



JUDICIAL REFORM INDEX
FOR
ALBANIA

October 2006

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VOLUME III

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ISBN: 978-1-59031-852-2

Printed in the United States of America

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Introduction

The Judicial Reform Index (JRI) is an assessment tool implemented by the American Bar Association's Rule of Law Initiative. It was developed by the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), with the purpose 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 the ABA, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

The ABA 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, the ABA 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, the ABA has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

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

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single 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.

Methodology

In designing the JRI methodology, the ABA 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’s 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. The ABA has continually integrated new standards and guidelines into its JRI process, such as the *Bangalore Principles on Judicial Conduct*.

Drawing on these norms, the ABA 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, the ABA developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or a European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, the ABA 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, the ABA 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 the ABA debated internally whether it should include one at all. During the 1999-2001 time period, the ABA tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI’s Executive and Advisory Boards, as well as outside experts, the ABA 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, the ABA 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, the ABA has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, the ABA 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.

The follow-on rounds of implementation of the JRI will be conducted with several purposes in mind. First, it will provide an updated report on the judiciaries of emerging and transitioning democracies 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 initial JRI assessments have been addressed by state authorities, members of the judiciary, and others. Periodic implementation of JRI assessments 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 judicial reform initiatives. Finally, by conducting JRI assessments on a regular basis, the ABA 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 follow-on 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.

Follow-on 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 follow-on 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, all follow-on assessment reports 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, the ABA 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 the ABA — 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. The ABA 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. The ABA 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.

During the course of developing the JRI, the ABA benefited substantially from two expert advisory groups. The ABA would like to thank the members of ABA/CEELI's First Judicial Advisory Board, including Tony Fisser, Marcel Lemonde, Ernst Markel, Joseph Nadeau, Mary Noel Pepys, and Larry Stone, who reviewed earlier versions of this index. Additionally, the ABA would like to thank the members of the Second Judicial Advisory Board, including Luke Bierman, Macarena Calabrese, Elizabeth Dahl, Elizabeth Lacy, Paul Magnuson, Nicholas Mansfield, Aimee Skrzekut-Torres, Roy T. Stuckey, Robert Utter, and Russell Wheeler, who stewarded its completion. Finally, the ABA also expresses its appreciation to the experts who contributed to the ABA/CEELI Concept Paper on Judicial Independence: James Apple, Dorothy Beasley, Nicholas Georgakopolous, George Katrougalos, Giovanni Longo, Kenneth Lysyk, Roy Schotland, Terry Shupe, Patricia Wald, and Markus Zimmer.

Assessment Team

The Albania JRI 2006 analysis assessment team was led by Beth C. Miller, a former ABA/CEELI liaison and legal specialist who previously served in Kosovo. Other members of the team were Rudina Jasini, an attorney from Tirana, and Alketa Prifti, Office Manager of the Tirana office of the ABA. The team received strong support from other ABA staff, including Program Manager Molly Inman, Regional Director for Central Europe and Eurasia Robert Lochary, and Research and Program Development Director Wendy Patten. Judicial Reform Focal Area Co-Coordinator Olga Ruda provided guidance throughout the assessment process, served as editor, and prepared the report for publication. The conclusions and analysis are based on interviews that were conducted in Albania in October 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

The 2006 Judicial Reform Index (JRI) for Albania demonstrates limited progress in several areas, while indicating that much work remains before Albania can establish an independent, accountable, transparent, and efficient judicial system. Of the 30 factors analyzed in the assessment, the correlations determined for seven factors improved from 2004 to 2006, while one factor (selection and appointment process) suffered a decline. With the exception of this latter factor, the remaining 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 seven the number of factors receiving the highest grade. Nineteen factors received neutral correlations in this report, including four that had received negative grades in 2004. However, four critically important factors continue to carry negative correlations: improper interference in the judicial decision-making, enforcement powers of the courts, career advancement of judges, and public access to court proceedings. Overall, the findings of the 2006 JRI suggest that fundamental progress in Albania's judiciary remains elusive, although the assessment reveals some encouraging developments, as well as awareness on the part of the judiciary's leaders and the government of the need for improvement.

Positive Aspects Identified in the 2006 Albania JRI

- An encouraging development over the past two years has been the **increasing capacity of the Magistrates' School**, which continued to improve the **quality of its initial training program for future judges**. The quality of its curriculum, faculty, interactive methodology, and publications is reflected in the virtually unanimous praise of its graduates, who are widely viewed to possess greater integrity and knowledge and produce better reasoned decisions than non-graduates.
- The Magistrates' School has also been active in **increasing the breadth of its continuing legal education (CLE) program**, in response to the recently introduced **requirement that all sitting judges participate in such trainings**. In 2006, the CLE curriculum was, for the first time, developed for three years in advance, with input from judges, governmental agencies, NGOs, and international organizations. While the government is allocating greater funds for the CLE program, it is **not yet completely self-sufficient**, and some courses continue to be funded by international donors.
- Acting through the Office of Administration of the Judicial Budget (OAJB), the judiciary still appears to have the **power to propose and administer its own budget**, although some courts believe that their individual influence is curtailed by limited opportunities to affect the OAJB's allocations to them. Despite this authority, judicial budgets are seen as insufficient to cover operating costs, especially in lower courts, and the year **2006 brought budget cuts across all government sectors**, including the judiciary. Coupled with the continuing decrease of the judicial budget as a percentage of the total government budget, this development prompted some respondents to suggest a weakening influence of the judiciary over its budget.

Concerns Relating to Judicial Accountability and Corruption

- The Albanian judiciary continues to suffer from a **strong public perception that judicial decisions are often based on improper influences**, stemming **primarily from private sources**, to a lesser extent from public officials, and only rarely from senior judges. Interference from private interests take many forms, including bribery by parties and their lawyers, *ex parte* communications, and pressure upon judges by means of personal connections. While the actual magnitude of such influences is difficult to quantify, a

recent public opinion survey ranked the judiciary among the most corrupt entities in the public sector. Over 50% of judges themselves admitted that corruption is a serious problem. Despite these reports, **prosecution of judges for corruption is rare**, and ongoing or proposed measures to address this problem are lacking.

- **Insufficient judicial salaries** remain one of the major factors contributing to corruption in judiciary. Despite a modest increase in 2006, salaries of lower court judges are lower than those of their counterparts in other branches of government. In addition, with two small exceptions, there are **no provisions that would allow for differentiation of salaries within the same court level** based on seniority, merit, or other similar factors. Many interviewees agreed that higher salaries would help in bolstering the resistance of judges to corruption; however, they also noted that the utilization of bribes and connections is deeply entrenched in Albanian society, and that more robust measures are needed to curb judicial corruption.
- Concerns remain about **political influence and the lack of transparency in the judicial discipline and removal process**, which derive from a number of variables, including the manner of drafting disciplinary decisions, executive influence, and the **perceived randomness of the disciplinary charges**. The High Council of Justice (HCJ) and the Ministry of Justice (MOJ) both have Inspectorates with overlapping responsibilities in the discipline process. Nonetheless, only the MOJ is authorized to initiate disciplinary proceedings, allowing it to reward or punish judges for their decisions. In addition, some judges are disciplined for minor infractions while serious violations go unnoticed. Despite a growing number of public complaints concerning judicial misconduct, there has been a **steady decline in the number of disciplinary proceedings**. This is attributable in part to the constitutionally imposed restraints barring investigation into judicial decisions, but also in part to weaknesses in the disciplinary process. On a more positive note, recent efforts to promote cooperation between the two Inspectorates and to streamline complaint registration and verification procedures bode well for improved efficiency.
- The **Code of Judicial Ethics**, which generally encompasses all aspects of judicial behavior, **lacks a meaningful enforcement mechanism** and does not create grounds for formal disciplinary proceedings before the HCJ. However, the **National Judicial Conference (NJC) has started to promote an agenda of ethics reform** by increasing the enforceability of the Code, providing advisory opinions, and creating more opportunities for ethics training. Likewise, the HCJ has referred to the Code in its decisions requiring interpretation of statutory disciplinary provisions. These efforts should result in greater recognition and effect of the Code among the judiciary.

Concerns Relating to Transparency of the Judiciary

- Despite constitutional and legal guarantees of the right to public trial, **limited courtroom space makes it unlikely that everyone wishing to observe a trial can be accommodated**. Trials in first instance courts are often held in the small offices of the judges, which has the practical effect of restricting attendance to parties, their lawyers, the judge, and the secretary. **Access to accurate information about scheduled cases can be equally problematic**. Typically, this information can only be obtained by contacting the judge. Public relations and media offices do not exist in all courts, and other court personnel are not always able or willing to provide the public with such information.
- While judicial decisions and other court documents are, in theory, a matter of public record, **only decisions of the High Court and the Constitutional Court are published on a regular basis**. A handful of lower courts began publishing some of their opinions

on their respective websites, but criteria for selecting the judgments for publication are unclear. Other courts may, reportedly, **deny non-parties' requests for copies of court records under various pretexts**. Lawyers and representatives of international organizations interviewed by the assessment team stated that they have difficulty obtaining access to courts documents. Even when decisions are obtainable, they may contain poor reasoning and suffer from illegibility when handwritten.

Concerns Relating to Inefficiency of Judicial Proceedings

- The **distribution of judicial caseloads** among different levels of the judiciary and different courts within the same level is **extremely uneven**. As a result, many courts are unable to adjudicate cases in a timely manner, and **lengthy backlogs and delays are typical**. A number of factors contribute to this problem, including high caseloads, understaffing, poor case management practices, infrastructure issues, and other systemic deficiencies that result in an inefficient use of the judges' time. Notably, however, some courts do not experience any backlog problems, despite their enormous caseloads. The government is contemplating reorganization of the judiciary, partial consolidation of smaller courts, reapportionment of judges, and unification of case management practices.
- The **number of court support personnel in most courts is insufficient** to enable judges to perform their duties efficiently. Court staff salaries are low even in comparison with civil servants in other branches of government, and the existing salary structure suffers from inequalities in its distribution. The **low salaries make it difficult to attract and retain qualified personnel** and make them more susceptible to corruption.
- Significant **gaps exist between contempt and subpoena powers granted to judges pursuant to procedural codes and the exercise of these powers in practice**. Inefficiencies of the notification system, non-appearances of witnesses, advocates, and prosecutors, and failure of the police to bring detainees to court are ongoing problems that set a detrimental example of disrespect toward the courts. Nonetheless, judges rarely issue contempt orders in these instances, choosing instead to postpone the trials. As a result, these are among the most frequent problems cited in trial delays.
- A related problem of enormous proportions is the **lack of enforcement of monetary judgments, particularly those issued against government authorities**. Although courts themselves have limited powers in this area, the widespread belief that bribes to bailiffs are necessary for successful enforcement only serves to aggravate the poor public image of the judiciary. In response to the international notoriety resulting from a judgment by the European Court of Human Rights, the Government of Albania is starting to address the enforcement problem more aggressively.

Albania Background

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

When Albania finally broke with the communist rule in 1991, it was "under the burden of the most vicious Communist regime in Eastern Europe, economic development that resembled sub-Saharan Africa, and disintegrating state institutions." FREEDOM HOUSE, *Albania*, in NATIONS IN TRANSIT 2006: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA [hereinafter ALBANIA NIT 2006]. The government launched a rapid reform program that resulted in remarkable progress in Albania's transition to democracy and a market economy. Nonetheless, the rule of law in Albania remains lacking fifteen years following the start of transition, and the government has been unable to gain full confidence of the citizens in the fundamental legitimacy of the new order. One observation that has been frequently expressed in recent years is that "Albanian democracy cannot move forward, past its current 'stalled transition,' until the rule of law, especially as it applies to the state, is substantially strengthened." See U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT [hereinafter USAID], ALBANIA DEMOCRACY AND GOVERNANCE ASSESSMENT: REVISED VERSION (PREPARED BY DEMOCRACY INTERNATIONAL, INC.) at 9 (Feb. 2006) [hereinafter ALBANIA D&G ASSESSMENT].

Legal Context

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

¹ For example, LAW ON THE ORGANIZATION AND FUNCTIONING OF THE JUDICIAL POWER (Law No. 8436 dated Dec. 28, 1998); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE CONSTITUTIONAL COURT (Law No. 8577 dated Feb. 10, 2000); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COURT (Law No. 8588 dated Mar. 15, 2000); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE MINISTRY OF JUSTICE (Law No. 8678 dated May 14, 2001); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COUNCIL OF JUSTICE (Law No. 8811 dated May 17, 2001); LAW ON DECLARATION AND AUDIT OF ASSETS, FINANCIAL OBLIGATIONS OF ELECTED PERSONS AND CERTAIN PUBLIC OFFICIALS (Law No. 9049 dated Apr. 10, 2003); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE SERIOUS CRIMES COURTS (Law No. 9110 dated Jul. 24, 2003); and LAW ON THE ORGANIZATION AND FUNCTIONING OF THE NATIONAL JUDICIAL CONFERENCE (Law No. 9399 dated May 12, 2005). These laws, together with the 1996 LAW ON THE MAGISTRATES SCHOOL, the 1998 LAW ON THE CREATION OF THE OFFICE FOR THE ADMINISTRATION OF THE JUDICIAL BUDGET, the 1995

Albania is governed by a unicameral Assembly (*Kuvendi*), consisting of 180 members elected pursuant to a mixed system combining elements of majority and proportional systems, and the President of the Republic, who is elected by the Assembly for up to two 5-year terms. The President appoints the prime minister who, in turn, forms the Council of Ministers composed of the deputy prime minister and ministers.

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

History of the Judiciary

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

Structure of the Courts

Albania has a three-tiered court system composed of first instance courts, courts of appeal, and the High Court. In addition, a Constitutional Court, which is outside the judiciary and is independent of all branches of government, exists to interpret and guarantee compliance with the Constitution. **Military first instance courts** and a **military court of appeal** function within the regular court system. These courts try members of the armed forces, prisoners of war, and others for crimes under the Military Criminal Code, such as desertion or evading being called to military service. As these courts have not carried a heavy caseload in recent years, a draft law currently under consideration would abolish them and transfer their cases to the regular courts.

First instance courts (frequently referred to as **district courts**) sit in 29 judicial districts throughout the country and try cases in the first instance. Five of these courts also include military first instance courts or sections. In addition, some courts include special sections for the adjudication of administrative, commercial, and labor disputes. Hearings in civil cases are conducted by a single judge, if the amount in controversy is under ALL 10 million (about USD 97.6 thousand),² or by a three-judge panel, and in criminal cases by a single judge or, when a sentence of more than five years is possible, by a three-judge panel. There are currently 286 judges sitting in Albania's first instance courts.

CODE OF CRIMINAL PROCEDURE, and the 1996 CODE OF CIVIL PROCEDURE, constitute the main legal provisions pursuant to which the judicial system functions in Albania.

² In this report, Albanian Leke (ALL) are converted to the United States Dollars (USD) at the approximate rate of conversion when this report was drafted (USD 1.00 = ALL 102.44).

Courts of appeal sit in 6 different regions of the country (Durrës, Gjirokastra, Korça, Shkodra, Tirana, and Vlora) and try cases in the second instance. These courts hear appeals from first instance courts in three-judge panels and may review issues of both fact and law. The Military Court of Appeal, located within the Tirana Court of Appeal, hears appeals from the military first instance courts, also in three-judge panels. At present, there are 65 judges sitting on the courts of appeal.

Serious crimes courts were established effective January 1, 2004 in an effort to increase the efficiency of the judiciary in addressing the problem of organized crime. Specifically, these courts have jurisdiction over cases involving the establishment of armed gangs or criminal organizations and the crimes they commit (specifically including illegal trafficking in narcotics), armed robbery, human trafficking, crimes related to terrorism, crimes against humanity, some severe political crimes, and other crimes punishable by at least 15 years imprisonment. Presently there are two such courts, both located in Tirana. The first instance court is the **Serious Crimes Court**, and the second instance court is the **Serious Crimes Appellate Court**. Both courts hear cases in panels of five judges.

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

The **Constitutional Court** has jurisdiction over cases involving the compatibility of international agreements with the Constitution prior to their ratification; compatibility of laws and normative acts of central and local governments with the Constitution and international agreements; conflicts of authority between central and local governments; and final adjudication of individuals' complaints that their constitutional right to due process of law was violated. It also has a significant political role, ruling on the constitutionality of political parties and organizations, as well as their activities; verification of the results of referenda and their constitutionality; and election and dismissal of the President of the Republic. The decisions of the Constitutional Court are binding on all other courts and are not subject to review by any other body. The Court consists of 9 judges who hear cases *en banc*.

Functions related to the administration of the judicial system in Albania are divided between the HCJ and the Ministry of Justice [hereinafter MOJ]. The **HCJ** is a constitutional body responsible for the protection, appointment, transfer, removal, education, moral and professional evaluation, career, and oversight of first instance and appellate court judges. It consists of 15 members: 3 *ex officio*, the President of the Republic (who serves as Chairman), the High Court Chairman, and the Minister of Justice; 3 selected by the Assembly; and 9 selected by the NJC. The parliamentary representatives must be jurists, who are not judges, with a minimum of 15 years legal experience, while the NJC representatives must have served as judges for a minimum of 10 years. The parliamentary and the NJC representatives are elected for a 5-year term.

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

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

Conditions of Service

Qualifications

To be appointed to a first instance court, a court of appeal, the Serious Crimes Court, or the Serious Crimes Appellate Court, a candidate must be an Albanian citizen, possess full legal capacity, hold a law degree, have no criminal record, have a "good reputation," and be at least 25 years of age. In addition, he/she must have either: (1) graduated from the Albanian Magistrates' School [hereinafter MS]; (2) had at least 3 years working experience as a professor in a law faculty or the MS, as a deputy of the Assembly, as a legal adviser to the Assembly, the President of the Republic, or the Council of Ministers, or as a specialist with the Ministry of Justice, the High Court, or the General Prosecutor's Office; (3) graduated from a qualifying postgraduate legal training program abroad; or (4) worked for at least 5 years as a judge, assistant judge, public prosecutor, advocate, or notary and pass a professional competency examination within six months after appointment to the bench. At this time, the vast majority of judges appointed to district courts are graduates of the MS.³ In addition to these requirements, to be appointed to a court of appeal, the Serious Crimes Court, or the Serious Crimes Appellate Court, candidates must also have worked for at least 5 years as a judge in district courts, and have demonstrated high ethical, moral, and professional standards in the exercise of their duties.

High Court judges are appointed from among highly qualified legal professionals with at least 15 years of work experience, or from among judges with at least 10 years on the bench. Appointments to the Constitutional Court are made from among highly qualified jurists with at least 15 years of experience in the legal profession.

Appointment and Tenure

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

Judges of the High Court and the Constitutional Court are appointed by the President of the Republic with the consent of the Assembly. They are appointed for fixed nine-year terms and do not have the right to be re-appointed. However, a High Court judge may be appointed to a court of appeal after completing his/her term in the High Court. The term of office of judges of the High Court and the Constitutional Court may end prematurely if they are convicted of a crime, do not appear for work for more than six months, reach the mandatory retirement age (65 for the High Court and 70 for the Constitutional Court), resign, or are declared incompetent by a court. In any of these cases, the end of a judge's tenure is declared by the court on which he/she sits.

³ It should be noted that, under a proposed revision to the Law on the Organization of the Judicial Power, all new judges, without exception, would be required to graduate from the MS.

Training

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

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

Effective from May 2005, all judges in Albania are required to participate in continuing legal education [hereinafter CLE] programs offered through the MS. While there is no minimum required duration, judges' participation in these courses is restricted to a maximum of 20 days per year, or 60 days every 5 years. At this time, the law does not include sanctions for failure to attend CLE programs; however, attendance records are submitted annually to the HCJ and placed into judges' personal files. Attendance at CLE courses is also a category in the new judicial evaluation system being implementing in pilot courts.

Albania JRI 2006 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, the ABA would underscore that these factor correlations and conclusions in the Albania JRI 2006 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Albania JRI 2004. The ABA considers the relative significance of particular correlations to be a topic warranting further study. In this regard, the ABA invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. The ABA 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 |
|---|---|------------------|------------------|-------|
| I. Quality, Education, and Diversity | | | | |
| Factor 1 | Judicial Qualification and Preparation | Neutral | Positive | ↑ |
| Factor 2 | Selection/Appointment Process | Positive | Neutral | ↓ |
| Factor 3 | Continuing Legal Education | Neutral | Positive | ↑ |
| Factor 4 | Minority and Gender Representation | Neutral | Neutral | ↔ |
| II. Judicial Powers | | | | |
| Factor 5 | Judicial Review of Legislation | Neutral | Neutral | ↔ |
| Factor 6 | Judicial Oversight of Administrative Practice | Neutral | Neutral | ↔ |
| Factor 7 | Judicial Jurisdiction over Civil Liberties | Positive | Positive | ↔ |
| Factor 8 | System of Appellate Review | Positive | Positive | ↔ |
| Factor 9 | Contempt/Subpoena/Enforcement | Negative | Negative | ↔ |
| III. Financial Resources | | | | |
| Factor 10 | Budgetary Input | Positive | Positive | ↔ |
| Factor 11 | Adequacy of Judicial Salaries | Neutral | Neutral | ↔ |
| Factor 12 | Judicial Buildings | Neutral | Neutral | ↔ |
| Factor 13 | Judicial Security | Negative | Neutral | ↑ |
| IV. Structural Safeguards | | | | |
| Factor 14 | Guaranteed Tenure | Positive | Positive | ↔ |
| Factor 15 | Objective Judicial Advancement Criteria | Negative | Negative | ↔ |
| Factor 16 | Judicial Immunity for Official Actions | Neutral | Positive | ↑ |
| Factor 17 | Removal and Discipline of Judges | Neutral | Neutral | ↔ |
| Factor 18 | Case Assignment | Neutral | Neutral | ↔ |
| Factor 19 | Judicial Associations | Negative | Neutral | ↑ |
| V. Accountability and Transparency | | | | |
| Factor 20 | Judicial Decisions and Improper Influence | Negative | Negative | ↔ |
| Factor 21 | Code of Ethics | Negative | Neutral | ↑ |
| Factor 22 | Judicial Conduct Complaint Process | Neutral | Neutral | ↔ |
| Factor 23 | Public and Media Access to Proceedings | Negative | Negative | ↔ |
| Factor 24 | Publication of Judicial Decisions | Negative | Neutral | ↑ |
| Factor 25 | Maintenance of Trial Records | Neutral | Neutral | ↔ |
| VI. Efficiency | | | | |
| Factor 26 | Court Support Staff | Neutral | Neutral | ↔ |
| Factor 27 | Judicial Positions | Neutral | Neutral | ↔ |
| Factor 28 | Case Filing and Tracking Systems | Neutral | Neutral | ↔ |
| Factor 29 | Computers and Office Equipment | Neutral | Neutral | ↔ |
| Factor 30 | Distribution and Indexing of Current Law | Neutral | Neutral | ↔ |

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

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

| Conclusion | Correlation: Positive | Trend: ↑ |
|---|------------------------------|-----------------|
| <p>All judicial candidates are required to have graduated from a university-level law faculty and, with a few exceptions, to complete the three year initial training course at the MS. The curriculum includes a broad course of study, covering both basic courses and a gradually expanding list of advanced subjects. A one year internship practicing as a magistrate is required during the third year of the curriculum. The quality and success of this program is widely recognized.</p> | | |

Analysis/Background:

All judicial candidates in Albania must be Albanian citizens who are no younger than 25 years old and meet the following requirements: (1) have full capacity to act; (2) have graduated from a university-level law faculty; (3) have completed the MS; and (4) have no criminal record and enjoy a good reputation. LAW ON THE ORGANIZATION OF THE JUDICIAL POWER IN THE REPUBLIC OF ALBANIA art. 19 (Law No. 28 of 1998, *as amended*) [hereinafter JUDICIAL POWER LAW]. Additionally, candidates for judicial positions at serious crimes courts and courts of appeal must have at least 5 years of judicial experience in the first instance courts. *Id.* art. 24.1. Candidates for positions on serious crimes courts may not have been removed from the judiciary following disciplinary proceedings, and may not have been subject to other disciplinary proceedings within two years from the date they enter the competition. LAW ON THE ORGANIZATION AND FUNCTIONING OF THE COURTS FOR SERIOUS CRIMES art. 4 (Law No. 9110 of 2003) [hereinafter LAW ON SERIOUS CRIMES COURTS]. Judges of the High Court must have at least 10 year of judicial experience or, alternatively, be prominent professional jurists with at least 15 years of experience. LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COURT OF THE REPUBLIC OF ALBANIA art. 3 (Law No. 8588 of 2000) [hereinafter LAW ON THE HIGH COURT]. Constitutional Court judges are selected from among highly qualified lawyers with at least 15 years of professional experience. CONST. art. 125.2; LAW ON THE ORGANIZATION AND FUNCTIONING OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ALBANIA art. 7.2 (Law No. 8577 of 2000) [hereinafter LAW ON THE CONST. COURT].

For many years, the quality of legal education offered by the public university system has been criticized as substandard, with little attention to practical skills or modern teaching methods. Amid these criticisms, the largest public law school in the country, the University of Tirana, adopted the Bologna Declaration in 2005 and began to implement the accompanying process.⁴ Under the Bologna process, a jurist degree is achieved after four years of school, and a master's degree after one additional year. This program is now in its second year of implementation. During the first year, the university encountered some problems with providing professors and translated

⁴ As part of an agreement between the government and the European Union to meet European educational standards, the university has begun to implement the Bologna process, the action program of the Bologna Declaration. The Declaration was signed in 1999 by 29 signatory countries to work towards a convergence of higher education standards within Europe. In Albania, the process has included adopting a new system of awarding course credits. The former system of not awarding course credits presented a barrier to students seeking to study abroad, due to the incompatibility of the Albanian system with other European universities.

books for new courses, such as Penal Policy and Cybercrime. Additional changes include the transfer of some courses, traditionally part of the jurist curriculum, to the master's program. Teaching methods also have been updated from the standard lecture format to more innovative approaches, such as discussion of hypothetical issues. The legal clinics have closed, but the subject continues to be taught in a course similar to a moot court.

The burgeoning of private law schools has caused some apprehension within the public university system. The first private law school, Luarasi, began operating in 2003, with the permission of the Council of Ministers upon the proposal of the Ministry of Education (see Decision No. 611, Sept. 9, 2003); six others have opened in the intervening period. The academic requirements for admission to the private schools are not as stringent as those for the public university; for example, no admission exam is required. The public university is currently discussing whether to allow professors to teach in both the public and private schools. While some professors are currently employed at both the public and the private law faculties, there are concerns that the financial lure of the private faculties will be detrimental to the quality of the professors in the public system. Another concern is the lack of regulation or standardization of the curricula offered at the private law faculties. Overall, interviewees expressed reluctance to freely allow market forces to determine the outcome of the competition between the public and private schools.

Following the completion of basic university legal training, judicial candidates must complete the three-year initial training course at the MS in order to be appointed as judges. Exceptions from this requirement exist for accomplished legal academics or jurists.⁵ In order to benefit from this exemption, an individual must meet the requirements for judgeship listed above, plus one of the following criteria:

- Have at least three years of experience as pedagogues in the University of Tirana Faculty of Law or in the MS, or as deputies, legal advisers in the Assembly, the Presidency or the Council of Ministers, or as specialists in the MOJ, the High Court, or the Prosecutor General's Office;
- Have received a diploma from a long-term legal post-university training program abroad, which meets the requirements of Albanian legislation or international agreements; or
- Have at least five years of experience as judges, assistant judges, prosecutors, advocates, or notaries. Within six months of appointment, these persons must pass a mandatory professional qualification examination consisting of both theoretical and practical components, in writing and orally. This examination is organized by the HCJ in cooperation with the MS and the Faculty of Law of the University of Tirana.

See JUDICIAL POWER LAW art. 20.

The MS is a public budgetary institution charged with professional training of magistrates (including both initial education of judicial and prosecutorial candidates and continuing education of sitting judges and prosecutors). LAW ON THE MAGISTRATES' SCHOOL OF THE REPUBLIC OF ALBANIA arts. 1-2 (Law No. 8136 of 1996, as amended) [hereinafter LAW ON THE MS]. It is governed by the Steering Council, the Director, the Pedagogical Council, and the Disciplinary Commission. In order to encourage impartiality, the admissions and evaluations processes are split between the Steering Council and the Pedagogical Council, respectively. The Steering Council is responsible for admissions, faculty selections, and approval of the curriculum, as well as for oversight of the School's operations and management. *Id.* art. 6(2). It consists of: the Chief Justice of the High Court (who also serves as the Chairman); the Prosecutor General; the Deputy Chairman of the HCJ; Deputy Minister of Justice, along with another MOJ representative; two judges appointed by HCJ; two prosecutors appointed by the Prosecutor General; the Chairman of the National Chamber of Advocates; the Dean of the University of Tirana Faculty of

⁵ It should be noted that, under a proposed revision to the Law on the Organization of the Judicial Power, all new judges, without exception, would be required to graduate from the MS.

Law; the School's Director; the staff persons responsible for the initial and continuous legal education programs; and two students elected by the General Assembly of Students. *Id.* art. 6(1). The Director of the MS, who manages its day-to-day activities, is appointed by the HCJ for a 4-year period from the ranks of judges and prosecutors with at least 10 years of relevant experience, or from the ranks of distinguished jurists with at least 15 years of legal experience. *Id.* art. 7. The Director also chairs the Pedagogical Council, which conducts student evaluations and consists of the internal teaching faculty responsible for the principle subjects taught, as well as one judge and one prosecutor designated from among the members of the Steering Council. *Id.* art. 9. Finally, the Disciplinary Commission reprimands students who violate rules of the School. It is chaired by the MS's Director and includes one judge and one prosecutor designated from among the Steering Council members (who cannot at the same time be members of the Pedagogical Council), two full-time faculty members designated by the Pedagogical Council, and two students elected by the General Assembly of Students. *Id.* art. 11.

Students for the initial training at the MS are selected based on the results of a written admission examination, and the number is limited to the number of expected vacancies, as determined by the HCJ prior to the start of the academic year. *Id.* arts. 16-17. Passage of the bar exam is not required. The predetermined number of students is chosen from among the applicants according to the following criteria: (1) law diploma with an average grade of 8 according to a scale of 5-10; (2) absence of criminal record; (3) good mental and physical health; (4) absence of bad conduct records. Typically, only ten to twelve future judges graduate each year.

The initial training program at the MS consists of a three-year curriculum. The first year includes theoretical courses in various legal disciplines. LAW ON THE MS art. 14(a). The second year is devoted to practical training under the supervision of the School's faculty member and a judge with high qualifications, and consists of practical observation of the work of courts, case studies, mock trials, visits to relevant judicial and auxiliary institutions, and other similar activities. *Id.* art. 14(b). This is supplemented by additional theoretical courses on new subjects and legislation approved during their second academic year. The final year is spent as a practical internship, where the students are appointed by the President of the Republic to engage in judicial practice at courts and handle cases of gradually increasing complexity under the tutelage of higher judges. *Id.* art. 14(c); JUDICIAL POWER LAW art. 20/a. During this final period, the candidates enjoy the same rights and have the same obligations as judges. LAW ON THE MS art. 21. The initial curriculum covers the standard procedural and substantive law courses. In addition, the school is continually expanding its course load to include new areas of the law, such as anti-trafficking and domestic violence, as well as less traditional subjects, such as gender awareness. Further improvements suggested by interviewees include providing additional training on legal skills, such as writing and reasoning, and on principles of justice.

Following the practical internship, the Pedagogical Council evaluates the work of the students on the basis of both the theoretical results and the practical results of the internship. *Id.* art. 20. In particular, it reviews the students' quality of legal reasoning and writing, the application of domestic and international law, as well as ethics in their decisions; however, it does not analyze the correctness of decision. *Id.* The data from this evaluation are then sent on to the HCJ, which makes recommendations on their appointment. See Factor 2 below for the description of appointment process. Each graduate can be expected to obtain a position in the judiciary. If no position is available at the time of graduation, the state nevertheless is obliged to pay the salary until a vacancy occurs. LAW ON THE MS art. 20.

Interviewees roundly applauded the MS for the quality and success of its program. They observed that graduates possess greater integrity and knowledge, are more prepared, and produce better reasoned decisions than non-graduates. In acknowledgement of its accomplishments, the School boasts a Medal of Recognition from the President.

For the benefit of students and professors, the MS has a library, a computer lab with 23 computers, a moot courtroom, and classrooms equipped with technological equipment. In 2006,

Office of Overseas Prosecutorial Development, Assistance, and Training of the U.S. Department of Justice [hereinafter OPDAT] donated a photocopy machine and three laptops. Increasingly, the School endeavors to become a publishing source of scholarly and educational journals. JETA JURIDIKE, a legal journal for professors and legal experts, is published quarterly, with funding from the Soros Foundation and the German Foundation for International Legal Cooperation (IRZ), and distributed to judges and prosecutors. With funding from the World Bank, the MS also published six textbooks on civil procedure, bankruptcy, alternative dispute resolution, private international law, intellectual property, and court management. Copies of these materials are distributed to judges who attend the CLE courses at the School.

Although the institution is performing well and has earned the respect of its constituency, areas for improvement remain. For example, the MS would like to procure more advanced technical equipment to enable videoconferencing with other schools. Also, the library collection could be enlarged to accommodate its growing use by students and professors. Achieving these goals depends on the financial constraints of the budget. The budget for both the initial and continuing legal education curricula comes mostly from the state. The School provides a draft budget, as approved by its Steering Council, to the Ministry of Finance, and representatives of the MS conduct an intensive lobbying campaign to pass the budget as drafted. Although the budget had been increasing steadily, the year of 2006 brought budget cuts across all sectors, including the MS.

ANNUAL BUDGET OF THE MS, 2004-2007

| | 2004 | 2005 | 2006 | 2007 |
|-------------------------|------------|------------|------------|------------|
| Allocations, ALL | 59,545,000 | 66,300,000 | 53,000,000 | 53,000,000 |
| USD equivalent | 581,267 | 647,208 | 517,376 | 517,376 |
| % change | n/a | +11.3% | -20.1% | 0 |

Source: Information provided by MS.

Factor 2: Selection/Appointment Process

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

| Conclusion | Correlation: Neutral | Trend: ↓ |
|--|-----------------------------|-----------------|
| The appointment of judges to first instance courts is based on objective criteria, although the process itself may be perceived as being subject to manipulation through personal and political influences. However, the criteria for appointment to higher courts are less rigid and perceived as subject to political influence. | | |

Analysis/Background:

The HCJ is responsible for proposing to the President of Albania judicial candidates for appointment to the first instance, appellate, and serious crimes courts. LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COUNCIL OF JUSTICE OF THE REPUBLIC OF ALBANIA art. 2(a) (Law No. 8811 of 2001) [hereinafter LAW ON THE HCJ]. HCJ has 15 members: 3 *ex officio*, the President of the Republic (who serves as Chairman), the High Court Chairman, and the Minister of Justice; 3 selected by the Assembly; and 9 selected by the NJC. *Id.* arts. 3, 11.1. The parliamentary representatives must be jurists, who are not judges, with a minimum of 15 years legal experience, while the NJC representatives must have served as judges for a minimum of 10 years. *Id.* art. 4.

The latter also may not come from the ranks of judges who have been punished with disciplinary measures, for so long as those measures are in force. The parliamentary and NJC members are elected for a 5-year period. *Id.* art. 6. In 2003, the permanent position of Deputy Director, responsible for administration of the institution, was created to counterbalance the turnover and dual roles of its members. *Id.* art. 12.

The HCJ, at the initiative of the MOJ, publicly announces judicial vacancies three times in two national newspapers and other media outlets. *Id.* art. 28; JUDICIAL POWER LAW art. 21. After one month, a special 5-person commission is formed to evaluate the compliance with constitutional criteria for judgeship and professional competence of the applicants. LAW ON THE HCJ art. 29. Although the law mandates a professional examination,⁶ in practice, the commission only determines compliance with the legal criteria for appointment. See DPK CONSULTING, A REVIEW OF THE FUNCTIONING OF THE ADMINISTRATION AND THE INSPECTORATE OF THE HIGH COUNCIL OF JUSTICE IN ALBANIA at 11 (Sept. 2005) [hereinafter DPK REVIEW OF THE HCJ]. In a full meeting of the HCJ, candidates are selected by majority vote; the President of the Republic is excluded from the voting. LAW ON THE HCJ arts. 25.3, 30. If the proposal is equally split, the proposal for appointment is considered accepted. *Id.* art. 26. According to the findings of a recent report, the discussion at these meetings is not focused on the merits of candidates; instead the endorsement of candidates is based on personal connections. See DPK REVIEW OF THE HCJ at 11.

Appointments of judges to the first instance courts are decreed by the President upon the proposal of the HCJ. LAW ON THE HCJ art. 2; JUDICIAL POWER LAW art. 20/a. Cited by interviewees as the least subjective judicial appointment process, the first instance courts receive new judges directly from the pool of graduates from the MS. HCJ considers personal preferences when assigning placements to the new graduates. The graduate with the highest grades has first choice. As Tirana is the most desirable location, the candidates with the highest grades usually are placed in the Tirana District Court. As explained in Factor 1 above, each graduate can be expected to obtain a position in the judiciary. If no position is available at the time of graduation, the state nevertheless is obliged to pay the salary until a vacancy occurs. LAW ON THE MS art. 20.

Similarly, the President appoints judges to the courts of appeals and the serious crimes courts, upon proposal of the HCJ. CONST. art. 136.4; JUDICIAL POWER LAW art. 24.1; LAW ON SERIOUS CRIMES COURTS art. 3.2. Appointees must have served a minimum of 5 years in the lower courts and demonstrated high ethical and professional standards. JUDICIAL POWER LAW art. 24. See *also* Factor 15 below.

By contrast, the criteria for appointment to the High Court and the Constitutional Court are vague and allow more leeway for political factors to influence the selection. The President appoints judges to both courts with the consent of the Assembly. CONST. arts. 125.1, 136.1. For the Constitutional Court, the only qualifications are a minimum of 15 years experience in the legal profession and “high qualifications.” *Id.* art. 125.2; LAW ON THE CONST. COURT art. 7.2. For the High Court, the criteria are either 10 years of prior judicial experience or more than 15 years as a prominent jurist. LAW ON THE HIGH COURT art. 3.

Many interviewees believed that the criteria for judicial appointments are too vague and therefore subject to manipulation through personal and political influence. Too often, connections are emphasized over merits. Attributed to public pressure on the HCJ and the President, appointments to the serious crimes courts in 2004 were hailed as improvements. In a break from earlier boilerplate acceptance of proposed candidates, the current President refused to approve all of the serious crimes court candidates nominated by the HCJ. Most interviewees construed the President’s actions as raising judicial standards. Whether or not this interpretation reflects the facts of the situation remains unknown, as the President is not required to provide reasons for his/her refusal to appoint the candidates.

⁶ However, the Regulation on the Appointment Commission only requires professional testing when deemed necessary, and provides an exemption for graduates of the MS.

Factor 3: Continuing Legal Education

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

| Conclusion | Correlation: Positive | Trend: ↑ |
|---|------------------------------|-----------------|
| <p>Free CLE for judges has become mandatory under a new amendment to the law on the MS. Input from the judges is considered in developing the courses. The offering of courses has grown extensively over the past several years.</p> | | |

Analysis/Background:

Since 2000, the MS has provided CLE to judges of the first instance and appellate courts, without cost to them. LAW ON THE MS arts. 2, 23. A change in the law enacted in May 2005 made CLE obligatory for judges. *Id.* art. 23. However, in order to gradually accustom the judges to mandatory courses, no punishment was included for nonattendance. Nevertheless, according to interviewees, the participation rate of judges in CLE programs is excellent. According to an estimate by the MS, approximately 70% of sitting judges attend courses offered through the CLE program. Attendance at CLE courses is a category in the new evaluation system being implementing in pilot courts. Points are awarded or deducted depending on whether a judge attends CLE courses which he/she has chosen to attend. THE EVALUATION SYSTEM ON THE PROFESSIONALISM AND ETHICS OF JUDGES at Chap. 12. Records of attendance are sent annually to the MS's Steering Council and the HCJ. *Id.* Chap. 26. The new law also restricts a judge's participation to a maximum of 20 days per year, or 60 days every 5 years, in order to deter avoidance of duties. LAW ON THE MS art. 23. The MS concludes each CLE course with an evaluation with respect to: topics; experts, materials, and methodology; and suggestions for new trainings. The results of the evaluations are used in the needs assessment process for the existing program and for new program. Upon completion of the CLE courses, judges receive a certificate, a copy of which is placed into their personal files. *Id.* art. 24.

In 2006, the CLE program was, for the first time, prepared for three years in advance. See *generally* PROGRAM OF CONTINUOUS TRAINING FOR JUDGES AND PROSECUTORS, 2006-2009 (Sept. 2006). After performing a needs assessment based on post-training evaluations, interviews, and reports of various governmental and nongovernmental institutions, including the Chairman of the High Court, the MOJ, the HCJ, and the Pedagogical Council, the MS prepares the prospective CLE schedule. LAW ON THE MS art. 23. The schedule is distributed by the MS to the judges, who select the trainings they will attend. These selections must be approved by the chief judges of the respective courts and by the HCJ. *Id.* art. 24.

The completed CLE program is sent to each judge, as well as the MS's Steering Council and the HCJ, inviting them to contribute as trainers. In addition, judges from the High Court and the Constitutional Court are invited to participate as trainers; they do not typically attend CLE courses as students. To apply for a position as a trainer, the applicant must submit a *curriculum vitae*, along with a description of the course, the teaching methods, and literature to be used. Interestingly, most applicants who fulfill all of these requirements are graduates of the MS.

From the time of the 2004 JRI, the breadth of the CLE program has grown extensively. Although the state budget is allocating greater funds for the CLE program, some courses continue to be funded by donors. The MS hosts an annual donor meeting where it distributes a proposed CLE program for the upcoming 2-3 years, and donors identify which trainings they will fund. The curricula strive to cover a range of emerging legal issues. For example, at the suggestion of the

HCJ, OPDAT and the Police Assistance Mission of the European Community to Albania [hereinafter PAMECA] will host a CLE seminar on the 2004 organized crime legislation for first instance judges in Durres in early February 2007. It will be repeated throughout the regions and in a roundtable with the High Court. In 2005-2006, Casals & Associates (a USAID contractor) funded five two-day sessions at the MS on the new intellectual property laws for 120 judges and prosecutors from district and appellate courts. Advanced sessions will be continued in 2006-2007. This particular course has the added benefit of sustainability, in that Casals & Associates is supporting the training of MS experts in this topic. In 2004, the soon-to-be-defunct Women’s Legal Rights Initiative [hereinafter WLRI], another USAID contractor, conducted a series of trainings on amendments to the Family Code. In a follow-up initiative to address concerns that judges were continuing to apply the old Family Code, WLRI conducted a more specific three-part series focusing on marital property, prenuptial agreements, and division of property between spouses. The event was repeated three times, with 25 judges attending each session. Other trainings have included a two-part series on trafficking issues for judges of the Serious Crimes Court in April 2004.

As concerns exist about the sustainability of the donor-based approach, the MS lobbied strenuously to receive a greater share of the state budget. As a result, the government has allocated increasingly larger amounts for the CLE program, although not yet adequate for the CLE program to be completely self-sufficient. The year of 2006 was an exception to budgetary increases, as the government reduced budgets in all sectors, and the recently approved 2007 budget has shown no improvement in this regard. The 2005 amendments to the Law on the MS also specified that the OAJB should financially support corresponding training expenses, such as accommodation and travel, for judges during the initial and CLE training programs. See art. 23.

In an outreach effort to courts outside of Tirana, the MS has also conducted trainings throughout the regions, but this effort is being reevaluated. All trainings, whether held at the School or regionally, require accommodation expenses for judges traveling from both distant and locations. On the other hand, regional trainings facilitate greater involvement from the judges in training preparations, and provide an opportunity to interact with colleagues from related fields. When the MS conducts regional trainings, they typically invite other participants such as attorneys, judicial police, NGO representatives, and social workers, to inculcate judges in the social and human aspects of cases.

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.

| Conclusion | Correlation: Neutral | Trend: ↔ |
|--|-----------------------------|-----------------|
| Albania does not maintain statistics on the ethnic and religious composition of the judiciary, but there are no legal or practical barriers to prevent most ethnic and religious minorities from being represented among the pool of judicial nominees or in the judiciary itself. An increasing number of women are serving as judges, but their ranks are concentrated in the lower instance courts. | | |

Analysis/Background:

The Constitution guarantees freedom from unjust discrimination on the basis of race, ethnicity, religion, and gender. CONST. art. 18.2. However, the lack of statistics regarding the ethnic and religious composition of the judiciary makes it difficult to determine the extent of ethnic and

religious representation in either the pool of judicial nominees or the judiciary itself.⁷ There are several judges of Greek ethnicity. Interviewees pointed out that Albanian society is generally tolerant of ethnic and religious differences and, as a result, these issues are not important within the culture. Furthermore, they were unaware of significant barriers to minority participation in the judiciary. As for ethnic and religious representation in the pool of nominees, the competitive entrance examination for the MS is open to all law graduates, although statistics are not maintained on the background of the applicants. While no discrimination is obvious within the law school, the MS, or the judiciary, other earlier forms of sociological discrimination, particularly for the Roma community, may impede their interest in, or access to, the fundamental education necessary for attaining a law degree and the title of judge.

As the following Table illustrates, slightly less than 40% of all sitting judges in Albania are women. While the percentages naturally vary among the courts, the most notable indication is that women are least represented in the highest courts. Thus, there appears to be an inverse relationship between gender and court level: the higher the court, the fewer female judges.

GENDER COMPOSITION OF THE JUDICIARY IN ALBANIA

| Court Level | No. of Sitting Judges | No. of Female Judges | As % of Total |
|----------------------|------------------------------|-----------------------------|----------------------|
| Constitutional Court | 9 | 1 ⁸ | 11.1 |
| High Court | 15 | 4 | 26.7 |
| Courts of Appeal | 65 | 21 | 32.3 |
| District Courts | 286 | 117 | 40.9 |
| TOTAL | 375 | 143 | 38.1 |

Source: HCJ.

At the same time, graduates from the law faculties are more or less evenly split between men and women, with some estimates placing women in the majority. As stated above, the candidates for enrollment in the MS are chosen based on their results on the entrance examination, without regard to gender. Interestingly, the results of the 2006 examination yielded a 70% female class.

⁷ Reliable data on the ethnic composition of the contemporary Albania are difficult to locate. According to the 1989 population census estimates, ethnic Albanians are the dominant ethnic group, constituting 95% of the population. The largest ethnic minority are Greeks, estimated at 3% according to official data, although several unofficial estimates place them at 8-12% of the total population. Other ethnic groups include Vlach, Roma (Gypsy), Serb, Macedonian, and Bulgarian (2% combined). An estimated 70% of the population are Muslim, with 20% Albanian Orthodox and 10% Roman Catholic. See CIA WORLD FACTBOOK, *available at* <https://www.cia.gov/cia/publications/factbook/geos/al.html>.

⁸ As this JRI report was being finalized, the term of the only female judge on the Constitutional Court has ended, although it is anticipated that the President will appoint another woman to fill this vacancy.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|--|-----------------------------|-----------------|
| <p>The Constitutional Court has the power to determine the constitutionality of laws and official acts. Recently, the Court has asserted itself more forcefully in the wake of the Assembly's continued disregard for its decisions.</p> | | |

Analysis/Background:

The Constitutional Court is the highest authority responsible for interpreting and implementing the Constitution. CONST. art. 124.1; LAW ON THE CONST. COURT art. 2. The Court is the final arbiter for constitutional issues; its decisions are binding and not subject to review by any other body. CONST. art. 132.1; LAW ON THE CONST. COURT art. 2. The Court has jurisdiction over issues involving compatibility of international agreements with the Constitution prior to their ratification; compatibility of laws and normative acts of central and local governments with the Constitution and international agreements; conflicts of authority between central and local governments; and final adjudication of individuals complaints for violation of their constitutional right to due process of law, following exhaustion of other remedies. CONST. art. 131; LAW ON THE CONST. COURT arts. 48, 49, 54. It also has a significant political role, ruling on the constitutionality of political parties and organizations, as well as their activities; verification of the results of referenda and their constitutionality; and election and dismissal of the President of the Republic. CONST. art. 131; LAW ON THE CONST. COURT arts. 57-65.

Both individuals and organizations may request a ruling directly from the Constitutional Court. CONST. arts. 134.1, 134.2; LAW ON THE CONST. COURT art. 71. Constitutional issues may also arise in the course of litigation in the regular courts and, if a judge believes that a law conflicts with the Constitution, he/she must suspend the proceeding and refer the issue to the Constitutional Court for a decision. CONST. art. 145.2; LAW ON THE CONST. COURT art. 68. In practice, however, judges and lawyers rarely raise constitutional issues. Judges are reportedly reluctant to utilize their constitutional authority because of a lack of understanding of the referral process and discomfort with the required legal reasoning. In order to refer the issue to the Constitutional Court, the judge would need to explain, using legal reasoning, why the issue presents a constitutional violation. Interviewees attributed the lawyers' reluctance to present constitutional arguments to a common misunderstanding that such issues can only be raised in the Constitutional Court.

Decisions of the Constitutional Court are final, not subject to modification, and have "general obligatory power." LAW ON THE CONST. COURT arts. 72.6, 75. Specifically, this means that if a law or other legal act was found unconstitutional, it is automatically repealed by virtue of the Constitutional Court's decision. *Id.* art. 76. Decisions of ordinary courts that were abrogated by the Constitutional Court lose force from the moment of the Court's decision. *Id.* art. 77. Enforcement of the Court's decisions is mandatory and is ensured by the Council of Ministers. *Id.* art. 81.

Despite the Court's power and authority, its decisions are not always respected by other branches of the government. As mentioned in the 2004 JRI, Prosecutor General Arben Rakipi was dismissed in 2002 following an investigation and proposal by the Assembly, approved by the

then-President. On appeal, the Constitutional Court found that the process initiated by the Assembly did not comply with due process protections, and ordered the Assembly to grant Mr. Rakipi due process. Nevertheless, the Assembly challenged the authority of the Court by proposing another Prosecutor General. Despite this act of defiance, the subsequent resignation of the Chairman of the Assembly amounted to a political acknowledgment of the Court's authority.

In the prosecution of Mr. Rakipi's successor, Prosecutor General Theodhori Sollaku, the Assembly, in its Decision No. 31 of May 5, 2006, attempted a different strategy by forming a Clinton-esque independent inquiry commission to review his work. In particular, the investigation included 80 cases and sought to establish an organized crime connection. The commission exercised greater caution to adhere to due process formalities by giving proper notice. Nevertheless, in December 2006, the Constitutional Court declared that, by investigating the procedural workings of the Prosecutor's office and reviewing the correctness of the Prosecutor's decisions, this commission exceeded its constitutional mandate.⁹ Moreover, according to the Criminal Procedure Code and the Law on the Prosecutor's Office, only the Prosecutor General can review the decision of a lower prosecutor. See CODE OF CRIMINAL PROCEDURE OF THE REPUBLIC OF ALBANIA art. 24 (Law No. 7905 of 1995, *as amended*) [hereinafter CRIM. PROC. CODE]; LAW ON THE PROSECUTOR'S OFFICE arts. 28-32, 42. Prior to the Court's decision, the President had refused to approve the proposal of the Parliamentary Commission requesting Mr. Sollaku's removal. According to one source, the overzealousness of the Sollaku investigation allowed the President to more easily refuse the proposed dismissal. The Assembly's response to the decision of the Constitutional Court remains to be seen.

Factor 6: Judicial Oversight of Administrative Practice

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|---|-----------------------------|-----------------|
| The judiciary has the power to review administrative acts; however, it lacks the <i>de jure</i> and <i>de facto</i> power to compel the government to act. This is particularly noticeable in the enforcement of judgments against the state. | | |

Analysis/Background:

The courts have jurisdiction to review administrative acts and to annul or declare them invalid. JUDICIAL POWER LAW arts. 2, 5-7; CODE OF CIVIL PROCEDURE OF THE REPUBLIC OF ALBANIA arts. 324, 331 (Law No. 8116 of 1996, *as amended*) [hereinafter CIV. PROC. CODE]; CODE OF ADMINISTRATIVE PROCEDURES OF THE REPUBLIC OF ALBANIA art. 18(b) (Law No. 8485 of 1999) [hereinafter ADMIN. PROC. CODE]. To handle such cases, administrative law sections have been established in 17 of the 29 first instance courts. See CIV. PROC. CODE art. 320(a). Generally, an administrative dispute may be brought before the court within 30 days from the date of the announcement of the decision of the administrative body that has reviewed the complaint within the administrative structure. However, the law allows for filing complaints directly with the judiciary, prior to exhausting the administrative remedies (for instance, where the administrative body has failed considered the complaint within a specified timeframe). *Id.* art. 328. Review of

⁹ The Constitution states in relevant part, "The General Prosecutor may be discharged by the President of the Republic upon the proposal of the Assembly for violations of the Constitution or serious violations of the law during the exercise of his duties, for mental or physical incapacity, for acts and behavior that seriously discredit the position and reputation of the Prosecutor." See art. 149.

administrative case is generally governed by applicable provisions of the Civil Procedure Code. *Id.* art. 323.

A total of 1,890 administrative cases were filed with the judiciary in 2004, and 1,668 cases in 2005. The bulk of these cases were filed with just four courts, Tirana, Shkodra, Korca, and Vlora; while the remaining 13 courts received between 6 and 80 cases each. See EUROPEAN ASSISTANCE MISSION TO THE ALBANIAN JUSTICE SYSTEM [hereinafter EURALIUS], RECOMMENDATION ON THE ORGANIZATION OF ADMINISTRATIVE JUSTICE IN ALBANIA at 6 (June 2006).

Several problems hinder the review of administrative cases by the courts. Many of these problems are identical to those experienced with other types of cases. For example, witnesses, in this case, the state, often abuse their position by failing to appear, and the proceedings are postponed. Some interviewees felt that this behavior by the state was particularly dangerous because it sets a public precedent of disrespect towards the judiciary.

Once a successful judgment has been issued in an administrative case, the difficulty in getting it enforced remains the primary barrier. The State is obstinate in delaying the payment of judgments against it, bringing the enforcement of such judgments to a standstill. One reason is that efficient enforcement would require a dedicated budget, but given the current overall budget crisis, the government has not had the resources to establish such a fund. In part, this problem also results from a legacy of the communist period, when the judiciary was seen merely as an instrument of the executive power and the communist party. But perhaps the most compelling reason is the inherent difficulty of the state in admitting its errors by authorizing the payment, effecting what amounts to a self-inflicted punishment. One interviewee explained that the crux of the problem is the mentality of government leaders. As an example, if a court finds that a civil servant was dismissed erroneously, the administration rarely reinstates the employee. In addition, the Bailiff's Office within the MOJ is responsible for enforcement of court decisions, and it is widely believed that bribes to the bailiffs are necessary to accomplish enforcement. Nevertheless, interviewees noted that the situation has improved. For example, the Prime Minister had reportedly ordered all government agencies to obey final court judgments. While this is an encouraging sign, unfortunately this order is not self-enforcing. See ALBANIA D&G ASSESSMENT at 12. See *also* Factor 9 below for a more detailed analysis of the problem with the enforcement of judgments in Albania.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

| Conclusion | Correlation: Positive | Trend: ↔ |
|---|------------------------------|-----------------|
| The court system has exclusive and ultimate jurisdiction over cases concerning civil rights and liberties, as guaranteed in the Albanian Constitution and the ratified European Convention on Human Rights. | | |

Analysis/Background:

The Constitution affords all persons within Albanian territory specified fundamental human rights and freedoms. See arts. 15-59. These rights include, *inter alia*: equality before the law and freedom from discrimination (*id.* art. 18); the right to life (*id.* art. 21); freedom of expression (*id.* art. 22); freedom from cruel, inhuman or degrading torture, punishment or treatment (*id.* art. 25); the right to liberty and freedom from arbitrary arrest and detention (*id.* arts. 27-28); the right to privacy of personal data, correspondence, and residence (*id.* arts. 35-37); electoral rights (*id.* art.

45); freedom of assembly and association (*id.* arts. 46-47); as well as a host of economic, social, and cultural rights and freedoms (*id.* arts. 49-59). Adherence to these provisions is incumbent upon all state organs and institutions. *Id.* art. 15.2. The Constitution prohibits infringement of these rights and freedoms without due process. *Id.* art. 42.1. In particular, in order to protect his/her constitutional and legal rights, freedoms, and interests, everyone is guaranteed the right to a fair and public trial, within a reasonable time, by an independent and impartial court. *Id.* art. 42.2.

The Constitutional Court has jurisdiction over certain constitutional issues, summarized in Factor 5 above, and issues final and binding interpretations of the Constitution. *Id.* art. 124.1. Nevertheless, adjudication of most alleged human rights violations initially occurs in the regular court system, where few litigants reportedly base arguments on the Constitution or the European Convention on Human Rights [hereinafter ECHR], and judges rarely refer to them in their opinions. Although courses on international human rights standards are included in both the initial training and CLE curricula, according to interviewees, older judges in particular are not confident in relying on the Constitution or international law and do not fully understand how these standards fit within the larger framework of applicable law.

One frequently cited example when the judiciary does not fully exercise its role as a guarantor of civil rights and liberties relates to the preliminary detention in the course of criminal proceedings. The Constitution authorizes restraints on a personal liberty “when there are reasonable suspicions that [a person] has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission.” See art. 27.2(c). In carrying out arrests, the police are obligated to immediately inform the detainee of the reasons for the arrest, as well as his/her right to remain silent, notify family, and obtain counsel. *Id.* art. 28.1. In addition, the Constitution mandates that the detainee “be sent within 48 hours before a judge, who shall decide upon his pre-trial detention or release not later than 48 hours from the moment he receives the documents for review.” *Id.* art. 28.2. This decision may be appealed directly to the High Court. *Id.* art. 28.3; CRIM. PROC. CODE art. 249.

Despite these constitutional guarantees, a recent report by the Organization for Security and Cooperation in Europe [hereinafter OSCE] found that the police frequently violate the rights of detained persons. Thus, out of 71 detainees surveyed by the OSCE, only 26 were handed a copy of a court decision authorizing their detention, and 23 were informed of the reasons for their arrest, while 19 (27%) had received neither. See OSCE PRESENCE IN ALBANIA, ANALYSIS OF THE CRIMINAL JUSTICE SYSTEM OF ALBANIA: REPORT BY THE FAIR TRIAL DEVELOPMENT PROJECT at 21 (Nov. 2006) [hereinafter OSCE REPORT]. In violation of the right not to incriminate oneself, the police also conduct interrogations without informing the suspect of his/her rights and outside the presence of defense counsel. Indeed, only 17 detainees interviewed by OSCE (24%) stated that they had been informed about each of their procedural rights upon detention. *Id.* This irregularity is caused partly by the somewhat conflicting guidance on this issue provided by the Criminal Procedure Code. While it requires the presence of an attorney during interrogations, an exception is provided where a crime has obviously taken place. CRIM. PROC. CODE art. 296. Not surprisingly, this loophole invites abuse of the right to an attorney. Another example is the failure to bring detainees before a judge within the constitutionally mandated 48-hour time limit. See UNITED STATES DEPARTMENT OF STATE, *Albania, in* COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2005 (Mar. 8, 2006) [hereinafter STATE DEPT. REPORT]. In practice, only 13% of detained persons surveyed by the OSCE appeared before a judge within 48 hours. Of the 74% who waited longer than 48 hours, 17% waited more than 3 days, and sometimes even as long as 4-5 days. This discrepancy may also be attributed to counting errors, in that the detention time is calculated from the time of detention within the cell, rather than the arrest itself. See OSCE Report at 33. Finally, the quality of the detention hearing itself is also a problem, in that it is often practiced by judges and attorneys as a mere formality, rather than an opportunity to challenge the basis of detention. In fact, only 6 detainees in the OSCE survey (8%) were informed of the reasons for the judge’s decision on detention, and only 45% were reportedly notified of their right to appeal such decision. *Id.* at 34.

Albania’s Ombudsman, known as the People’s Advocate [hereinafter PA] plays an important role in protecting and advocating for individuals against “unlawful or improper actions or failures to act of the organs of public administration or third parties acting on their behalf.” See CONST. arts. 60-63; LAW ON THE PEOPLE’S ADVOCATE art. 2 (Law No. 8454 of 1999, *as amended*). In May 2005, amendments to the Law explicitly authorized the PA to “accept complaints, requests or notifications of human right violations arising from the administration of the judiciary, irrevocable decisions and judicial procedures,” provided that his/her investigations and requests do not infringe the independence of judicial decision-making. See LAW ON THE PEOPLE’S ADVOCATE art. 25. The PA performs his/her duties through investigation of complaints of alleged human rights violations. *Id.* arts. 13-20. Upon conclusion of the investigation, the PA may recommend to remedy the violations to the appropriate administrative authority, which suspends the alleged illegal acts or actions. If the investigation reveals a violation of individual rights by the judicial bodies, the PA, “without interfering with their procedures, shall notify the competent authorities of the violations.” He/she may also recommend that the injured party file a suit with court. *Id.* art. 21. Finally, the PA may petition Constitutional Court on matters that fall within the PA’s jurisdiction. CONST. art. 134.1; LAW ON THE PEOPLE’S ADVOCATE art. 24(c). To guarantee independence of the PA, he/she enjoys the same immunity as the High Court judge. CONST. art. 61.3; LAW ON THE PEOPLE’S ADVOCATE art. 6.

Indicating the growing significance and legitimacy of the PA’s office is the constantly increasing inflow of complaints. Thus, during 2005, the PA handled 4,361 complaints, which represents an 18% increase from 2004. This number included 301 complaints against the MOJ, including 102 related to delays in the enforcement of judgments by the Bailiff’s Office, and 388 complaints against the judiciary, many of which are related to delays in court proceedings. See ANNUAL REPORT ON THE ACTIVITY OF THE PEOPLE’S ADVOCATE, 1 JANUARY – 31 DECEMBER 2005 at 10, 11, 27, 64 (2006). Regarding the complaints which are not dismissed as groundless or beyond its jurisdiction, the PA attempts to resolve the issue by submitting recommendations and/or proposals to the relevant public authority or by mediating between the complainant and the public organ. Overall, 582 cases (24%) investigated in 2005 were resolved favorably for the complainants. *Id.* at 10.

Albanian Constitution also incorporates by reference the provisions of the ECHR, which Albania ratified in 1996. See art. 17.2; see also LAW NO. 8137 (July 1996, effective Oct. 1996). In ratifying the ECHR, Albania included the right for individuals to bring petitions to the European Court of Human Rights [hereinafter European Court]. In 2006, 60 complaints were filed against Albania with the European Court, up from 52 in 2005 and 28 in 2004; altogether, the Court received 240 complaints against Albania since November 1998. Of these cases, there are four which the ECHR has adjudicated, three of which found a violation on the part of Albania. Three of these cases dealt with aspects of the right to fair trial under Article 6 of ECHR (see *Beshiri et al. v. Albania* (Aug. 2006); *Balliu v. Albania* (June 2005, no violation found); and *Qufaj Co. sh.p.k. v. Albania* (Nov. 2004)), and one case, *Bajrami v. Albania* (Dec. 2006), found a violation of the right to respect for family life. See generally EUROPEAN COURT OF HUMAN RIGHTS, SURVEY OF ACTIVITIES 2006. See also Factor 9 below for details on the *Qufaj* case addressing the enforcement of court decisions.

Factor 8: System of Appellate Review

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

| Conclusion | Correlation: Positive | Trend: ↔ |
|---|------------------------------|-----------------|
| The reversal of judicial decisions exclusively through the judicial appellate process is enshrined both in law and in practice. | | |

Analysis/Background:

The principle that judicial decisions may only be reversed through the judicial appellate process is well understood and enshrined in practice. As a matter of law, “judicial power is exercised only by the courts, in conformity with the Constitution and powers given by law.” JUDICIAL POWER LAW art. 1. The guaranteed review of a judicial decision is accomplished by appeal, review, or recourse to a higher court, unless provided otherwise in the Constitution. *Id.* art. 16; CONST. art. 43. An appeal is a challenge based on fact and law; review is a reconsideration of the sentence and underlying facts at any time, even when sentence has been served. CRIM. PROC. CODE art. 449; CIV. PROC. CODE arts. 442/a, 494. Recourse is akin to cassation, an appeal to the High Court challenging the application of law in the lower court, without disputing the factual findings of the lower court. CIV. PROC. CODE art. 472.

The courts of appeal receive appeals from first instance courts within their regional jurisdiction which are heard in three-judge panels. JUDICIAL POWER LAW art. 7. Within 10 days following the decision, an appeal may be made by the prosecutor, defendant, or private parties. CRIM. PROC. CODE arts. 412, 415, 422. In civil cases, the timeframe for filing an appeal is 15 days. CIV. PROC. CODE art. 443. Cases are reviewed by three-judge panels. *Id.* art. 460; CRIM. PROC. CODE art. 14. Civil appellate review is limited due to the principle of party disposition. CIV. PROC. CODE art. 459. By contrast, criminal appellate review is not limited to the grounds raised in the appeal. If the prosecutor is the appellant, the appellate court may review the facts, alter and/or increase the punishment, as well as find guilty an acquitted defendant. When the defendant appeals, however, the court may not impose a heavier sentence. CRIM. PROC. CODE art. 425. In reviewing the case, an appellate court may affirm the original decision, modify it, or reverse the decision and either dismiss the case or remand it to the first instance court. *Id.* art. 428; CIV. PROC. CODE arts. 466, 467 (allowing only one remand).

The Serious Crimes Appellate Court hears appeals from the Serious Crimes Court in five-judge panels. LAW ON SERIOUS CRIMES COURTS arts. 2.2, 6. It operates according to the same procedural rules as the regular appellate courts. *Id.* art. 7.

The High Court “is the highest judicial authority, which has original and appellate jurisdiction.” As the final appellate body in Albania, it serves as a court of cassation for decisions from the courts of appeal. JUDICIAL POWER LAW art.13. Appeals with the High Court must be filed within 30 days from the date of the final decision of the appellate court. CRIM. PROC. CODE art. 435; CIV. PROC. CODE art. 472. Recourse to the High Court may be based on the following grounds: violation or improper application of the substantive or procedural laws, or lack of reasoning or illogical reasoning in a decision that is the subject of recourse review. CRIM. PROC. CODE art. 432; CIV. PROC. CODE art. 472. Review is limited to the points of law raised in the complaint. CRIM. PROC. CODE art. 434; CIV. PROC. CODE arts. 475, 483. The High Court reviews cases in five-judge panels divided into civil and criminal subject matters or, when required by law, in joint panels. LAW ON THE HIGH COURT arts. 10, 13, 14; CRIM. PROC. CODE art. 437; CIV. PROC. CODE arts. 472, 481, 485. The law requires joint panels in only two situations: (1) when the lower courts require a resolution of disparate treatment of cases, i.e., to unify their practice; and (2) when a judge is dismissed from office. CONST. art. 141.2; JUDICIAL POWER LAW art. 46; LAW ON THE HIGH COURT arts. 14, 15; CRIM. PROC. CODE art. 438; CIV. PROC. CODE arts. 472, 481.

The Constitutional Court hears questions solely concerning the interpretation of the Constitution and constitutionality of laws and other legal acts. See Factor 5 above. Its decisions are binding and final, and are not subject to further review or annulment. CONST. art. 132.1; LAW ON THE CONST. COURT arts. 75, 80. The Court can only interpret its decisions to clarify any doubts or disagreements as to their meaning, without changing the content. LAW ON THE CONST. COURT art. 80. However, while the reversal of judicial decisions issued by ordinary court is respected, the interpretations of the Constitutional Court do not always receive the same deference. See Factors 5 and 9 for additional details.

Factor 9: Contempt/Subpoena/Enforcement

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

| Conclusion | Correlation: Negative | Trend: ↔ |
|---|------------------------------|-----------------|
| While judges have adequate <i>de jure</i> powers of subpoena, contempt, and enforcement, they are insufficiently exercised and not respected by other branches of government and the public in general. | | |

Analysis/Background:

Statutorily, judges are afforded adequate powers of subpoena, contempt, and enforcement. In particular, courts are authorized to serve summons upon witnesses, to provide notice of legal consequences for nonappearance, and to compel the submission of evidence. CIV. PROC. CODE arts. 128-129, 223-224; CRIM. PROC. CODE arts. 157, 191. Delivery of notification is made by the court clerk and by mail or other means, as ordered by the court. CIV. PROC. CODE arts. 128, 143, 144. In criminal cases, witnesses can be forced to appear before the court. See CRIM. PROC. CODE art. 164. In civil cases, witnesses may be fined up to ALL 30,000 (approximately USD 293) in civil cases for failure to appear. See CIV. PROC. CODE art. 165. In addition, failure by a witness, expert or translator to appear pursuant to a court summons without a reasonable cause, is punishable by a fine or imprisonment of up to 6 months. CRIMINAL CODE OF THE REPUBLIC OF ALBANIA art. 310 (Law No. 7895 of 1995, *as amended*) [hereinafter CRIM. CODE]. At the same time, it should be noted that the law does not contain any provisions mandating disciplinary measures for failure to appear by defense attorneys or prosecutors.

In practice, there remains a significant gap between these procedural powers and the reality. Failures of the notification system, non-appearance of witnesses, advocates, and prosecutors, and failure of the police to bring detained individuals to court are all ongoing problems, which are often cited as one of the most frequent causes of trial delays. In part, summonses are ineffective due to a dysfunctional mail system, which suffers from inaccurate addresses and poor delivery services. Another reason is insufficient resources, such as vehicles for the process servers to reach more remote areas. According to interviewees, public officials and governmental agencies are prone to ignoring the court's authority, and their nonappearance sets a destructive example of disrespect towards the courts for laypeople. In other instances, many witnesses choose not to show up at court, since they generally suffer no consequences, or because they may experience the fear of reprisals. Lawyers frequently use their procrastination as a defense technique, resulting in trial postponements, sometimes to the detriment of criminal defendants. See OSCE REPORT at 183.

Unfortunately, judges exercise their contempt and subpoena powers only infrequently. Orders of contempt are rarely issued, despite frivolous postponement and nonappearance of attorneys and disruptive behavior of parties during proceedings. Some interviewees suggested that the judges choose not to discipline the attorneys because of improper symbiotic financial relationships and the pressures of working within a small interconnected community.

Enforcement of judgments is recognized as a problem of enormous proportions in Albania. The Bailiff's Office, administered by the MOJ, is responsible for enforcement of court decisions. See LAW ON THE ORGANIZATION AND FUNCTIONING OF THE MINISTRY OF JUSTICE art. 17 (Law No. 8678 of 2001, *as amended*) [hereinafter LAW ON THE MOJ]. The courts themselves have limited power to execute decisions; they simply hand over the order to the bailiff for enforcement. The functioning of the Bailiff's Office is plagued by delays and inefficiency caused by a variety of problems, including poor training on enforcement issues and infrastructure problems such as limited space

and scarce equipment. See generally EURALIUS, FIRST ANALYST OF NEEDS AND GAPS OF THE ALBANIAN ENFORCEMENT SERVICE (March 2006). In addition, the belief among the populace that bribes are necessary for successful enforcement is widespread. Low salaries paid to the bailiffs (base salary of ALL 27,000 per month as of February 2006, or about USD 265) only serve to reinforce this opinion. However, several interviewees commented that, despite the common belief that bribes to bailiffs will expedite the enforcement, in practice this method is not particularly effective, given the number of outstanding judgments.

Numerous examples are reported when parties were unable to obtain compensation due to them by virtue of a court judgment, as losing parties routinely ignore court orders and the government often fails to enforce them. For instance, in cases where women have been awarded child support or alimony, they have difficulty obtaining the actual funds. As far as judgments against the government authorities are concerned, enforcement is virtually non-existent. According to some estimates reported to the assessment team, the state currently has outstanding payments resulting from judgments hovering around USD 9 million. Overall, it is estimated that only 45% of final judgments are enforced, although this represents an improvement from just 33% in 2003. ALBANIA D&G ASSESSMENT at 12. In September 2005, nearly 13,000 judgments remained unexecuted. See ALBANIA NIT 2006.

The problem with lack of enforcement of judgments is present even at the level of the Constitutional Court. Although the Court strives to rule independently of political concerns, the Assembly and the executive exert political pressure by resisting its decisions that run counter to their agenda. As explained in greater detail in Factor 5 above, even though the Constitutional Court found that the parliamentary investigation of former Prosecutor General, Mr. Rakipi, violated due process protections, the Assembly ignored the Court's decision to grant him due process, and neither reinstated Mr. Rakipi nor provided him with an opportunity for a new hearing. While the Assembly adhered more carefully to due process guidelines in the investigation of Mr. Rakipi's successor, Mr. Sollaku, the underlying aim of interfering with the judiciary by the legislature remained the same.

The Constitutional Court recently has declared that the pattern of non-enforcement of court decisions by the government violates the right to fair trial under ECHR, and insisted that the government comply with the judicial decisions. Albania has also drawn international attention to its egregious non-enforcement record through the decision against it by the European Court in 2005. The petitioner in that case, who had an unenforced judgment against the Albanian government, initially applied to the Constitutional Court, which declined the complaint on the grounds that enforcement of court decisions was outside its jurisdiction. The European Court found that the Constitutional Court was competent to hear the case, and the refusal to do so constituted a violation the right to a fair hearing codified in Article 6, Section 1 of the ECHR. See *Qufaj Co. sh.p.k. v. Albania* (Decision No. 54268/00, Nov. 18, 2004). In response to the Court's decision, the Council of Ministers approved the payment to the litigant. The government has also resolved to address the problem through, *inter alia*, possible reforms within the Bailiffs' Office. Apparently, the international notoriety pressured the government to address the enforcement problem more aggressively.

III. Financial Resources

Factor 10: Budgetary Input

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

| Conclusion | Correlation: Positive | Trend: ↔ |
|--|------------------------------|-----------------|
| <p>The judiciary as a whole has a meaningful opportunity to advocate for its budget and exercises control over the funds therein once allocated to the individual courts. Despite this, individual courts would like to have greater influence over the budgetary process.</p> | | |

Analysis/Background:

The judiciary has a dedicated budget, which it drafts and administers independently of other branches of government. CONST. art. 144; JUDICIAL POWER LAW art. 18. The OAJB was established in 1998 to “administer budgetary funds destined for the courts, ensuring the application in principle of the judiciary’s independence from other powers.” LAW ON THE CREATION OF THE OFFICE FOR THE ADMINISTRATION OF THE JUDICIARY BUDGET art. 2 [hereinafter LAW ON THE OAJB]. The daily operations of the OAJB are managed by the Director, who answers to a nine-member Executive Board. *Id.* arts. 6, 11. The Chairman of the High Court serves as the Chairman of the Board. Other members include a High Court judge, an MOJ representative, two chief judges from appellate courts, and four chief judges from district courts. *Id.* The representatives are chosen during a meeting of all the chief judges. Board membership carries a 2-year mandate with the right of reelection. *Id.* art. 7. The OAJB has its own budget, which comes directly from the Ministry of Finance.

The OAJB receives a proposed budget from each court, except the Constitutional Court, which must be approved by the Board. *Id.* art. 9. The Constitutional Court has its own independent budget, which it drafts and administers independently of the OAJB. LAW ON THE CONST. COURT art. 6. The budgets contain line items detailing expenses for salaries, social security, operating expenses, and investments. After receiving proposed budgets from the courts, the OAJB compiles the approved budget requests into the consolidated judiciary budget and forwards it to the Ministry of Finance. LAW ON THE OAJB art. 9. In a hearing before the Parliamentary Commissions on Legal Issues, Public Administration and Human Rights and on the Economy and Finances, the OAJB, represented by the Board Chairman and the Office Director, has the opportunity to defend the proposed judiciary budget. Afterwards, the Minister of Finance prepares the draft State Budget, an aggregate budget of all institutions, for submission and approval to the Council of Ministers. LAW ON PREPARATION AND EXECUTION OF THE STATE BUDGET FOR THE REPUBLIC OF ALBANIA art. 18 (Law No. 8379 of 1998). Finally, the Council of Ministers submits the budget to the Assembly for approval, and the latter can make changes regarding the institutional budgets. When the OAJB receives the funds for the approved judicial budget, it makes the final decisions about allocating them among the courts based on the prior budget submitted by each court, as well as on priorities set by the OAJB and approved by the Executive Board. LAW ON THE OAJB art. 9.

In general, the judicial budgets are perceived as insufficient to cover operating costs, especially in the lower courts. Frequently, the Assembly does not approve the funding requests in full. In addition, the OAJB Board itself occasionally adjusts the court budgets downward, depending on evaluations by its specialists. These evaluations are based on the needs of the courts and take into account the number of judges and their performance, caseloads, as well as special

circumstances of individual courts. *Id.* art. 10. One interviewee complained that the OAJB has poor discretion in allocating funds, citing an instance when High Court judges received vehicles while the lower courts were struggling to pay essential operating expenses, such as experts, translators, and judicial travel abroad for witness interrogation.¹⁰ Although the OAJB has an opportunity to advocate for the overall judicial system budget, some courts believed that their individual influence was curtailed by limited opportunities to affect the OAJB's allocations to them.

The following Table shows the amounts budgeted to the Albanian courts in 2005-2007. The 2006 budget represents a reduction in the amounts allocated to the judiciary, which is representative of the overall budgeting cuts for all government-funded expenditures during the year. Furthermore, the annual amounts allocated to the judiciary continue to decrease as a percentage of the total State Budget expenditures. Some respondents suggested that such a trend may indicate a weakening influence of the judiciary over its budget, although the assessment team was unable to verify this proposition through other sources.

JUDICIAL SYSTEM BUDGET IN 2005-2007

| Court Level | 2005 Budget | | 2006 Budget | | 2007 Draft Budget | |
|-------------------------------|------------------|-----------------|------------------|-----------------|-------------------|-----------------|
| | Ths. ALL | Ths. USD equiv. | Ths. ALL | Ths. USD equiv. | Ths. ALL | Ths. USD equiv. |
| Constitutional | 91,000 | 888 | 83,000 | 810 | 91,000 | 888 |
| High | 218,610 | 2,134 | 174,110 | 1,700 | 173,300 | 1,692 |
| Appellate | 262,663 | 2,564 | 237,330 | 2,317 | 231,000 | 2,255 |
| District | 832,125 | 8,123 | 784,360 | 7,657 | 831,100 | 8,113 |
| OAJB | 26,602 | 260 | 28,200 | 275 | 20,600 | 201 |
| TOTAL OAJB Budget | 1,340,000 | 13,081 | 1,224,000 | 11,948 | 1,256,000 | 12,261 |
| TOTAL Judiciary Budget | 2,771,000 | 27,050 | 2,531,000 | 24,707 | 2,603,000 | 25,410 |
| % of State Budget | 1.74% | | 1.63% | | 1.33% | |

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

Once approved, the final budgeted amounts are sent to each court, which manages the funds through its internal budget office. JUDICIAL POWER LAW art. 18. Courts manage their budgets independently, but substantial expenditures, such as office equipment or generator fuel, require a tender process administered through the OAJB. *Id.* Due to the cumbersome tender process, some courts expressed a desire for greater budgetary independence. If a court encounters unforeseen expenses, the OAJB can allocate additional funds upon the request of the respective court's budget director accompanied by the signature of the court's chief judge. When necessary, funds may also be reallocated by giving priority to infrastructure investments in the courts. However, according to OAJB, the law does not allow reallocating the funds between different line items within the approved budgets.

In addition to ensuring sufficient funding of the courts, OAJB also provides financial support for certain initial and CLE training expenses incurred by judges, such as accommodation and travel. See Factor 3 above.

¹⁰ It should be clarified that, per OAJB's comment, the purchase of vehicles occurred in 2005, when judicial budgets included sufficient funds for operating expenses; the latter became a problem in 2006.

Factor 11: Adequacy of Judicial Salaries

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|---|-----------------------------|-----------------|
| Judicial salaries have improved over the last few years. Nevertheless, the salaries remain insufficient for judges to support their families without recourse to other sources of income. | | |

Analysis/Background:

Court budgets allocate sufficient amounts to fully cover the payment of salaries to judges, and salaries have been on the rise over the last few years. However, in 2006, the increase in salaries did not become effective until July 2006, due to overall budget cuts.

Under the Law on the System of Judicial Salaries, judicial salaries were revised with the aim of making them comparable to other public officials on the similar level. The salary of a High Court judge is the same as that of a government minister, and the Chairman receives 20% more than the judge on the court. LAW ON THE HIGH COURT art. 22. The salary of a Constitutional Court judge is equal to that of the High Court Chairman; while the salary of the Constitutional Court Chairman is 20% higher than that of its judge. LAW ON THE CONST. COURT art. 17. As show in the Table below, initial judicial salaries of lower court judges are figured at a percentage of the salary of a High Court judge, without consideration of seniority. Judges in the Tirana District Court and the Tirana Appeals Court receive a slightly higher salary, probably due to the heavier workload and higher cost of living.

JUDICIAL SALARIES IN ALBANIA, AS % OF HIGH COURT JUDGE'S SALARY

| Court Level | Judge | Deputy Chairman | Chairman |
|--------------------------------|--------------|------------------------|-----------------|
| First Instance Courts | | | |
| Tirana District Court | 65 | n/a | 70 |
| Serious Crimes Court | 60 | 65 | 70 |
| Other District Court | 50 | 57 | 60 |
| Appeals Courts | | | |
| Tirana Appeals Court | 80 | n/a | 90 |
| Serious Crimes Appellate Court | 75 | 80 | 90 |
| Other Appeals Courts | 70 | 75 | 80 |

See JUDICIAL POWER LAW arts. 39/1, 39/2; LAW ON SERIOUS CRIMES COURTS App. 1.

AVERAGE MONTHLY JUDICIAL SALARIES, 2004-2006

| | High Court | Courts of Appeal | District Courts |
|------------------------|-------------------|-------------------------|------------------------|
| 2004-2005 | | | |
| ALL | 155,110 | 108,570 | 77,550 |
| USD equivalent | 1,514 | 1,060 | 757 |
| As of July 2006 | | | |
| ALL | 162,420 | 113,694 | 81,210 |
| USD equivalent | 1,586 | 1,110 | 793 |
| % increase | 4.5 | 4.5 | 4.5 |

Source: OAJB.

Despite the modest increase in salaries in 2006, lower court judges still do not receive salaries equivalent to similarly situated officials in other branches of government. Salaries of district court judges currently approximate those of heads of directorates within the ministries, while salaries of appellate court judges are close to those of heads of general directorates within the ministries. Chief judges of courts of appeal receive salaries in the amount similar to deputy ministers. Some interviewees remarked that even if all judicial salaries were on a par with counterparts in other branches, this would not take into consideration the inherent security risks and heavy workload of a judge. According to at least one interviewee, the discrepancy in security risk should also be considered within judicial levels. As an example, judges from the Serious Crimes Court make only 10% more than judges in the first instance courts, despite the risks associated with their cases.

Generally, judges are not entitled to additional benefits for their service, although such benefits were provided under the former Communist system. However, judges of the Constitutional Court receive a month's salary for their vacation, and are entitled to special protection for their family and property, as well as close physical protection for themselves. See LAW ON THE CONST. COURT art. 18. Details for the special protection are to be elaborated upon by the Council of Ministers in a subsequent law. Currently, the Council has submitted the implementing legislation to the Minister of Interior for further comments, but it has not yet been approved.

As described in more details in Factor 20 below, corruption within the judiciary is reported to be a big problem. As part of their judicial reform project, EURALIUS presented a proposal to increase judicial salaries, which the Minister of Justice challenged, saying that a salary increase will not reduce corruption within the judiciary.

Factor 12: Judicial Buildings

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

| <i>Conclusion</i> | <i>Correlation: Neutral</i> | <i>Trend: ↔</i> |
|---|------------------------------------|------------------------|
| Judicial buildings are conveniently located and easy to find. Although many courts have undergone extensive renovations, the remaining buildings lack the infrastructure to provide an appropriate environment for the dispensation of justice. | | |

Analysis/Background:

The budget for the judiciary includes funds for court reconstruction and renovation projects. Considered during the regular budgetary process described above, these approved requests by courts are included in the overall judicial budget, which the OAJB then allocates to the individual courthouses. OAJB *Internal Rules* § I(2)(a). The OAJB then forwards the projected budget to the Ministry of Economic Cooperation and Trade and the respective district treasury branch. *Id.* § III(1)(e).

Since 2001, the government, with donor assistance, has undertaken several reconstruction and renovation projects. In particular, the OAJB has invested in construction of two new courthouses, complete reconstruction of seven court buildings, and partial renovation of four others. The improvements have secured and modernized the facilities according to contemporary standards, including a separate entrance for defendants or court staff, greater space for judges' offices and secretaries, increased number of courtrooms, better security systems for penal courtrooms, improved infrastructure, and a separate place to provide public services and information, such as filing suits or requesting copies of decisions. The latter also facilitates the smooth functioning of

the court administration. Some courts have undergone total reconstruction, while others only required partial renovations. In most cases, these changes have resulted in a more respectful and user-friendly environment.

Despite these modernizations, limited courtroom space continues to present a problem. While this poses a greater problem in Tirana and in the lower courts due to the sheer volume of cases, the issue exists throughout the system, with the exception of the High Court and the Constitutional Court. The dearth of courtrooms causes many judges to conduct trials in their offices. For example, the Tirana District Court, which otherwise is considered an example of improved public access and modern technology, has only 7 courtrooms for 58 judges and an annual caseload of 14,000 cases. In the Elbasan District Court, 17 judges share 2 courtrooms, and most of the judicial offices are smaller than the office of the chief judge's secretary. Overall, according to the OAJB, the 30 first instance courts in Albania have a combined of 81 courtrooms for 286 judges, while the eight appellate-level courts share 19 courtrooms for 65 judges (i.e., an average of less than 3 courtrooms per court). The High Court similarly has only 3 courtrooms. According to interviewees, some judges prefer to hold sessions in their offices, and use the lack of courtrooms as a pretext for doing so. Regardless of the justifications, trials in judicial offices are problematic for several reasons. First, the proceedings lack the formality and dignity of a courtroom. Second, the judge's office does not contain adequate space for the parties, lawyers, witnesses, and secretary, not to mention the public and media. See also Factor 23 below. In addition, the lawyers have no place for books or documents. Finally, for many cases, the proximity of parties, witnesses, and the judge presents a security risk. This is especially critical in criminal, domestic violence, and property cases.

In addition to more courtrooms, judicial buildings in Albania need rooms to provide confidential meeting spaces for attorneys and clients. Although the newly built and reconstructed court buildings do provide some space for this purpose, other courts do not have a separate room for attorneys to confer with clients confidentially. Such conferences typically occur in the halls, which are full of people, or perhaps in a pretrial detention room. Another concern in the lower courts is archival storage. For example, the Elbasan District Court, which handles approximately 5,000 cases every year, has exhausted its available storage space and is temporarily storing completed case files in the offices of secretaries.

As of October 2006, nine courthouses are in the process of reconstruction. In a few remaining locations, little to no renovation has occurred and the infrastructure is quite poor. In these courts, the situation is dire. To some degree, the OAJB is delaying renovation due to limited funds, but in certain instances, such as the Elbasan District Court, the building is beyond renovation and so will need to be rebuilt in another location. Renovation had begun in that court under the European Union's PHARE project, but was later halted, because the OAJB planned to transfer the court to a new location. OAJB has identified constructing a new building for the Elbasan District Court as its first priority; however, at this point, the Court is in limbo, unsure whether to restructure its organization or to simply wait for the eventual but undetermined move.

An additional reason behind delaying the reconstruction or building of new courthouses is the possible reorganization of the judicial system, currently under consideration, which would facilitate court administration by merging some of the courts. Until the reorganization is completed, the OAJB is reluctant to invest in court buildings which may no longer be required.

Factor 13: Judicial Security

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

| Conclusion | Correlation: Neutral | Trend: ↑ |
|---|-----------------------------|-----------------|
| <p>While security for judges continues to be inadequate, greater resources are being allocated to protect judges within judicial buildings. No ongoing program exists to provide security to judges outside of the courthouse; however, they are entitled to receive special protection upon their request.</p> | | |

Analysis/Background:

The State Police are responsible for providing security to judges and courthouses. LAW ON STATE POLICE OF THE REPUBLIC OF ALBANIA arts. 1.1, 3 (Law No. 8553 of 1999); JUDICIAL POWER LAW art. 36; *see also Decision of the Council of Ministers on the Protection and Security of the Important State Buildings* (Decision No. 112 of March 2001).

In the course of courthouse renovations, the OAJB has allocated greater funds to updating the security equipment and personnel at judicial buildings. For instance, in 2004, the government allocated ALL 8.3 million (approximately USD 81 thousand) for judicial security, allowing to set up a security system for the Tirana District Court. The Court now has one entrance for the public and a separate, guard-controlled entrance for penal cases, but no separate entrance for judges. The Court has increased the number of guards to protect the building, and also maintains regular contact with the Tirana Police Department so that it can request backup if necessary. In 2005, the OAJB spent ALL 9.83 million (USD 96 thousand) on security improvements, installing security systems in Shkoder and Vlora district courts. Judicial security budget for 2006 amounted to ALL 11.48 million (USD 112 thousand), which was earmarked for providing security system to Durres District Court, as well as equipping 26 additional courthouses with hand-held metal detectors and security cameras. In addition to improvements at the lower court levels, the High Court has metal detectors and a separate entrance for judges. Due to these protections and the nature of the High Court, judges generally feel more secure than judges of the lower courts, because they have fewer contacts with parties and always hold proceedings in the courtroom. In addition, the High Court now has a budget to install security cameras throughout its building.

While many of the renovated courthouses have improved security systems, including guards and metal detectors, guards frequently examine bags and parcels only half-heartedly. Furthermore, holding trials in the cramped quarters of judges' offices severely hinders the security situation. *See Factor 12 above.* However, as renovated courthouses strive to provide greater courtroom space, the security risks presented from in-office trials should decrease accordingly. Nonetheless, several first instance courts, such as Elbasan District Court, continue to function without the basic protections offered in renovated courthouses.

To a one, the judges interviewed expressed dissatisfaction with the low level of security for judges and at the courthouses. Serious incidents have occurred in which the property of judges was attacked, or judges and lawyers individually were attacked or threatened. Some examples relayed to the assessment team include a bomb that exploded in the apartment of a judge in Mat, and an incident when acid was thrown at an attorney's face. According to interviewees, the perpetrators typically are not found, with one cited exception that the person who threw acid at the attorney served a jail sentence upon his conviction. Despite these episodes, concerns about security appear to be based more on the possibility of threats, intimidation, or assault, as only a handful of actual incidents could be cited.

Judges also have the right to receive special protection for themselves, their families, and their property in grave security circumstances. JUDICIAL POWER LAW art. 38.1. While some judges have needed and utilized such protection, such instances are rare. For example, one judge commented that he does not like the message that the presence of a bodyguard conveys to the public.

Obviously, the issue of security looms larger for serious crimes courts. These courts must be located near, but separate from, other courts, and must have enhanced security. LAW ON SERIOUS CRIMES COURTS art. 11.3. In addition, judges of these courts are entitled to special protection for themselves, their families, and their property. *Id.* art. 9; JUDICIAL POWER LAW art. 38/a. Since the 2004 JRI, the implementation of these standards has been in process. The Council of Ministers has drafted implementing regulations, and is currently awaiting comments from the Ministry of Interior. In the meantime, both the Serious Crimes Court and the Serious Crimes Appellate Courts have been relocated together to a temporary accommodation until the completion of a proposed facility. The European Union is financing the construction of a new building, which will be outfitted with a high-security system accompanied by 70 police guards. The temporary facility also has improved its security, by installing cameras, card entrance, and a metal detector, placing security guards, and setting up a separate entrance for the public.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

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

| Conclusion | Correlation: Positive | Trend: ↔ |
|---|------------------------------|-----------------|
| Judges of the first instance courts and courts of appeal are appointed for indefinite terms and continue in office until they resign, are removed for cause, or reach the retirement age of 65. Judges of the High Court, the Constitutional Court, and the serious crimes courts are appointed for fixed nine-year terms, and only the latter are entitled to reappointment. | | |

Analysis/Background:

Judges of first instance courts and courts of appeal are appointed for indefinite terms and serve until they resign, are removed for cause, or reach the retirement age of 65. CONST. art. 138; JUDICIAL POWER LAW arts. 25, 27. Judges of the serious crimes courts are appointed for fixed terms of nine years and may be reappointed. LAW ON SERIOUS CRIMES COURTS arts. 3.1, 3.3. Following the end of their mandate, these judges have the right to be appointed to their previous judicial office or to vacancies on other courts, receiving priority over other candidates. *Id.* art. 3.5. While judges of the Constitutional Court and the High Court similarly receive nine-year fixed term appointments, they may not be reappointed. CONST. arts. 125.2, 136.3; LAW ON THE CONST. COURT art. 7.2. However, a High Court judge may be appointed to a court of appeal after completing his/her term in the High Court. LAW ON THE HIGH COURT art. 24. A judge of the Constitutional Court is to be appointed “in another equal or similar duty” at the completion of his/her tenure. LAW ON THE CONST. COURT art. 18. Like lower court judges, judges of the High Court must retire at the age of 65. JUDICIAL POWER LAW art. 25. Only Constitutional Court judges have a retirement age of 70. CONST. art. 127. Both *de jure* and *de facto*, guaranteed tenure for judges is respected.

Factor 15: Objective Judicial Advancement Criteria

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

| Conclusion | Correlation: Negative | Trend: ↔ |
|---|------------------------------|-----------------|
| <p>The existing judicial advancement process has been criticized for being too reliant on personal connections, rather than on individual merits and other objective criteria. A newly adopted evaluation process should bring objectivity and transparency to the process.</p> | | |

Analysis/Background:

Judges may be promoted by appointment to serve as chief judge or deputy chief judge within the same court, by transfer to another court of the same level in a preferred location, or by appointment to a higher court. Chief judges and deputy chief judges of the district courts, courts of appeal, and serious crimes courts are appointed by the HCJ. LAW ON THE HCJ art. 2(e). In 2006, the HCJ approved a regulation outlining the criteria and procedures for appointment of judges to these positions. The HCJ also has the authority to transfer a judge to a court of the same level in a preferred location, according to the criteria used for initial appointments. *Id.* art. 2(c). Finally, the HCJ makes recommendations to the President of the Republic regarding the promotion of sitting judges to the courts of appeal and the serious crimes courts. CONST. art. 136.4; LAW ON SERIOUS CRIMES COURTS art. 3.2. The statutorily defined criteria for such promotion include 5 years of judicial experience in the lower courts, as well as “high ethical, moral, and professional standards.” JUDICIAL POWER LAW art. 24. Promotion is normally done with the consent of the judge in question. *Id.* art. 28. A more detailed explanation of how these standards should be demonstrated is left to the discretion of the HCJ.

As described more fully in Factor 2 above, the President appoints judges to both the High Court and the Constitutional Court with the consent of the Assembly. CONST. arts. 125.1, 136.1. As the criteria for these appointments do not necessarily require prior judicial experience, such appointments are not always regarded strictly as promotions. Although most judges appointed to these positions have served on the bench, interviewees emphasized the importance of codifying judicial experience as a criterion.

Generally, the integrity of the existing judicial advancement process is regarded with suspicion by other judges. Most interviewees stated that the process was largely random and dependent on a judge’s self-promotion and networking skills. The overall consensus was that concrete and objective criteria, which allow for a gradual progression towards higher judicial positions, should be defined in the law. Without such definition, the vagueness of criteria does not provide a threshold to disallow applicants, and potentially appointees, who lack experience and qualifications. To illustrate the need for statutorily defined criteria, one interviewee mentioned that approximately 50 applicants of varied qualifications have applied for vacancies in the High Court.

The HCJ is charged with deciding on the criteria for evaluation of judges and overseeing the evaluation process. LAW ON THE HCJ art. 2(dh). As suggested in the 2004 JRI, the biannual evaluations conducted by the HCJ Inspectorate could serve as a useful tool in deciding on judicial promotions. However, the evaluation methodology lacked sufficient detail and analysis to differentiate among candidates and to assess the performance of the judges. For example, the form allowed 4 assessment categories of Excellent, Very Good, Good, and Incompetent. Most judges received a Very Good or Good, and the corresponding numerical scores offered little delineation between the categories. In response to these criticisms, the HCJ, in collaboration with the Council of Europe, adopted a revised evaluation system in 2005. Under the new system,

the chief judge maintains a file to record the judge’s work quality, quantity, and speed. The assessment is conducted on the basis of this file, along with a review of overturned decisions and CLE attendance records. Based on this information, the HCJ Inspectorate prepares a draft evaluation, which is submitted for review to the chief judge of the respective court, the chief judge of the Court of Appeal, and the judge being evaluated. If a judge is dissatisfied with the report, he/she can appeal to the HCJ for an amended version. In 2006, the new evaluation system was implemented as a pilot program in the Durres District Court and Court of Appeal, as well as the Elbasan District Court. In December 2006, the Inspectorate will report on the progress of the implementation, and in early 2007, the new evaluation system will be expanded to all courts. Despite agreement that the new procedure is an improvement over the former ailing evaluation system, some chief judges expressed concern that the complexity of the new evaluation generates an added burden on an already overwhelmed court.

Some additional measures to improve the judicial advancement process are also discussed. For example, a new version of the Law on the Organization of the Judicial Power, which provides, *inter alia*, for clearer promotion criteria is currently under consideration by the Assembly. There is also a proposal to transfer the responsibility for appointment of chief judges and deputy chief judges of the courts from the HCJ to the MOJ. In an effort to buttress the objectivity of the promotion process, the President of the Republic has encouraged the HCJ to give priority in promotions to MS graduates. The President has also broken with the tradition of boilerplate approval of the HCJ recommendations by refusing to appoint certain proposed candidates to the serious crimes courts.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

| Conclusion | Correlation: Positive | Trend: ↑ |
|---|------------------------------|-----------------|
| <p>Generally, judges have immunity for official actions. Although a law exists to prosecute judges for an unfair decision, it has a limited application because it requires the decision to have been made knowingly.</p> | | |

Analysis/Background:

Under the Constitution, judges are granted immunity in connection with performance of their official duties, and only the approval of the HCJ waives that immunity. CONST. art. 137.3; see *also* JUDICIAL POWER LAW art. 26. This immunity extends to both criminal actions and civil lawsuits. JUDICIAL POWER LAW art. 37. If, however, a judge is apprehended in the course of committing a crime or immediately thereafter, he/she may be arrested. However, if the HCJ does not consent to the prosecution within 24 hours following the arrest, the judge will be released. CONST. art. 137.4; JUDICIAL POWER LAW art. 26. An exception to this standard is made for judges of the High Court and the Constitutional Court. The former are subject to prosecution only with approval of the Assembly. *Id.* art. 137.1. The latter may not be prosecuted without the consent of the Constitutional Court. *Id.* art. 126. If a High Court judge or a Constitutional Court judge is arrested in the course of committing a crime, the police must notify the Constitutional Court, whose consent is required prior to the judge’s initial appearance before a criminal tribunal. If the consent is not given within 24 hours, the judge must be released. *Id.* arts. 126, 137.2; LAW ON THE CONST. COURT art. 16.2. Judges of the Constitutional Court enjoy an additional protection in that they do not bear legal responsibility for their opinions and votes related to cases under the Court’s review. LAW ON THE CONST. COURT art. 16.1.

During the pendency of a criminal proceeding against a judge, he/she is suspended from the office until the final decision in his/her case is issued. JUDICIAL POWER LAW art. 27.

Once the immunity of a judge has been waived, he/she may be prosecuted under several provisions of the Criminal Code designed to protect against corruption by public officials. These include passive corruption of a judge, i.e. soliciting or accepting any irregular benefit or offer of a benefit, or accepting an offer or promise deriving from an irregular benefit, in exchange for undertaking or failing to undertake a certain act related to a judge’s duty, which is punishable by imprisonment of up to 10 years or a fine between ALL 800 thousand and ALL 4 million (USD 7,800-39,000). See CRIM. CODE art. 319/a. There are also similar provisions criminalizing passive corruption by public officials (see *id.* art. 259) and high state officials (see *id.* art. 260).

Finally, the law authorizes the prosecution of a judge for knowingly issuing an unfair final decision. CRIM. CODE art. 315. Although this provision is rarely used, a former first instance court judge, Elvis Kotini, was unsuccessfully prosecuted under it in 2004. He was charged and convicted for several errors in judgments, including a mathematical error regarding the amount of pretrial detention. As a disciplinary measure, the HCJ dismissed him. Mr. Kotini appealed his criminal conviction to the High Court and won on the basis that his erroneous decisions were intermediate, not final ones as required by the statute. Since the Court overturned the conviction based on procedural requirements, neither the prosecutor, the attorney, or the judge himself explored the distinction between a judicial error resulting in dismissal and one meriting criminal charges. Thus, the issue of what constitutes an unfair decision was not addressed. Interviewees responded that while the law could be misused, it is not as dangerous as it seems because the unfair decision must have been made “knowingly.”

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.

| <i>Conclusion</i> | <i>Correlation: Neutral</i> | <i>Trend: ↔</i> |
|---|------------------------------------|------------------------|
| New procedures have been implemented to improve the removal and discipline process for judges, but it is too early to determine their practical impact. Concerns about political influence and the lack of transparency remain. | | |

Analysis/Background:

The grounds for which judges may incur disciplinary measures, including removal from office, are specified in the Constitution and in the law. Per these provisions, disciplinary violations include the following:

- actions incompatible with the function of a judge;
- disclosure of secrets of an investigation or deliberation room, or other confidential data;
- grave or repeated failures or delays in performance duties;
- failure to respect rules of solemnity;
- unjustified absence from work;
- indecent or immoral actions committed during or after working hours;
- actions against the fulfillment of duty or failure to perform compulsory procedural actions that do not constitute criminal offense; and
- unjustified failures to enforce disciplinary measures.

See JUDICIAL POWER LAW art. 41.

In three decisions, the Constitutional Court has restricted the MOJ and the HCJ from pursuing complaints based on the quality of judicial decisions, unless it pertains to an ethical violation. See Decision No. 29 (April 30, 2001); Decision No. 11 (April 2, 2003); and Decision No. 17 (Nov. 12, 2004). Although the assessment team was unable to obtain official data on this issue, the HCJ decisions disciplining judges based on the merits of their cases were, reportedly, frequently used in the past. See DPK REVIEW OF THE HCJ at 20. The Court ruled that a final decision cannot be the basis of discipline; only a higher court has the authority to review a lower court's reasoning. Judges who were dismissed because of disciplinary proceedings resulting from their judicial decisions were reinstated. According to the HCJ, these Constitutional Court decisions are taken into consideration by the Council when the necessity for disciplinary measures is evaluated. Nonetheless, despite these rulings, the DPK's report recommended that the HCJ should continue to discipline judges based on the merits of the case, given the numerous instance where decisions are "blatantly wrong." See DPK REVIEW OF THE HCJ at 28.

The HCJ is charged with deciding on the disciplinary responsibility of judges. CONST. art. 147.4; LAW ON THE HCJ art. 2(b), (c). At the same time, the institution of disciplinary proceedings falls within the exclusive competence of the Minister of Justice. JUDICIAL POWER LAW art. 44; LAW ON THE HCJ art. 31. When the Minister submits a request for disciplinary proceedings, the Chief Inspector records the request in the Register of Disciplinary Proceedings. See *Disciplinary Proceedings Regulations* art. 3. The judge under investigation is provided with the filed documents 10 days prior to the hearing, and is given at least 48 hours notice of the scheduled hearing. *Id.* arts. 5-6; JUDICIAL POWER LAW art. 44. At the hearing, the MOJ presents its case, followed by a response from the judge or his/her representative. HCJ members then have the opportunity to question the judge. *Disciplinary Proceedings Regulations* art. 8. During the proceedings, a judge in question has the right to be heard and to defend himself/herself either on his/her own or by a lawyer. JUDICIAL POWER LAW art. 44; LAW ON THE HCJ arts. 32-33. At the conclusion of the hearing, the HCJ members discuss the case and vote on the disciplinary measures proposed by the MOJ. *Disciplinary Proceedings Regulations* art. 9. A majority of the voting members present decide the case. *Id.* art.10. If the votes are divided equally, the proposal for a disciplinary measure is considered defeated. LAW ON THE HCJ art. 26. Following the hearing, the HCJ issues a reasoned decision. *Disciplinary Proceedings Regulations* art. 11(4).

If a judge is found guilty of one of the disciplinary violations, he/she may be subject to the following sanctions: reprimand; reprimand with warning; suspension from office and transfer to a lower position within same court for a period of 6 months to 1 year; or transfer to another court of the same level or lower level. JUDICIAL POWER LAW art. 42. Sanctions must take into account the kind and nature of the violation committed. *Id.* art. 43. The law formerly provided for additional sanction of removal from office, but the Constitutional Court recently declared this provision unconstitutional for its failure to comport with the disciplinary guidelines set forth in the Constitution. See Decision No. 3 (Feb. 20, 2006). The Constitution only permits the removal of a judge from office for commission of a crime, mental or physical incapacity, acts and behavior that seriously discredit the position and image of a judge, or professional insufficiency. See arts. 128, 140, 147.6; see *also* JUDICIAL POWER LAW art. 27. Three judges who appealed their removal to the High Court were reinstated pursuant to the Constitutional Court decision. While the law is silent as to appellate recourse with respect to the imposition of less severe disciplinary measures (see CONST. art. 147.6; JUDICIAL POWER LAW art. 46; LAW ON THE HCJ art. 34), in the past the High Court has also allowed appeals in cases involving lesser penalties despite the lack of legal authority.¹¹

The HCJ website, <http://www.kld.al>, publishes all of its decisions, including those related to imposition of disciplinary measures and removal of judges.

¹¹ However, the assessment team was informed that a recent Constitutional Court decision found such practice unconstitutional.

As acknowledged in the 2004 JRI, the number of instances of dismissed judges has steadily declined over the years. According to the HCJ, this decline is attributable in part to the constitutionally imposed restraints, barring investigation into judicial decisions.

NUMBER OF JUDGES SUBJECT TO DISCIPLINARY SANCTIONS, 2004-2006

| Type of Sanction | 2004 | 2005 | 2006 |
|---------------------------|------|------|------|
| Removal from office | 4 | 1 | 1 |
| Transfer to a lower court | - | 3 | - |
| Suspension from office | - | 2 | - |
| Reprimand with warning | 3 | - | 6 |
| Reprimand | 1 | - | - |
| Acquitted | - | - | 4 |

Source: HCJ.

One remaining source of dissatisfaction among many members of the judiciary is the lack of transparency of the discipline process itself. The lack of transparency derives from a number of variables, including the manner of drafting disciplinary decisions, executive influence, and perceived randomness of the disciplined charges.

Disciplinary decisions drafted by the HCJ are becoming more open and revealing more about the process of each case. The Disciplinary Proceedings Regulations adopted in 2003 required, *inter alia*, reasoned decisions. See art. 11(4). Previously, decisions typically included only a summary conclusion of the proceeding. While the written decisions issued by the HCJ have shown a trend towards greater transparency by expounding on legal reasoning, some interviewees emphasized the need for improved iteration of the underlying reasoning and evidence. See also DPK REVIEW OF THE HCJ at 27.

The impression of limited transparency within the HCJ is aggravated by the degree of control exercised by the MOJ over the disciplinary process. The executive branch, through the MOJ, has the potential to influence decisions of the HCJ in two ways. Firstly, as stated above, the MOJ has the exclusive authority to initiate disciplinary proceedings, based on a complaint, against a judge. Accordingly, if a judge is “protected” by the MOJ, the HCJ has no recourse to initiate proceedings on its own. Judges interpret the MOJ’s role as impinging on their independence to make decisions free from executive influence. Although it is a well established principle by the Constitutional Court that court decisions should not be reversed except by a higher court, judges commented that the practice continues in covert ways through interference by the MOJ. Lower court judges expressed concern about being targeted for issuing politically unpopular decisions. Thus, the MOJ’s authority over the process may potentially exert a deterrent influence over judicial decision-making.

Secondly, the Minister of Justice sits on the HCJ. Although he/she is barred from voting in discipline cases (see LAW ON THE HCJ art. 25.3), he/she is present during the discussion and is allowed to express his/her opinion. Thus, his/her presence and involvement on the Council may exert subtle pressure on the decision-makers and thereby affect the outcome of disciplinary decisions. Practically every interviewee strongly disapproved of the control exercised by the MOJ over the judicial complaint and discipline process.

The government has attempted to impart influence upon the judicial function in other ways. For instance, judge Artan Gjermeni, who sits on the HCJ, provided the required asset declaration to a new independent agency, the High Inspectorate for Declaration and Audit of Assets [hereinafter HIDAA]. The declaration listed an apartment but the price in the contract differed from the current price because the contractor had provided a garage as compensation for delay. Although the law also requires oral disclosures, the judge did not disclose the garage, allegedly because it was the result of an oral agreement. HIDAA concluded that his annual revenue did not justify such an expensive apartment. Among the judiciary, this investigation was perceived as a political

prosecution because the judge in question belonged to the opposition party.¹² By removing this judge from the HCJ, the government hoped he could be replaced with a more pro-government representative. The HCJ investigated the judge in question, but found no cause for discipline. See HCJ Decision No. 189 (March 28, 2006). See also Factor 20 below for a more detailed discussion of examples of improper influence on the judiciary by other branches of government.

Finally, several interviewees remarked that the disciplinary process appears random, noting that judges are disciplined for minor infractions while serious infractions go unnoticed. The interviewees were under the impression that judges are both protected and prosecuted due to the presence or the lack of political or personal connections, as well as bribery. On the other hand, the perceived corruption within the HCJ is somewhat belied by the fact that the HCJ has investigated the conduct of its own members.

While there continue to be concerns among the judiciary regarding the transparency and political influence weighing in on disciplinary decisions of the HCJ, efforts are underway to improve the deficient areas. Thus, in an effort to increase the legitimacy of the institution, a permanent special deputy director of the HCJ was appointed in 2003, with the role to oversee the work of the HCJ and to handle daily administrative tasks. See *Regulation on the Organization and Functioning of the Inspectorate of the HCJ* art. 2. Other programs that are designed to promote cooperation between the HCJ and the MOJ Inspectorates and to streamline complaint registration and verification procedures are described in greater detail in Factor 22 below.

Factor 18: Case Assignment

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|---|-----------------------------|-----------------|
| <p>As prescribed by law, case assignment is done by lottery. A few courts have replaced the traditional manual lottery with a more secure electronic system. Judges may be disqualified from hearing a case only for good cause, such as family, economic, or other interest suggesting lack of impartiality.</p> | | |

Analysis/Background:

The law mandates case assignment through a lottery system in all courts except the Constitutional Court, which sits *en banc*. JUDICIAL POWER LAW art. 15. While a few courts have introduced more sophisticated electronic lotteries, most lack the necessary infrastructure and resources to do so and continue to use a manual lottery system.

Although each court has its individual process, the manual lottery generally is performed in the following manner. After the lawsuits are registered in the secretary's office and signed by the chief judge and the head secretary, they are divided into their respective sections, such as criminal, civil, administrative, and commercial. The cases are recorded in the register by date in the order in which they are received. The chancellor (court administrator) of the court then writes numbers on pieces of paper, for each case section. The papers are placed upside down on the desk, and each judge selects one. The judge is assigned the case corresponding to the number

¹² This perception, however, was not shared by the public. Indeed, respondents from outside the judiciary reported that this case, and its subsequent dismissal, had only served to reinforce the public sentiment about impunity of judges.

he/she selected. In courts with designated criminal, civil, or other panels, only the judges sitting on a particular panel would participate in the lottery dealing with their respective subject matter.

While the manual lottery is intended to ensure randomness and appears to be used in good faith, it is open to manipulation by the chancellor, the secretary, and/or the chief judge. No examples were provided of abuse of this system, yet one interviewee commented, “in a system where the lottery is controlled by the chief judge, the process is corruptible.” Even in the best of circumstances, a lottery excludes other important factors, such as a judge’s workload, the complexity of the case, and a judge’s specialization not covered by one of the court panels.

Currently, only the High Court and a handful of district courts (Fier, Kavaje, Kurbin, Shkodra, Tirana, and Vlora) assign cases through a computerized lottery system. In the High Court, the Civil Case Management and Information System [hereinafter CCMIS] assigns cases automatically based on workload and then random distribution, organized by the court sections, such as civil, administrative, and criminal. The Chairman of the Court can override the case distribution if needed; nobody else has the access or authority to influence case assignment. Under the ARK-IT system, such as the one in the Tirana District Court, the secretary enters the case information into the computer program. In assigning cases, the program considers a judge’s workload, types of cases already assigned, and the work speed of the judge. The program tries not to assign the same types of cases to the same judge, i.e., if a judge is already handling a murder case, there is a lower probability that a second murder case would be assigned to that judge. The results of the assignment can be viewed internally, as well as by the public through the court’s website. The public can also find the information by using the public use computers located in the lobby of the Tirana District Court. These electronic lottery systems provide greater protections against both actual and perceived bias in case assignment.

After a case has been assigned, the judge may only be removed from hearing that case through a process of recusal. Thus, a judge must recuse himself/herself or be disqualified from the case when he/she has an economic, legal, or familial conflict of interest or connection to the case. In addition, if the judge has been previously involved in the case, either as a witness, a prosecutor, or a judge, on another level or stage of the proceeding, he/she must withdraw. See CIV. PROC. CODE arts. 72-73; CRIM. PROC. CODE arts. 15-17. Any party may request the judge’s withdrawal. CIV. PROC. CODE arts. 74-75; CRIM. PROC. CODE arts. 18-23. In criminal cases, the conflict of interest rules also apply to the court personnel assigned to the case. CRIM. PROC. CODE art. 23. If the request is denied in a civil case and deemed “unjust,” the requesting party may be required to pay court costs and a fine of up to ALL 5,000 (approximately USD 49). CIV. PROC. CODE art. 76. If a judge has been disqualified from handling a case, the chief judge of the court assigns the case to a new judge. *Id.* art. 73.

Although requests by parties to remove a judge are not frequent, interviewees stated that judges do recuse themselves on occasion.

Factor 19: Judicial Associations

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

| Conclusion | Correlation: Neutral | Trend: ↑ |
|--|-----------------------------|-----------------|
| The newly restructured NJC serves as a quasi-judicial association. Although criticized for being unrepresentative, the organization is becoming more active on behalf of judicial interests. | | |

Analysis/Background:

In 2005, the NJC was restructured under a new law, modeled after the Law on the Judicial Conference in the United States. The original role of the NJC was defined under the Constitution to appoint the nine judges to the HCJ. See art. 147.1. In its expanded role as the representative organ of all judges, the NJC's purpose also includes defending the independence of the judiciary and defining the principal directions of the activity of the courts. LAW ON THE NATIONAL JUDICIAL CONFERENCE OF THE REPUBLIC OF ALBANIA arts. 1, 2 (Law No. 45 of 2005) [hereinafter LAW ON THE NJC]. In pursuing these directives, the NJC makes proposals to public institutions regarding improvement of the legal and institutional framework for the judiciary. *Id.*

The Chairman of the High Court serves as the NJC President. *Id.* art. 3.1. Other members of the NJC consist of the chief judges of the district and appellate courts, as well as other judges selected by the Regional Judicial Conferences [hereinafter RJC]. *Id.* art. 4.1. The Executive Council is comprised of the Chairman of the High Court, 4 chairmen of appellate courts, and 10 chairmen of district courts. It is responsible for overseeing the organization and internal administration of the NJC, including calling meetings and setting priorities for the various commissions within the NJC. *Id.* art. 6. There are special permanent commissions that deal with issues such as budget, continuous professional improvement, ethics, relations with state institutions and international organizations, and relations with the media, non-profit organizations, and the public. Other commissions may be created on an *ad hoc* basis. Commissions are charged with advising and making recommendations to the NJC and the Executive Council regarding policies and programs. *Id.* art. 9.

RJCs are established within the respective jurisdictions of the appellate courts. They include all district and appellate judges and are chaired by the chief judge of the appellate court. *Id.* art. 4.2. Each RJC elects NJC members from among the judges within that region. The number of NJC members chosen from each RJC is determined by the ratio of the number of judges within a region as compared to the overall number of judges in the country, excluding the High Court judges. *Id.* art. 4.5. These elected members serve a one-year term. *Id.* art. 4.6. Accordingly, the majority of judges do not participate directly in decision-making. The NJC holds an annual meeting, at which the President of the Republic makes a presentation. *Id.* art. 3. Regrettably, interviewees reported that the President typically leaves shortly after his presentation without hearing the concerns or issues confronting the judiciary.

The NJC is provided with sufficient authority to enable it to play an influential role as an advocate for judicial interests, through its involvement in HCJ and its commissions. In particular, it is responsible for selecting nine HCJ members, which affects discipline and selection of judges. CONST. art. 147; LAW ON THE HCJ art. 4. In addition, the various commissions within the NJC are becoming more active. For example, the Commission on Legislative Assistance provided comments on draft legislation at the request of the Minister of Justice. In at least one instance, when the NJC commented that the proposed penalties in the draft revisions to the Criminal Code were too harsh, the Assembly incorporated some of these comments into the legislation. However, the NJC did not have the opportunity to provide input on the amended Law on the HCJ.¹³ In order to increase the effectiveness and legitimacy of the NJC, one interviewee suggested that the Parliament should be required to consider input from the NJC on any legislation concerning the judiciary. The Ethics Commission is pushing an agenda of ethics reform, including seminars for the Commission itself and the judiciary at large. The Commission is also providing advisory opinions interpreting the Judicial Ethics Code upon request of the HCJ. See Factor 21 above for additional details.

¹³ At the same time, it should be noted that, reportedly, the MOJ similarly was not provided with an opportunity to comment on these amendments, because the drafter, a civil society organization, introduced them directly into the Assembly.

The new representative system was adopted in response to the inefficiency of meetings under the previous structure, in which all judges could participate directly. Some interviewees expressed criticism over the restructuring because it is hierarchical and limits the participation of judges. Critics remarked that, unlike the U.S. with its thousands of judges, Albania with a judiciary of less than 400 members does not need a representative system to function efficiently. Another concern is that the general membership has no opportunity to select the NJC’s President and members of its Executive Council, as these individuals are designated by the Law.

Judges are guaranteed the freedom to form societies or other organizations to protect their rights and interests and to offer opportunities for professional improvement. JUDICIAL POWER LAW art. 35. While some judges have proposed the formation of an independent judicial association with direct representation, others countered that the corps of judges has neither the resources nor the will necessary to support another association.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

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

| Conclusion | Correlation: Negative | Trend: ↔ |
|---|------------------------------|-----------------|
| Despite constitutional and legal guarantees of independence in the judicial decision-making, undue influence upon the judiciary remains a significant problem. Perceptions of judicial corruption are widespread, and influence from private sources is prevalent. Less commonplace are occasional attempts by other governmental branches to influence judges. | | |

Analysis/Background:

According to the Constitution and other applicable laws, judges are independent and subject only to the Constitution and the laws. See CONST. 145.1; JUDICIAL POWER LAW art. 3; LAW ON THE CONST. COURT arts. 3.1, 25.1. The judicial power in Albania is exercised only by the courts, in compliance with the Constitution and the competences provided for by law. JUDICIAL POWER LAW art. 1. Similarly, the Code of Judicial Ethics requires that judges shall not be influenced by biased interests, public and government pressure, or be scared because of criticism. See Rule 2. Interference in the activity of the courts or the judges entails liability according to law. CONST. art. 145.3. Specifically, active corruption of a judge or other judicial employees, defined as direct or indirect proposal, offer or giving of any irregular benefits for a judge or a third person in exchange for performing or not performing a certain act regarding a judge’s duty, is punishable by imprisonment of 1-4 years, or a fine between ALL 400 thousand and ALL 2 million (USD 3,900-19,500). CRIM. CODE art. 319. Passive corruption by a judge, i.e. soliciting or accepting any irregular benefit or offer of a benefit, or accepting an offer or promise deriving from an irregular benefit, in exchange for undertaking or failing to undertake a certain act related to a judge’s duty, is punishable by imprisonment of up to 10 years or a fine between ALL 800 thousand and ALL 4 million (USD 7,800-39,000). *Id.* art. 319/a.

Notwithstanding these constitutional and statutory guarantees, undue influence upon the judiciary remains a significant problem in Albania. According to interviewees, the source of the influence primarily comes from private sources, to a lesser extent from public officials, and only rarely from senior judges. While it is obviously difficult to quantify the degree of such interference in the judicial decision-making, a recent OSCE report list describes numerous specific instances of

corruption within the judiciary. It cautions, however, that the credibility of these reports varies and that “in some cases, it has been obvious that the person relaying the story has just been convinced that he/she ‘lost’ a case because the court or the prosecution was corrupted, without ... being able to substantiate his/her allegations in any way.” See *generally* OSCE REPORT at 169-173.

The existence of corruption within the judiciary is perceived by the general public to be very high. The judiciary is frequently ranked among the most corrupt entities in the public sector. According to a 2005 survey, citizens ranked the judiciary, together with parliamentarians, customs and tax officials, as the most corrupt institutions in the country, of the 17 institutions surveyed. CASALS & ASSOCIATES, CORRUPTION IN ALBANIA: PERCEPTIONS AND EXPERIENCE, SURVEY 2005. SUMMARY OF FINDINGS at 6 (June 2006) [hereinafter CORRUPTION SURVEY]. Courts were also perceived as the least transparent of all public sector institutions. *Id.* at 9. Surprisingly, in the same survey over one-half (53%) of judges themselves admitted that corruption is a serious problem. Fifty-one percent admitted that lawyers approach them outside of court with bribes, and 33% reported that litigants approach them. *Id.* at 15. On the other hand, judges, somewhat inexplicably, indicated that it was not at all common for the court proceedings at various levels of the judiciary to be vulnerable to bribes. On a 100-point scale (where 100 means “Very common”), all of these instances received a mean score of 20-25 points. Similarly, judges did not believe that the following indications of corruption in the judiciary were common: offers of bribes by prosecutors to court officials to accelerate trials (mean score of 20.6), willingness by judges to accept or request bribes (24.0), and willingness by court administration staff to accept or request bribes (24.8). See CASALS & ASSOCIATES, 2005 SURVEY OF JUDGES IN ALBANIA at 44-46 (revised May 2006).

Due to the extent of corruption, the functioning of the judiciary is perceived as a problem for doing business by 56% of firms responding to the 2005 Business Environment and Enterprise Performance Survey (BEEPS). Although this represents an improvement over 62% of firms providing this response in 2002, the number of firms who believed that the judiciary was honest, fair, and impartial has declined. See WORLD BANK, IMPLEMENTATION COMPLETION REPORT ON ALBANIA LEGAL AND JUDICIAL REFORM PROJECT at 4-5 (June 2006) [hereinafter WORLD BANK PROJECT IMPLEMENTATION REPORT]. The confidence of private citizens in the judiciary is similarly low, as indicated by the fact that only about 37% of the public believe in the judicial system’s ability to deliver justice to crime victims and punish the criminals. See CORRUPTION SURVEY at 14.

Interference from private interests need not take the form of monetary bribery. Despite being expressly prohibited by the Code of Judicial Ethics (see Factor 21 below), *ex parte* communications between judges and parties, prosecutors, and defense attorneys remain commonplace in Albania. As described by the OSCE, parties are frequently seen approaching judges; prosecutors or other parties are found sitting in judges’ offices or entered courtrooms together with judges; advocates are seen having coffee with judges; and parties file documents directly with judges rather than through the court’s secretariat. See OSCE REPORT at 175-176. Frequently, litigants or lawyers use their personal connections to apply pressure upon judges. Lawyers are often characterized as “intermediaries for corruption” who bribe judges and court officials to achieve favorable outcomes for their client. See ALBANIA D&G ASSESSMENT at 12. Albania is a small country where family and personal connections are strong. Although many interviewees agreed that higher salaries and education would help in bolstering the resistance of judges to corruption, they also noted that the mentality of litigants and lawyers to utilize bribes and connections is deeply entrenched.

Despite these reports, the prosecution of judges for corruption is rare in practice. In particular, there were no criminal prosecutions of judges on corruption charges in 2006.

The executive branch and the legislature are also seeking to impart influence in the judicial function. The Minister of Justice can influence the judiciary through his/her membership on the HCJ. Even though the Minister does not vote, he/she can still influence the votes of other HCJ members through expressing his/her opinions. The judicial inspection system was also cited by

interviewees as a source of governmental influence. Of particular concern is the existence of two inspectorates, at the HCJ and the MOJ, and the fact that only the MOJ has the exclusive authority to initiate disciplinary proceedings against judges. This means that the MOJ has the power to reward or punish judges for their decisions. The influence is considerably greater in the district and appellate courts, particularly if a case has strong political overtones. The MOJ can make frequent and impromptu inspection visits, which can exert subtle pressure upon the judges. According to some interviewees, the Chairman of the High Court stopped the too frequent visits by MOJ because they interrupted the work of the judges and changed the atmosphere within the court.

The Assembly has also launched thwarted attempts to control the composition of the HCJ. In 2005, it attempted to alter the composition of HCJ by passing a law barring a HCJ member from serving on both the judiciary and the HCJ. The Assembly enacted the law under the guise of fighting corruption. Although the President refused to sign the law, it automatically went into effect. The law was viewed by many as a surreptitious attempt to affect the political outcome of elections. According to electoral law, the HCJ proposes one member to the Central Election Committee [hereinafter CEC]. See ELECTORAL CODE OF THE REPUBLIC OF ALBANIA art. 22. As the political balance of the CEC was equally split prior to this appointment, the appointment by HCJ could have influenced the political orientation of the CEC. The CEC implements the Electoral Code and handles or, according to some reports, manipulates the entire election process, including certification of voter lists. The Assembly assumed that the HCJ members would resign rather than surrender their judgeship, and 9 new, more conservative, members would be appointed by the Assembly or by the NJC. In fact, the opposite occurred, and judges resigned from the judiciary. The Constitutional Court subsequently found this law unconstitutional both because the government was compromising the independence of the judiciary and because the Constitution expressly requires these positions to be filled by judges. See Decision No.14 (May 22, 2006).

The assessment team was not made aware of any ongoing or proposed action plans by the judiciary to address the problem, or public perceptions, of corruption within the system, or to improve the public image of the judiciary.

Factor 21: Code of Ethics

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

| Conclusion | Correlation: Neutral | Trend: ↑ |
|--|-----------------------------|-----------------|
| <p>Although issues of enforceability remain, the Code of Judicial Ethics is gaining greater recognition and effect among the judiciary. The NJC, through its Ethics Commission, is pushing an agenda of ethics reform, including increasing enforceability of the Code, providing advisory opinions, and creating more opportunities for ethics training. Although ethics training is not required for judges, initial and continuing education courses on these issues are being offered more frequently.</p> | | |

Analysis/Background:

The Code of Judicial Ethics [hereinafter CODE OF ETHICS] was adopted by the NJC in 2000. The Code generally encompasses all aspects of judicial behavior, including the duties of independence and impartiality, the exercise of judicial power, and restrictions upon extrajudicial activity. Specifically, it covers, *inter alia*, issues such as: conflicts of interest (see CODE OF ETHICS

Rules 3, 12, 16, 19); duty to avoid any impropriety or appearance of impropriety (*id.* Rules 4, 15); *ex parte* communications (*id.* Rule 9); duty of confidentiality (*id.* Rule 11); participation in political activities or discriminatory organizations (*id.* Rules 17, 18); and prohibition to accept gifts, favors, privileges or promises for material assistance from persons with a direct or indirect interest in a case (*id.* Rule 23). The Code is binding upon judges of all levels, as well as the administrative staff of the courts. *Id.* Rules 26, 29. Violations of the rules therein may result in a reprimand from the NJC, which allegedly examines such cases through its nonexistent (as discussed below) Disciplinary Commission. *Id.* Rules 27-28.

In addition, judicial ethics issues are also regulated by the Constitution and other applicable laws. Thus, judges are to act in a manner that preserves their dignity, without permitting actions that compromise the profession, the judicial system, or their reputation in society. JUDICIAL POWER LAW art. 34. Judges are prohibited from being members of political parties or participating in political activities. CONST. arts. 130, 143; JUDICIAL POWER LAW art. 29. Judicial function is declared incompatible with an elective mandate or any other public or private function or activity, including service as experts in arbitration proceedings or arbitrators. CONST. arts. 130, 143; JUDICIAL POWER LAW arts. 30-31. Judges are also required to preserve the confidentiality of information learned in the course of court proceedings and to refrain from making statements about pending cases. JUDICIAL POWER LAW art. 32.

The NJC established an Ethics Commission in 2002. Since that time, its work has concentrated on judicial ethics reform by increasing the enforceability of the Code of Ethics, participating in trainings, and providing advisory opinions on the Code of Ethics. Thus, in an effort to strengthen the Code of Ethics, the Commission is reviewing the Code to identify unenforceable provisions. One such provision requires the Disciplinary Commission of the NJC to forward disciplinary cases to the HCJ. See CODE OF ETHICS Rule 27. In practice, however, this rule is without force, because no such Commission currently exists within the NJC. As a result, the Ethics Commission will recommend either changing its own name to the Disciplinary Commission or granting disciplinary competence to itself. Other entities, such as the OSCE, have expressed similar concerns regarding the unenforceability of the Code of Ethics.

Sitting judges are not required to receive trainings on the Code of Ethics. Although the law schools do not yet provide ethics courses, the MS continues to include courses on the topic in both its first-year initial training curriculum and the CLE programs. Additional trainings have also been organized, mostly by international organizations operating in Albania. In 2004, with the cooperation of an American judge, ABA/CEELI organized a week-long roundtable in Tirana on ethical issues in the Albanian judiciary and ways to implement reform. A similar event was hosted by the MS with support from the Council of Europe in June 2005. During November 2006, the OSCE held a series of seminars on the Code of Ethics focusing on *ex parte* communications and gifts to judges. See Press Release, OSCE Presence in Albania and National Judicial Conference Organize Judicial Ethics Seminars (Nov. 10, 2006). In addition to judges from various district courts and courts of appeal, four judges participated from the High Court, one judge from the HCJ, and two from the serious crimes courts. During the 2006-2007 academic year, the MS plans to conduct four workshops for 15 judges each dealing with the broad issues of judicial ethics and accountability, such as disciplinary proceedings, conflicts of interest, asset declarations, as well as the new judicial evaluation system. See PROGRAM OF CONTINUOUS TRAINING FOR JUDGES AND PROSECUTORS, 2006-2009 at 84-86. The Ethics Commission is eager to pursue additional educational opportunities on ethics for the judiciary.

The Ethics Commission has begun to provide advisory opinions on the application of the Code of Ethics upon request by the HCJ. To date, the Commission has issued three such opinions. Moreover, even though violations of the Code of Ethics do not automatically create grounds for formal disciplinary proceedings before the HCJ, the HCJ has referred to the Code in its decisions requiring interpretation of disciplinary provisions within the Judicial Power Law. See DPK REVIEW OF THE HCJ at 16.

Factor 22: Judicial Conduct Complaint Process

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|--|-----------------------------|-----------------|
| <p>The public utilizes the judicial conduct complaint process through the MOJ and the HCJ Inspectorates and other offices. However, overlapping mandates of the two Inspectorates hinder the efficient and transparent operation of the process. A new Memorandum of Understanding between the Inspectorates promises to clarify duplicative competences and unify procedures.</p> | | |

Analysis/Background:

The process for registering complaints regarding judicial conduct exists. Complaints can be submitted to the MOJ, the HCJ, the Office of the President, and the PA Office. As only the MOJ and the HCJ have complaint registries, the Office of the President and the PA forward some complaints to these two offices. Other bodies that direct complaints to the HCJ or the MOJ include the Administration of the Chairmanship of the Assembly, the Prime Minister's Office, and Office of the General Prosecutor. See DPK REVIEW OF THE HCJ at 17.

Nevertheless, concerns abound over the perceived influence from the executive branch regarding the judicial conduct complaint process. Both the MOJ and the HCJ have Inspectorates to investigate judicial complaints. Although the Constitutional Court ruled in 2004 that the existence of the two Inspectorates did not pose a constitutional conflict, the majority of interviewees expressed dissatisfaction with the overlapping mandates of the two institutions and the MOJ's control over the investigation process. Many felt that the overlap was duplicative, and that the MOJ's involvement abridged the independence of the judiciary. See *also* Factor 17 above discussing the potential influence of the executive branch, through the MOJ, on the HCJ's decisions.

Efforts are underway to clarify overlapping areas and improve the efficiency of the Inspectorates. For example, since 2004, the MOJ and the HCJ have been engaging in a occasional joint inspections of the court, rather than duplicating inspections as frequently happened in the past. See DPK REVIEW OF THE HCJ at 23. These joint inspections have continued on an *ad hoc* basis. Another project, funded by USAID and implemented by Casals & Associates, is aimed at promoting cooperation between the two institutions, with the goal of furthering a fair and transparent judicial evaluation and complaint process. One of its recent activities included bringing the two Inspectorates on a study tour to Spain in July 2006. Following the study tour, the two Inspectorates signed a Memorandum of Understanding for future cooperation between them. The proposed cooperation consists of establishing a Working Group to produce several guidelines for clarification of the overlapping mandates. The broadest of these is the Policy Framework Document, which will define the purpose and scope of control over judges and courts. Additional aims are to standardize the complaint verification procedures and the procedures for the registration of complaints. Detailed complaint verification procedures will be set forth in a regulation, while new procedures for registration call for the establishment of streamlined complaint registries in both the MOJ and the HCJ. Eventually, the registries will share a computerized system to manage the data. Within a year from the signing of the MOU, the Minister of Justice and the HCJ will develop and introduce the Manual of Inspection Procedures to define the respective rules and procedures for inspection and control. Currently, the Working Group is drafting the verification of complaints procedure.

As for public awareness, the public would seem to be generally well informed about the process for registering complaints against judges, as illustrated by the increasing number of complaints

filed each year. According to statistics supplied by the HCJ, it received 391 complaints in 2003, 538 in 2004, 710 in 2005, and 770 in 2006. The PA received 388 complaints against the judiciary in 2005, up from 252 complaints in 2004, many of which were related to delays in court proceedings. See ANNUAL REPORT ON THE ACTIVITY OF THE PEOPLE’S ADVOCATE, 1 JANUARY – 31 DECEMBER 2005 at 11, 64 (2006). In fact, most judges were convinced that the public is all too well informed about the process. On the contrary, the NGO representatives believed that while the public may be aware that such a procedure exists, it is not informed about how and where to register complaints. No public awareness campaigns specific to the registration of judicial conduct complaints were mentioned; however, the PA is engaging in a general public awareness campaign, as illustrated by its plethora of posters throughout Tirana.

Factor 23: Public and Media Access to Proceedings

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

| Conclusion | Correlation: Negative | Trend: ↔ |
|--|------------------------------|-----------------|
| As a matter of law, courtroom proceedings are open to the public and the media, but in practice their presence is restricted by limited space available. | | |

Analysis/Background:

Under the law, the right to public trial is guaranteed to everyone (see CONST. art. 42.2), and courtroom proceedings are generally open to the public and the media. However, a judge may order to close to the public a criminal trial when the publicity may damage the social morality or result in disclosure of a state secret, if this is requested by the competent authority; to protect courtroom order from incidents which impair the normal conduct of the hearing; to protect the witnesses or the defendant; or, when necessary, to interrogate juveniles. CRIM. PROC. CODE arts. 339, 340; see also LAW ON SERIOUS CRIMES COURTS art. 7.2. When the bases for the *in camera* proceeding no longer exist, the proceedings may become public. *Id.* In civil cases, the public may also be barred from the proceedings in order to protect commercial or invention secrets, or when circumstances from the intimate private life of the parties and of other participants in the proceedings are mentioned. The decision to hold a private hearing must be announced to the public. CIV. PROC. CODE art. 173. The Constitutional Court may conduct a closed hearing for reasons related to the protection of the public moral, public order, national security, privacy, or individual rights. LAW ON THE CONST. COURT art. 21.2. In any case, however, judicial decisions are to be announced publicly. CONST. art. 146.2.

In practice, however, the limited available space frequently makes it unlikely that everyone wishing to observe a trial can be accommodated. Despite few reported incidents when public access to proceedings has been expressly denied (see, e.g., OSCE REPORT at 165), the lack of courtrooms, which often results in trials being held in the small offices of the judges, usually restricts attendance at the first instance courts to the parties, their lawyers, the judge, and the secretary. If media is allowed to attend, priority would be given to the more prominent media institutions due to limited space. Interviewees also reported that priority is usually given to high-profile cases when allocating the larger courtrooms.

Accommodation is much less of a problem at the appellate courts because of the lower caseload and better courtrooms. The High Court has three courtrooms, each of which has seating for more than 40 persons, and one of which doubles as a conference room for 120 persons.

Information about upcoming cases is generally available to the public, either through postings in the foyer or via the website in more sophisticated facilities, such as the Tirana District Court.

However, the recent OSCE report observed that the publicly-posted schedules are typically updated only once a week (or even less frequently), which means that it may be difficult for the public to obtain accurate information on trial schedules. While secretaries and the chancellors, upon request, can provide the public with such information, they are not always able or willing to do so. Most frequently this information can only be obtained by contacting the trial judge. See OSCE REPORT at 157-158. A related problem is the absence of waiting areas attached to the courtrooms, which results in the public waiting for the trials to start outside the courthouse or in the crowded hallways outside the judges' offices. *Id.* at 165. The structure of the court administration in district and appellate courts should, theoretically, include a public relations and media office or sector, which, *inter alia*, exhibits trial lists for the public within the courthouse. See *Regulation on Organization and Functioning of Judicial Administration* art. 24. In practice, however, such offices have not been created in every court. OSCE REPORT at 158.

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: ↑ |
|---|-----------------------------|-----------------|
| <p>While judicial decisions are, in theory, public record, only the decisions of the High Court and the Constitutional Court are published on a regular basis. Access to decisions of lower courts is improving, in part through their publication on the websites of some of the courts.</p> | | |

Analysis/Background:

As a matter of law, with some exceptions, everyone has the right to request information on official documents pertaining to the activity of state organs and persons that exercise state functions, without explaining the motives. See CONST. art. 23; LAW ON THE RIGHT TO INFORMATION ON OFFICIAL DOCUMENTS art. 3 (Law No. 8503 of 1999) [hereinafter LAW ON OFFICIAL DOCUMENTS]. More specifically, the Constitution mandates the public announcement of all judicial decisions. See art. 146.2. A final decision in a criminal case must be announced and issued at the end of the proceedings and immediately filed with the secretariat following the announcement. CRIM. PROC. CODE arts. 379, 386. The decision must be reasoned and signed by all panel members, but no deadline for its issuance is set forth in the law. *Id.* art. 382. The law expressly restricts publication of court decisions where the defendant is a juvenile, a hearing is held in camera, or where the case involves state or other protected secrets. *Id.* art. 103. The law also provides that final decisions may be obtained to resolve evidentiary issues in criminal cases. *Id.* art. 193. Final decisions in civil cases should contain the legal basis on which the settlement of the dispute is based, the analysis of evidence, and the manner of the settlement, and must be signed by all participating judges. CIV. PROC. CODE arts. 29, 126, 308, 310. The decision should be submitted to the secretariat following the proceeding or, in complicated cases, it may be issued within 10 days. *Id.* art. 308. At the request of a party, the court also must publish the decision in a newspaper, when doing so would “serve to the reparation of damage.” *Id.* art. 30. Finally, in anticipation of requests for examination or copying of their decisions, courts are required to prepare ahead of time copies of their final decisions and other official documents that have previously been given to at least one person. LAW ON OFFICIAL DOCUMENTS art. 9.

Despite the Constitution's general mandate to publish court decisions, most courts do not follow this in practice. Among the district and appellate court, only a handful of courts publish some of their opinions. For example, the Tirana District Court publishes most of its opinions dating from 2003 through present on its website, <http://www.gjykatatirana.gov.al>, as well as in hard copy. Other district courts that provide online access to texts or excerpts of selected judgments include

Shkodra, Fier, and Kavaja. See OSCE REPORT at 160. In other district courts, parties receive copies of decisions, but non-parties generally must formally request copies, state the reason for the request, and pay for the service.¹⁴ CRIM. PROC. CODE arts. 105, 197. Although the law states that any interested person may obtain a copy of the decision, it also allows the respective court discretion to examine the request. *Id.* art. 105. In practice, interviewees stated that decisions can be withheld if the presiding judge decides to restrict access to protect the public or the parties. Lawyers and representatives of international organizations interviewed stated that they have difficulty obtaining access to court documents, which implies that the public must meet with obstacles. See also OSCE REPORT at 161-163 (listing examples of specific problems encountered with obtaining copies of decisions directly from the courts). For lawyers, the limited access can seriously impede effectiveness of their representation. As stated in Factor 8 above, a defendant has only 10 days within which to appeal a court decision. However, court decisions often are read partially or in summary in court at the end of trial, and the final decision may not be issued until after this period has elapsed. Interviewees suggested that some judges may intentionally obstruct access to decisions, because they issue late decisions with poor writing and reasoning. Another reason proffered during interviews is a legacy of distrust towards the administration inherited from the communist regime, as judges may fear retribution from the administration due to the delays and poor quality of their decisions. Even when decisions are obtainable, they may contain poor reasoning and suffer from illegibility when handwritten.

Decisions and minority opinions of the High Court and the Constitutional Court are published in hard copy and on their respective websites, <http://www.gjykataelarte.gov.al> and <http://www.gjk.gov.al>. CONST. arts. 132.2, 142.2; LAW ON THE HIGH COURT art. 19; LAW ON THE CONST. COURT art. 26. Specifically, the High Court's decisions are published in its periodical bulletin, DECISIONS OF HIGH COURT, while decisions of its joint colleges unifying or amending judicial practice are published in the next issue of the OFFICIAL JOURNAL [hereinafter OJ]. Decisions of the Constitutional Court are published in the OJ no later than 15 days of being sent to the publisher. LAW ON THE CONST. COURT art. 26. In addition, judges and prosecutors are provided with copies of High Court decisions. However, the general public has a harder time obtaining copies of these decisions. Although the High Court's bulletin is available for purchase, interviewees who were not members of the judiciary were uncertain where to purchase them. While websites have improved public access, some of them are not very user-friendly.

The legal culture does not place much importance on decisions of the lower courts. One lawyer interviewed mentioned that he is only interested in having access to the High Court's decisions due to their precedential value, whereas decisions of other courts carry no such importance.

Factor 25: Maintenance of Trial Records

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|---|-----------------------------|-----------------|
| Somewhat reliable minutes, rather than transcripts, of courtroom proceedings are maintained but are not easily available to the public. | | |

¹⁴ As a general rule, fees for issuing the copies of official documents cannot exceed costs incurred for the production of the document, except documents regarding the location, rules, and procedures of a public authority, which must be provided free of charge. See LAW ON OFFICIAL DOCUMENTS arts. 8, 13.

Analysis/Background:

In criminal cases, minutes of courtroom proceedings may be recorded in a summary or verbatim form at the court's discretion. CRIM. PROC. CODE arts. 115, 120. An exception is made for oral orders of the presiding judge, which always are recorded verbatim. *Id.* art. 346. Summarized minutes are permitted where the case is simple or verbatim minutes are technologically unfeasible. *Id.* art. 120. In either case, the judge must ensure that the minutes include the essential portions of testimony and evidence and are signed by the recorder. *Id.* arts. 116, 122, 345. In civil cases, the minutes are recorded by the court secretary and include explanations of the parties, the evidence examined, as well as the orders announced by the court. CIV. PROC. CODE arts. 77, 172. The law does not specify whether the minutes should be in summary or verbatim form.

In practice, the secretary of a judge takes notes, usually by hand, in the course of each courtroom proceeding. According to interviewees, reliability of the minutes is questionable, and legibility is sometimes inscrutable. The disputed contents of minutes have served as the basis of appeal when parties claimed a discrepancy between what was actually said and recorded. Occasionally, illegibility has even caused the High Court to remand a case to a lower court.

Two projects have been initiated to improve the recording of minutes. A USAID-funded project which, *inter alia*, enabled secretaries to type minutes directly into a computer, ended, due in part to a World Bank, now EURALIUS, project, CCMIS, which overlapped in other areas.. Even though the areas of overlap at that time related only to the case management portion of the software, USAID decided to end the project since the government had agreed to both programs without attempting to coordinate them or electing one to be used by all the courts. Although intended for five pilot courts with subsequent expansion by the Government of Albania to all courts, the USAID project was only implemented in the District Courts of Tirana, Fier, Kavaje, Mat, Shkodra, and Vlora prior to its termination. The CCMIS system now allows for the recording of trial minutes directly into the computer, with a printout for the parties. As most courtrooms are not equipped with computers, the secretaries in the Tirana District Court use the system where they are able. Otherwise, the minutes are recorded manually and entered into the CCMIS system after the trial. Several interviewees commented on the importance of introducing an electronic system of creating transcripts, and perhaps charging a fee for issuance of copies.

Other courts have tried to use computers for transcribing purposes, but lost the work when one of the frequent electricity losses occurred. Handwritten minutes present less of a problem in the High Court, because no witnesses testify and the notes are prepared as a summary of the proceedings rather than an exact recording of the oral and written testimony. In the Constitutional Court, secretaries prepare verbatim minutes by hand and type them into the computer after the proceedings.

The Criminal Procedure Code permits the release of minutes from other criminal or civil proceedings where they have relevance to the evidence in the instant case. See art. 193. Interviewees stated that a party or the public could obtain a copy of courtroom minutes if interested, but such requests are unusual in practice.

VI. Efficiency

Factor 26: Court Support Staff

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

| | | |
|--|-----------------------------|-----------------|
| Conclusion | Correlation: Neutral | Trend: ↔ |
| Judges on the lower courts lack adequate human resource support to enable them to perform their duties efficiently. Staffing situation is better in the higher courts. Low salaries threaten the retention of qualified employees. | | |

Analysis/Background:

Each court in Albania has the following administrative support sectors: a chancellor's office, a secretariat, an archives office, a public relations and media office, and a budget office, as well as auxiliary staff such as drivers and janitors. See *Regulation on Organization and Functioning of Judicial Administration* art. 3. The chancellor, or court administrator, is appointed by the MOJ and is responsible for budgetary matters, day-to-day management of the court, as well as human resources management. *Id.* arts. 10-11. Relying on an MOJ staffing guide, which determines the number of support staff positions available (see LAW ON THE MOJ art. 11), the chief judge of each court, in consultation with the chancellor, conducts the hiring process for other personnel, except the budget officer. *Id.* arts. 8, 10; see also DPK CONSULTING, REVIEW OF COURT RATIONALITY IN ALBANIA at 8 (Sept. 2005) [hereinafter DPK REVIEW OF COURT RATIONALITY]. The secretariat is responsible for case management and keeping minutes of courtroom proceedings. *Regulation on Organization and Functioning of Judicial Administration* arts. 13-22. The archives office maintains and ensures the safe and proper storage of court documents. *Id.* art. 23. The public relations and media office provides information to the public and handles all communications with the public. *Id.* art. 24. Finally, the budget office, also headed by an MOJ appointee, is responsible for the drafting and implementation of the annual budget, including interaction with the OAJB and other public organs involved in the budget administration. *Id.* art. 25.

Although the chief judge of each court has ultimate control over court operations, the chancellor is charged with intermediate oversight of personnel. *Id.* arts. 7, 9. Moreover, court administration issues are handled by the Office for Judicial Issues within the MOJ. Some interviewees felt that the involvement of MOJ via its representatives presents a conflict of interest and threatens the independent functioning of the judiciary. Appointment of the chancellor and the budget officer by the MOJ is also sometimes problematic, because the Minister may have his/her preferences and the court has no ability to influence his/her decisions.

The Table below shows the number of court support personnel at each level of the judiciary (including the number of court staff positions budgeted for during each year, and the actual number of staff employed by the courts), as well as the current ratio of support staff per each judge.

NUMBER OF COURT SUPPORT PERSONNEL IN ALBANIA, 2004-2006

| Year | High Court | Courts of Appeal | District Courts | TOTAL |
|---------------------------|------------|------------------|-----------------|------------|
| 2004 | | | | |
| Budgeted no. of positions | 101 | 152 | 596 | 849 |
| Actual no. of court staff | 79 | 138 | 578 | 795 |
| 2005 | | | | |

| | | | | |
|----------------------------------|------------|------------|------------|------------|
| Budgeted no. of positions | 101 | 143 | 577 | 821 |
| Actual no. of court staff | 79 | 140 | 574 | 793 |
| 2006 | | | | |
| Budgeted no. of positions | 101 | 147 | 573 | 821 |
| Actual no. of court staff | 79 | 141 | 562 | 782 |
| Current staff/judge ratio | 5.3 | 2.2 | 2.0 | 2.1 |

Source: HCJ.

As the Table illustrates, the number of support personnel at most courts, with the exception of the High Court, is inadequate. This problem with understaffing was also corroborated by the interviewees. For example, in the Tirana District Court, two to three judges share one secretary. In the Elbasan District Court, the number of secretaries was decreased for the second time without consultation with the chief judge, even though most of the judges share secretaries. In the Durres District Court, four judges function without the necessary assistance of a secretary. Many judges on the Constitutional Court also share secretaries. Legal advisors are provided only for judges of the High Court, who select them from among applicants meeting the requirements of judicial appointment to a first instance or appeals court. LAW ON THE HIGH COURT arts. 20, 21. The legal advisor receives a salary equivalent to that of a first instance or appeals court judge, depending on his/her qualifications and experience. *Id.* art. 20.

The salaries of court support staff, which are determined by the MOJ, are extremely low compared to civil servants in similar positions in other branches of government. This situation stems partly from the governments reluctance to extend the status of civil servants to administrative court personnel.

BASE SALARIES OF JUDICIAL SECRETARIES (JS) AND COURT BUDGET OFFICERS (BO)

| Year | High Court | Courts of Appeal | | District Courts | |
|------------------------|------------|------------------|--------|-----------------|--------|
| | JS | JS | BO | JS | BO |
| 2004 | | | | | |
| ALL | 29,000 | 13,530 | 18,050 | 13,200 | 15,150 |
| USD equivalent | 283 | 132 | 176 | 129 | 148 |
| 2005 | | | | | |
| ALL | 29,000 | 15,570 | 19,320 | 14,870 | 16,610 |
| USD equivalent | 283 | 152 | 189 | 145 | 162 |
| As of July 2006 | | | | | |
| ALL | 31,764 | 17,390 | 20,660 | 16,310 | 18,480 |
| USD equivalent | 310 | 170 | 202 | 159 | 180 |

Source: OAJB.

These low salaries make it difficult to attract and retain qualified personnel. The courts have observed this phenomenon especially as it concerns secretaries. Many secretaries come to the courts with a law degree or other university degree. They tend not to stay long because the salary does not comport with their education level. For instance, in the Tirana District Court, seven secretaries with law degrees resigned within six months for higher salaries. Consequently, the courts must constantly hire new secretaries and invest the time in training them, resulting in low quality of staff, poor quality of work, and possibly corruption. The OAJB attempted to remedy this discrepancy by submitting a draft law increasing the salaries of secretaries. However, neither the former nor the current MOJ responded, and the salaries have remained unchanged.

Another problem is the distribution of salaries. Per law, a chancellor receives the same salary as a judge on the respective court (see JUDICIAL POWER LAW art. 14/b); therefore, chancellors in the higher courts receive a higher salary than district court judges. There has been much discussion to change the salary structure but ultimately the decision rests with the MOJ.

While corruption at sub-judicial level is not thought to be a significant problem, opportunities for corruption occur with the handling of court documents, such as case assignment, or with creation of minutes, which can be changed by secretaries.

Many interviewees also expressed concerns over the inadequate qualifications and training of court support staff. Although many secretaries possess legal knowledge due to their law degrees, they lack management and administrative skills. Until recently, few opportunities for continuing training of court support staff were available. For instance, in 2004, the OSCE provided secretarial and administrative training for the new personnel at the newly formed serious crimes courts. Pursuant to a Memorandum of Understanding between the MS and the MOJ, in 2006 the MS launched a new training program for court personnel on court administration. As of now, the trainings are not mandatory. The curriculum includes courses on case management, technical skills, as well as more abstract subjects such as access to justice. Another training program currently under consideration would be directed towards bailiffs. In addition, the MS published a manual on court administration, funded by the World Bank.

Factor 27: Judicial Positions

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|--|-----------------------------|-----------------|
| <p>The system for creating new judicial positions exists but is not particularly flexible. Moreover, the distribution of judges throughout the regions does not always correspond to regional needs. Plans for reorganization of the judicial system, which in part would redistribute judges are being discussed.</p> | | |

Analysis/Background:

The President of the Republic, in consultation with the HCJ and the MOJ, makes the final decision about the number of judges throughout the judiciary. JUDICIAL POWER LAW art. 12; LAW ON SERIOUS CRIMES COURTS art. 2; LAW ON THE MOJ art. 11. Only the number of judges on the High Court and the Constitutional Court is set by law. See LAW ON THE HIGH COURT art. 1 (providing for 17 judges); LAW ON THE CONST. COURT art. 7 (providing for 9 judges). In order to alter the number of judicial seats, the Minister of Justice must present a proposal to the President, who would decide after consulting with the HCJ. In practice, such changes are not a frequent occurrence.

In order to address the changing workloads and judicial absences, judges can be transferred to different courts temporarily for a three-month period per year. For longer-term transfers, the consent of the judge is required. JUDICIAL POWER LAW art. 28. The judge receives a 5% salary increase during the designated time period. As an alternative method to cover judicial absences, the HCJ, upon the proposal of the Minister of Justice, can appoint a judge to hear a specified number of cases in a court of the same level. Such transfers are not infrequent in practice. For instance, judges of the Military Appellate Court, which has a very small caseload, are often delegated to general courts of appeal.

According to information provided by the HCJ, at the time of this JRI there were 286 judges sitting on the first instance courts, 65 judges on the courts of appeal, 15 judges on the High Court (two judicial positions are vacant), and 9 judges on the Constitutional Court.

While the assessment team was unable to obtain statistics on the current caseloads at different levels of the judiciary, it is generally recognized that the court system is unable to adjudicate

cases in a timely manner, and lengthy case backlogs are typical. See, e.g., STATE DEPARTMENT REPORT; ALBANIA NIT 2006. The following two Tables summarize the information on the inflow and backlogs of cases in the Albanian judiciary in 2004 and 2005, as well as the average caseload quotients (defined as the ratio of incoming cases to the number of judges) and case clearance rates (defined as ratio of completed cases to new filings) at the different levels of the judiciary. Military courts and serious crimes courts are excluded.

CASELOADS AND BACKLOGS IN THE ALBANIAN COURTS, 2004-2005

| Court Level | Pending at the start of the year | New filings during the year | Completed during the year | Pending at the end of the year |
|---------------------------------|----------------------------------|-----------------------------|---------------------------|--------------------------------|
| 2004 – TOTAL | 9,606 | 58,174 | 56,109 | 11,371 |
| High Court – total | 1,854 | 2,294 | 2,388 | 1,760 |
| Civil | 1,707 | 1,326 | 1,768 | 1,265 |
| Criminal | 147 | 968 | 620 | 495 |
| Courts of Appeal – total | 1,832 | 6,065 | 5,822 | 2,075 |
| Civil | 1,443 | 3,475 | 3,384 | 1,534 |
| Criminal | 389 | 2,590 | 2,438 | 541 |
| District Courts – total | 5,920 | 49,815 | 47,899 | 7,536 |
| Civil | 4,242 | 43,227 | 41,455 | 5,714 |
| Criminal | 1,678 | 6,588 | 6,444 | 1,822 |
| 2005 – TOTAL | 11,371 | 66,803 | 66,139 | 12,135 |
| High Court – total | 1,760 | 2,765 | 2,607 | 1,918 |
| Civil | 1,265 | 1,767 | 1,758 | 1,274 |
| Criminal | 495 | 998 | 849 | 644 |
| Courts of Appeal – total | 2,075 | 6,811 | 6,201 | 2,685 |
| Civil | 1,534 | 4,225 | 3,797 | 1,962 |
| Criminal | 541 | 2,586 | 2,404 | 723 |
| District Courts – total | 7,536 | 57,227 | 57,331 | 7,532 |
| Civil | 5,714 | 51,325 | 51,353 | 5,686 |
| Criminal | 1,822 | 5,902 | 5,978 | 1,846 |

Source: EURALIUS, BACKLOG ANALYSIS OF ALBANIAN COURTS 2002-2005 (Jan. 2007) (citing MOJ Statistical Yearbook).

ANNUAL CASELOAD QUOTIENTS AND CASELOAD CLEARANCE RATES, 2004-2005

| Court Level ¹⁵ | Caseload quotient | | Caseload clearance rate, % | |
|---------------------------|-------------------|------------|----------------------------|--------------|
| | 2004 | 2005 | 2004 | 2005 |
| High Court (15/13) | 153 | 213 | 104.1% | 94.3% |
| Courts of Appeal (46/44) | 132 | 155 | 96.0% | 91.0% |
| District Courts (258/260) | 193 | 220 | 96.2% | 100.2% |
| TOTAL (319/317) | 182 | 211 | 96.5% | 99.0% |

Source: EURALIUS, BACKLOG ANALYSIS OF ALBANIAN COURTS 2002-2005; calculations by the assessment team.

¹⁵ The numbers in brackets in this column reflect the actual number of judges sitting within each court level in, respectively, 2004 and 2005.

Overall, the EURALIUS study references above concluded that backlogs are not a common problem of all Albanian courts; however, many courts do experience backlog problems of different magnitude. In particular, the report revealed the following trends:

- Existing backlog problems concern primarily criminal cases, although some courts have a backlog of civil cases only, while others have a backlog of both criminal and civil cases;
- Identified backlog problems are not generally attributable to a high caseload (for example, Tirana District Court has no backlog problem with regard to civil cases, despite the fact that its caseload amounted to around 40% of the overall caseload of Albanian courts);
- The High Court has a serious backlog problem of criminal cases caused by the significant increase in its caseloads and the persistent judicial vacancies;
- Four out of six courts of appeal have a serious backlog problem, which result primarily from high caseloads, understaffing, and infrastructure issues;
- At the district court level, only 9 out of 29 courts currently experience backlog problems, which are attributable to a variety of issues specific to each court.

See EURALIUS, BACKLOG ANALYSIS OF ALBANIAN COURTS 2002-2005 at 126.

At the same time, a 2005 study on the judiciary, covering the year 2004, showed that as a whole, the judicial system was unable to keep up with the caseload. With the exception of a few smaller districts, first instance courts were unable to clear their contested case calendars. See DPK REVIEW OF COURT RATIONALITY at 11. Fully 10% of criminal cases and 23% of contested civil cases required more than 6 months until their resolution. *Id.* at 13-15. Interestingly, the study also revealed that the productivity of judges in the district courts was very low. According to the results, a judge, at current caseload levels, should be occupied only 62-65% of the work day. While the study cautions that these findings should not be interpreted to reflect on the judges' efficiency, it suggests that they can be caused by the uneven distribution of caseloads among the different courts, as well as other systemic inefficiencies that may result in an inefficient use of the judges' time. *Id.* at 10. The report concludes that, given the existing caseloads, types of cases, and relative time required per case type, approximately 168-176 judges should be required in the district courts. *Id.* at 18-21. Another interesting statistic was the disparity among district courts concerning cost per case. While the average cost per case was USD 17, it ranged from USD 10 in Tirana to USD 49 in Kolonje. Although the underlying reason for the resulting disparity was not pursued in the study, it may be indicative of varied case management practices. See *id.* at 15-17.

Drawing on these statistics, a restructuring of courts, reapportionment of judges, and unification of case management practices would facilitate a more efficient resolution of cases in the district courts. The use of more efficient electronic case management systems has started in pilot courts, with plans for the eventual dissemination of these systems throughout the judiciary. In addition, the MOJ and DPK have proposed alternate systems for reorganization of the judicial system, both of which involve the partial consolidation of smaller courts into larger regional ones. If enacted, these changes would enable the judges to have more flexibility in handling the shifting workloads.

On August 1, 2006, the Minister of Justice sent draft decrees for the approval to the President of the Republic, which provide for abolishing of eight judicial districts and adjusting the jurisdiction of the courts of appeal accordingly. As the Minister announced in a press release on August 15, the district courts of these districts would be kept as branches. The President asked the HCJ for its opinion, as required by law. The HCJ issued its opinion on October 18, acknowledging the need for the reorganisation of several judicial districts, but pointing to the need for proper legislative foundation for the creation of branches. At the time of publication of this report, the issue was still pending with the President.

Factor 28: Case Filing and Tracking Systems

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|--|-----------------------------|-----------------|
| <p>Most courts still employ a manual case filing and tracking system, which is both labor-intensive and time-consuming. New projects are underway to install electronic case management systems.</p> | | |

Analysis/Background:

Most courts employ a manual case management system. The systems differ slightly among courts, but generally, the process begins in the chief secretary's office where cases are recorded by hand in a register, according to the filing date. The daily entries in the register are signed by the chief judge and chief secretary and compiled into a preliminary list. The list is then subdivided according to court sections, such as criminal, civil, administrative, commercial, etc., and each page is also signed by the chief judge, chief secretary, and the chancellor. The list records the lottery number and the register number. After the case is assigned to a judge via lottery, as described in Factor 18 above, the assignment is recorded in the registry. Case assignments are also posted in the public receiving room immediately following the completion of the lottery.

This highly labor-intensive and time-consuming system presents numerous challenges. Many interviewees remarked on the abundant opportunities for corruption in a system involving so many people. Lawyers in particular complained that case files are maintained in a state of disorder, without a corresponding index or list of contents.

To address these issues, modern electronic case management systems are being installed in several courts. Funded by USAID and the Soros Foundation and implemented by the East-West Management Institute [hereinafter EWMI] in 2002, the ARK-IT civil and criminal case management program was installed in Tirana, Fier, Kavaje, Mat, Shkodra, and Vlora. In 2006, ARK-IT in the Tirana District Court became fully operational and accessible via the Court's website, <http://www.gjykatatirana.gov.al>. Data from the last three years of archives were entered into the system. The website is very advanced and allows the user to search for court decisions, see chronology of hearings, obtain reasons for continuances, and read summaries of court hearings. In addition, the user can find information on the case assignment and run a comparison between similar cases by clicking on a listed category of issues. Anecdotally, one interviewee noted that during a seminar a participant from another country labeled this website one of the best in Eastern Europe. The chief judge is attempting to implement additional improvements, such as increasing the daily schedule to a longer-term one and placing online the records of the Office of Information and Protocol, which deals with media relations and correspondence. Although the Court does not maintain official access statistics, unofficially interviewees reported that the website is used extensively by lawyers, jurists, parties, and government officials.

Beginning in 2000, the World Bank funded a second, parallel case management system, CCMIS, for civil cases. The project is now being implemented by EURALIUS and was piloted in the Durrës District and Appeals Courts and the High Court. In contrast to the ARK-IT System, which was installed successfully in six courts, CCMIS has been selected by the Government of Albania as a unified case management system and is now available at all courts nationwide. In order to enable the necessary infrastructure to run the system, EURALIUS provided 176 computers, 20 servers, 20 LAN networks, and 46 network printers to the Albanian courts. Each of the courts will receive training on use of the system. Former software and compatibility problems hindering the

use of the system in Durres have been resolved in early 2007. Under a new tender of the European Union to be launched in February 2007, the CCMIS system will be extended also to criminal cases, decisions will be published over the Internet, and all courts would have a website and receive Internet connection for one year.

According to a EURALIUS report, while each system had its advantages, the more modern technology of CCMIS, as well as its appellate case tracking system provided greater benefits. Although it currently does not encompass criminal cases nor provide websites, CCMIS is planning to adopt these additions to the system. Additionally, the Albanian MOJ owns the CCMIS software, thus eliminating the need for payment of licensing fees. See generally EURALIUS, RECOMMENDATION ON COURT COMPUTERIZATION – WORLD BANK SYSTEM CCMIS AND USAID SYSTEM ARK-IT IN COMPARISON (2006).

Factor 29: Computers and Office Equipment

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|--|-----------------------------|-----------------|
| <p>The number of computers and other equipment, especially among the lower courts, remains insufficient to facilitate the efficient handling of caseloads. Even where computers are available, other problems, such as failing Internet access and electricity outages, plague the system.</p> | | |

Analysis/Background:

Although all courts appear to be equipped with some computers, few of them have a sufficient number of computers for each judge and each secretary. As exceptions, the High Court and the Constitutional Court are fully equipped with computers. In most courts, however, the judge and his/her secretary share a computer. For example, in the Tirana District Court, although each judge and each secretary does not have an individual computer, each chambers has a computer. Some judges are not computer literate, which means that only the secretary uses the computer anyway. Many of the existing computers are outdated or experience frequent technical problems. However, the overstretched court budgets do not allow for many replacements or additions.

International organizations operating in Albania donated much of the initial office equipment. For example, when the serious crimes courts were first established in 2004, the OSCE provided over two dozen computers, as well as printers, telephones, photocopying and fax machines, office radiators, and uniforms for clerks and secretaries. It is noteworthy that the state budget also started to allocate funds for these expenses.

As mentioned in Factor 28 above, the World Bank provided case management software to 3 pilot courts. The EURALIUS program, which took over the project, agreed to provide IT equipment in all courts for the CCMIS software upon the condition that the government would hire six IT specialists to maintain the system throughout the courts. The Tirana District Court and the High Court, with two employees, already had IT persons on staff. After intensive and protracted budgetary discussion, the 6 IT positions have been filled. Courts without IT employees have suffered constantly from malfunctioning or broken electronic equipment, which causes delays in their work. Many of these courts are smaller and located in remote geographic areas, with limited technological assistance available. Some of these difficulties should begin to lessen from the assistance offered by the IT staff.

While all courts have telephones, the telephones within a court are not necessarily linked through a network. In one court, the judges and secretaries communicate with each other using personal cell phones when the telephone system breaks down. In another court, a sealed box containing computer equipment was in storage and remained unopened for seven years. Several courts either do not have Internet connections at all or power blockages limit their ability to utilize the existing connections. According to interviewees, these problems are much more prevalent among the smaller and lower-level courts.

Infrastructure and electrical power are ongoing obstacles to the smooth and efficient functioning of courts in Albania. Even in those courts fully equipped with computers and Internet access, the intermittent electricity supply requires a generator for continuous operation of electrically powered equipment. The operation of generators is a costly enterprise. Although the Tirana District Court operates with two generators, the accompanying high maintenance and fuel expenses could not be handled by all other courts. In some courts, the secretaries have chosen to use computers as a back-up system because the electricity outages have resulted in a loss of data on several occasions.

Factor 30: Distribution and Indexing of Current Law

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

| Conclusion | Correlation: Neutral | Trend: ↔ |
|---|-----------------------------|-----------------|
| <p>All judges receive copies of the OJ, which contains texts of the laws and other legal acts, on a regular basis, but the compilation does not include all jurisprudence. No indexing system exists for organizing changes in the law.</p> | | |

Analysis/Background:

According to the Constitution, laws, ratified international agreements, as well as acts of the Council of Ministers, ministries, and other central state institutions must be published in the OJ in order to enter into force. See arts. 84.3, 117.1, 122.1. The OJ also publishes decisions of the Constitutional Court and unifying decisions of the joint colleges of the High Court. It is published monthly by the Official Publications Center [hereinafter OPC], under the MOJ. However, only those documents which the Center receives are published; therefore, many regulations and orders of public institutions are not published. Also excluded are judicial decisions of district and appellate courts and the remaining High Court decisions. Neither amendments to the laws nor the new laws themselves are organized by topic or index, although a subject-matter index of laws and other legal acts enacted during the year is published annually

The OJ is distributed to all judges on a monthly basis free of charge. See JUDICIAL POWER LAW art. 38.2; LAW ON THE CONST. COURT art. 18.1(c). As stated in Factor 24 above, all judges also receive copies of High Court decisions because of their precedential significance. The MS distributes JETA JURIDIKE, which includes articles on topical legal issues, written by professors and legal experts, free of charge to all courts. Otherwise, few resources exist to chronicle trends in jurisprudence or legal debates.

The High Court has a library for use by its judges and legal advisors, but financial and space constraints make the creation of libraries impracticable for other courts. Instead, many judges maintain a personal library and borrow books from colleagues as needed.



Other projects, formerly implemented by EWMI with funding from USAID, include the publication of a CD-ROM with new laws and a subscription legal service, akin to Westlaw or Lexis. Some courts have a special budget for purchasing legal journals and publications, but the electronic databases are prohibitively expensive for the courts, despite the obvious benefits.

Official publications are also available to the public through the CODIS system funded under the World Bank's project, via the national publications website, <http://www.qpz.gov.al>. The website includes the OJ, codes, and certain legislative compilations. A parallel system JUDIS has been developed which includes texts of all judicial decisions of the High Court from 1999 onwards. However, these systems lack an indexing method to organize amendments or searching capabilities. Additional problems relate to budgeting for maintenance and operation of the system following the end of the World Bank's project. The level of awareness about the new system within the legal community is still rather low, although the OPC has started to address this issue. See WORLD BANK PROJECT IMPLEMENTATION REPORT at 11.

List of Acronyms

| | |
|------------------|--|
| ABA/CEELI | American Bar Association's Central European and Eurasian Law Initiative |
| ALL | Albanian Leke |
| CCMIS | Civil Case Management and Information System |
| CEC | Central Election Committee of the Republic of Albania |
| CLE | Continuing Legal Education |
| ECHR | European Convention on Human Rights |
| EURALIUS | European Assistance Mission to the Albanian Justice System |
| EWMI | East-West Management Institute |
| HCJ | High Council of Justice of the Republic of Albania |
| HIDAA | High Inspectorate for Declaration and Audit of Assets |
| JRI | Judicial Reform Index |
| MS | Magistrates' School of the Republic of Albania |
| MOJ | Ministry of Justice of the Republic of Albania |
| NJC | National Judicial Conference of the Republic of Albania |
| OAJB | Office of Administration of the Judicial Budget of the Republic of Albania |
| OJ | Official Journal of the Republic of Albania |
| OPC | Official Publications Center of the Republic of Albania |
| OPDAT | Office of Overseas Prosecutorial Development, Assistance, and Training |
| OSCE | Organization for Security and Cooperation in Europe |
| PA | People's Advocate of the Republic of Albania |
| PAMECA | Police Assistance Mission of the European Community to Albania |
| RJC | Regional Judicial Conference |
| USAID | United States Agency for International Development |
| USD | United States Dollars |
| WLRI | Women's Legal Rights Initiative |