution, compliance of domestic laws with binding international laws and treaties, constitutionality of political parties and associations, legitimacy of certain elections, and impeachments of the President or Vice President. *Id.* The Constitutional Court has the authority to decide whether an issue addressed to it is within its competence. CC ACT art. 13.

The Constitutional Court does not act on its own initiative, but instead considers petitions filed with it by at least one-fifth of the members of the National Assembly, the President, the Council of Ministers, the SCC, the SAC or the Prosecutor General. CONSTITUTION art. 150(1). Pursuant to

the recent constitutional amendments, the office of Ombudsman was given constitutional recognition and the occupant was empowered to refer a legislative act of the National Assembly that allegedly violates the rights and freedoms of citizens to the Constitutional Court for review. *Id.* arts. 91a, 150(3). Courts in the regular judiciary do not have the authority to determine that a law or its application to a particular person is unconstitutional. If a case works its way up to the SCC or the SAC, those courts may, if they identify an apparent inconsistency between a law and the Constitution, suspend proceedings and refer the constitutional issue to the Constitutional Court for resolution. *Id.* art. 150(2). If an aggrieved citizen believes that a law or its application in a particular case violates his/her constitutional rights, the citizen's only way to obtain relief is to persuade one of the authorized petitioners to refer the case to the Constitutional Court. It is expected that the new Ombudsman will serve an important role in providing access for citizens to press legitimate constitutional claims, while at the same time screening unmeritorious claims and protecting the Constitutional Court from a deluge of cases.

In both principal areas of its jurisdiction, the Constitutional Court has been active and effective, taking strong positions in 2002-2003 in support of judicial independence and restraint of legislative efforts to increase the MOJ authority over the judiciary. See, e.g., Constitutional Court Decision No. 3 (Apr. 10, 2003). Ironically, these positions may have prompted some of the recent constitutional amendments that returned some administrative and other powers over the judiciary to the MOJ. The Court has also aggressively asserted its power to interpret the Constitution, emphasizing the importance of this role in guiding future actions by the National Assembly and preventing the enactment of unconstitutional legislation. See, e.g., Constitutional Court Decision No. 8 (Sep. 1, 2005).

The Constitutional Court does not have the authority to render pre-enactment advisory opinions on legislation, and may not review a law until it is published in the SG. Only a small percentage of total laws passed are referred to the Court for constitutional review; in recent years, 10-15 such cases are typically considered each year.

As reported in the 2002 and 2004 JRIs, the Constitutional Court has an excellent reputation for independence, efficiency, and competence. While many of its decisions involve highly public and controversial issues and, accordingly, are not always popular, the Court is widely admired and its judgments are respected and enforced.

## 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: Positive</b>	<b>Trend: ↔</b>
<p>The SAC has overall responsibility for review of administrative practice and, by most accounts, is an efficient, modern, and transparent body capable of independent action. Nonetheless, there still remain areas, such as enforcement of monetary judgments against governmental bodies, where improvement is needed in practices and/or procedural laws.</p>		

### Analysis/Background:

Article 120 of the Constitution provides for court review of the legality of acts of administrative bodies, and specifically allows citizens and legal entities to appeal against an administrative act that affects them except as otherwise prohibited by law. The SAC is responsible for “exercising supreme judicial supervision as to the accurate and equal application of the laws in administrative justice.” CONSTITUTION art. 125. In so doing, it rules on “disputes as to the legality of acts of the

Council of Ministers and of the individual government ministers, as well as of other acts specified by law.” *Id.*

There are four principal laws governing administrative practice in Bulgaria. One is the JSA, which contains some basic provisions concerning the jurisdiction, operations and internal procedures of the SAC. *See generally* arts. 91-100. It provides that the SAC “shall be the court of last resort in administrative justice exercising supreme judicial supervision as to the accurate and equal application of the laws.” *Id.* art. 91. The SAC serves as the “cassation instance for the judicial acts of all courts as to the legal conformity of administrative acts,” and as the “sole instance which shall rule on disputes as to the legal conformity of the acts of the Council of Ministers and of the individual ministers, as well as of other acts specified in a statute as appealable only before the [SAC].” *Id.* art. 92. The Court is organized into two chambers, each with several divisions; the objective is to create specialty areas within the administrative field that will both expedite and improve the quality of decision-making. *Id.* art. 93. The SAC sits in three-judge panels when hearing appeals of administrative acts of government officials in specific cases and broader decisions that do not constitute normative acts, and when hearing appeals as cassation instance from decisions of the administrative chambers of district courts. Five-judge panels are used when the SAC hears cases involving the legal conformity of normative acts and when it serves as cassation instance with respect to appeals from decisions of three-judge panels of the SAC. When the SAC renders interpretive judgments concerning contradictory case law or considers whether to refer a matter to the Constitutional Court, decisions are made in a general meeting of the appropriate chamber. *Id.* art. 95. Motions for interpretive judgments may be referred by the SAC chairperson, the Minister of Justice, the Prosecutor General, or the Deputy Prosecutor General who heads the SAC’s prosecution office. *Id.* art. 97.

The second principal law governing administrative practice is the Supreme Administrative Court Act, *promulgated in* SG No. 122 (Dec. 19, 1997), *last amended* SG No. 84 (Sep. 23, 2003) [hereinafter SAC ACT], which broadens the jurisdiction of the SAC in several areas. In addition to the cases mentioned in the JSA, the SAC also hears appeals against acts or decisions of the SJC and the Bulgarian National Bank and applications for repeal of effective court decisions in administrative cases. *Id.* art. 5. The SAC is not allowed, however, to review acts concerning the right of legislative initiative, foreign policy and national defense, as well as certain internal administrative matters. *Id.* art. 7. Grounds for repeal of administrative acts include lack of competence to issue an act, failure to comply with established form, substantial violations of procedural rules, conflict with a material law, and failure to comply with the objective of the law. *Id.* art. 12. The SAC Act provides that the parties to the case may bring new evidence before the Court during the appeal. *Id.* art. 25. Decisions made by five-member panels of the SAC are not subject to further appeal. *Id.* art. 23.

The third law is the Administrative Procedure Act, *promulgated in* SG No. 90 (Nov. 13, 1979), *last amended* SG No. 55 (June 17, 2003) [hereinafter ADMIN. PROC. ACT], directed primarily at individual acts or the refusal to issue such acts. These acts are administrative acts of official state and municipal organs (below the levels of President and Council of Ministers) that create rights and obligations or affect rights and lawful interests of individual citizens and entities. *See* arts. 1, 2. This Act sets forth procedures for the issuance of an administrative act, appeal of an act within the organ that issued it and to the next higher administrative organ or unit, and finally appeal before the court. It is not necessary to exhaust the administrative appeal process before going to court. *Id.* arts. 6-18, 19, 33, 35. Where the administrative act was issued or approved by a Minister, an agency head immediately subordinate to the Council of Ministers, the leadership of a public organization, or a regional governor, the appeal must be made directly to the SAC. In all other cases, jurisdiction belongs to the district court. *Id.* art. 36.<sup>12</sup>

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<sup>12</sup> A new Administrative Procedure Code was pending on April 1, 2006, in draft form that, among other things, would create special lower administrative courts to hear in first instance appeals of certain administrative acts. These new courts would presumably assume jurisdiction over cases now considered by the administrative chambers of the district courts and likely over some matters

The final law affecting practice in this area is the Administrative Violations and Sanctions Act, *promulgated in* SG No. 92 (Nov. 28, 1969), *last amended* SG No. 79 (Oct. 4, 2005) [hereinafter ADMIN. VIOL. & SANC. ACT], which permits persons to appeal certain penal decrees imposed by administrative bodies to the applicable regional court, from which cassation appeal may be taken to the district court. See arts. 59, 63. No further appeal is possible.

The SAC itself continues to be a widely respected institution that is highly regarded for its transparency, efficiency, and use of modern technology. Its judges are generally considered to be competent, hard-working, and knowledgeable. Its administrative staff is helpful and well-organized, and it has a website (<http://www.sac.government.bg>) where documents and decisions are readily available to interested persons. During the socialist era, Bulgarians were not allowed to challenge the acts of the government, and it took some time since 1989 before they became comfortable doing so. Looking at the SAC's statistics, it would appear that they have found the requisite level of comfort. New cases filed with the SAC have more than doubled in the past seven years, rising from 5,890 in 1998 to a record 12,366 in 2005. The SAC heard 16,410 cases last year and decided 12,493. The average judge on the Court decided 192 cases.

The SAC does not maintain records of the percentage of decisions it issues in favor of the private citizen or entity as opposed to the governmental official or unit in individual or general administrative acts. It does, however, keep statistics on the outcome of challenges to normative acts, otherwise known as secondary legislation. In 2005, 92 pieces of secondary legislation were challenged before the SAC and decisions were entered in 91 of these cases. Of the 91, 14 items of secondary legislation were invalidated in whole or in part, a relatively high rate of 15% that suggests the SAC's judges are independent and willing to rule against the government when appropriate.

While the SAC's own performance appears admirable, the overall system of administrative review has its critics. One source described the process as slow and subject to abuse; others felt that the district court administrative chambers were biased in favor of the governmental party in individual acts (such as tax cases), routinely giving the government delays and procedural breaks and upholding its determination on the merits. Another respondent alleged that it is difficult for a victim of a human rights violation to obtain damages under the Act on the Liability Incurred by the State for Damages Inflicted on Citizens, *promulgated in* SG No. 60 (Aug. 5, 1988), *last amended* SG No. 105 (Dec. 29, 2005) [hereinafter STATE RESPONSIBILITY ACT], saying that judges often obstruct efforts to obtain relevant documents and witnesses. Several informants commented on the difficulties they have experienced in enforcing judgments, especially monetary judgments, against governmental defendants. The Civil Procedure Code, *promulgated in* TRANSACTIONS OF THE PRESIDUM OF THE NATIONAL ASSEMBLY No. 12 (Feb. 8, 1952), *last amended* SG No. 105 (Dec. 29, 2005) [hereinafter CIV. PROC. CODE], provides in effect that the normal enforcement measures in monetary claims are not available for use against governmental debtors, and the creditor is limited to presenting the execution writ to the financial department of the institution and requesting payment. See art. 399. Where, as is typically the case, funds are not budgeted for that purpose, the creditor must await the next year's budget and hope his/her claim is included and paid. The adverse effect of article 399 on the citizen's right to a fair trial was successfully challenged as a violation of the European Convention on Human Rights, in *Mancheva v. Bulgaria*, 39609/98 [2004] ECHR 101 (Sep. 30, 2004), but it remains part of the Civ. Proc. Code and continues to be an obstacle to recovery. Judicial review of administrative actions loses some of its value if a successful private party is delayed or otherwise frustrated in enforcing a monetary judgment in his/her favor.

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now heard by three-judge panels of the SAC. If these changes are enacted, it is not expected that these lower administrative courts will be operational until 2007, and even that schedule depends on the resolution of funding issues.

## 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 judiciary has full authority and responsibility for cases involving civil rights and freedoms, and there are no extraordinary tribunals that could undermine the judiciary's jurisdiction.		

### Analysis/Background:

The Constitution sets forth numerous civil rights and freedoms of Bulgarian citizens, including the right of “[a]nyone charged with a criminal offense to be brought before an authority exercising judicial power within the time limit established by statute.” See art. 31. It also states that the “judiciary shall protect the rights and legitimate interests of citizens, legal persons and the State.” *Id.* art. 117(1); see also JSA art. 2(1). The judiciary in Bulgaria has jurisdiction of all civil, criminal and administrative cases, the creation of extraordinary courts is impermissible, and citizens and legal entities are entitled to judicial remedies upon violation of their rights and freedoms. JSA arts. 3(4), 4(1), 7; see also CRIMINAL PROCEDURE CODE arts. 1, 6, *promulgated in* SG No. 86 (Oct. 28, 2005), *effective* Apr. 29, 2006 [hereinafter CRIM. PROC. CODE].

The State Responsibility Act specifically permits citizens to file suit and obtain relief from governmental violations of their civil rights. See arts. 1-2. In addition to, but not in lieu of, their remedies in Bulgarian courts, citizens may also bring suit before the European Court of Human Rights for alleged violations of their rights under the European Convention on Human Rights, which became effective in Bulgaria on September 7, 1992.

While criminal pre-trial investigations are under the control of the prosecutor and investigator pursuant to article 193 of the Crim. Proc. Code, interception of correspondence and searches and seizures may be undertaken only with authorization of the trial judge, with certain narrow exceptions. *Id.* arts. 161, 165.

Military courts have jurisdiction in certain circumstances to try civilian as well as military personnel. These include civilian staff of military and security organizations while discharging their duties, and civilians who participate in crimes with military personnel. *Id.* art. 396. Military court judges are, however, members of the judiciary and subject to the same standards as other judges. There is also a military court of appeals to hear intermediate appeals, and further appeals in cassation may be made to the SCC. *Id.* art. 397. All of these proceedings are thus under the judicial system.

None of the assessment team’s interviews revealed any sign that the Bulgarian judiciary lacks jurisdiction over cases where a citizen’s civil rights and freedoms are at stake.

## Factor 8: System of Appellate Review

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>Lower court decisions may be reversed only through appeals and cassations within the judicial system. The review process nonetheless suffers from the fact three instances are typically available and often utilized for resolution of a dispute. This process is perceived to be too time-consuming and a waste of judicial resources, and has prompted calls for reform.</p>		

### Analysis/Background:

As previously noted, general jurisdiction decisions of the regional court in first instance may be appealed first to the district court in second instance, and thereafter to the SCC in cassation. Similar decisions of the district court in first instance are appealable to the court of appeals in second instance and thereafter to the SCC for cassation. Administrative cases are tried in first instance in the district court's administrative chamber, from which appeal lies to a three-judge panel in the SAC, and thereafter in cassation to a five-judge panel there. Some administrative cases, depending on the nature of the case and the identity of the governmental defendant, may be heard in only one instance or in a first instance plus a cassation appeal. See JSA arts. 39, 52, 57, 66, 72, 80-81, 91-92; CRIM. PROC. CODE arts. 258, 313, 346; CIV. PROC. CODE arts. 79, 196, 218a; SAC ACT arts. 5-7, 22-23; ADMIN. PROC. ACT art. 33; ADMIN. VIOL. & SANC. ACT art. 63. In general, however, litigation in Bulgaria takes place in three possible stages.

In criminal cases, second instance appeals may be brought not only by a convicted defendant but also by the prosecutor or a private complainant who is dissatisfied with the first instance outcome. CRIM. PROC. CODE arts. 318, 335-337. New evidence and witnesses may be introduced at the intermediate appeal level if the court believes they will be important for a correct disposition of the case. *Id.* art. 327. In civil cases, either party may file an appeal and the case is heard on a *de novo* basis; new evidence may be introduced only if it is newly-discovered. CIV. PROC. CODE arts. 196, 205.<sup>13</sup> Appeals for cassation consider only whether there were errors of law, procedural irregularities, lack of jurisdiction, unfair punishment or similar problems with the proceedings below, and do not reopen the merits of the case or consider new evidence. See, *e.g.*, *id.* arts. 218a-b; CRIM. PROC. CODE art. 348.

The assessment team received no information to suggest that judicial decisions in Bulgaria can be reversed other than through the appellate process within the judiciary. There is no extrajudicial body that reviews court decisions, and there was no evidence that members of the executive or legislative branches intervened to cause a higher court to overturn a lower court's judgments. As will be discussed under Factor 20 below, there are concerns among various persons interviewed that outside influences may affect judicial decision-making generally. None of these concerns relates directly to the system or process of appellate review, however, and thus they do not affect the present analysis.

As an important aside, however, the appellate system did provoke a number of comments and suggestions, some of which are apparently under consideration within the SJC and the National Assembly. First, there was general criticism of the three-instance arrangement presently in place. Several respondents favored eliminating one of these instances, perhaps by consolidating the regional and district courts into single first instance courts and expanding the second instance jurisdiction of the courts of appeals. It was noted that the courts of appeals do not presently have

<sup>13</sup> Amendments to the Civ. Proc. Code now under discussion would preclude the introduction of new evidence on appeal without the approval of the court pursuant to specified standards.

a heavy workload (averaging 9.5 cases heard and 7.8 cases decided per judge per month in 2005), and that they therefore have capacity to take on more cases. In this connection, the *de novo* aspect of the first appeal seems especially unnecessary and time-consuming, and the opportunity for introduction of new evidence on appeal seems unwarranted and encourages holding back key evidence in the lower court for tactical surprise at the next level.

Second, and related to this point, was the suggestion expressed by several persons that the SCC, especially, and also the SAC should have the power to limit the cases they hear to those that are most significant and others that need to be decided to resolve contradictory interpretations and unify the country’s jurisprudence. Reportedly, there are amendments to the Civ. Proc. Code under consideration that would pick up this thought for civil cases only, placing responsibility for the determination on the intermediate appellate court and making that determination appealable to the SCC.

The third major concern with the present appellate system was the length of time required for a case to progress all the way from initial filing to ultimate resolution on appeal. This delay was uniformly attributed to the SCC, especially its civil chambers, which by some accounts take two or three years simply to hear a case and additional time to decide it. Even then, according to some persons, the case is often remanded to the lower court based on some procedural irregularity rather than decided on the merits. The long period for resolutions of cases can cause special hardship in labor cases, where a discharged employee may be without adequate replacement income. The caseload of SCC judges is especially heavy, as the average member of the Court completed 204 cases in 2005. CENTRE FOR LIBERAL STRATEGIES, THE JUDICIARY: INDEPENDENT AND ACCOUNTABLE. INDICATORS ON THE EFFICIENCY OF THE BULGARIAN JUDICIAL SYSTEM (Preliminary Report of the Project “Strengthening of the Policy Making Capacity of the Bulgarian Judicial System”), at 18 (2006) [hereinafter CLS PRELIMINARY STUDY].

Information provided by the SJC reveals that between 10% and 14% of appeals at all levels result in reversals, a sufficiently high percentage that indicates appellate review is meaningful in Bulgaria.

### **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: Neutral</b>	<b>Trend: ↑</b>
<p>Judges do have subpoena, contempt, and enforcement powers, but penalties are weak and judges seem reluctant to use them. Summonses are subject to highly formalized requirements and are too easily invalidated, while enforcement of judgments is often slow, cumbersome and excessively debtor-friendly. A recent law creating private enforcement agents and proposals for further reforms in the Civil Procedure Code may lead to improvements. The executive branch, through the MOJ and the MOI, provides some assistance in these areas.</p>		

#### Analysis/Background:

The presiding judge of the court is responsible for controlling order in the courtroom, and his/her directives are binding on everyone present. The judge has the power to penalize those who disturb order, in accordance with applicable law. JSA art. 103.

The Civ. Proc. Code contains procedures, forms and guidelines for summoning parties and witnesses (see arts. 41-52); charges costs for delays or belated presentation of evidence to the

responsible party (see art. 65); authorizes the court to fine a witness who fails to appear or declines to testify for no valid reason up to 100 leva (US\$ 63) (see arts. 71-72); penalizes third parties who fail to produce documents, officials who improperly serve summonses and persons who disrupt court proceedings up to 50 leva (US\$ 31) (see arts. 74-75); contains provisions for enforcement of final judgments (see arts. 219-224); establishes provisions for executable judgments, issuance of writs of execution and disposition of challenges (see arts. 237-255); authorizes collateral security measures even while the case is still pending (see arts. 308-322); and contains a wide range of post-judgment collection methods (subject to numerous defenses) available to the public or private enforcement agent seeking recovery (see arts. 323-464).

In civil proceedings, the major concerns under this Factor 9 are (i) delays due to the failure of parties and witnesses to appear at hearings because of minor technical defects in the form of summons or difficulties in delivering it, and (ii) the slow and difficult process of enforcing judgments. With respect to the summoning problems, the procedure is highly formalized, and irregularities often lead to rescheduling of hearings or abrogation of decisions because the summons was void and the party was deprived of a right to a defense. This has happened where, for example, the summons form was not properly filled in or not signed by the summoning officer, the summoning officer failed to specify the manner of service, the summons was served fewer than seven days before the hearing, or the summons was served to the attorney who had drafted the claim but who did not hold a power of attorney to represent the plaintiff.

Concerning the enforcement problem, public bailiffs charged with enforcing judgments are frustrated by poor working conditions; a Civ. Proc. Code that allows debtors to challenge and delay collection efforts; provisions like article 399 that restrict collection of monetary judgments against governmental entities (see Factor 6 above); special difficulties enforcing non-monetary judgments; a generally pro-debtor culture that minimizes the import of a financial obligation and views debtors more sympathetically than creditors; and the lack of any law allowing creditors to force non-business debtors into bankruptcy. One source estimated that only 10% of all monetary judgments are collected in full, at least within a year after collection efforts commence.

Bulgaria recently passed a Private Enforcement Agents Act, *promulgated in* SG No. 43 (May 20, 2005), which contemplates the creation of a corps of private individuals [hereinafter PEAs] who would operate independently out of their own offices and provide enforcement services on a fee basis. The PEAs must be lawyers, abide by a code of ethics, charge fees according to a tariff approved by the Council of Ministers, and operate under the general supervision of the MOJ. The Act reflects an effort to privatize and professionalize the old public bailiff system and inject a profit incentive into the collection process. The number of PEAs is set in proportion to the general population, and vacancies are to be filled by a competition. Existing public bailiffs would be entitled to become PEAs without undergoing a competition, and 94 of the roughly 260 public bailiffs have decided to make the move. It is expected that PEAs will eventually assume the bulk of the enforcement caseload, while new public bailiffs will be hired only to meet special needs and to provide at least one public bailiff per regional court. The PEA system is not yet operational, so there is no way to estimate whether its objectives will be realized. Certainly, without accompanying changes to the Civ. Proc. Code that would expedite collection efforts and reduce opportunities for debtor delays and challenges, it would be difficult for the PEA program alone to make meaningful improvements in enforcement outcomes.

In the criminal law area, subpoena, contempt, and enforcement provisions and powers are included in the new Crim. Proc. Code. These include provisions on summonses (see arts. 178-182, 256-257); the functions of the presiding judge and his/her power to expel from the courtroom persons who disturb order (see arts. 266-267); requirements for the presence of the parties and attorneys at the hearing, with certain exceptions (see arts. 269, 271); provisions for appeal and cassation and possible grounds for reversal (see arts. 313-355); and provisions for executing judgments in criminal cases (see arts. 412-418). See also IMPLEMENTATION OF PENAL SANCTIONS ACT, *promulgated in* SG No. 30 (Apr. 15, 1969), *last amended* SG No. 105 (Dec. 29, 2005). While criminal cases suffer comparable difficulties and delays with respect to summons deliveries

and attorney continuances, enforcement of judgments is understandably less of an issue in this context, especially when the defendant is already in custody.

The judiciary does receive assistance from the executive branch, specifically the MOJ and the MOI, in carrying out these subpoena, contempt and enforcement responsibilities. For example, the JSA assigns the MOJ responsibility for providing judicial police who, among other tasks, maintain order, provide security, assist with service of summons and execution against property, and secure the appearance of persons by compulsory process where so warranted by a judicial authority. See art. 36e. Also, the MOJ's security directorate assists the judicial branch on request in serving summonses to individuals, identifying addresses, and forcibly bringing witnesses to hearings. *Regulation No. 1/03 on the Structure, Organization and Operations of the Security of the Bodies of the Judiciary* arts. 21, 23, promulgated in SG No. 11 (Feb. 5, 2003), last amended SG No. 13 (Feb. 10, 2006); see also *Structural Regulation of the Ministry of Justice* art. 30, promulgated in SG No. 83 (Aug. 30, 2002), last amended SG No. 84 (Oct. 21, 2005) [hereinafter *MOJ Structural Regulation*].

The basic legal framework that would provide judges with at least some powers of contempt, subpoena and enforcement appears to be in place, but these provisions do not seem to work very well. It would appear that the penalties for violations are too mild to serve as a deterrent, and the provisions for enforcement are too cumbersome and debtor-friendly. Efforts are now underway or being considered to address some of these concerns.<sup>14</sup> The big problem is that judges have historically not been very assertive in exercising the powers already given to them, and it is uncertain whether they would be any more forceful if penalties were greater and procedures were more streamlined.

### 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>
<p>Despite a recent constitutional amendment giving the MOJ authority to propose a draft budget for review by the SJC, it appears the SJC still has responsibility over, and certainly influence in, the preparation, implementation, and accounting of the budget of the judicial system. Its budget requests in recent years have been reduced significantly by the National Assembly, however, and funding is not adequate for the needs of the system.</p>		

#### Analysis/Background:

Article 117(3) of the Constitution provides that “[t]he judiciary shall have an independent budget.” Pursuant to the recent amendments to this document, the MOJ now has the responsibility to

<sup>14</sup> There are, reportedly, amendments under consideration for the Civ. Proc. Code that would give the judge greater control over the case and take it away from the attorneys, improve summoning procedures and powers, add an obligation for the judge to encourage settlement, give the judge more powers to restrict continuances and grant default judgments, obligate judgment debtors to disclose their assets (rather than requiring the creditor and bailiff to discover them or launch mass collection efforts), and provide other changes to accelerate and improve civil litigation.

“propose the judicial system draft budget and submit it for a review to the [SJC].” *Id.* art. 130a.1. This change reportedly reflects some unhappiness within the National Assembly and elsewhere regarding the SJC’s budgeting efforts and perhaps the size of its requests, combined with the fact that the Constitutional Court has repeatedly struck down legislation that would have placed more judicial budgeting authority within the executive branch. See, e.g., Decision No. 18 of Dec. 16, 1993, SG No. 19 (Mar. 9, 1993); Decision No. 4 of Oct. 7, 2004, SG No. 93 (Oct. 19, 2004). Whether and to what extent this amendment will actually affect the development and content of the judiciary budget remains to be seen; much will depend on its interpretation, practical application and implementing legislation.<sup>15</sup> The wording of new article 130a.1 would seem to leave room for the SJC to do its own budget planning and modify the MOJ’s draft as it sees fit during its review.

There have been reports of unhappiness within the EU hierarchy over this perceived infringement on judicial independence, which, if it leads to an adverse effect on Bulgaria’s accession to the EU, could cause the National Assembly to rethink this amendment. On the other hand, numerous persons interviewed were critical of the management, budgeting, and administrative effectiveness of the SJC. It is possible that greater involvement by the MOJ, with its experienced and professional staff and other resources, could actually benefit the judicial system, provided the views and needs of the judiciary are still reflected in the ultimate results.

The JSA provides for the SJC to submit the draft judiciary budget to the Council of Ministers and control its implementation. See art. 27(1).8. This arrangement will presumably continue under the new Constitutional scheme. The Act sets forth the general budgeting procedures, including a requirement that the judiciary budget be a self-contained part of the state budget with the SJC as primary spending unit and the courts and other judicial authorities as second-level spending units. *Id.* art. 196. Once the judicial system budget is ready to go, the Constitution contemplates that the Council of Ministers draft and present the entire state budget in bill format to the National Assembly (see art. 87(2)), that the National Assembly adopt the state budget and report on its implementation (see art. 84(2)), and that the Council of Ministers manage the implementation of the state budget (see art. 106).

The SJC Work Regulation establishes a permanent Budget and Finances Commission composed of SJC members and assigns it various functions. See art. 18. The internal rules for preparation and implementation (see arts. 8-12), the role of an administrative unit called the Finances and Budget Directorate (see art. 72), and the audit of the budget by an Internal Financial Control Department within the SJC (see art. 76) are also spelled out in the SJC Work Regulation.

As shown in the table below, in recent years the judicial budget has grown in line with the increases in the overall state budget, representing 2.2-2.3% of the total. According to the CLS Preliminary Study, this percentage is roughly comparable to that of most other European countries. A portion of the judiciary’s budget consists of various court fees paid for judicial services, an amounted forecast to be 48,000,000 leva (US\$ 3,000,000) in 2006. The SJC’s budget requests have been slashed dramatically by the National Assembly in arriving at the official budget, cutting the judicial system’s request by 30% in 2004 and 2005 and by 42% in 2006. The final 2006 judiciary budget of 273,500,000 leva corresponds to US\$ 170,937,500.

**JUDICIAL SYSTEM BUDGET (in thousands)**

	SJC Total Request		Actual Jud. Budget		Total State Budget		Jud. Budget as %
	Leva	US\$	Leva	US\$	Leva	US\$	
<b>2004</b>	292,158.9	182,599.3	205,222.0	128,263.8	9,289,533.0	5,805,958.1	2.2

<sup>15</sup> The JSA was amended to require the MOJ to prepare the draft judicial budget and submit it to the SJC for discussion and approval prior to its introduction into Parliament.

<b>2005</b>	328,564.5	205,352.8	230,105.3	143,815.8	10,467,241.3	6,542,025.8	2.2
<b>2006</b>	471,900.0	294,937.5	273,500.0	170,937.5	11,901,110.7	7,438,194.2	2.3

Source: SJC Administration

Within the 2006 judicial budget, funds were allocated as follows (amounts shown in thousands):

	<b>Leva</b>	<b>US\$</b>
<b>Supreme Administrative Court</b>	8,939	5,587
<b>Supreme Court of Cassation</b>	11,220	7,013
<b>Prosecutor's Offices</b>	58,388	36,493
<b>National Investigation Service</b>	7,082	4,426
<b>National Institute of Justice</b>	2,334	1,459
<b>Supreme Judicial Council</b>	8,010	5,006
<b>Investigative Offices</b>	50,712	31,695
<b>Lower Courts</b>	126,215	78,884
<b>Contingencies</b>	600	375
<b>TOTAL:</b>	<b>273,500</b>	<b>170,938</b>

Source: 2006 STATE BUDGET OF THE REPUBLIC OF BULGARIA Act art. 2, promulgated in SG No. 105 (Dec. 29, 2005).

Several respondents stated that the judiciary budget is inadequate, especially with respect to funds for capital expenditures to construct and renovate court facilities, and that resources are inequitably distributed within the judicial system.

## 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: Positive</b>	<b>Trend: ↑</b>
Judicial salaries and benefits have improved considerably in recent years, and are now generally considered adequate to attract and retain qualified judges and meet the reasonable needs of them and their families.		

### Analysis/Background:

Pursuant to article 27(1).5 of the JSA, it is the responsibility of the SJC to “fix the remuneration of the judges, prosecutors and investigators.” Specifically, the basic monthly salaries of the chairpersons of the SCC and the SAC, the Prosecutor General, and the Director of the National Investigation Service shall be 90% of the salary of the Constitutional Court chairperson. JSA art. 139(1). The latter’s salary is the arithmetic mean between the salary of the President of the Republic and the chairperson of the National Assembly; other Constitutional Court judges receive 90% of their chairperson’s compensation. CC ACT art. 10.

The basic monthly salary of the lowest position of magistrate will be set at double the average monthly salary of persons employed in the public sector. JSA art. 139(2). According to the National Institute for Statistics, that amount as of December 2005 was 366 leva (US\$ 229), making the salary of a newly appointed junior judge 732 leva (US\$ 458) per month. The salaries of the remaining members of the judiciary are to be fixed by the SJC. *Id.* art. 139(3). The SAC

has ruled that the SJC is free to determine these remaining salaries at its discretion, and this determination is not subject to judicial review. SAC Decision No. 5341 (June 9, 2005).

The assessment team was unable to obtain, in time for publication of this report, a copy of the SJC's table showing monthly salaries of all judges by rank and position. It would appear reasonable to presume, however, that pay levels increase steadily and substantially from the junior judge base as one advances through the profession.

In addition to their regular salaries, judges also receive an annual robe or other clothing allowance equivalent to two average monthly salaries of persons employed in the public sector (an allowance currently equaling 732 leva or US\$ 458), special pay for service during holidays or vacation periods, free housing or an allowance in lieu thereof, social, health and accident insurance, a lump sum payment on retirement or other removal from office (except for a criminal conviction, dereliction of duty or similar wrongdoing), compensation upon reinstatement for wrongful dismissal, and travel and moving expenses when appointed to a new position requiring relocation. JSA arts. 139(4), 139a-f.

By all accounts, judicial compensation has improved considerably in recent years, as only a few years ago salaries were considered very low, judges were held in low esteem, and the profession was unappealing to law graduates. Many judges reportedly became discouraged and resigned from their positions, becoming attorneys instead. Now, however, salaries are variously described as "decent, even high," "quite adequate relative to the budget and have been increased substantially in recent years," "substantially increased recently . . . and so much better," "absolutely adequate . . . big salaries," "better pay," "a steady improvement in . . . remuneration," etc., and as a result "now the judiciary is attractive to young people." Compensation continues to be well below that of the top ranks of the attorneys' profession, but the stability, security and increasing prestige of the judiciary offer what many people consider to be offsetting advantages.

The only complaints raised about judges' salaries concerned the lack of distinctions between judges in the same ranks and positions based on productivity or other performance indicators. One person stated that, although the salary scale is expressed as a range at each level, every judge at that level in fact receives the maximum end of the range. Similarly, another respondent said that remuneration should be commensurate with workload, observing that there is no difference in the pay received by a judge deciding 49 cases per month in one court and another judge of the same rank and position completing seven cases per month. That person's opinion was that there should be a more objective approach to compensation. On the other hand, another interviewee mentioned that there has been a proposal to distinguish among judges of the same rank but that it is difficult to agree on the appropriate criteria to apply.

While the improvements in judicial pay are noteworthy and encouraging, it is important that ongoing attention be given to this important component of an effective judicial system. The SJC, the BJA and other interested organizations need to be sure that salaries are not allowed to stagnate and that they instead continue to be sufficient to attract the best candidates to the profession.

## 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>Conditions in court buildings vary throughout the country; many are well-located and reasonably impressive while others are in need of renovation, expansion, or replacement. A significant problem exists, especially in Sofia, with inadequate numbers of courtrooms and judges' offices, contributing to case scheduling difficulties, delays, and poor working environments.</p>		

### Analysis/Background:

The responsibility for construction, renovation and maintenance of court buildings is somewhat blurred in Bulgaria. There is nothing in the Constitution or the JSA that explicitly assigns this task to the SJC, although it could be implied in the independence of the judiciary and the stand-alone nature of its budget. CONSTITUTION art. 117. The JSA provides for the MOJ to establish a structural unit to interact with the SJC and judicial authorities in, among others, the area of judicial system buildings. See art. 35(1).6. Efforts by the National Assembly to broaden the MOJ's authority in this and other categories of judicial administration have consistently been rejected by the Constitutional Court as impinging on judicial independence. See, e.g., Decision No. 4 (Oct. 7, 2004), SG No. 93 (Oct. 19, 2004); Decision No. 11 (Nov. 14, 2002), SG No. 110 (Nov. 22, 2002). The SJC has, accordingly, established within its body an Investment Policy Commission, which is assigned the job of planning, budgeting and organizing matters pertaining to judicial buildings, and an administrative force called the Investment Policy and Judicial Buildings Directorate to support and carry out these projects. *SJC Work Regulation* arts. 13(2).10, 25a, 70.3a, 73a. The SJC's assumption and execution of these responsibilities was upheld in SAC Decision No. 10507 of Nov. 28, 2005. More recently, however, the National Assembly apparently decided to try to bypass the Constitutional Court's restraints by amending the Constitution itself to provide expressly that the MOJ shall "manage the assets of the judicial system." CONSTITUTION art. 130a.2. It is still possible, of course, that the Constitutional Court will interpret this amendment narrowly to preserve the ultimate SJC authority in the judicial infrastructure area in keeping with the independence of the judiciary, or will determine that this sort of change is ineffective unless adopted by a Grand National Assembly. For now, though, it appears that the MOJ will be taking charge of court facilities.<sup>16</sup>

The murky and shifting lines of authority in this area have not contributed to clear and consistent standards or adequate outcomes for judicial buildings in the Republic. The Palace of Justice in Sofia, which houses the SCC, the Sofia Court of Appeals, the Sofia City and District Courts and the Prosecutor General, is (due in part to a recent and controversial renovation) an attractive, prominently located, and impressive structure with spacious corridors and modest but dignified courtrooms. Its interior layout is confusing, however, and signage is inadequate and unhelpful, especially to parties and other infrequent visitors. More troubling, the number of courtrooms and offices available to the judges on these courts is woefully inadequate. The Sofia City Court, for example, has 130 judges (the equivalent of more than 40 three-judge panels) but only 10 courtrooms, aggravating case delays due to unavailability of hearing venues. It may take several months to schedule a courtroom for a given case, and if there is a continuance or a need for a subsequent session in the case it may take several more months to find a room. Judges' offices are also substandard, as there are three or four judges (and up to five junior judges) in each office, with understandably unpleasant and unproductive working environments. There does not

<sup>16</sup> The JSA was amended to specifically transfer the management of court buildings and properties to the MOJ.

appear to be any concrete plan or funding in place to address the space needs of this Court. The other courts located in the Palace of Justice are also crowded; the Sofia District Court reportedly has only one courtroom for 26 judges (eight-plus panels). Even at the SCC level, there are typically two judges in each office.

Conditions are even worse in the Sofia Regional Court, the country’s largest and busiest, whose building is not especially attractive, conveniently located or easy to find. Its narrow corridors and stairways are congested, most courtrooms are extremely small and lack space for significant public attendance, there are four to five judges per office, and the attorneys’ room for reviewing case files is unavailable due to renovation. The crowded offices prompt many judges to try to work at home, which means not only that judges are unavailable in the court building but that case files are sometimes with the judges and unavailable for review by prosecutors and attorneys. While this Court has been given a new building, it is under a major renovation which has been stalled and may not be ready for occupancy for several years.

While the assessment team was, of course, unable to visit all or even a significant sampling of court buildings in the country, it appeared that conditions outside of Sofia were somewhat better. Buildings appeared to be less congested and adequately maintained. There was still a shortage of facilities, however, as one regional court had 15 courtrooms, some very small, for over 40 judges, while another had three courtrooms for 10 judges. A district court had enough judges for almost six panels but only two available courtrooms. Offices were shared by at least two judges in these court buildings, and there did not appear to be separate rooms set aside for attorneys to review case records.

According to one source, 140 judicial buildings have been, or are scheduled to be, renovated over the period 2004-2006. It is unclear, however, how extensive and costly these renovations were and will be. Certainly, the present space problems will not be alleviated without significant expansions, conversions, and new construction.

Improvement in this factor will require establishing and implementing reasonable and consistent occupancy standards (desired ratios of judges per courtroom and per office), planning for long-term growth and needs, budget support from the National Assembly, and careful monitoring of project expenditures and results. In addition, alternatives to reducing case backlogs besides adding judges should continue to be explored (see discussion under Factor 27 below).

**Factor 13: Judicial Security**

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>There is some security presence at court building entrances and outside certain judges’ office areas, and physical violence does not appear to be an immediate concern, but additional resources should be devoted to security to minimize the risk of attacks.</p>		

**Analysis/Background:**

The MOJ, acting through a specialized security unit, is responsible for providing security for all judicial system buildings; for physically protecting as necessary magistrates and witnesses; for maintaining order in court facilities; for assisting judicial authorities in both service of summonses and execution of judgments against property; for securing the appearance of persons by compulsory process where warranted by a judicial authority; and for escorting criminal defendants

to court proceedings. See JSA art. 36e; see also *MOJ Structural Regulation* art. 30 and Appendix thereto (providing for 1,155 persons in this security unit). According to the MOJ, its budget for this unit was 16,227,911 leva (US\$ 10,142,438) in 2005 and is 20,026,863 leva (US\$ 12,516,789) in the current year. The MOJ says it has responsibility for 98 court buildings, and assigns an average of four security guards to each building. The other members of the unit are handling the remaining functions described above. A total of 14 court buildings have a combined 19 metal detectors. It is unclear whether guards in the other 84 courthouses have hand-held “wands” or use other forms of search and detection procedures to inspect persons and bags entering the building.

There is definitely a degree of security in the Bulgarian courthouses, but there is room for improvement. All judicial buildings visited by the assessment team had court police positioned at entrances, and persons entering had to pass through a metal detector and provide identification. Briefcases, bags and similar items did not go through the metal detector, but were placed on a table for inspection by a guard. In most cases, these items were duly, if not thoroughly, searched, but on a couple of occasions (when there was a line of persons waiting to enter) the inspection was cursory or nonexistent. It would have been useful, especially at busy times, to have scanners with conveyor belts for inspection of carried bags. Most buildings had separate guarded entrances for judges, attorneys and other official court personnel, as well as their guests, who were allowed to pass without inspection upon showing identification. Once inside the building, there was typically little visible security in the hallways or in/outside the courtrooms. In the Palace of Justice, there was a guard at each entrance leading to the building wings housing the offices of judges, prosecutors and key administrators. In other courthouses visited by the team, there might be a similar guard post controlling access to office areas; yet in different buildings, anyone able to get through the entrance could walk into a judge’s office without passing through further security.

Several persons noted that, until a few years ago, it was fairly common for court facilities to receive bomb threats as often as once per month, necessitating evacuation of the building and bringing a halt to hearings in progress. The prevailing assumption was that most if not all threats were specifically intended to force postponement of certain cases. With the entrance security now in place, threats now prompt searches but not evacuations, and the number of threats has declined.

Most magistrates felt safe in the court buildings and were not worried about possible attacks. One person commented that the guard post outside a wing of judges’ offices was really intended to prevent obstruction of work due to losing parties’ continuing to plead their cases. That person said that there have been some threats of physical harm against judges, but they have involved emotional reactions by disturbed parties who lost their cases. Another individual commented that the court police take their orders from the MOJ and not from the court chairperson, whose wishes are typically granted as a matter of good will but not pursuant to direct authority. Sometimes a judge would like to have a guard stationed outside his/her courtroom while it is in session, but the police reportedly see their job as largely limited to securing the building entrance and defendants in custody.

As is true in most countries, it appears that security is sufficient unless and until there is a serious breach by a determined assailant, after which it will be obvious that deficiencies exist and need to be addressed. It would be far preferable to identify the weaknesses now and devote the necessary resources to minimizing the risk of attack rather than to wait until something tragic happens.

## 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>
<p>Once judges complete five years of service (including their time, if any, as junior judges), they are evaluated and a determination is made by the SJC as to whether they should become “irremovable.” If they pass this stage, they are assured of tenure until retirement at the age of 65, absent specified cause for early termination.</p>		

#### Analysis/Background:

Article 129 of the Constitution provides in effect that, upon completion of five years of service as a judge, he/she becomes “irremovable” by a decision of the SJC. The judge may nonetheless be removed upon reaching the retirement age of 65, resignation, conviction and sentence for an intentional crime, continuous inability to perform his/her duties for more than a year, or “grave breach or systematic dereliction of official duties as well as actions damaging the prestige of the judiciary.” The five-year tenure requirement represents an increase from the three-year period in effect until 2003, a change which was obviously intended to provide a greater opportunity for consideration of the judge’s overall qualifications and maturation.

The five-year irremovability period includes service time as a junior judge. JSA art. 129. The procedure for the tenure determination calls for the judge’s administrative manager, the court chairperson, to submit a proposal for performance appraisal; alternatively, the interested judge may also submit a proposal. *Id.* The proposal must be made at least three months before the completion of the five year term, submitted in writing, and include: professional information about the judge following the SJC’s format; the opinion of the court chairperson; information about the number, type, complexity and seriousness of the judge’s cases; compliance with statutory and non-binding time periods; number of judgments upheld and repealed, and the grounds for the latter; awards and sanctions during the five-year period; an assessment of the judge’s moral integrity and professional capacity in accordance with the rules of professional ethics; and participation in training courses and programs, scientific conferences, etc. See arts. 30b(2)-(4). The SJC’s Proposals and Evaluations Commission [hereinafter P&EC] carries out the performance appraisal and submits it to the full SJC. If the appraisal is negative, the evaluated judge is entitled to file his/her objections thereto and has the opportunity to be heard at the SJC meeting considering the issue to present his/her case for tenure. The SJC then decides by majority vote by secret ballot within seven days of submission. *Id.* arts. 30b(5)-(8). Interested parties may appeal an adverse SJC decision to the SAC within 14 days of notification. *Id.* art. 34. Judges denied tenure are removed from office by the SJC. *SJC’s Temporary Evaluation Rules* art. 13(4).

As will be noted under Factor 15 below, the specific standards and format for evaluations are in the process of evolution, and there are some concerns about the objectivity, uniformity of application and areas of emphasis of the present model. It is expected that more concrete and measurable criteria will soon be approved.

According to one source, in practice a judge who continues on the bench for five years can be almost assured of earning tenure. In 2005, it was reported, only five or six magistrates were rejected when considered by the SJC for irremovability. This individual hoped that with approval and publication of the new criteria, tenure evaluation will be more stringent and meaningful.

As a separate matter, discussed more fully under Factor 20 below, one respondent objected to the fact that prosecutors and investigating magistrates on the P&EC and the SJC participate in the evaluation and tenure determination for judges. In the view of that person, prosecutors and investigators represent parties, as attorneys do, while judges are independent decision makers. There should be a separate body to make these determinations for judges; it can include outside representation but from the public as a whole and not just prosecutors and investigators.

By reason of a recent amendment to the Constitution, the chairpersons of the SCC and the SAC and the Prosecutor General are now subject to impeachment by the President upon a proposal by at least one-fourth of the members of the National Assembly approved by a vote of two-thirds thereof. See art. 129(4). Under the present JSA, these magistrates are not removable by the SJC, but the SJC can propose that the President of the Republic remove any of them and the President cannot refuse a second proposal. See art. 30a.

Constitutional Court judges, in contrast to members of the judiciary, are chosen for fixed nine-year terms without possibility of reappointment, an arrangement that provides both in theory and in practice considerable independence for the members of this vital body. As discussed in Factor 5 above, the Constitution sets forth certain narrow grounds for the premature termination of their tenures in office. See art. 148.

## Factor 15: Objective Judicial Advancement Criteria

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>The SJC recently adopted temporary rules for evaluation and promotion of judges using generally objective criteria, but they focus heavily on quantitative rather than qualitative considerations and are not widely understood or accepted. The SJC is also considering radical changes to these rules, so there is considerable uncertainty surrounding the process.</p>		

### Analysis/Background:

Article 129 of the Constitution places responsibility for promoting magistrates with the SJC, although new article 130a.3 allows the MOJ to make proposals for appointments and promotions of judges as well as other magistrates. A performance appraisal shall be undertaken at the time a magistrate is proposed for promotion in rank or position, and specifies the contents of the proposal and the information to be supplied with it. See JSA art. 30b. This is the same information and procedure followed when considering a judge for irremovability, as discussed in detail under Factor 14 above. Briefly, the proposal includes the opinion of the judge's court chairperson, statistics concerning the judge's cases and reversals, compliance with deadlines, CLE participation and moral integrity. Proposals for promotion are made by court chairpersons with respect to their deputies, the judges in their courts, and the chairpersons of the immediately lower courts (if applicable) in their jurisdictions. *Id.* art. 30(1). Proposals may also be made by one-fifth of the members of the SJC or by the MOJ, and the MOJ may comment on proposals made by others. *Id.* arts. 30(2), (4).<sup>17</sup> The appraisal is carried out by the P&EC, which submits it

<sup>17</sup> The JSA was amended so that eligible candidates may participate in all competitions without being nominated. Court chairpersons, members of the SJC and the MOJ no longer have the authority to make proposals for promotion.

to the full SJC for consideration.<sup>18</sup> If the performance appraisal is negative, the evaluated judge has the opportunity to file objections in writing and to be heard by the SJC. The SJC votes in secret and decisions are made by simple majority vote. Interested parties are permitted to appeal adverse decisions of the SJC to the SAC, and this right presumably extends to judges unhappy with negative promotion outcomes. *Id.* art. 34.

The JSA also contains a procedure for “promotion in place” through assignment to a higher rank and increase in salary in the case of judges who “have proved that they are highly qualified and perform the official duties thereof in an exemplary manner, after they have served at least three years in the relevant or equivalent position.” See art. 142. For example, a regional judge by rank who has served at least three years and meets the requisite standards of qualifications and performance can be promoted in rank to district court judge. The promotion may be requested by the individual judge, going either through his/her court chairperson or directly to the SJC. The request triggers the performance appraisal and SJC determination described in the preceding paragraph.

Article 15 of the SJC’s Temporary Evaluation Rules sets forth 10 benchmarks, several divided into subparts, to be applied during a comprehensive assessment of a judge. These include:

- length of court proceedings;
- preparation by the reporting judge;
- number of pending cases, broken down by under six months, six to 12 months, and over one year;
- case complexity and difficulty;
- time frame within which a court decision is prepared;
- cases during the reporting period (backlog at the beginning of the period plus cases filed and scheduled during the period), divided into those cases taking less than one month from the last hearing to the issuance of the judgment, those taking between one and three months, and those taking between three and 12 months;
- quality of court decisions, measured by numbers of cases upheld, reversed or amended on appeal, number of cases terminated with and without justification, and cases postponed at the request of the parties or procedurally by the court;
- compliance with professional ethics rules;
- personal motivation to occupy the relevant position;
- ability to work as part of a team;
- reputation among members of the legal profession and the public (taking into account, per article 19, any allegations, complaints, publications in the press and the outcomes of follow-up investigations);
- citations and awards, qualification and educational degrees; and
- disciplinary actions and similar violations.

Evaluations under these benchmarks are conducted by the P&EC, which grades the judge for each year under review (all five years for a tenure decision and the last three years for a promotion) and assigns points ranging from one (lowest) to five for each benchmark for each year. The grade for the year is the sum of the points received, up to an annual maximum of 50, and the combined total for the years under review is the judge’s final score. The P&EC then gives a positive evaluation if the final score exceeds 125 for a tenure review or 75 for a promotion or pay raise. *Id.* arts. 4-6, 20-21.

These benchmarks would appear to be objective, perhaps excessively so with their emphasis on statistics and their slighting of the quality and thoroughness of a judge’s work product and his/her

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<sup>18</sup> Under the new JSA amendments, only candidates for positions with appellate courts and the SCC/SAC have their professional records taken into consideration for purposes of promotion. Candidates for positions with district courts, even those with a previous judicial history, are judged solely on exam results.

conduct of court proceedings; so long as the decision is issued on time and ultimately upheld on appeal, it counts as a positive. Basing promotion on court records that are essentially a compilation of numbers can be deceiving, and can even have a deleterious effect on the quality, reasoning, persuasiveness, and ultimately public acceptance of decisions.

The SJC's Temporary Evaluation Rules are barely a year old, and it does not appear that they have been widely implemented or even disseminated. Moreover, at the time of the assessment team's visit, the SJC was in the process of considering and apparently finalizing a new and permanent appraisal ordinance that would contain considerably more detailed factors, criteria, indicators and procedures, and would provide a standard evaluation form. As a result, the overall appraisal process seems to be in a state of transition and uncertainty.

Based on interviews, there is not much confidence in the fairness and objectivity of the judicial evaluation and promotion system in the country. Several persons referred critically to the highly publicized incident involving the promotion of an SJC member's son a little over a year ago, which led to a petition signed by 92 judges (see Factor 2 above). A number of respondents thought it was inappropriate for prosecutors and investigators to take part, as P&EC and SJC members, in the process and decision-making involving the evaluation and advancement of judges. This opinion was not shared by the prosecutors who were interviewed. One person said that evaluation should be a regular event conducted annually, providing a way to identify and correct concerns and weaknesses before they become serious problems. Another interviewee noted that case statistics at the district court and higher reflect the work of a panel and not a single judge, so that the evaluated judge may be unfairly helped or hurt by the efforts of his/her fellow panel members. Several judges claimed that they did not know what the "real" criteria are, acknowledging that there are standards set forth in the Temporary Rules but asserting that they are not followed; there is, in the view of these judges, little or no correlation between the relevant statistical results and actual promotion decisions. It may be that this criticism was directed toward the court chairperson's opinion which is included with the materials provided to the P&EC, and toward the weight that opinion is given in the evaluation, rather than toward the statistical analysis conducted by the P&EC. Several court and chamber chairpersons who commented on their evaluation standards described criteria that varied from court to court, some of which overlapped but differed from the official benchmarks; these may simply be their personal criteria used in arriving at their opinions.

Recommendations for appointment to the position of chairperson of a regional, district or appellate court may be made by the chairperson of the immediate higher court, by one-fifth of the members of the SJC, or by the MOJ, and then submitted to the P&EC. JSA arts. 30(1), 30(2), 30(4), 30a(1). Appointment to the position of chairperson of a regional, district or appellate court is limited to a five-year term, which may be renewed. CONSTITUTION art. 129(6); JSA art. 125a(5). The chairpersons of the SCC and the SAC are appointed to seven-year terms by the President, on motion of the SJC. CONSTITUTION art. 129(2); JSA art. 125a(1)(4).

As detailed under Factors 1 and 2, an individual with certain minimum years of legal service may be appointed directly to a higher court by the SJC. Any such individual is also qualified to be appointed to the position of chairperson or deputy chairperson of a regional, district, or appellate court. JSA art. 125b. It would appear possible to use this authority to promote individual judges without going through the normal evaluation and promotion process and, of course, to bring in non-judges to serve not only as higher court judges but also as court chairpersons. Appointing legal professionals who are not actively serving as judges to these lofty positions could lead to a demoralized judiciary where political influence rather than professional performance as a judge is the determinative factor for promotion.

## Factor 16: Judicial Immunity for Official Actions

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

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↔</b>
Judges have immunity while conducting their official duties, unless their actions constitute an intentional indictable offense.		

### Analysis/Background:

Amendments made to the Constitution in 2003 restricted what had been criticized as overly broad immunity for judges but preserved their rights to “functional” immunity. The current provision reads that, “[u]pon exercise of judicial power, judges, prosecutors and investigating magistrates shall not incur criminal and civil liability for the official actions thereof and for the acts decreed thereby, except where what is done shall be an intentional offense at public law.” See art. 132(1). With this change, judges are still protected from prosecution or lawsuits for their official actions and statements, but are responsible for their personal, non-official behavior.

Further, even where an intentional offense at public law is allegedly committed by a judge, a charge may not be brought against him/her without authorization from the SJC. *Id.* art. 132(2). In addition, a judge may not be detained except for committing a “grave” crime, and then only with the SJC’s approval. *Id.* art. 132(3). Prior SJC authorization for detention is not required when the judge is caught in the act of committing the grave crime. Authorization for waiver of immunity may be granted by the SJC on the request of the Prosecutor General or at least one-fifth of the members of the SJC. *Id.* art. 132(4); see also JSA arts. 27(1).6, 134; *SJC Work Regulation* arts. 6(1).9, 49-50. The SJC will remove a judge against whom public prosecution criminal proceedings have been brought pending the outcome of the case, with the judge entitled to reinstatement and back pay if the proceedings are terminated or result in acquittal. JSA art. 140.

The assessment team received very little comment about judicial immunity, suggesting that the 2003 amendments struck the proper balance between accountability and independence for judges. One person suggested that functional immunity could protect a judge from prosecution for the worst form of corruption: taking a bribe for deciding a case a certain way. This view would seem to be a minority interpretation of the intent and meaning of the constitutional provisions.

## 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>
The standards and process for judicial discipline are defined by law and recent increases in the number of disciplinary actions brought against judges suggest the leadership of the courts is moving seriously to address problems in this area. There remain several concerns with, among other things, the specificity of the criteria and the due process protection available to accused judges in removal cases.		

## Analysis/Background:

Magistrates shall be, among other things, “demoted, transferred and removed from office by the [SJC].” CONSTITUTION art. 129(1). While judges become “irremovable” after five years by an SJC decision, removal is still permitted for retirement at age 65, resignation, sentence to prison for an intentional offense, continued inability to perform one’s duties for more than a year, or “grave breach or systematic dereliction of official duties, as well as actions damaging the prestige of the judiciary.” *Id.* art. 129(3). As a result of the latest amendments to the Constitution, the MOJ is entitled to make proposals for “demotion, transfer and removal from office of judges” as well as other magistrates. *Id.* art. 130a.3. The SJC’s decisions in these cases are to be adopted by secret ballot. *Id.* art. 131.

The JSA restates the SJC’s responsibility in this area and lists its function of adopting decisions in disciplinary proceedings against judges and against court chairpersons and their deputies. See arts. 27(1).4, 27(1).7. Interestingly, the JSA contemplates separate regimes for removal actions and for disciplinary proceedings, even though the latter can also lead to dismissal and there is considerable overlap as to the grounds for the two measures. The principal differences seem to be that removal actions go through the P&EC with greater speed and fewer protections for the accused judge, while disciplinary actions go to either a single reporter or an *ad hoc* committee appointed by the SJC and provide numerous procedural rights to the judge.

In the case of tenured judges, grounds for removal include those mentioned in the Constitution plus incompatibility of office or occupation under article 132(1). These grounds include the retirement age of 65, resignation, conviction and sentence for an intentional crime, continuous inability to perform his/her duties for more than a year, or “grave breach or systematic dereliction of official duties as well as actions damaging the prestige of the judiciary.” CONSTITUTION art. 129; JSA arts. 131(1)-(2). The removal process typically starts with a proposal to the P&EC by the court chairperson having direct or indirect supervision over the subject judge. That is, the removal proposal is made by the SCC chairperson with respect to his/her deputies, chamber chairpersons, and judges, as well as chairpersons of the courts of appeal; by the SAC chairperson as to his/her deputies, chamber chairpersons and judges; by a court of appeals chairperson concerning his/her deputies and judges and the chairpersons of the district courts; by a district court chairperson in respect of his/her deputies and judges and regional court chairpersons in the district court’s jurisdictional area; and by a regional court chairperson concerning his/her deputies and judges. Proposals may also be made by at least one-fifth of the SJC members and by the MOJ, who may also express opinions on other proposals made to the SJC. JSA art. 30. The P&EC, a standing commission of seven SJC members, receives the proposal, which must be in writing and supported by relevant documents and evidence. The P&EC then has 14 days to meet to discuss the proposal and submit it to the full SJC with a recommendation and reasoned opinion. The SJC then considers and acts on the proposal at least seven days following submission by the P&EC. *Id.* art. 30a. Any interested party may appeal the SJC’s decision to the SAC within 14 days of notification. *Id.* art. 34.<sup>19</sup>

As noted elsewhere, separate rules are provided for removal of the SCC and the SAC chairpersons and the Prosecutor General, with the SJC establishing grounds for removal and proposing to the President that the individual be removed; if the President declines to do so but the SJC repeats its proposal, the President must remove the individual from office. *Id.* arts. 27(1).1, 29. The President may also to impeach any of these top judiciary members upon a two-thirds vote of the National Assembly. CONSTITUTION art. 129(4). Other court chairpersons and their deputies may be removed from office for certain grounds specified in JSA, but they would retain the position of tenured judge unless removal were for retirement, sentence to prison for an

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<sup>19</sup> The recent JSA amendments provide court chairpersons with the authority to impose administrative sanctions for minor disciplinary violations enumerated in JSA arts. 170(1)1-2.

intentional crime, serious breach of or systematic failure to discharge official duties, or action detrimental to the prestige of the judiciary. See art. 125c(1).

In the case of other disciplinary proceedings, judges shall face disciplinary sanctions in the event of “guilty failure to discharge their official duties, as well as for breach of professional ethics.” JSA art. 168(1).<sup>20</sup> Disciplinary sanctions may be applied irrespective of any civil, criminal or administrative penalties separately imposed on the judge. *Id.* art. 169. Possible sanctions include reprimand, censure, demotion in rank or position for a period ranging from six months to three years, and dismissal. *Id.* art. 170(1). Further, the appropriate sanction depends on the “gravity of the offense, the form of guilt, the circumstances surrounding the offense, and the conduct of the offender.” *Id.* art. 171. Proposals for disciplinary sanctions against a judge may be made by any of the parties allowed to propose removal under article 30 of the JSA; that is, the applicable court president, the MOJ or one-fifth of the members of the SJC. *Id.* art. 172. In general, disciplinary proceedings may be instituted up to six months after detection, but no more than one year following the commission of the offense. *Id.* art. 173. If the SJC decides to institute disciplinary proceedings, it will then appoint either a reporter or a three-judge panel (as noted earlier) and will notify the accused judge, who may raise written objections and offer evidence to support his/her case. If the reporter is used, there is no actual hearing and the reporter prepares a report and opinion for the SJC. If the three-judge panel is appointed, a hearing is held, the judge and the author of the proposal are given notice and opportunity to appear, the accused judge may have legal counsel present to defend him/her, and the panel adopts a decision by majority vote which it reports to the SJC. *Id.* arts. 174-180. Either way, the SJC meets to consider the matter and reach a reasoned decision by a majority of its members, approving or rejecting the proposed disciplinary sanction or downgrading it to a reprimand or censure. The judge and the originator of the proposal are then notified of the outcome, and either may appeal the decision to the SAC within 14 days of notification. An appeal does not stay execution of the sanction. *Id.* arts. 181-184. Any disciplinary sanction other than dismissal is deleted after it is served, and may be deleted earlier by the SJC if the judge shall have committed no other offense in the interim. JSA art. 186.

The SJC’s detailed internal procedures for disciplinary actions are spelled out in articles 51-64 of the SJC Work Regulation.

There are several technical and policy concerns with this disciplinary structure. First, as observed earlier, a judge can be “removed” with fewer due process rights than those that are available if he/she is “disciplined,” even though the ground, originator, and consequences may be identical. Second, the phrase “actions damaging the prestige of the judiciary” is a fairly ambiguous ground for removing a tenured judge, and calls for greater definition in the JSA or the SJC’s regulations. As it is, this ground could conceivably be used as an excuse for terminating a judge for political or personal reasons, or even in retaliation for a decision he/she reached in a court case. It should be noted, however, that the assessment team did not receive any complaints or suggestions that abuses of this nature have occurred. Third, it is not entirely clear that the disciplinary ground of “breach of professional ethics” necessarily incorporates the Professional Ethical Rules of the Bulgarian Judges (discussed under Factor 21 below) exclusively and in their entirety. That would be a fair reading of article 168(1) of the JSA, especially since the SJC has formally approved the foregoing ethical rules, but there is room for an argument that behavior may be unethical and thus sanctionable even if it is not prohibited by these Rules. Fourth, as mentioned under several other factors in this report, several persons expressed the view that prosecutors and investigators should not have a role in career decisions involving judges, including disciplinary matters.

Disciplinary cases, while heard and decided in closed sessions, are generally made public in the SJC’s annual report and published on its web site (<http://www.vss.justice.bg>). Publication is, of

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<sup>20</sup> Significantly, the JSA was amended to provide for disciplinary sanction against judges tolerating improper procrastination of judicial proceedings.

course, important for transparency and for building public confidence that the disciplinary process works and that magistrates are not simply protecting each other. If the detailed circumstances of each alleged violation were also published, they would provide useful guidance to the judiciary as to the SJC's interpretation of the rules and activities to avoid. One respondent stated that the SJC used to announce the results in disciplinary cases promptly after they were arrived at, but now waits until after the inevitable appeal to the SAC to make them public. Since the SAC's web site shows case filings, it is possible to learn something about the SJC's decisions in advance of the SAC's decision on appeal. The SAC's final decisions are published and widely accessible throughout the Republic.

According to the SJC, there were only two proposals for sanctions filed against judges in 2004; both were district court judges, one charged with missing deadlines and the other with undue delays in issuing judgments, and both were dismissed. In 2005, however, the number of cases brought against judges increased to 15: 11 for systematic failure to fulfill duties or undue delays in fulfilling them, two for breach of professional ethics and/or damaging the prestige of the judiciary, and two for illegal actions in particular cases. By the end of 2005, six of those 15 cases were decided by the SJC, producing three dismissals, two censures and one acquittal. The average case in 2005 took five months between the filing of the complaint and the decision by the SJC. At the beginning of 2005, four disciplinary appeals were pending before the SAC; in three of them the SJC was upheld, while in the remaining case the SAC reversed the SJC's decision because of "contradictions in the facts."

For all magistrates, the SJC's disciplinary caseload increased from 18 in 2004 to 28 in 2005, with 19 of the 28 cases concluded either during 2005 or in the first three months of 2006. In those 19 cases, the SJC applied the sanction that was proposed in nine, rejected it or the proceedings were terminated in five, imposed a stricter sanction than was proposed in four, and ordered a lesser sanction in one of the cases.

The dramatic increase in the number of disciplinary actions filed against judges, while troubling in one sense, is encouraging in that it shows that the SJC and the court leadership take the process seriously and are determined to deal with unproductive, unethical or corrupt judges. Even with the increase, though, the number of disciplinary complaints is well below that of many other developed countries, suggesting that only the most blatant and/or systematic problems are addressed.

## **Factor 18: Case Assignment**

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↑</b>
<p>The courts are now required to use random case assignment, but it is not being implemented uniformly across the country and it appears that discretion is often applied to override its outcomes. A computerized system is in the process of adoption but is not fully in place and functioning.</p>		

Analysis/Background:

There are no provisions in the JSA, the Crim. Proc. Code, the Civ. Proc. Code or other laws that deal with the procedure to be followed in assigning cases to specific judges or panels.<sup>21</sup> Courts are typically organized into chambers and sometimes further apportioned into divisions by subject matter, and this structure limits the range of judges who can be given particular cases. Still, these chambers are often fairly large and judges can be rotated among them, so it is possible in most circumstances for a given case to go to a number of different judges. The assignment will affect the caseload, professional development and potentially the evaluation and promotion of the judge to whom it is made, and could conceivably impact the outcome of the case. Traditionally in Bulgaria, this has been a matter within the discretion of the court or chamber chairperson, who has been free to establish whatever method, objective or subjective, that he/she might consider appropriate.

Recently, however, the MOJ adopted its Ordinance on Court Administration in the Regional, District, Military and Appellate Courts, *promulgated in* SG No. 95 (Oct. 26, 2004), *last amended* SG No. 16 (Feb. 21, 2006) [hereinafter *MOJ Court Admin. Ordinance*], which addresses this issue. Newly filed cases are to be delivered to the court chairperson or his/her designee, who will determine the type of case and select the reporting judge in compliance with the principle of random case assignment. See art. 26(1). The reporting judge cannot then be replaced except by reason of recusal or absence, in which event the case is reassigned by observing the principle of random case assignment. *Id.* art. 26(3). Section 1 of the Additional Provisions to this Ordinance defines the random case assignment principle to mean that “cases shall be distributed to the reporting judges according to the consecutive order in which cases have been initiated and the alphabetical list of judges per division and panel.” Similarly, the SAC now has its own Ordinance on the Organization and Functioning of the Administration of the Supreme Administrative Court, *promulgated in* SG No. 44 (May 27, 2005), which specifies that the SAC, chamber or division chairperson determines the reporting judge “on the basis of random selection.”

Based on interviews, it appears that random case assignment is used fairly faithfully in some courts but not uniformly across the country. Part of the problem is that the judicial system is transitioning to some new case management software, which includes a random case assignment feature. Only a few courts, and not all chambers within those courts, have the software in place, and several respondents indicated the software had some limitations. Another aspect of the problem, as reported by some persons, is that the purely random method, whether applied manually or by computer, does not adequately take into account differences in case complexity, similarities in fact patterns, and judges’ expertise and backlogs, resulting in inequities and inefficiencies. One interviewee mentioned a case where a judge had been dismissed for excessive and repeated delays, and that it was necessary to allow the replacement judge to work through the huge case backlog before having new cases assigned. Another said it was appropriate to consider the judge’s decisiveness in assigning difficult cases.

One other concern here is that the court or chamber chairperson is apparently able to override the results of random case assignment, manual or computerized, for whatever good or possibly improper reason he/she may have. Selective overrides defeat the purpose of random case

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<sup>21</sup> The JSA was amended to require random case assignment.

assignment and should be either prohibited or regulated. If they are to be permitted, the SJC or the MOJ should prescribe clear, uniform and objective standards and require that the chairperson issue a public and reasoned explanation for the override.

It is apparent that Bulgaria is making progress toward an objective case assignment system, but there is still much to be done before it is fully operational, uniformly applied, transparent, and equitable among judges.

## 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: Neutral</b>	<b>Trend: ↔</b>
<p>The BJA exists and is fairly active, but its personnel and financial resources are limited and it is therefore not as active and effective in advocating and serving the interests of member judges as it should be.</p>		

### Analysis/Background:

Article 44 of the Constitution guarantees to citizens “the right to freedom of association.” Particularly, “[j]udges, prosecutors and investigators shall be free to form and to join organizations which defend the independence and professional interests thereof and promote the professional qualifications thereof.” JSA art. 12(2). Such organizations may not associate with “trade union organizations from another branch or sector at the national or regional level.” *Id.* art. 12(3).

The BJA was founded as a nongovernmental organization in 1997 by 20 judges, and has grown to the point where at the beginning of 2006 it had 774 members out of the total 1,894 sitting judges in the courts, or about 41% of possible membership. Members pay a 10 leva (US\$ 6) initiation fee and annual dues of 24 leva (US\$ 15); the BJA also receives some financial assistance from foreign donors. The BJA concentrates its activities in two areas: institution-building of the association itself, and building greater trust toward judges among members of society. Its rapid growth reflects well on its institution-building efforts. It is also trying to recruit younger judges into leadership positions and has established regional offices in 10 districts. Its trust-building activities have been focused principally on young people, for whom the BJA has held moot court initiatives and a theater on drug resistance for age-appropriate groups.

The BJA sometimes consults with the National Assembly and the Constitutional Court on legislation affecting judges and on broader policy and constitutional issues. It also defends judges when they are unfairly criticized in the media, something that reportedly happens less often in recent years as journalists are growing more understanding of the complexity of the legal process. It has held national judicial conferences for the past two years, which have been well attended and highly regarded. As noted elsewhere, it took the lead in getting 92 judges to sign a petition protesting the promotion of a judge who was the son of an SJC member. The BJA drafted the judicial code of ethics and commentary, which was passed by its national assembly and referred to the SJC; the latter, acting pursuant to JSA art. 27(1).13, approved the code. The BJA does not appear to have an ongoing working relationship with the SJC as such, although several SJC members are also members of the BJA.

The BJA is able to operate without interference or intimidation from the government or any other source.

There are limits to the BJA’s human and financial resources and thus to its effectiveness in promoting the interests and professional qualifications of judges. It has only one paid employee, and its five-member managing board consists entirely of full-time judges who volunteer their time. It has not been able to undertake some of the promotion, advocacy and member services work commonly performed by better-funded judges’ organizations, such as public relations and lobbying for increased pay and benefits, improved court facilities and better overall working conditions; encouragement of judicial independence; sponsorship of CLE, judicial ethics, bench and bar and other conferences; publication of a newsletter and other periodicals; and provision of special insurance, vacation packages and other tangible benefits for its members.

One respondent said that the BJA reacts to serious problems, but is not pro-active; it should also concentrate more on local rather than national activities. Another person suggested that the BJA have a designee take part in the legislative drafting process, saying that magistrates should especially be part of the working team that drafts procedural codes because of their intimate familiarity with court practices and problems.

Others have observed that the effectiveness and stature of the BJA are largely tied to its leadership, and that its chairperson and two other board members will complete their second of two maximum terms in a few months. There is concern that the leadership transition be smooth, and that all members believe they have a role in, and influence over, the BJA.

The BJA is also heavily dependent on foreign donor support for many of its activities, and much of this funding will disappear once the EU accession takes place. It is doubtful the BJA can fully replace this support with additional membership dues or user fees, so its new leadership will need to be especially creative in attracting alternative funding if the BJA is to avoid cutbacks in its already limited activities.

## 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 prevailing public perception is that judicial decisions are not based solely on the facts and law, despite legal requirements to the contrary and reported reductions in actual bribe solicitations by judges. It still appears that some judges are subject to improper influence from parties, attorneys, court chairpersons, prosecutors and others.</p>		

#### Analysis/Background:

The Constitution states that “[t]he judiciary shall be independent. In the performance of the functions thereof, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law.” See art. 117(2). Judges are required to issue reasoned decisions. *Id.* art. 121(4). While the recent amendments adding article 130a to the Constitution, giving the MOJ greater authority with respect to judicial budgets, facilities, training and careers, have the potential to undermine institutional judicial autonomy, the basic message of the Constitution is still that the judiciary should be independent and that individual judges should make their decisions in accordance with the facts and law, avoiding undue influence from others.

This theme is picked up in the JSA as well, in provisions that guarantee independence of the judicial system (see art. 1(2)), mandate that judges be independent and subservient only to the law in performing their duties (see art. 13), and require judges to act according to their consciences and free inner conviction (see art. 14). Certain offices, professions, businesses and personal service activities are declared to create inherent conflicts and are thus incompatible with the profession of judge. *Id.* art. 132. A fairly recent addition to the JSA requires that by May 31 of each year, judges declare their income and financial interests for the previous calendar year to the National Audit Office. *Id.* art. 135.

Other codes and laws provide the basic legal structure to tackle judicial corruption. The Criminal Code, *promulgated in* SG No. 26 (Apr. 2, 1968), *last amended* SG No. 88 (Nov. 4, 2005), states that a person who “entices an official of . . . the judicial authorities to violate his official duty in connection with the administration of justice shall be punished by deprivation of liberty for up to five years or by probation or public censure.” See art. 289. From the other side, the “official who accepts a gift or any other undue benefit, or accepts a proposal or a promise for a gift or benefit, in order to perform or fail to perform an act connected with his service, or because he has performed or failed to perform such an act, shall be punished for bribery for deprivation of liberty for one to six years.” *Id.* art. 301. Further, for bribery committed by a “person holding a responsible official position, including that of a judge, . . . the punishment shall be . . . deprivation of liberty for three to ten years, fine of up to 20,000 leva [US\$ 12,500],” and other penalties. *Id.* art. 302.1.

The Crim. Proc. Code asserts that “judges are independent and obey only the law” (see art. 10); requires the court to decide by inner conviction, based on a complete investigation, taking the law as guidance (see art. 14(1)); contains provisions for recusals by judges in the face of certain real or perceived conflicts of interest (see arts. 29, 31); and requires the judge’s decision to be reasoned (see art. 34). The Civ. Proc. Code similarly provides for judges to recuse themselves (see arts. 12-14); obliges the court to base its decision on the circumstances accepted by it as proven and in accordance with the law (see art. 188(2)); and requires the decision to be reasoned (see art. 189(2)). The Admin. Proc. Code incorporates the Civ. Proc. Code as a supplement to its own provisions. See art. 144.

The real issue, though, is whether judges in practice make their decisions strictly on the basis of the law, the evidence and their inner convictions or, instead, are subject, in at least some cases, to improper outside influences.

The actual prevalence of corruption is inherently impossible to gauge. Bribes and similar transactions are effected privately by people who are breaking the law and have every reason to conceal their activities. A recent study attempted to quantify “corruption pressure” in the Republic. See CENTER FOR THE STUDY OF DEMOCRACY, ON THE EVE OF EU ACCESSION: ANTICORRUPTION REFORMS IN BULGARIA (2006) [hereinafter 2006 CSD STUDY]. It presents an index that measures the percentage of persons surveyed who had interacted with judges during a specific period and had been asked for money, gifts or favors by judges. According to the 2006 CSD Study, 3.4% of respondents had actually been subjected to corruption pressure during the survey year ending October 2005. *Id.* at 12. While some may be heartened by the fact this index represents a decline from 5.8% the previous year, it is difficult to take comfort in the fact one out of 30 citizens says he/she was solicited by judges to pay bribes in a single year. In all likelihood, this figure understates the frequency of actual corruption, since it does not measure unsolicited bribes offered by citizens and since survey respondents who yielded to bribe solicitations are probably not included; again, parties to illegal payment transactions have no incentive to acknowledge their activity, even anonymously to surveyors. In an area where zero tolerance should be the standard, it would appear that Bulgaria still has work to do.

Public perceptions of corruption are not necessarily any more meaningful. Some may be derived from actual first-hand experiences, but at least as often they are founded on questionable bases. Examples of the latter include unfair criticism by media and politicians, ignorance of the judicial

process (and the fact that results may be driven by the law or the evidence rather than the judge's whim), and the so-called "unhappy loser syndrome." Losing parties are often unwilling to accept the lack of merit in their cases, so they (and their friends and relatives) blame their losses on corruption of the judges who issued the decisions. Meanwhile, the winning parties are ungrateful to the legal process, believing they received only what they deserved. Also, some negative views of judges are undoubtedly based on experiences with, and opinions of, other components of the legal system, including police, court clerks, attorneys, investigators, and prosecutors. Judges are perhaps emblematic of the justice system and may be held accountable for the actions of others beyond their control. Persons who do pay bribes probably go through intermediaries, who may or may not pass the funds on to the purported recipient.

Whatever the cause or justification of society's views on judicial corruption, it is evident that negative perceptions are widespread. The 2006 CSD Study found that 59.3% of people surveyed in November 2005 believed that nearly all or most judges are involved in corruption, an increase over 56.1% the year before. *Id.* at 14. Similarly, the perception of the judicial system as a highly corrupt sector of the society is revealed in the Global Corruption Barometer 2005, where the judiciary received the score of 4.3 on a scale of 1 (not corrupt at all) to 5 (extremely corrupt); it came out as the second most corrupt sector behind the customs offices. See TRANSPARENCY INTERNATIONAL, REPORT ON THE GLOBAL CORRUPTION BAROMETER 2005 at 18 (Dec. 9, 2005), available at [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb](http://www.transparency.org/policy_research/surveys_indices/gcb) (last visited Mar. 2, 2006). Transparency International also assigned Bulgaria a corruption perceptions index of 4.1 for 2004 (placing it 54th among 145 countries ranked), and reported that the Republic's index for 2005 had actually worsened to 4.0, putting it in the 55th spot out of 158 countries. See TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2004, available at [http://www1.transparency.org/cpi/2004/dnld/media\\_pack\\_en.pdf](http://www1.transparency.org/cpi/2004/dnld/media_pack_en.pdf) (last visited Mar. 2, 2006); TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2005, available at [http://www1.transparency.org/cpi/2005/dnld/media\\_pack\\_en.pdf](http://www1.transparency.org/cpi/2005/dnld/media_pack_en.pdf) (last visited Mar. 2, 2006). Looking at the Freedom House's survey, Bulgaria's rating on corruption was a below average 4.00 on a scale of 1 (best) to 7. See FREEDOM HOUSE, *Bulgaria*, in NATIONS IN TRANSIT 2005: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA, available at <http://www.freedomhouse.hu/nitransit/2005/bulgaria2005.pdf> (last visited Mar. 2, 2006).

A lack of public confidence in the integrity of the judicial system, regardless of the actual reality, can be destructive of the rule of law in a society. It diminishes support for the legal process as the vehicle to resolve disputes, encourages extralegal methods, and produces public cynicism over the judicial system. It also has a self-fulfilling effect: if people believe bribes are needed to obtain the desired result, they are more likely to offer them, and this leads to greater temptation on the part of judicial and law enforcement authorities to accept them.

While it is easy to criticize societal perceptions as unfounded, it is much more difficult to change them. It will take a combination of media awareness, public education, more thorough and better reasoned judgments, clearer laws, meaningful enforcement measures and grass-roots changes to shift public opinion in this area. Greater transparency throughout the judicial system usually helps to deter and detect corruption, as well as to instill increased confidence among outsiders. Areas calling for transparency include reports on random case assignment overrides and their justification, information on judge recusals and whether they were initiated by the judge or requested by a party, publication of dockets and opinions, and open access to case records. *Ex parte* communications between judges and parties or their legal representatives are reportedly very common and often defended as legitimate methods to elicit facts or find out about problems in court procedures, but they present too many opportunities for undue influence and unfair access and should be prohibited.

An example of a recent effort in this direction which appeared well-intended but poorly designed was the commission created by the SJC to fight corruption in the judicial system. See *SJC Work Regulation* arts. 13(2).4, 20. An entity was established to address this problem, but was not

given the administrative capacity, investigatory powers or enforcement mechanisms it needed to do its job properly.

During the assessment team's onsite visit, several respondents asserted that corruption exists in at least some cases but stated they had never personally witnessed or experienced it. As often happens with this topic, the rumors and suspicions typically involved *other* components of the system. The criminal court judges and prosecutors thought the problem lay in the civil and commercial areas; civil court judges blamed the criminal courts, including prosecutors, attorneys and investigators. Various persons blamed the company registries, alleging they often charged special fees for expedited service.<sup>22</sup> Several interviewees suggested corruption was much more likely at the highest levels of the judiciary, since appeals in important cases are routinely taken as far as possible and a bribe in a lower court would accomplish very little.

While there is never an excuse for demanding or accepting bribes, whatever self-serving rationale judges might once have manufactured has disappeared as their salaries and benefits have risen over the past few years.

Aside from financial corruption, there is concern over undue influence on other grounds. Some persons noted that judges can be influenced by friendships with attorneys, perhaps based on law school or other personal connections, which do not technically constitute grounds for recusal. Similarly, one interviewee said that, while a judge obviously cannot hear a case where the attorney or prosecutor is the judge's spouse, this does not apply where the judge's spouse is a colleague or associate of the attorney or prosecutor. A judge can also be influenced by his/her court or chamber chairperson, especially with the leverage held by the latter over the judge's evaluation and promotion. One person alleged that the chairperson sometimes told judges how to rule in particular cases and based promotion recommendations on their obedience.

Undue influence may also be felt by an institutional feature of the Bulgarian judicial system, which is what some view as an unhealthy relationship between judges and prosecutors (and, to a lesser degree, investigators). As noted several times in this report, prosecutors are considered magistrates and serve on the SJC and its panels and commissions when they are appointing, evaluating, promoting and disciplining not only prosecutors but also judges. The public prosecutors operate in a tightly-knit hierarchy, in which the actions of lower-level prosecutors are controlled by and reported to their superiors up the chain. A judge ruling for the defendant in a criminal case does so knowing that the prosecutor who just lost the case may someday be in a position to influence the judge's career advancement, and almost certainly reports directly or indirectly to another prosecutor who will. Moreover, it was reported that judges and prosecutors within a given court meet frequently to address court administrative, procedural and sometimes substantive issues and developments, giving the impression of a "team" working together to serve the needs of justice. This team concept is, in fact, encouraged from the outset by the NIJ, which considers an important part of the initial training curriculum for junior magistrates to be the "creation of team spirit and collegiality between the three magistrate professions." This coziness could account for the astonishingly high conviction rate in Bulgarian courts, reportedly above 98% across the country and even higher in some locales. There could be other reasons for this statistic, such as extraordinarily thorough pre-trial investigations or stringent standards for indictments, but the close relationship between judges and prosecutors likely plays a role.

As one judge pointed out, a prosecutor is merely an advocate for one party, no different from the attorney for the defendant, while the judge is an independent decision-maker. It would seem appropriate to consider taking team spirit among magistrate branches out of the NIJ curriculum, and reducing the present level of interaction between judges and prosecutors within courts (or,

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<sup>22</sup> In this regard, a bill was pending at the April 1 cutoff date for this report that would remove company registrations from the judiciary and place it in an administrative department within the MOJ, freeing judges to work on other cases and, hopefully, simplifying and expediting registrations and reducing corrupt payments.

alternatively, inviting bar council representatives to participate in their meetings). It would also appear desirable to organize divisions within the SJC to deal separately with the three magistrate branches and their respective appointments, evaluation, promotion and discipline. This is not to say that outside representation on these divisional bodies is undesirable; on the contrary, outside participation can add transparency, accountability and public confidence to the process. In the view of the assessment team, however, the outside representatives should come from the general public and not from the ranks of prosecutors, investigators or, for that matter, attorneys.

## Factor 21: Code of Ethics

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>	<b>Trend: ↔</b>
<p>The SJC has approved a code of ethics for judges, but it is unclear how widely it is accepted, taught, followed and enforced. The code is very general and brief, and does not directly prohibit <i>ex parte</i> communications.</p>		

### Analysis/Background:

There are several laws which impose duties with ethical implications on judges. The JSA, for example, requires judges to “respect the confidentiality of deliberations upon adjudication of cases” and to “safeguard the official secrecy of information” that has come to his/her knowledge. See art. 136. It also provides that judges may not express anticipatory opinions on cases assigned to them or express any opinions on cases not assigned to them. *Id.* art. 137. Judges are also forbidden from providing legal advice. *Id.* art. 138. The Civ. Proc. Code contains rules for recusal of a judge from hearing a case where he/she is related to a party, has participated in the resolution of the case before the courts, has been a witness or representative in the case, has a vested interest in the resolution of the case, or has a special relationship with a party that could affect the judge’s impartiality. See art. 12. If the judge does not recuse him/herself, a party may file a request for recusal. *Id.* art. 13. Similar, though more elaborate, rules for recusal are imposed by the Crim. Proc. Code. See art. 29.

The JSA further provides that the SJC shall “approve rules of professional ethics adopted by the relevant professional organizations of judges, prosecutors and investigators.” See art. 27(1).13. Pursuant thereto, in 2004 the BJA adopted the Professional Ethical Rules of the Bulgarian Judges [hereinafter *Judicial Ethics Rules*] and submitted it to the SJC, which approved it.

The Judicial Ethics Rules encompass general statements of ethical behavior and covers the professional conduct of judges with regard to the judge’s integrity and independence, competence, confidentiality, relations with the media and civil society organizations, and treatment of other persons in the course of his/her official duties. There are also provisions relating to the personal conduct of judges.

There was reportedly some resistance within the judiciary to the adoption of a Judicial Ethics Rules, and this sentiment was still apparent two years later. Numerous judges expressed the view to the effect that judicial ethics is a matter of one’s personal moral upbringing and integrity, and that writing down a series of ethical rules won’t have any effect if the judge lacks the character and internal standards to behave properly. One said that the Judicial Ethics Rules do not introduce any new concepts, but simply codifies unwritten standards and expectations that have long existed. While this sentiment is understandable, a clear, comprehensive and well-

enforced code can create common behavioral norms among judges, set judicial conduct expectations in the minds of attorneys and other members of the public, draw lines that visibly distinguish acceptable from unacceptable behavior, and facilitate appropriate sanctions for violations.

It would appear that part of the difficulty here is attributable to the use of the term “ethics,” which indeed connotes integrity and morality; a better term would be “conduct,” since the true focus is on behavior rather than internal beliefs and character. Another problem may be that the Judicial Ethics Rules have not been widely disseminated or taught to sitting judges. While it is part of the initial training program at the NIJ, it does not appear that either the NIJ or the courts have held or plan to hold any CLE seminars or other sessions for active judges on the Judicial Ethics Rules and their application to real world scenarios often encountered in practice. In addition to their use in CLE for judges, it would be desirable for the Judicial Ethics Rules to be posted prominently in courthouses and widely circulated for public education and awareness.

Perhaps the biggest deficiency in the Judicial Ethics Rules is their brief and general coverage, running just three pages and containing some fairly elementary principles. Similar codes from other countries can run much longer and provide much more detailed guidance to judges in their daily lives. The Judicial Ethics Rules do not adequately address what would appear to be one of the major problems in Bulgaria, that of *ex parte* communications. Article 4(1).3 prohibits the judge from sustaining personal relations capable of raising reasonable doubts as to impartiality with the parties in the cases he/she is deciding. This is not specific enough, however, to ban casual or one-time communications on the subject of a pending case with parties, prosecutors or attorneys, outside the presence of a representative of the other side. By some reports, these communications are fairly common and can improperly influence the outcome of the case.

SJC statistics indicate that two judges were subjected to disciplinary proceedings in 2005 for violation of ethical rules and/or damaging the prestige of the judiciary, with one case resulting in the judge’s dismissal from office. While the statistics do not say so, it is possible that ethical violations were alleged but rejected in other cases. It thus appears that rules of professional behavior are considered by the SJC and those authorized to propose disciplinary sanctions, even if only as a secondary basis for charges, but it is not clear that these rules are the provisions of the Judicial Ethics Rules. See *also* Factor 17 above. The number of ethical complaints also seems very low in relation to other countries, where allegations of breaches of judicial decorum or mistreatment of parties or their attorneys are fairly common.

**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>
There are several processes by which citizens may present complaints against judges, but it is unclear whether they are widely known to or used by the public.		

Analysis/Background:

All citizens the “right to present complaints, suggestions and petitions to the state authorities.” CONSTITUTION art. 45. The latest amendments to the Constitution included article 91a, which officially recognized the office of Ombudsman to “represent citizens in the protection of their rights and freedoms.” As noted under Factor 5 above, the Ombudsman has the right to refer matters to the Constitutional Court.

In 1980, Bulgaria enacted the Law on Proposals, Notes, Complaints and Applications, *promulgated in* SG No. 52 (July 4, 1980), *last amended* SG No. 55 (July 7, 2000) [hereinafter LPNCA], which allows citizens to file complaints for the protection of their rights and legal interests with the competent “social management body” [hereinafter competent body], which is obligated to render a decision in an objective and lawful manner. *Id.* arts. 3, 6. The competent body must correct the breach of the citizen’s rights and legal interests, and must take necessary steps to hold officials accountable. *Id.* arts. 9, 31(2).<sup>23</sup>

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

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

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

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

Even though the LPNCA is controlling, it is not clear that the procedures set forth therein are being strictly followed by the two “social management” bodies that are competent to receive citizens’ complaints against judges: the courts and the SJC. While it is generally understood that citizens have the right to file complaints against judges, there are no uniform standards or procedures for handling complaints, nor is the complaint process publicized or transparent. The courts, in particular, lack sufficient staff to properly screen and dismiss frivolous complaints while investigating the meritorious complaints.

The MOJ, through its Inspectorate on the Judiciary, also receives and reviews citizens’ complaints and forwards the complaint, if meritorious, to the applicable court chairperson or the SJC for consideration and appropriate action.

The SJC has developed internal regulations for handling citizens’ complaints. Citizens may file complaints directly with the SJC. The Complaints Commission, a permanent organ of five SJC members, reviews the complaint and provides a response within 30 days of completing its investigation. *SJC Work Regulation* arts. 13(2)(9), 25. The SJC’s commission to fight corruption in the judicial system is also charged with receiving electronic complaints via the SJC’s website (<http://www.vss.justice.bg>). *Id.* art. 20.7.

According to the SJC statistics, it received and reviewed 10 complaints against judges under the LPNCA in 2004, 33 complaints in 2005, and 13 complaints this year through April 4.

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<sup>23</sup> The LPNCA was subsequently repealed, effective July 12, 2006.

Under the Ombudsman Act, *promulgated in* SG No. 48 (May 23, 2003), with amendments pending as of this report's April 1 cutoff date, citizens may also file complaints against judges with the Ombudsman when they feel their rights or freedoms have been violated. See art. 2. Complaints may be filed orally or in writing, but not anonymously, and the Ombudsman refers them to the appropriate state agency (in this case – the SJC Complaints Commission), which has 14 days to respond. *Id.* arts. 24-28. The Ombudsman may intervene to mediate the matter, refer it to the MOJ if he/she believes a criminal violation has taken place, and undertake other actions as specified in articles 19-20. It was reported that the first Ombudsman was not elected until April 2005, and there is no information available about complaints against judges filed with this official.

## 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: Positive</b>	<b>Trend: ↔</b>
<p>Court hearings are generally open to the public and the media. Judges are required or permitted to close sessions in certain specified circumstances. The courts generally appear to be reaching out to the media on a more open and systematic basis.</p>		

### Analysis/Background:

All court sessions are to be open to the public except where otherwise provided by law. CONSTITUTION art. 121(3). Citizens have the right to obtain information from any state body or institution on a matter of legitimate interest to them, so long as the information is not a state secret or other secret protected by law and does not affect the rights of others. *Id.* art. 41(2); see also JSA art. 101(1); CRIM. PROC. CODE art. 20; CIV. PROC. CODE art. 105. In criminal proceedings, hearings are held behind closed doors if needed to safeguard a state secret, protect morality or prevent the divulgence of facts pertaining to the intimate lives of citizens. CRIM. PROC. CODE art. 263. It is also possible to close a hearing for testimony by a witness whose safety or whose family's safety would be at risk through public testimony, or in cases involving underage persons. *Id.* arts. 123, 141, 391.

In civil matters, if the circumstances of the case make a public hearing detrimental to the public interest or involve the intimate private lives of a party, the judge on his/her own motion or at the request of a party may rule that the case, or certain aspects thereof, be heard in closed session. CIV. PROC. CODE art. 105(3). Intermediate appeals are held in public, as are SCC hearings of civil cases. *Id.* arts. 208, 218f. SAC cases are also heard in open sessions. SAC ACT art. 34.<sup>24</sup>

Under the law and in practice, judges rarely close a courtroom, and there are few complaints in this area. In recent years, the judiciary has made great progress in opening up the legal process to the public and members of the media, having come to the realization that media understanding and awareness can actually be beneficial. Courts have developed media strategies to help get their message across and to establish procedures and mechanisms for responding to media inquiries. Many courts have followed the SAC's model and created websites with information about the court and its proceedings. A number of courts have hired press attaches, whose principal functions are to interact with the media, read all newspapers and report on articles affecting the attache's court(s), confirm the accuracy of published news, cooperate with

<sup>24</sup> As noted above, new Admin. Proc. Code has been enacted; it still incorporates the Civ. Proc. Code where otherwise silent (see art. 144) and provides for public hearings before the SAC (see art. 217).

reasonable media requests, provide schedules of upcoming cases, distribute annual case statistics, and arrange interviews with court chairpersons and other judges. See MOJ Court Admin. Ordinance art. 163 (creating a press office in each court); JSA art. 188r (establishing press service officers as a subcategory of court clerks). Journalists are allowed to have video and still cameras in the courtroom unless the parties or the judges object, and many do object; the Constitution generally forbids photographing persons without their knowledge and despite their express disapproval. See art. 32(2).

Journalists are generally satisfied with their access to court hearings. Some courtrooms are very small and unable to accommodate many, if any, members of the media in addition to the parties and their legal representatives, but if a case is likely to attract significant media interest courts will generally try to anticipate this and schedule the hearing for a larger courtroom. While most journalists appear more interested in criminal cases than in civil and commercial matters, one source noted that commercial disputes are sometimes closed because of the claimed confidentiality of trade secrets involved in the case. When a hearing is closed, it is difficult if not impossible to verify the reason and necessity for the secrecy.

The Constitutional Court's proceedings are not open to the public except in rare instances when the Court chooses to invite oral argument, obtain expert testimony or otherwise open the session. CC ACT art. 21. The Court considers its proceedings to be non-adversarial in nature and uses its sessions to receive the input of the reporting judge, consider the briefs of interested parties, and deliberate over the issues presented before ruling.

Pursuant to 2004 amendments to the JSA, sessions of the SJC are public, with the exception of disciplinary proceedings and sessions dealing with immunity waivers and temporary suspensions of judges. See art. 27(3). The SJC's hearings are held in a relatively small conference room just large enough for its members and key staff, so proceedings are televised and contemporaneously shown in a nearby room for the media.

One troubling bit of information surfaced during the interviews from two different sources. They reported that security guards in some court buildings refused to allow Roma individuals to enter their buildings unless they could produce summonses showing their official business in the court. In addition, a Roma teenager reading a schedule of hearings on a wall near the entrance was reportedly evicted from the building by a guard without cause. These acts are obviously contrary to the law and violate the rights and freedoms of these citizens. While the MOJ Structure Regulation contains certain conditions on access to judicial buildings and premises (see art. 14), neither this nor any other authority can reasonably be used to justify selective exclusion or harassment of ethnic minorities.

## **Factor 24: Publication of Judicial Decisions**

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

**Conclusion**

**Correlation: Neutral**

**Trend: ↑**

While decisions at the highest levels of the judiciary are generally published, this is rarely true at the intermediate appeal level and especially unusual in first instance courts. Case decisions may be inspected only by the parties and their attorneys, except where the court chairperson authorizes an exception for good cause shown. Nonetheless, even attorneys for the parties often face obstacles to timely review and inexpensive copying of decisions. Access is starting to improve as courts establish websites and obtain the capacity for posting at least some decisions for review by authorized persons; however, there is no state-wide policy on this topic.

Analysis/Background:

Article 121(4) of the Constitution requires that “all acts issued in the course of the administration of justice be reasoned,” and article 101(2) of the JSA mandates that judges deliver these acts according to the procedure and time limits specified by law. In civil and administrative cases, the court announces its decision within 30 days of the final hearing of the case. The decision is signed by all judges, with majority and dissenting judges setting forth the basis for their positions. CIV. PROC. CODE arts. 187-190. While the decision is supposed to be “pronounced,” (*id.* art. 187), it was reported that the typical procedure is for the court just to send a notice to the parties indicating that a decision has been reached; the parties then proceed to the relevant clerk’s office to read the decision.

In criminal cases, the judgment must be read in open court by the presiding judge after it is signed by all members of the panel. CRIM. PROC. CODE art. 310(1). Even where the case must be tried behind closed doors, sentences must be announced publicly. *Id.* art. 263(3). Where the reasoning of the decision has not yet been prepared, the presiding judge announces only the conclusion and the court then has 15 days (30 days if the matter involves factual and legal complexity) to prepare and issue the rationale. *Id.* arts. 308, 310. The court has no obligation to read the reasoning of the decision in open court when it is not prepared until after the conclusion is announced. In intermediate appeals, the second instance court may either summon the parties to a court hearing and announce its judgment and reasoning at that time or notify the parties that the judgment has been prepared and is available for their review. *Id.* art. 340(1). At the cassation level, the court is required to announce its judgment not later than 30 days after the court hearing to adjudicate the matter. *Id.* art. 354(4).

Decisions of the Constitutional Court, together with the reasoning and the position of each judge, are routinely published in the SG. CONSTITUTION art. 151(2); CC ACT art. 14(3). They are also available on the Court’s website, <http://www.constcourt.bg>. SAC decisions repealing or halting enforcement of normative acts are required to be published in the SG. SAC ACT art. 31. SAC and SCC interpretive judgments are binding on all judicial and executive authorities. JSA arts. 86(2), 97(2). However, there is technically no express requirement that they be published; only decisions of the SAC repealing statutory acts of the Council of Ministers and ministers are required by law to be included in the official section of the SG. See STATE GAZETTE ACT art. 6, *promulgated in* SG No. 89 (Oct. 6, 1995), *last amended* SG No. 31 (Apr. 8, 2005) [hereinafter SG ACT]. In fact, virtually all decisions of both high courts are published in the SG and are posted on their respective websites, <http://www.vks.bg> (SCC) and <http://www.sac.government.bg> (SAC).

Publication of lower court decisions is a more erratic affair, as the SG Act does not generally require them to be published. Some courts of appeals and district courts have websites, and commonly provide access to at least their significant decisions (second instance in the case of district courts) using that vehicle. Certain of these decisions are, according to one respondent, included in the subscription legal database and may be viewed through that source. Those judgments are thus available for guidance to regional and first instance district courts. At the same time, other courts of appeals and district courts do not yet have functioning software that

would enable them to post their decisions on websites, and at least one court of appeals reportedly publishes only the outcomes but not the reasoning of its decisions.

First instance court decisions are typically not accessible to anyone other than the parties and their legal representatives. *MOJ Court Admin. Ordinance* art. 60(1). This is somewhat ironic, in that decisions (at least in criminal cases) are typically read in open court where they can be heard by any member of the public, but they may not then be reviewed in written form. Third persons who are not parties to the case may not examine case records, including decisions, without first obtaining the permission of the court chairperson or his/her designee upon showing of a lawful interest and good reason. *Id.* art. 60(2). Information on the progress of proceedings is supposed to be granted immediately, whether in person, by telephone or through online access. *Id.* art. 61. The *MOJ Court Admin. Ordinance* also contemplates an information service and press office within each court to provide legal and procedural information, educate the public and interact with the media. *Id.* arts. 162-163.

The actual practices in the courts seem to vary somewhat, depending on the court chairperson's policies and, in some cases, the relationship between the access seeker and the chairperson or court clerks. Journalists can occasionally obtain access by going through the press attaché, if there is one in the relevant court, or through a friendly attorney for a party in the case, or directly to the court chairperson. If the case involves a juvenile, state secret or intimate personal information that would justify a closed hearing at trial, all records pertaining to that case, including court decisions, are understandably withheld from persons who are not parties or their attorneys.

With the transition to computerization and case management software underway, it is expected that attorneys will be able to obtain access to decisions in most cases involving their clients through the court's website and password-protected entry. By one account, though, not all cases will be given this treatment because of the huge volume involved. It will still be necessary to maintain duplicate hard copy case files in the courts. It is not clear at this point whether the media and other members of the public will be able to view the written decision in these first instance court cases by going on the court's website, but it seems unlikely. In any event, the availability, scope and use of court websites do not fall under any policy or rule of state-wide application, and are left generally to the discretion of the court chairperson. Considerable variations may be expected across the country unless the SJC steps in to regulate this topic.

## 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><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>	<b><i>Trend: ↔</i></b>
<p>Non-verbatim summaries of the testimony and other important developments during court proceedings (called protocols) must be maintained, but their accuracy is debatable. There is a pilot project for audio recording of court hearings that, if universally adopted, would improve reliability. As with judicial decisions, court protocols and other case records are available to the litigants and their attorneys; third parties must normally obtain court permission to review protocols.</p>		

### Analysis/Background:

Records of courtroom proceedings, referred to as the protocol, are made in all civil and criminal cases. See *JSA* art. 106 (referring to the record of the proceedings and providing that it be kept in the Bulgarian language). The presiding judge dictates the protocol to the court reporter, and

they are both required to sign the written protocol within three days of a hearing. Contents of the protocol must include: (i) the time and place of the session; (ii) the jury members; (iii) the parties that appeared; (iv) a summary of statements of the parties and witnesses; (v) the written evidence produced; and (vi) court rulings. The parties and/or their legal representatives have seven days from the filing of the signed protocol to request amendments based on incompleteness or inaccuracies. If there are proposed amendments, the presiding judge summons the parties and the court reporter and issues a decision on the requested amendment. CIV. PROC. CODE art. 126; CRIM. PROC. CODE arts. 311-312; see also *MOJ Court Admin. Ordinance* arts. 29-30 and Exhibit One (sample form for record keeping). The final protocol then becomes a part of the case record to be considered on appeal. In criminal cases, for every investigative action before trial and every judicial action at trial it is also necessary to draft a record of the action, together with comparable information concerning date and place, time of commencement and completion, persons involved, requests or comments made, action performed and evidence collected. CRIM. PROC. CODE arts. 128-130.

There have been some complaints concerning the accuracy of these protocols, with attorneys occasionally complaining that the presiding judge almost always sides with the court reporter when there are disputes over misstatements or omissions in the protocol. Several attorneys claimed that the written protocol is sometimes finished and filed more than three days following the court hearing but backdated to a date within the three-day limitation. This practice makes it difficult or impossible for the attorney to file his/her corrections and additions within the seven days allotted.

Technology is beginning to aid improvements in this area. Until a few years ago, court reporters used noisy and inefficient manual typewriters to type the protocol. Now, computerized word processing is available in most courtrooms, and the presiding judge often has a monitor to enable him/her to review the protocol for accuracy as it is typed by the court reporter. Even more encouragingly, article 311(3) of the Crim. Proc. Code authorizes the court to order preparation of a sound and video recording of the court hearing, subject to certain procedural safeguards, and there are reports that pending amendments to the Civ. Proc. Code would allow verbatim recordings of hearings in civil cases as well. Under a pilot program, four district courts and one regional court have a total of seven courtrooms with verbatim recording systems, and it is expected that considerably more will be in place by the end of 2006. The purpose of these recordings is not to replace the protocol but to provide clear evidence to resolve disagreements over the contents of the protocol and thus to improve their accuracy. The recording would not be available for use on appeal.

While the use of protocols is fairly common in European legal systems, it is a cumbersome process that interrupts the flow of a case, adds to the time required for the court hearing, and sometimes necessitates a subsequent hearing on requested amendments. These problems would not be solved by audio recordings of court hearings, unless verbatim transcripts of the recording were prepared and they were usable on appeal.

Similarly to judicial decisions, protocols and other case records are typically not accessible to anyone other than the parties and their legal representatives without the permission of the court chairperson. *MOJ Court Admin. Ordinance* art. 60. Further, the Access to Public Information Act, promulgated in SG No. 55 (July 7, 2000), last amended SG No. 103 (Dec. 23, 2005), provides additional legal support for access to case records, subject to the exceptions and limitations set forth therein.

A number of complaints were received from attorneys regarding access to court records, at least in the lower courts. One long-standing objection has related to the right of an attorney to obtain free access to and copies of court documents upon mere showing of his/her attorneys card, without regard to whether the attorney represents a party in the case or whether the attorney even has a specific client for whom he/she seeks access. ATTORNEYS ACT art. 31, promulgated in SG No. 55 (June 25, 2004), last amended SG No. 10 (Jan. 31, 2006). The *MOJ Court Admin.*



Ordinance does not recognize this broad right of attorneys, and the predecessor MOJ regulation taking a similar position was routinely upheld by the SAC. Court clerks also typically require a power of attorney that confirms the attorney is in fact representing a party to the case, a requirement that can be burdensome if the attorney has been asked to represent the party but wants to review the record before deciding whether to accept the employment.

Even attorneys who represent the parties and have powers of attorney find access to be difficult in some cases. Most courts maintain only hard copy case files, and there are no duplicate files for a given case. The attorney is supposed to be able to review the case file the day before the hearing in an attorneys' room set aside in the courthouse for this purpose. *MOJ Court Admin. Ordinance* art. 60(3). It is possible, however, for the file to be in the possession of the judge (who may be working at home because of poor working conditions in his/her office) or the prosecutor, and unavailable for review by the attorney. In addition, many courts do not have adequate, if any, attorneys rooms for examination of records, and the only place to review them is a small and crowded area in the clerk's office. If the attorney wants to have copies made of pertinent documents from the file, some courts require him/her to obtain expensive certified copies and pay for them with bank transfers. Other courts have regular copiers available in either the clerk's office or the attorneys' room where uncertified photocopies can be made for reasonable charges. Finally, certain, perhaps most, courts require the attorney to apply in advance for written permission from the court chairperson to take the case file with him/her for inspection and/or copying off premises. There are conflicting reports as to whether prosecutors face these same restrictions and obstacles when seeking to review, copy, or remove case records.

With the transition to computerization and case management software underway, it is expected that attorneys will be able to obtain access to most records in cases involving their clients through the court's website and password-protected entry. By one account, though, not all cases will be given this treatment because of the huge volume involved, and even the case records that will be electronically available will not contain all documents. The initial claim, main documents, minutes, case status and decision will reportedly be included, but not evidence and other items. It will still be necessary to maintain duplicate, and more complete, hard copy case files in the courts. It is not clear at this point whether the media and other members of the public will be able to view these records on the courts' websites, but it seems unlikely. Further, the availability, scope, and use of court websites are left generally to the discretion of the court chairperson, and considerable variations may be expected across the country unless the SJC steps in to regulate this topic.

When, as is typical, a first instance court decision is appealed, the case file is transferred to the intermediate appeal court and then, if applicable, to the cassation court. Once all appeals are exhausted, the file is sent back to the first instance court for storage. There is reportedly no microfilming or similar capacity for condensing the volume of these closed files, or use of off-site storage, so the files typically take up considerable space in the courthouse that could be used for more productive purposes. There are varying lengths of time, depending on the nature and magnitude of the case, that archived files must be retained before they may be destroyed.

## **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>
<p>Judges generally lack assistants who can help with legal research, opinion drafting and other responsibilities. Court clerks are normally assigned to entire courts rather than to individual judges. While difficulties remain, court clerks have become more professional, better trained and more customer-oriented in recent years.</p>		

Analysis/Background:

The JSA now provides for the position of “judicial assistant,” a person meeting the necessary qualifications of a judge but not appointed to the magistracy, to serve in the SCC and the SAC as appointed by the applicable chairperson. See art. 148a. Their task is to “assist judges in the work thereof.” *Id.* The presumed intent of this provision was to provide the judges on these two high courts with persons having legal educations to conduct legal research and prepare draft judgments, thereby easing the workload of these overworked judges and expediting long-delayed cassation appeals. Reasonably capable judicial assistants could presumably be hired and utilized, under supervision, to perform these tasks without requiring the compensation, benefits, job security, and other perquisites of judges. While this concept has considerable merit and may yet prove beneficial, its present benefit is inconsequential. According to one source, there are only one or two such assistants employed for each chamber of the SCC to assist as many as 40 judges, and they are presently used mainly for daily reports and clerical work. The SAC has had these judicial assistants for a considerably longer period, and now has a total of 15 for 77 judges.

No judicial assistants are available at the lower courts. As a result, judges must still do virtually all of their own case file reviews, legal research, opinion writing, and many other formal and time-consuming tasks where legally trained assistants should be able to provide assistance.

Except for court chairpersons, judges generally do not have their own assigned secretaries or other administrative assistants. Instead, court clerks are assigned to the court as a whole, where they assist with either general administration (budget/finance, human resources, facilities, etc.) or court operations (court reporting, intake/maintenance of case records, or summons delivery). Because of a shortage of courtrooms, court reporters may work for a number of different judges and panels over the course of a work week. The JSA’s provisions on court clerks are set forth in articles 187-188o.

According to SJC statistics, as of February 28, 2006, the numbers of judges and court clerks, excluding the SCC and the SAC, were as follows:

**NUMBERS OF JUDGES AND COURT CLERKS**

<b>Court(s)</b>	<b>Judges</b>	<b>Court Clerks</b>	<b>Judge/Clerk Ratio</b>
<b>Courts of Appeals</b> <sup>(1)</sup>	112	130	1.16: 1
<b>District Courts</b> <sup>(2)</sup>	729	1,341	1.84: 1
<b>Military Courts</b>	41	111	2.71: 1
<b>Regional Courts</b> <sup>(3)</sup>	871	2,730	3.13: 1
<b>TOTAL:</b>	<b>1,753</b>	<b>4,312</b>	<b>2.46: 1</b>

Notes: <sup>(1)</sup> The Military Court of Appeals is included with military courts for this purpose.

<sup>(2)</sup> District courts include the Sofia City Court.

<sup>(3)</sup> Regional courts include the Sofia Regional Court.

It is unclear whether the SJC has a formula or other standard for determining the proper number of court clerks for a given court or in relation to a certain number of judges. It may be that the variations in responsibilities, caseloads and conditions at different levels of the judiciary and

diverse regions of the country make it impossible to set a workable benchmark that would make sense everywhere. New clerk positions may be authorized based simply on the urgency and persuasiveness of court chairperson requests and budget capacity.

In the past, court clerks suffered from a poor reputation among magistrates, attorneys and members of the general public in terms of their qualifications, training, motivation, efficiency and customer service attitudes. While criticism has not disappeared, the overall impression is that in recent years, this group of public servants has become more organized and professional and a stronger link in the judicial chain. This progress is attributable to several factors described in the 2004 JRI: the initiatives and guidance of a model courts pilot project; the organization and development of a National Association of Court Clerks, with its national base, substantial share of eligible membership (47% as of January 1, 2006), code of ethics, training programs and promotional activities; and the 2002 amendments to the JSA, which established competitions for new clerk positions (see art. 188a(1)) and created the office of “court administrator” in each court, a professional non-judge executive who could better manage the administrative operations of the court while relieving the court chairperson of some of his/her non-judicial burdens (see art. 188q). The NIJ has also been assigned to assist in the training of court clerks (*id.* art. 35f(1)), and has begun to offer programs directed at these persons. It eventually expects to provide an initial training program for all new clerks and offer continuing education every three years for experienced clerks. The MOJ Inspectorate of the Judiciary also takes an active role in examining court operations to try to identify and correct problem areas and expedite resolution of cases. *Id.* art. 35b.

Further improvement is called for, however. The funding, employment and training of court administrators has been a slow process and is not yet fully completed. The space problems that afflict judges also burden court clerks, whose facilities and working environments are not always conducive to cheerful, courteous and efficient customer service. Computerization is in its early stages, and much needs to be done to install and properly operate electronic case management, docket control, filing, website links and other information services. Better compensation is needed to attract the most qualified applicants for new positions in the court administrative area. Finally, every effort should be made to reform and streamline procedures throughout this area, including consideration of simplified summoning forms and methods, audio recording of court hearings, and compressed layers of appeal. It is encouraging to note that progress is already underway in several of these areas.

## Factor 27: Judicial Positions

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

<b>Conclusion</b>	<b>Correlation: Positive</b>	<b>Trend: ↑</b>
Judicial positions are regularly added by the SJC as needed to reduce the caseloads of judges on the busiest courts. Other reforms could reduce the burdens of judges without adding judicial positions.		

### Analysis/Background:

Under the JSA, the SJC has the power and duty to “determine the number of the judges . . . in all courts. . . .” See art. 27(1).3. This authority is, of course, limited by budgetary considerations, so is strongly influenced by the actions of the Council of Ministers and especially the National Assembly in drafting and adopting the state budget. The new role of the MOJ to propose the judiciary’s draft budget and submit it for review to the SJC (see CONSTITUTION art. 130a(1)) is yet

to be fully defined, but it could also constrain (or potentially supplement) the SJC's ability to add judges.

Procedurally, proposals on the number of judges may originate with the applicable court chairpersons, at least one-fifth of the members of the SJC, or the MOJ. JSA arts. 30, 30a. They are first submitted in writing to the P&EC, and must be supported by reasoning based on the number, type, complexity and seriousness of files and cases examined in the last five years. *Id.* The P&EC has 14 days to discuss the proposal and submit it to the SJC with a reasoned opinion, and the SJC in turn acts on it at least seven days after the P&EC submission is received. *Id.*

According to the SJC, its standard used in determining when and where to create new judge positions is the average monthly caseload of one judge, based on the number of completed cases. When the average caseload of a judge in one court is larger than the average caseload for similar courts around the country, the SJC authorizes extra judge positions until the average caseload of that court is decreased to the average levels for the country.

The following table shows caseload statistics by type of court, excluding the SCC and the SAC, for 2005 (groupings are according to the format supplied by the SJC, with the Military Court of Appeals included with military courts, the Sofia City Court separated from other district courts, and regional courts divided into three categories as shown):

#### CASES HEARD AND COMPLETED IN 2005

<b>Court(s)</b>	<b>No. of Cases Heard</b>	<b>No. of Cases Heard per Judge per Month</b>	<b>No. of Cases Completed</b>	<b>No. of Cases Completed per Judge per Month</b>
<b>Courts of Appeal</b>	11,395	9.50	9,352	7.79
<b>Military Courts</b>	2,962	6.02	2,699	5.49
<b>District Courts</b>	130,134	19.61	108,032	16.28
<b>Sofia City Court</b>	54,320	38.36	36,565	25.82
<b>Regional Courts in District Centers</b>	187,961	42.45	152,257	34.39
<b>Other Regional Courts</b>	118,180	29.40	96,086	23.90
<b>Sofia Regional Court</b>	79,503	55.67	53,324	37.34

Source: SJC.

The CLS Preliminary Study reported that the average SAC judge in 2005 completed 16 cases per month, while the average SCC judge during the same period completed 17 per month.

It is interesting to note the wide range in completed cases per judge at the different levels of the judiciary, with relatively few cases handled by courts of appeals and military court judges and significantly higher volumes at the regional and district court levels. Even within categories of courts, there are substantial variations. For example, within the regional courts, completed cases per judge per month range from as low as 5.71 in Ivaylovgrad to more than 50 in Bourgas and Petrich, with the other regional courts occupying the full spectrum between those extremes. There can be many explanations for these variances, including temporary absences or surpluses of judges, extraordinary circumstances (new legislation, local business layoffs or bankruptcies), jurisdictional differences (some courts deal with company registrations, real estate recordings, execution writs, customs cases and foreign parties that other courts either do not have or have in smaller quantities, thus distorting numbers), etc. Presumably, the P&EC and the SJC adjust for these special considerations, look at long-term trends and projections, and determine their needs for judicial positions accordingly.

The SJC's data also indicate that 23 new judicial positions were created in 2004, 49 more in 2005, and 100 additional positions through February 28, 2006. As of that date, there were 93 vacancies available to be filled.

Of course, simply adding judicial positions and filling them with newly appointed judges cannot accomplish much unless (i) the new judges are selected through suitable competitions and undergo appropriate initial training from the NIJ, and (ii) there are courtrooms and offices that provide the physical facilities in which the new judges can do their jobs.

As the SJC is undoubtedly well aware, there are other means of reducing judicial workloads beyond simply adding new judges to courts having higher caseloads per judge than similar courts in the Republic. Some of these means, many of which are obvious and are already under consideration by both official and unofficial proponents of judicial reform, include:

- Transferring judges from the consistently lower caseload courts to the courts having higher volumes.
- Freeing judges of responsibility for categories of cases that can readily be handled by trained civil servants who do not need legal educations and judicial experience. This includes company registrations, which are to be transferred to a department of the MOJ under pending legislation, non-profit entity registrations (which could be similarly transferred), and real estate filings.
- Expanded use of judicial assistants, the legally trained clerks who can aid judges by conducting legal research, reviewing case files and drafting opinions for them.
- Reducing the present system of three-instance consideration of cases to two instances, and limiting the second instance review to a cassation appeal focusing narrowly on errors of law and procedural/jurisdictional irregularities. This could also include prohibiting appeals of minor cases, and giving the SCC the power to decline to hear appeals of cases that are not especially significant and do not raise inconsistencies in jurisprudence.
- Related to the foregoing, consolidating regional and district courts into single level first instance courts and expanding the second instance jurisdiction of courts of appeal. Where feasible, court consolidation within particular levels (e.g., combining two or more second instance courts) could be an alternative or additional step that would facilitate balancing of caseloads within the consolidated court.
- Establishing more specialized courts that would develop expertise in, and concentrate their efforts on, complex subject matters and be able to resolve them more expeditiously and correctly.
- Simplifying and streamlining procedural rules to alleviate delays and reduce complications caused by failure to comply with highly technical formalities. Many of these measures have been mentioned elsewhere in this report, including improved summoning methods and requirements, greater control by the judge over the scheduling and movement of cases (with less deference to the wishes of attorneys and parties), replacement of protocols with verbatim transcripts, faster and easier procedures for enforcement of judgments, better use of pre-trial and first hearing sessions to narrow facts and issues in dispute, inadmissibility of new evidence on appeal, etc.
- Increased computerization of case records, case assignments, docket control, filings and dissemination of schedules and decisions.

- Greater authorization, encouragement and use of alternative dispute resolution, particularly arbitration and mediation, that would take many cases out of the judicial system. Arbitration has a lengthy tradition and wide acceptance in Bulgaria, but its use can be increased. Mediation has also been used for years, but it has only recently been endorsed and professionalized through legislation and special rules for training and certification of qualified mediators. Early impressions of court-referred, *ad hoc* and commercial mediation centers in various regions have been encouraging and suggest this area has the promise of making a significant dent in the burdens of the judicial system.

## 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>Most courts still use manual systems that contain hard copy documents and record filing dates but do not automatically “flag” deadlines to assure timely and efficient movement of the case. Some courts have moved to automated systems with case management software, but conversion is still in the early stages.</p>		

### Analysis/Background:

At present, most courts in Bulgaria continue to use manual filing and hard copy records for their cases.<sup>25</sup> As such, there is no particular method for highlighting or “flagging” delays or pending deadlines for steps to be accomplished, whether the service of a summons, the preparation of or objection to a court protocol, the issuance of the judge’s decision, or the overall length of time taken for a case to be resolved at a given level. It is essentially up to the individual judge, court clerk or attorney to manually create and maintain a personal calendar of coming deadlines if he/she wants to be sure of compliance. The case record will show the dates on which certain steps were taken and thus identify deadlines missed after the fact. Similarly, statistics reported to the court or chamber chairperson and routine or special examinations conducted by the MOJ Inspectorate will reveal failures to meet deadlines. There is not, however, a feature of this manual system that will automatically and clearly bring pending due dates to the attention of the responsible person to prevent deadlines from being missed in the first place.

The Bulgarian judiciary is transitioning to case management software that would, among other things, provide for automated control of dockets and case records and contain a feature that would flag deadlines and facilitate timely and efficient movement of each case. Some courts have had and used software for this purpose on a pilot basis for two or three years, but with EU accession on the horizon the country is moving to a different software system and those courts have either converted to the new system or will need to do so in the near future. In some courts, one or two chambers have converted while the other chambers have not. There are varying estimates concerning the time that will be required before the automated system is fully in place, operational and utilized by trained personnel, with linking networks both within and among courts, but it is likely these actions will not be entirely completed until mid-to-late 2007.

## Factor 29: Computers and Office Equipment

<sup>25</sup> The JSA was amended to require the SJC to approve all information management systems.



***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><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>	<b><i>Trend: ↔</i></b>
Computers are generally available to judges and court clerks, but these users are not all well-trained on their use. Most do not employ them for all the functions for which they can be used, and do not have the operating systems that would allow them to utilize the computers for many of the important court operations.		

**Analysis/Background:**

According to the SJC, as of January 1, 2006, a total of 1,744 personal computers (including laptops) had been provided to judges in the district and regional courts of the Republic. An additional 2,616 computers had been issued to court clerks in those courts, while another 426 computers were installed in courtrooms for use by court reporters in recording the proceedings. Of the 112 regional courts, only 26 were listed as not having computers in courtrooms; all 112 showed that judges and clerks had them.

No statistics were provided for the SCC, the SAC, or the courts of appeals, but they presumably are at least as well computerized as the district and regional courts. The SAC, in particular, is highly regarded for its use of information technology.

The SJC indicated that the computers provided to the district and regional courts were used for word processing, legal research, case management, and accounting. Since relatively few courts at this level have case management software, it may be presumed that this use is fairly rare. Of course, the availability of computers does not necessarily mean that those persons who have been provided them are trained to use them to their full extent or that all of the computers have Internet access.

Several respondents expressed disappointment that the judicial system is not better automated than it is after all of these years. The change in case management software has, by some accounts, caused the system to regress from its position two years ago. A couple of persons said the computers provided are not as modern or well-maintained as they should be, while others commented on the inadequate computer skills of some of the more senior judges and clerks.

**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: Positive</b>	<b>Trend: ↑</b>
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<p>There are several electronic legal databases and a state gazette that provide judges, at no cost, with all laws on a current basis and most of the important court decisions necessary for the performance of their duties.</p>
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Analysis/Background:

Bulgaria has several computerized legal databases that contain the texts of current laws and treaties, as well as significant cases from the Constitutional Court, the SCC and the SAC, and occasionally from courts of appeals. Some are web-based and maintained on a current basis, while others are downloaded and installed onto computer hard-drives and are updated as revisions are produced and downloaded. Several of them are subscription-based systems, which require users to pay a fee to obtain access, while others are operated on a pay-as-you-go basis. At least one site is free, but its resources are limited. The SG has established its own free website, <http://dv.parliament.bg>, containing the titles (but not texts) of laws from SGs dating back to the start of 2005. Judges are able to obtain access to the best databases through their court-supplied computers at no cost, and are also able to use these services for free at home if they have personally owned computers. This allows them to work at home, an important option given their crowded offices in court buildings.

There are limitations to these databases, especially in their coverage of lower court decisions. A district or regional court judge may not have access to all of the relevant decisions of the court of appeals having jurisdiction over his/her court. As discussed in Factor 24 above, first-instance court decisions are rarely if ever available in these sources. In addition, the research services do not carry current EU laws and jurisprudence that will be essential for the Bulgarian judges once accession occurs, although the NIJ is distributing compact discs to judges with most if not all of this information. Abstracts from some law review articles are available on the databases, but these commentaries are not complete.

Reports indicate that these databases are easily searchable and contain links to other related provisions and important court decisions pertaining to a particular law or article.

Aside from the general databases, many courts appear to be moving toward the use of websites that will carry all of their decisions, providing a means of guiding judges and attorneys in their application of current law. As noted previously in Factor 24, though, this effort does not seem to be directed or coordinated on an official, state-wide basis.

In addition to electronic sources, of course, there are still hard copies of the laws, as well as issues of the SG that contain new and amended laws and selected high court decisions. Hard copies are not always available for all individual judges, who must either use the court's copies or purchase their own. In addition, the assessment team is aware of only one courthouse library containing a broad range of useful reference materials for research by judges, and it is maintained by the bar council rather than the court.

## List of Acronyms

<b>BJA:</b>	Bulgarian Judges Association
<b>CLE:</b>	Continuing Legal Education
<b>EU:</b>	European Union
<b>JRI:</b>	Judicial Reform Index
<b>JSA:</b>	Judicial System Act
<b>LPNCA:</b>	Law on Proposals, Notes, Complaints and Applications
<b>MOI:</b>	Ministry of the Interior
<b>MOJ:</b>	Ministry (or Minister) of Justice
<b>NAAA:</b>	National Agency for Assessment and Accreditation
<b>NIJ:</b>	National Institute of Justice
<b>P&amp;EC:</b>	Proposals and Evaluations Commission
<b>PEA:</b>	Private Enforcement Agent
<b>SAC:</b>	Supreme Administrative Court
<b>SCC:</b>	Supreme Court of Cassation
<b>SG:</b>	State Gazette
<b>SJC:</b>	Supreme Judicial Council