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Introduction

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

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

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

Assessing Reform Efforts

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

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

Id. at 615.

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

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

Larkins, *supra*, at 615.

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

ABA/CEELI's Methodology

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

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

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

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

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

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

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

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

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

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

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



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

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

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Assessment Team

The Macedonia JRI 2003 Analysis assessment team was led by Thomas F. Cope and benefited in substantial part from the efforts of Keti Ilievaska, Neda Korunovska, Zarko Hadzi Zafirov, and Marilyn Zelin. The conclusions and analysis are based on interviews that were conducted in Macedonia in November 2003 and relevant documents that were reviewed at that time. ABA/CEELI Washington staff members Julie Broome, Sokol Shtylla, and Andrew Solomon served as editors. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

Macedonia Background

Legal Context

In 1913, the land historically known as Macedonia was divided between Greece, Serbia, and Bulgaria. The portion under Serbian control eventually became a republic of the Socialist Federal Republic of Yugoslavia in 1944. Following a referendum in 1991, it became independent as the Republic of Macedonia. As an accommodation to Greek objections to its use of the name Macedonia and symbols Greece considered exclusively Hellenic, Macedonia agreed to use the name the Former Yugoslav Republic of Macedonia for a ten year period.

From February to July 2001, militants conducted an armed insurgency in the area of Macedonia bordering Kosovo. NATO facilitated a ceasefire and on 13 August 2001, with international facilitation by the United States and the European Union, ethnic Albanian and Macedonian leaders (including all Macedonian political parties) signed the Ohrid Framework Agreement. The Framework Agreement preserved a unified, multiethnic state, with greater rights for minority groups. The Macedonian Assembly (the national legislature) ratified the Framework Agreement and on 16 November 2001 amended the Constitution as required by the Framework Agreement.

Macedonia is a parliamentary democracy governed by the Assembly, a president, the government (executive), the judiciary, and a Constitutional Court. The Constitution vests legislative authority in a unicameral Assembly (*Sobranie*) of 120-140 representatives, who are elected for four-year terms. By statute, the number of representatives was fixed at 120. The Assembly's authority includes adopting and amending the Constitution, adopting and giving authentic interpretations to laws, adopting the budget, electing the government, electing judges to the Constitutional Court, and electing and dismissing all other judges.

The president of the Republic of Macedonia is head of state and holds executive powers in conjunction with the government. The president is elected by direct election and serves up to two five-year terms. He or she appoints a mandator to constitute the government.

The government consists of the prime minister, deputy prime ministers, and ministers. Among other things, the government determines policy for implementing laws, is responsible for execution of laws, and proposes laws and the budget to the Assembly.

Macedonia's court system was established pursuant to the 1991 Constitution and subsequent laws, particularly the 1995 Law on Courts.

History of the Judiciary

The most significant and enduring influence on the judiciary is the legacy of post-World War II socialist Yugoslavia. The judiciary took on its present form in 1996, when the Law on Courts modified the structure of the judiciary by eliminating specialized courts. Prior to 1996, there were district courts in Bitola, Skopje, and Stip that handled commercial cases. There were also labor courts and courts that tried less serious criminal offenses. The work of these specialized courts is now performed by the basic courts.

Structure of the Courts

The **basic courts** are courts of first instance for all civil and criminal matters and are also responsible for enforcement of judgments. In addition, the basic courts of Bitola, Skopje I, and Stip have jurisdiction to try crimes committed by members of the armed forces.¹ There are twenty-seven basic courts in Macedonia. The number of judges deciding a case depends on the

¹ Skopje has two basic courts, referred to as Skopje I and Skopje II.

seriousness or complexity of a case, ranging from a single judge, a single judge with two lay judges, or two judges with three lay judges.

Macedonia has three **courts of appeal**, located in Bitola, Skopje, and Stip. They are second-instance courts with jurisdiction over appeals from the basic courts. These courts also decide disputes over the territorial jurisdiction of basic courts within their territory. The courts of appeal hear cases in councils (*i.e.*, panels) of three judges or, in more difficult criminal cases, five judges.

The **Supreme Court**, located in Skopje, is the highest court in Macedonia. It decides appeals from the courts of appeal only when provided by law and has an administrative law department with jurisdiction over all appeals from administrative organs. The Supreme Court not only decides disputes involving the territorial jurisdiction of the basic courts and courts of appeal, but it can also transfer local jurisdiction among those courts. Twenty-five judicial positions are authorized at the time research for this report was completed, the Supreme Court had twenty-two judges, with an additional three to be appointed. The court hears appeals in councils of five judges. It also ensures uniform implementation of the laws by deciding questions of significance in a general session of all the court's judges.

The **Constitutional Court**, which dates from 1963, is formally outside the judicial branch. Among other things, it determines whether laws conform to the Constitution and protects human rights and freedoms. It consists of nine judges. Anyone may petition the Constitutional Court.

Conditions of Service

Qualifications

All judges must have formal university-level legal training. However, there is no requirement that new judges have practiced before tribunals, nor are they required to take any specific courses before taking the bench. To be eligible for appointment to a basic court, candidates must have two years of legal experience, pass the bar examination, and then have more than five additional years of legal experience. Judges of the courts of appeal and the Supreme Court must have more than nine and twelve years of legal experience, respectively, after passing the bar examination.

Appointment and Tenure

The Republic Judicial Council (RJC) submits judicial nominations to the Assembly for appointment. The RJC has seven members, each of whom must be an outstanding member of the legal profession. Under a recent constitutional amendment mandated by the Framework Agreement, three of the RJC's members must be elected by both a majority of the Assembly representatives and a majority of the total number of representatives who belong to non-majority communities. All judges in Macedonia have permanent tenure.

Constitutional Court judges serve nine-year, non-renewable terms. The RJC nominates candidates for two positions, the President of the Republic nominates candidates for another two, and the Assembly nominates the remaining five and also makes the final decision on appointment of all Constitutional Court judges. Under a recent constitutional amendment mandated by the Ohrid Framework Agreement, three of the nine Constitutional Court judges must be elected by both a majority of the Assembly representatives and a majority of the representatives who belong to non-majority ethnic communities.

Training

Judges have a right and an obligation to obtain continuing legal education. The Center for Continuing Education (CCE), established by the Macedonian Judges Association (MJA), provides continuing legal education programs for judges, court assistants, and court interns.

Macedonia JRI 2003 Analysis

The Macedonia JRI 2003 analysis reveals that Macedonia has made important strides in judicial reform. Several recent changes appear likely to contribute significantly to judicial reform in the future, such as the Law on the Court Budget, the constitutional amendments pursuant to the Ohrid Framework Agreement aimed at increasing non-majority representation, and the change in the Republic Judicial Council's membership. The factor correlations and conclusions in the Macedonia JRI 2003 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Macedonia JRI 2002. ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA/CEELI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

Judicial Reform Index Factor		Correlation 2002	Correlation 2003	Trend
I. Quality, Education, and Diversity				
Factor 1	Judicial Qualification and Preparation	Negative	Negative	↔
Factor 2	Selection/Appointment Process	Neutral	Neutral	↔
Factor 3	Continuing Legal Education	Positive	Neutral	↓
Factor 4	Minority and Gender Representation	Negative	Negative	↔
II. Judicial Powers				
Factor 5	Judicial Review of Legislation	Positive	Positive	↔
Factor 6	Judicial Oversight of Administrative Practice	Neutral	Neutral	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Neutral	Neutral	↔
Factor 8	System of Appellate Review	Positive	Positive	↔
Factor 9	Contempt/Subpoena/Enforcement	Negative	Negative	↔
III. Financial Resources				
Factor 10	Budgetary Input	Negative	Neutral	↑
Factor 11	Adequacy of Judicial Salaries	Negative	Negative	↔
Factor 12	Judicial Buildings	Negative	Neutral	↑
Factor 13	Judicial Security	Positive	Neutral	↓
IV. Structural Safeguards				
Factor 14	Guaranteed Tenure	Positive	Positive	↔
Factor 15	Objective Judicial Advancement Criteria	Neutral	Neutral	↔
Factor 16	Judicial Immunity for Official Actions	Neutral	Neutral	↔
Factor 17	Removal and Discipline of Judges	Neutral	Neutral	↔
Factor 18	Case Assignment	Negative	Neutral	↑
Factor 19	Judicial Associations	Positive	Positive	↔
V. Accountability and Transparency				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Negative	Negative	↔
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Neutral	Neutral	↔
Factor 24	Publication of Judicial Decision	Negative	Neutral	↑
Factor 25	Maintenance of Trial Records	Negative	Neutral	↑
VI. Efficiency				
Factor 26	Court Support Staff	Neutral	Neutral	↔
Factor 27	Judicial Positions	Neutral	Neutral	↔
Factor 28	Case Filing and Tracking Systems	Negative	Negative	↔
Factor 29	Computers and Office Equipment	Neutral	Neutral	↔
Factor 30	Distribution and Indexing of Current Law	Negative	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: Negative	Trend: ↔
Judges must have university-level formal training and a specified number of years of legal experience (not necessarily before a court), but there is no requirement that judges receive additional specialized training before appointment to the bench.		

Analysis/Background:

Judges must be citizens of Macedonia who have graduated from the law faculty, passed the bar examination, and satisfied the applicable work experience requirement. LAW ON THE COURTS art. 43, O.G.R.M. Nos. 36/95, 45/95 [hereinafter LAW ON COURTS]. In order to be eligible to take the bar examination, law graduates must serve a two-year legal internship. LAW ON THE BAR EXAMINATION arts. 2-3, O.G.S.F.R.Y. 26/80, 7/88. The bar examination is given over two days and tests both theoretical and practical knowledge. Graduates interested in pursuing a judicial career often satisfy the two-year experience requirement by serving as court interns in a basic court or an appellate court. See *id.* art. 97 (employment of court interns). In addition, more than five years of satisfactory legal work experience after passing the bar examination is required for appointment as a basic court judge. LAW ON COURTS art. 43. This requirement is generally satisfied by service as a court assistant.

Because there is no systematic program of instruction or preparation for court interns or court assistants, the quality of preparation an intern or assistant receives depends largely on the judges with whom he or she works. Court interns generally rotate between departments, but the quality of mentoring they (and court assistants) receive varies considerably, and there is little monitoring of their performance to assess whether they are gaining relevant skills. Since 1999, the Center for Continuing Education (CCE), an initiative of the Macedonian Judges' Association (MJA), has provided both substantive and computer skills training for court interns and court assistants. See Factor 3 below regarding the CCE's activities. However, newly appointed judges are not required to undergo any additional training before they take the bench. In its draft national strategy, the MOJ has proposed that the CCE become an institute of magistrates to provide both training for judicial candidates and continuing education for judges. However, until recently it appeared that lack of funding could prevent this from occurring. It now appears that the necessary funding may be available from an international donor.

Interviewees disagreed about whether new judges have sufficient training and experience. Many doubted that they are qualified to embark on a judicial career. Some pointed out that it is possible to become a judge without having had any judicial experience, either as a court assistant or, in the case of appointment to the higher courts, as a judge. On the other hand, other interviewees said they thought that many new judges are qualified.

More than nine years of satisfactory legal work experience is required for appointment as an appellate court judge. *Id.* For appointment to the Supreme Court, a candidate must be a distinguished legal expert with more than twelve years of satisfactory legal work experience. *Id.*

A Supreme Court judge may also be appointed from the ranks of full or associate law professors who have taught a subject connected with judicial practice for more than ten years. *Id.*

Judges of the Constitutional Court are not required to have a specified number of years of work experience, but they must be appointed “from the ranks of outstanding members of the legal profession.” CONSTITUTION OF THE REPUBLIC OF MACEDONIA art. 109(4), O.G.R.M 52/91 [hereinafter CONST.].

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.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
<p>The law requires judicial candidates to meet objective criteria for appointment. However, the Assembly appoints judges in its sole discretion, upon nomination by the Republic Judicial Council (RJC). In the past, the RJC has been criticized for being overly political in its nominations.</p>		

Analysis/Background:

The Republic Judicial Council is responsible for nominating judicial candidates for appointment by the Assembly. CONST. art 105; LAW ON COURTS arts. 38-39. The RJC consists of seven members, all of whom are elected by the Assembly for six-year terms from the ranks of “outstanding members of the legal profession.” CONST. art. 104; LAW ON THE REPUBLIC JUDICIAL COUNCIL art. 7, O.G.R.M. 80/92 [hereinafter LAW ON THE RJC]. Although article 7 of the Law on the RJC requires four members of the RJC to be judges, this requirement was held unconstitutional. DECISION OF THE CONSTITUTIONAL COURT OF MACEDONIA, O.G.R.M. 26/93, sec. 632. As a result of a recent amendment to the Constitution required by the Framework Agreement, three of the RJC’s members are chosen by a double majority; that is, a majority of the Assembly representatives, as well as a majority of the total number of representatives who belong to non-majority ethnic communities. CONST. art. 104(2), *as amended by* AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA, amend. XIV, O.G.R.M. 91/2001 [hereinafter CONST. AMENDS.]. Members of the RJC are eligible for reelection, but only for a second term. CONST. art. 104. The President of the Republic nominates two members of the RJC. CONST. art. 84.

When a judicial position becomes available, the Assembly publishes an announcement of the vacancy in the *Official Gazette* and in the daily press. LAW ON COURTS art. 42. Within fifteen days after publication in the *Official Gazette*, candidates for the position must submit an application to the RJC. *Id.* The RJC evaluates nominees for appointment on the basis of “working qualities and recommendations” and on an “impartial estimation of the candidate’s professional and moral qualities, professional competency, and experience exercised during his previous work.” LAW ON THE RJC art. 13. The RJC has adopted a regulation setting forth specific criteria for election and advancement of judges. These criteria include the following:

- Grade point average in law school;
- Work experience in courts or public prosecutors’ offices;
- Attendance at and participation in seminars;
- Number of cases resolved annually;

- Number of decisions affirmed by appellate courts;
- Number of decisions reversed by appellate courts;
- Backlog of cases;
- Average length of time for rendering decisions;
- Number of cases in which the main hearing or the decision was postponed and reasons for postponement; and
- Efforts to pursue continuing legal education or to improve knowledge and skills.

RJC REGULATION No. 8/12, sec. V (1994). The most objective of these criteria (efficiency in deciding cases and success on appeal) obviously relate only to sitting judges seeking advancement.

When evaluating a candidate, the RJC solicits the opinions of the minister of justice and the general session of the Supreme Court and, in the case of a sitting judge, that of his or her court. LAW ON THE RJC art. 11. The RJC usually interviews each candidate for the appellate courts or the Supreme Court. For each vacancy, the RJC is to nominate the candidate with the “highest educational grade and working qualities and experience.” LAW ON THE RJC art. 13.

After the RJC proposes candidates to the Assembly, the Assembly’s Commission for Elections and Appointments reviews them. The president of the RJC usually appears before the commission to defend the candidates. However, there is reportedly little debate on the candidates’ merits. The president of the RJC presents a generic, *pro forma* defense of the candidates, and discussion is limited. After the commission completes its review, the Assembly votes on the candidates. The Assembly does not provide reasons for accepting or rejecting a candidate, and it is not uncommon for the Assembly to reject a candidate. In March and April 2002, for example, the RJC proposed thirty-eight candidates, and the Assembly elected thirty-five and rejected three. If the Assembly rejects a candidate, the RJC proposes a new one. LAW ON THE RJC art. 14. If, however, the RJC concludes that none of the potential candidates meets the requirements for a vacancy, it notifies the Assembly, which then advertises the position again. *Id.*

Many interviewees believe that the RJC was influenced by political considerations and that, by its nature, the Assembly will always consider politics when electing judges. Several stated that nepotism and political favoritism were serious problems with the RJC. A frequently cited example was the appointment in 2001 of the minister of agriculture’s wife, a basic court judge with little experience, to one of the appellate courts. Also, in July 2002 the RJC proposed, and the Assembly elected, a candidate for the Supreme Court who had had no experience at all working in the judiciary, but had been a member of the then ruling coalition. VEST 603 (12 July 2002). One interviewee argued that these are exceptional cases and most of the time judges do not appear to be elected because of their politics. In any event, there have been no such incidents recently. Furthermore, there has been a turnover in the RJC’s membership, and a number of interviewees expressed confidence in the abilities and integrity of the new members elected thus far.

Interviewees cited participation by judges in election commissions as contributing to the perception, if not the reality, that judges are political. This is because two members of the State Election Commission are Supreme Court judges appointed with the agreement of the ruling political parties that received the largest number of votes in the last election, and two with the agreement of the opposition parties that received the largest number of votes in the last parliamentary election in 2002. LAW ON THE ELECTION OF REPRESENTATIVES TO THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA art. 13(1)-(2), O.G.R.M. 42/2002. Similar provisions apply to regional election commissions and municipal election commissions. See *id.* arts. 17(2)-(3), 21(2)-(3) (one basic court judge appointed on the proposal of the ruling parties and one on the proposal of the opposition parties). Service on an election commission contributes to the perception that the judges who were appointed are not fully independent, but loyal to the parties that agreed to or proposed their appointment. One interviewee asserted that participation in election commissions also contributes to backlogs in the courts, since the judges serving on a commission often devote two months every other year to such work.

The RJC has a more limited role in nominating candidates to the Constitutional Court. It only proposes candidates for two positions on the court, and the President of the Republic proposes candidates for two other positions. CONST. arts. 105, 84; LAW ON THE RJC art. 36. The Assembly elects all nine judges of the Constitutional Court. *Id.* art. 109. As a result of a recent amendment to the Constitution pursuant to the Framework Agreement, three Constitutional Court judges are chosen by a double majority; that is, a majority of the Assembly representatives, as well as a majority of the total number of representatives who belong to non-majority communities. CONST. art. 109(2), *as amended by* CONST. AMENDS., amend. XV.

Factor 3: Continuing Legal Education

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

Conclusion	Correlation: Neutral	Trend: ↓
By law, continuing legal education for judges is both a right and an obligation. The Center for Continuing Education (CCE) makes continuing legal education programs available to judges and court staff. Because it is funded almost entirely by international donors, there are concerns about the CCE's long-term sustainability.		

Analysis/Background:

Each judge has “a right and obligation to a continuous professional training during his/her term of office.” LAW ON COURTS art. 51. At least 2% of the court budget is required to be set aside for professional training for judges and other court employees. LAW ON THE COURT BUDGET art. 4, O.G.R.M. 60/03 [hereinafter LAW ON THE COURT BUDGET]; *see also* LAW ON COURTS art. 51. For a description of the recently enacted Law on the Court Budget, *see* Factor 10 below. The Code of Judicial Ethics also stresses the importance of continuing legal education, through reading, writing for professional journals, and participating in seminars and roundtables. MACEDONIAN JUDGES’ ASSOCIATION CODE OF JUDICIAL ETHICS art. 9 (1994) [hereinafter CODE OF JUDICIAL ETHICS].

In March 1999, the Macedonian Judges Association (MJA) established the CCE to provide continuing legal education for judges, court interns, and other court staff. Beginning in 2002, the CCE has also organized trainings for prosecutors. Managed by an eleven-member board, the CCE has a staff of five, with office space in the Skopje Court of Appeal building provided by the court. Most of the CCE’s funding has come from Open Society Foundation Institute Macedonia, which provided \$213,000 over the past four years (1999-2003). The Stability Pact, OSCE, and the US Department of Justice’s Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) have also sponsored CCE trainings. In addition, ABA/CEELI provided \$60,000 of funding for the CCE. The CCE is now funded by USAID through the Macedonian Court Modernization Project.

From its inception through 2002, the CCE conducted 57 continuing legal education seminars, providing training to 1,712 judges from every court in Macedonia and 337 court staff. The following table summarizes the numbers of seminars and attendees:

Year	CLE Seminars	Judges	Court Interns & Assistants	Others	Total Trained
1999	14	352	35	140	527
2000	19	456	173	61	690
2001	13	409	72	72	553
2002	11	495	57	64	616
TOTAL	57	1712	337	337	2386

As the number of judges who attended seminars exceeds the total number of judges in Macedonia, it is apparent that some have attended multiple seminars over the years. In addition, from 1999-2002, the CCE conducted computer skills training courses for 30 judges and 196 court staff. Because the CCE has a limited number of computers available for computer skills training, increased demand for such training caused the Ministry of Justice to arrange for courses through a private computer training company beginning in 2002.

Participants in the CCE’s seminars receive written materials, often in the form of case studies that serve as the basis for discussion. Judges have input in the selection of topics for continuing legal education through questionnaires. Furthermore, one interviewee explained, when the CCE develops its annual workplan, it strives to include topics for instruction that are timely and of value to judges. The Macedonian Court Modernization project is working with the CCE to develop a standardized curriculum for judges and court staff, and it is working jointly with the Open Society Foundation Institute Macedonia to develop a course for court administrative staff.

Although many interviewees thought that the CCE does a good job of providing continuing legal education, a number suggested that more needs to be done, both in terms of providing additional opportunities for continuing legal education and making it possible for more judges to attend seminars. Several interviewees expressed concern that the CCE is not sustainable because it primarily depends upon funding from international donors, rather than the state.

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: Negative	Trend: ↔
<p>Although the law requires proper and equitable representation of all ethnic communities in the judiciary, the percentage of ethnic Albanians is significantly lower than their percentage of the population as a whole. As a result of the Framework Agreement, structural changes have been made to improve the situation, but it is unlikely that significant changes will occur soon. The percentage of female judges now slightly exceeds that of male judges.</p>		

Analysis/Background:

Discrimination “on the basis of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status” is prohibited in the selection of judges. LAW ON COURTS art. 40(1). An amendment to the Law on Courts enacted 23 September 2003 requires that in the selection of judges “proper and equitable representation of citizens of all communities shall be provided, without violating the criteria provided by law.” *Id.* art. 40(2), *as amended by* LAW ON AMENDING THE LAW ON COURTS art. 1, O.G.R.M. 64/03; *see also* CONST. art. 8(2), *as amended by* CONST. AMENDS. amend. VI (a fundamental value of the constitutional order is

“[a]ppropriate and fair representation of the citizens who belong to all communities in the bodies of the state authority . . .”).

Pursuant to the Framework Agreement, a census was conducted from 1-15 November 2002 with international monitors, who confirmed its validity. As a result of this new census, current data on the percentages of the various ethnic groups in Macedonia are now available. The following table compares the ethnic composition of the judiciary (presently consisting of 633 judges, excluding the judges of the Constitutional Court,² who are considered separate from the judiciary) the ethnic composition of the overall population:

Community	Judges		Overall Population	
	Number	Percentage	Number	Percentage
Macedonians	561	88.7%	1,297,981	64.2%
Albanians	41	6.5%	509,083	25.2%
Turks	4	0.6%	77,959	3.8%
Roma			53,879	2.7%
Serbs	7	1.1%	35,939	1.8%
Bosnians			17,018	0.8%
Vlachs	16	2.5%	9,695	0.5%
Others	4	0.6%	20,993	1.0%
Total	633	100.0%	2,022,547	100.00%

Across the judiciary as a whole, ethnic Macedonians and Vlachs are overrepresented, and the other ethnic communities are underrepresented. However, the situation varies from court to court. In the Supreme Court, for example, 6 of the 22 presently sitting judges (27.2%) are ethnic Albanians, as are 5 of 19 judges (26.3%) in the Gostivar Basic Court, and 4 of 17 judges (23.5%) in the Kicevo Basic Court—close to their percentage in the population at large. In some courts, particularly in western Macedonia, there are even higher percentages of ethnic Albanian judges. For example, 11 of 28 judges (39.3%) in the Tetovo Basic Court and 3 of 5 judges (60%) in the Debar Basic Court are ethnic Albanians. Nevertheless, to achieve the Constitution’s goal of fair representation of citizens of all communities, more needs to be done.

Steps are being taken to increase non-majority representation on the bench. Pursuant to the Framework Agreement, the Assembly adopted amendments to the Constitution to enhance non-majority representation on the Republic Judicial Council (RJC) (and thus indirectly among judicial candidates) and on the Constitutional Court. FRAMEWORK AGREEMENT art. 4.3 (13 Aug. 2001) [hereinafter FRAMEWORK AGREEMENT]. Specifically, the amendments require that three of the seven members of the RJC and three of the nine Constitutional Court judges be chosen by a double majority; that is, a majority of all Assembly representatives, as well as a majority of the total number of representatives who belong to non-majority ethnic communities. CONST. arts. 104(2), 109(2), *as amended by* CONST AMENDS. amends. XIV, XV.

Some interviewees stated that the issue of ethnic representation on the bench is not a significant problem and that it has received more attention than it deserves. However, many interviewees believe that it would be desirable to have more judges from non-majority ethnic communities, although a number of them commented that change will inevitably be slow. In the first place, it can occur only as judicial vacancies arise. There are presently thirty-two vacancies, a number that could increase somewhat if the Assembly creates additional judicial positions. See Factor 27 below. Even if all those positions were filled by non-majority candidates, ethnic Albanians would still be underrepresented. Another obstacle is the limited pool of qualified non-majority candidates, because until recently legal instruction in the Albanian language was unavailable in

² Presently, six of the judges on the Constitutional Court are ethnic Macedonians, and two are ethnic Albanians. The remaining position will be filled by a candidate acceptable to non-majority communities.

Macedonia. Now such instruction is offered at Southeast European University in Tetovo. Nevertheless, the bar examination is administered only in Macedonian. In the last announcement of judicial vacancies in 2003, only two of the sixty-six applications were from non-majority candidates. Noting that there are fewer non-majority women law students, one interviewee speculated that increasing the number of non-majority judges could have an adverse impact on the gender balance of the bench.

According to the most recent information, the overall gender distribution in the judiciary is as follows:

Men	291 (46.6%)
Women	325 (53.4%)

Overall, women now slightly outnumber men in the judiciary, a change that occurred since the Macedonia JRI 2002 was prepared, when the percentage of men (50.5%) was slightly greater than that of women (49.5%).

Although the numbers of men and women judges are approximately equal, there are fewer women in the Supreme Court, of which, 5 of the 22 currently sitting judges are women. In the Constitutional Court, 3 of the 8 currently sitting judges are women. On the other hand, some women have risen to positions of leadership in their courts. It is significant that the presidents of all three appellate courts (Bitola, Skopje, and Stip) are women.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

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

<i>Conclusion</i>	<i>Correlation: Positive</i>	<i>Trend: ↔</i>
The Constitutional Court determines the ultimate constitutionality of legislation and other official acts, and its decisions are respected and enforced.		

Analysis/Background:

The Constitutional Court’s jurisdiction includes deciding whether laws conform to the Constitution and whether regulations conform to the Constitution and laws. CONST. art. 110. It also has jurisdiction to decide on the constitutionality of “the programmes and statutes of political parties and associations of citizens[.]” *Id.* Anyone may initiate a proceeding to determine constitutionality. RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA art. 12, O.G.R.M. 70/1992. The Constitutional Court may also initiate such a proceeding on its own initiative. *Id.* art. 14. When a question about the constitutionality of a law is raised in litigation, the court hearing the dispute must initiate a proceeding in the Constitutional Court to determine whether the law in question is constitutional. LAW ON COURTS art. 12. Furthermore, if the court believes that the law is unconstitutional “and the constitutional provisions cannot be applied directly,” it must adjourn the proceedings until the Constitutional Court has decided the question of constitutionality. *Id.* Each party has a right to appeal a decision adjourning the proceedings. *Id.* In practice, however, judges rarely request a decision on constitutionality from the Constitutional Court.

Within the legal community, the Constitutional Court is well respected for its professionalism and independence. Most interviewees spoke favorably about the independence and effectiveness of the Constitutional Court, as illustrated by the number of laws it has found to be unconstitutional. Although most of the court’s decisions have been properly and timely enforced, there had been attempts by the executive branch to undermine the court, according to a number of those interviewed for the Macedonia JRI in March 2002. However, there have been no such reports for the period since then.

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: ↔
Although the judiciary has the power to review administrative acts, the procedures for doing so are protracted and inefficient.		

Analysis/Background:

An initial administrative decision may be appealed to a second instance administrative body within fifteen days after the decision was made. LAW ON ADMINISTRATIVE PROCEDURE art. 223(1), O.G.S.F.R.Y. 47/86. The second instance body’s decision may then be appealed to the Supreme Court within thirty days after receipt of that decision. LAW ON COURTS 34(3); LAW ON ADMINISTRATIVE DISPUTES, art. 24, O.G.S.F.R.Y. 36/77 [hereinafter LAW ON ADMINISTRATIVE DISPUTES]. Such appeals are filed in the administrative law division of the Supreme Court, which presently consists of six judges, although nine positions are authorized. An appellant may also file an appeal with the Supreme Court if the second instance body fails to issue a decision within sixty days plus an additional seven days after a further request for a decision. LAW ON ADMINISTRATIVE DISPUTES art. 26(1).

The Supreme Court may either vacate the administrative decision and remand it to the agency that issued it in the first instance or the court may issue its own decision. If the court remands for further action and the agency fails to act within thirty days, the appellant may then request the agency to act. If the agency fails to act within seven days after the request, the appellant may notify the court, which will request a report from the agency explaining its failure to act. If the agency does not provide a satisfactory explanation to the court within seven days, the court may enter a final decision and direct the agency to enforce it. *Id.* arts. 62-65.

Judicial review of administrative decisions has typically been plagued by delays and protracted proceedings. There is a backlog of approximately 3,000 administrative cases in the Supreme Court, many of them several years old. Moreover, when the court does affirm an administrative decision, it rarely issues a decision of its own; instead it almost always remands the decision to the agency that made the decision in the first instance, thereby adding to the length of the proceedings. Interviewees asserted that in most cases the appeal process can take two or two and one-half years before an appeal is finally resolved.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

Conclusion	Correlation: Neutral	Trend: ↔
The judiciary has exclusive jurisdiction relating to civil rights and liberties, and individuals have direct access to the Constitutional Court to promote and protect specified fundamental rights.		

Analysis/Background:

The Law on Courts affirms that one of the three functions of the judiciary is “promotion of the protection and respect for human freedoms and rights, within the framework of . . . the judicial office.” LAW ON COURTS art. 3(b). Thus, all courts have jurisdiction to render decisions concerning the rights of citizens and are authorized to protect the freedoms and rights of individuals. *Id.* arts. 5, 6.

In addition to the other courts, the Constitutional Court has special responsibility for protecting human rights. In particular, it is responsible for protecting the rights of citizens relating to freedom of conviction, conscience, thought, and public expression of thought, as well as prohibiting discrimination on the basis of sex, race, religion, or national, social, or political affiliation. CONST. art. 110(3). The court’s rules allow anyone to file an application claiming a violation of these rights. RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT art. 51, O.G.R.M. 70/92. Such applications must be filed within two months after the applicant becomes aware of the violation, but no later than five years after the event. *Id.* Applicants need not exhaust their remedies in the other courts first.

According to one interviewee, only a handful of article 110(3) cases have been filed with the Constitutional Court to address human rights violations, and the court has yet to find a violation of one of the rights enumerated in that article. Indeed, one interviewee remarked that most issues involving human rights are decided in the basic courts, whose judges have little understanding of human rights generally or the European Convention on Human Rights (ECHR) in particular. Another agreed that, despite many trainings on the Convention, most judges are uncomfortable basing a decision on it. Notwithstanding these issues, several interviewees said that the basic courts usually respect most constitutional rights. Nevertheless, according to the State Department’s Human Rights Report, alleged human rights abuses by police or other state agents are often not effectively investigated. U.S. Department of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2002, MACEDONIA (2003). In Macedonia, investigative judges play an important role in pre-trial investigation of criminal cases. When alleged human rights abuses are not effectively investigated, few such prosecutions result.

Factor 8: System of Appellate Review

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

Conclusion	Correlation: Positive	Trend: ↔
It is well established in law and practice that judicial decisions may be reversed only through the judicial appellate process.		

Analysis/Background:

A judicial decision may be modified or abolished only by a court with jurisdiction to do so and in a proceeding authorized by law. LAW ON COURTS art. 13. According to interviewees, this principle is respected in practice.

Factor 9: Contempt/Subpoena/ Enforcement

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

Conclusion	Correlation: Negative	Trend: ↔
<p>Although the law provides adequate judicial subpoena, contempt, and enforcement powers, they are seldom invoked. Furthermore, when invoked, they are often ineffective or not respected in practice.</p>		

Analysis/Background:

The law provides judges with subpoena powers, but these powers are often ineffective in practice, resulting in perhaps the greatest single cause of delay, according to interviewees. Civil subpoenas are generally sent by ordinary mail. Because proof of receipt is not required, service by mail is unreliable. The courts can also use process servers to serve subpoenas, but interviewees criticized them for lack of diligence. When a witness who was properly served fails to appear without satisfactory explanation in either a civil or criminal proceeding, the judge may order the witness to be brought to court by force and may even impose a fine of up to four times the average national salary for the preceding month (presently about \$200/month). LAW ON CIVIL PROCEDURE art. 233, O.G.R.M. 33/98 [hereinafter LAW ON CIVIL PROCEDURE]; LAW ON CRIMINAL PROCEDURE art. 229(1), O.G.R.M. 37/96, 80/99 [hereinafter LAW ON CRIMINAL PROCEDURE].

Nevertheless, judges rarely use these subpoena powers. When a witness fails to appear, judges usually only issue a warning, or simply send another subpoena to the witness. This is true both in civil and criminal proceedings and results in delays, because crowded dockets prevent hearings from being rescheduled until a month and a half or two months later. In civil cases, moreover, judges are reluctant to enter default judgments when a defendant fails to appear and prefer to continue the case. Not until the third such hearing, according to one interviewee, will a judge typically enter judgment against a defendant who consistently fails to appear. Several interviewees also stated that police often do not appear in minor criminal cases, which also leads to postponements. Interviewees universally condemned service of process as ineffective and a significant cause of delay.

Judges also have contempt powers, but, again, rarely use them in practice. In both civil and criminal cases, judges may remove from court and fine anyone who disrupts the proceedings or who fails to obey an order of the court. LAW ON CIVIL PROCEDURE arts. 301, 303; LAW ON CRIMINAL PROCEDURE art. 287. The maximum fine for contempt is four times the average national salary in a civil proceeding and two times the average national salary in a criminal proceeding. *Id.* However, judges are reportedly reluctant to use their contempt powers against a recalcitrant party or witness. Although lawyer misconduct occasionally occurs, interviewees did not believe it was a serious problem.

Enforcement of civil judgments is also a significant problem. When a judgment debtor fails to comply with a judgment, the judgment creditor must file a new action in the civil execution department of the first instance court. See Angana R. Shah & Antonio Kostanov, *Enforcement of*

Judgments in Macedonia: Problems and Proposed Solutions with a Comparative Perspective 1-3 (2003). As in the case of subpoenas, problems with service of process commonly results in delay. *Id.* at 5-6. Furthermore, debtors have numerous opportunities to object (e.g., to the inventory, the valuation of assets, the sale, and the distribution of assets), with each objection typically resulting in a hearing and then an opportunity to appeal. *Id.* at 6, 15-16. Third parties can also object and claim an interest in the property, an interest that was often acquired by fraudulent transfer. *Id.* at 6-8, 30, 33-34. When a corporate judgment debtor is involved, the company will often be liquidated and a new one formed to carry on its business, but without any obligation on the part of the new company to satisfy the predecessor’s judgments. *Id.* at 12.

One lawyer described enforcement of judicial decisions as “the most inefficient procedure in our country.” Interviewees invariably shared his bleak assessment, often with equally strong language. Indeed, it is said that enforcing a judgment may take as long as it took to obtain the judgment in the first place. Another serious problem, according to one lawyer, is that judges are unwilling to issue preliminary injunctions at the beginning of a case to prevent the defendant from transferring property. As a result, when the judgment creditor is finally able to enforce a judgment, there may be nothing against which to enforce it. Part of the problem is that many courts have too few enforcement judges. Perhaps a more significant problem is the civil enforcement law itself, which is essentially the enforcement law of the Socialist Federal Republic of Yugoslavia. A Ministry of Justice working group has been formed to draft more effective legislation in this area.

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: Neutral	Trend: ↑
<p>Under the new Law on the Court Budget, the judiciary is responsible for preparing a budget for the courts, subject to the approval of the minister of finance, as well as supervising implementation after the court budget has been approved by the Assembly. It is too soon to tell how effective this new law will in fact be in affording the judiciary a meaningful opportunity to influence the amount of money allocated to it by the Assembly.</p>		

Analysis/Background:

Until recently, the Ministry of Justice (MOJ) was responsible for preparing and submitting the judiciary’s budget. See LAW ON THE ORGANIZATION AND OPERATION OF GOVERNMENT AGENCIES art. 17, O.G.R.M. 58/00. Under that arrangement, the Supreme Court submitted a request to the MOJ, which then negotiated a final amount with the Court. This was then submitted to the Ministry of Finance, which reportedly usually reduced the amount requested before submitting it to the Assembly. Once appropriated, the funds were transferred from the Ministry of Finance to the MOJ and then to the courts. There were complaints about how this arrangement worked in practice.

Courts also collect money from court fees, auctions of confiscated property, fees for keeping deposits, etc. This money is kept in a separate account and is transferred to the state budget every fifteen days. Legislation adopted in 1997 called for half that money to be returned to the courts. LAW ON ENFORCEMENT OF COURT SANCTIONS arts. 231, 260, O.G.M.R. 3/97. However, in

practice, that has not occurred. *There is No Government That Does Not Want the Judiciary on its Side*, VEST 959 (13 Sept. 2003).

The result was that insufficient funds found their way to the judiciary. According to one newspaper report, “Courts for many years have had a problem with paying their debts. The debt of the 27 trial courts for unpaid utilities, services of the lawyers assigned to the courts, salaries for lay judges, post office services, and expert witnesses is around \$900,000.” *Justice is Slow, but It Comes*, DNEVNIK, 21 Mar. 2000. A number of interviewees confirmed that this situation still exists: many basic courts lack sufficient funds for postage, utilities, and fees for lay judges (jurors) and experts.

The following table summarizes the level of funding allocated to the judiciary and the Constitutional Court in the past five years:³

Year	Judiciary		Constitutional Court	
	Budget (MKD)	Percentage of State Budget	Budget (MKD)	Percentage of State Budget
1999	866,101,983	1.74%	25,734,000	0.051%
2000	865,064,000	1.49%	15,943,000	0.028%
2001	934,226,000	1.53%	16,159,000	0.021%
2002	919,662,000	1.38%	15,914,000	0.024%
2003	1,234,207,000	1.83%	18,490,000	0.027%

See LAW ON THE BUDGET, O.G.R.M. 67/97; LAW ON THE BUDGET, O.G.R.M. 18/99; LAW ON THE BUDGET, O.G.R.M. 86/99; LAW ON THE BUDGET, O.G.R.M. 10/01; LAW ON THE BUDGET, O.G.R.M. 106/01; LAW ON THE BUDGET, O.G.R.M. 21/03.

In 2003, Macedonia became the first country in the region to adopt an independent court budget law. See LAW ON THE COURT BUDGET. This law establishes a nine person Court Budget Council (CBC), consisting of a president, who is the president of the Supreme Court, and eight other members. *Id.* art. 7. The others are the president of the Republic Judicial Council (RJC), the minister of justice, the presidents of each of the three appellate courts, and three presidents of basic courts, who serve two-year terms in rotation. *Id.* A representative of the Ministry of Finance also participates in the CBC, but has no vote. *Id.* The CBC is responsible for preparing the court budget, which forms a part of the budget of the Republic of Macedonia, and for supervising its implementation. *Id.* art. 9. The new law also establishes an Administrative Office of the CBC, within the Supreme Court, to perform administrative tasks for the CBC. *Id.* arts. 10-11. Each court prepares its own financial plan, for implementation by the president of the court, and submits information to the CBC to enable it to draft the proposed court budget. *Id.* arts. 13, 14, 16. However, before submitting this proposal to the government the president of the CBC and the minister of finance must agree on the amounts included. *Id.* art. 15. The president of the CBC then presents the proposed court budget to the government and to the Assembly, when the budget of the Republic is considered. *Id.* art. 8. If the president of the CBC and the minister of finance cannot agree on modifications to the proposed court budget, the minister of finance may make whatever modifications he or she considers appropriate and then submit the court budget to the government. *Id.*

³ The amounts shown in the table for the judiciary are taken from the budget line item entitled “Bodies relating to the courts’ work,” which not only includes the courts (except for the Constitutional Court, which is outside of the judicial branch), but also the RJC, the Ombudsman, and the Public Prosecutors Office. Nevertheless, the bulk of this went to the courts. For example, of the MKD 1,234,207 approved for “Bodies relating to the courts’ work” for 2003, MKD 1,025,133,000 was for the courts themselves. In any event, it is important to note that the funding that courts actually received was less than the amounts shown in the table.

The impact of this law remains to be seen. Although most interviewees believed that it would probably not result in increased funding for courts, almost all agreed that it will afford the judiciary a greater degree of independence. Several interviewees pointed out that much will depend on the amount of deference the minister of finance is willing to accord the CBC, because in the event of a disagreement, the minister of finance is free to decide what level of funding to propose to the Assembly. Interviewees pointed out, though, that this law is an important step forward, since the judiciary will now control the expenditure of its funds.

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: Negative	Trend: ↔
Although judges are paid more than the average Macedonian, their salaries are modest, particularly in comparison to other countries in the region.		

Analysis/Background:

Judges in Macedonia are paid a salary plus a monthly supplementary payment equivalent to \$60 to cover the cost of food and travel to and from work. The following table shows net payments (in United States dollar equivalents) made to judges:

Position	Monthly Salary	Supplement	Total
Basic Court Judge	\$540	\$60	\$600
Basic Court President	\$596	\$60	\$656
Appellate Court Judge	\$596	\$60	\$656
Appellate Court President	\$650	\$60	\$710
Supreme Court Judge	\$653	\$60	\$713
Supreme Court President	\$692	\$60	\$752

The supplementary payments were added in 2001, and the scale of judicial salaries has been unchanged since then.⁴ Judicial salaries in Macedonia are generally lower, in some cases significantly so, than those of many other countries in the region. They are comparable to those of prosecutors, which reportedly have not been raised in ten years.

The average minimum wage at the end of September 2002 was approximately \$186. U.S. Department of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2002, MACEDONIA sec. 6.e (2003). Judicial salaries are well above the income of an average citizen in Macedonia. Nevertheless, there was widespread agreement among interviewees that judicial salaries (and those of prosecutors) are too low and should be increased substantially. Some argued that salaries are too low to eliminate at least the temptation to accept a bribe. Public suspicion that judges are corrupt will likely persist at least until judges are paid a salary the public regards as sufficient to remove such temptation. Raising judicial salaries could also contribute to changing the public's perception about the importance of the judiciary. It may be that an idealistic commitment to the profession helps to explain why some judges remain in the judiciary, despite inadequate salaries. One judge asked, "Are we too enthusiastic? Are we too much in love with

⁴ The apparent increases in judicial salaries reflected in the table above compared to the Macedonia JRI 2002 are due solely to changes in the rate of exchange.

our profession?” Another asserted that to be a judge, “you either have to be a fool or in love with your profession.”

Although no increase in judicial salaries is planned for 2004, the Macedonian Judges Association (MJA) is preparing a draft law on judicial salaries that would change the way salaries are determined.

Factor 12: Judicial Buildings

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

Conclusion	Correlation: Neutral	Trend: ↑
Courthouses are for the most part conveniently located, and, although many lack sufficient numbers of courtrooms, the government has recently devoted significant funding to construction and renovation of courthouses.		

Analysis/Background:

For the most part, the location and accessibility of judicial buildings are adequate. However, many courts are housed in old buildings that are not well maintained and are overcrowded, with judges sometimes having to share offices. The lack of sufficient courtrooms forces some judges to hold civil hearings in their offices. For example, the Basic Court in Stip has only three courtrooms for twenty-four judges. However, there are some positive exceptions. Several interviewees noted that the government has spent an increasing amount of money on courthouses in recent years and that the situation is improving. For example, the Supreme Court and Skopje II Basic Court are housed in new buildings, a new courthouse for the Struga Basic Court is under construction, and the Stip and Skopje Courts of Appeal and Tetovo Basic Court have recently been renovated.

A related issue concerns the public prosecutors, whose offices were usually in courthouses. In some places prosecutors have been provided with offices in different buildings, because this can create a perception that judges are more favorably disposed toward prosecutors than toward advocates. However, there are still courts that share a common building with prosecutors.

Factor 13: Judicial Security

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

Conclusion	Correlation: Neutral	Trend: ↓
Judicial police were established in 1996 to provide security at courthouses; however, they have no responsibility for protecting judges outside the courthouse. Existing security measures such as metal detectors are not used effectively. Serious threats against judges are said to occur, but are rarely reported.		

Analysis/Background:

Armed judicial police, subject to the direction of the court president, are stationed at each courthouse. LAW ON COURTS arts. 103-109. In response to concerns that there are insufficient police in some courts, the Ministry of Justice (MOJ) is increasing the number of judicial police. However, judicial police are only stationed in courthouses; they do not provide protection for judges outside the courthouse. Although the MOJ installed metal detectors in all courts several years ago, in some courts they appear to contribute little in the way of security. Judicial police either routinely allow people to walk around, rather than through, metal detectors, or fail to stop, let alone search, those who trigger metal detectors.

Although there were some security problems in the portion of Macedonia affected by the crisis in 2001, such as the bombing of the courthouse in Struga, the situation seems to have returned to normal. Interviewees knew of judges being threatened, but most judges who were interviewed said that they were not concerned about their safety or the safety of their families. However, other sources say that judges frequently face threats in criminal cases, but they do not report them because of a lack of response on the part of the police.

The government’s announced intention to place greater emphasis on fighting organized crime is an important reason why judicial security needs to be improved.

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: ↔
Except for Constitutional Court Judges, who serve nine-year terms, all judges have guaranteed permanent tenure.		

Analysis/Background:

All judges have permanent tenure, until retirement at age 65. The Constitution specifically provides that “[a] judge is elected without restriction of his/her term of office.” CONST. art. 99; see also LAW ON COURTS art 21. The nine judges of the Constitutional Court are elected by the Assembly for nine-year, non-renewable terms. CONST. art. 109. This is comparable to the terms for constitutional court judges in other European democracies.

Factor 15: Objective Judicial Advancement Criteria

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

Conclusion	Correlation: Neutral	Trend: ↔
Judges seeking advancement must be evaluated on specific, objective criteria. However, the Republic Judicial Council (RJC), which is responsible for making nominations, has been criticized in the past as being overly political, and judges are appointed by a vote of the Assembly.		

Analysis/Background:

Judicial advancement is governed by the same rules and procedures applicable to judicial appointment, which are described in Factor 2 above. For sitting judges seeking advancement, criteria includes work experience in courts, the number of cases resolved annually, the number of decisions confirmed by the appellate courts, the number of reversals, and the average length of time for the judge to render decisions. RJC REGULATION NO. 81/2, pt. V (1994). Candidates for appointment to an appellate court must have more than nine years of legal work experience after the bar examination, and candidates for the Supreme Court must have more than twelve years experience. LAW ON COURTS art. 43.

Interviewees agreed that political influence is an important factor in advancement, differing only in the extent to which they believe other factors play a role as well. Some interviewees expressed the view that the process has become more politicized in recent years. One asserted that political considerations can be particularly important in appointments to the Supreme Court, because of its role in elections. Interestingly enough, when it came to providing specific examples of blatant politics in appointments to the higher courts, many interviewees mentioned instances from several years ago, under the prior government. This illustrates how difficult it is to change public perceptions, once formed. However, several interviewees commented favorably on the newly elected members of the RJC. Finally, some interviewees argued that, because judicial appointment and advancement ultimately depend on a vote of the Assembly, political considerations will inevitably play a role in the process.

The newly elected members of the RJC plan to implement changes in its procedures for evaluating judicial candidates. First, a database with information on existing judges is being compiled. This will provide objective data for evaluating candidates. Second, when the RJC meets to consider candidates, the presidents of the courts for which candidates will be proposed will be invited to participate.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Neutral	Trend: ↔
All judges generally have immunity, but the immunity of all except Constitutional Court judges can be lifted by a vote of the Assembly.		

Analysis/Background:

Although the Constitution accords judges immunity, it also provides that the Assembly “decides on the immunity of judges.” CONST. art. 100. Thus, judicial immunity depends on decisions of another branch of government. This is in contrast to the Constitutional Court, which itself determines the immunity of its judges. *Id.* art. 111. So, too, in the case of the Assembly and the government, which have authority to determine the immunity of representatives and ministers, respectively. *Id.* arts. 64, 89. Despite this disparity in the position of the judiciary, interviewees were not aware of any recent instance in which the Assembly lifted a judge’s immunity.

Furthermore, the Law on Courts includes specific safeguards to protect judicial immunity. For example, judges may not be held responsible for a judicial decision, nor may they be detained without the Assembly’s approval, unless caught in the act of committing a crime punishable by at least five years imprisonment. LAW ON COURTS art. 65. Moreover, the lifting of immunity may occur only after the Assembly obtains the opinion of the Republic Judicial Council (RJC). *Id.* However, judicial immunity does not deprive injured parties of redress for injuries. The government is responsible for all damages that a judge causes to citizens or juridical persons through illegal or irregular actions while performing judicial duties. *Id.* art. 62.

Interviewees generally agreed that the extent of immunity accorded judges is appropriate and is respected in practice. However, several interviewees commented that allowing the Assembly to decide on a judge’s immunity diminished at least the perception of judicial independence.

Factor 17: Removal and Discipline of Judges

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

Conclusion	Correlation: Neutral	Trend: ↔
Reasonably objective criteria for removal or discipline of judges are set forth in the Constitution, laws, and regulations. A lack of transparency in the removal and disciplinary process has fueled speculation about the motives behind certain removals and makes it difficult to evaluate the fairness of the process in practice.		

Analysis/Background:

Under the Constitution, a judge may be removed from office involuntarily if he or she: (1) is convicted of a crime and sentenced to prison for six months or more; (2) commits “a serious disciplinary offense defined in law, making him/her unsuitable to perform a judge’s office,” as determined by the Republic Judicial Council (RJC); (3) exhibits “unprofessional and unethical performance of a judge’s office,” as determined by the RJC; (4) “permanently loses the capability of carrying out a judge’s office,” as determined by the RJC. CONST. art. 99(3). Except for the first, the RJC is responsible for determining the existence of grounds for removal and discipline of judges and thus plays an important role in the process. Those grounds are further defined in laws and regulations to guide the RJC’s determinations.

The Law on Courts, for instance, defines the actions that constitute a “serious disciplinary offense” as follows:

- committing a serious violation of the public order and peace that undermines the judge’s reputation and that of the court;
- engaging in party and political activities;

- serving in a public office or profession;
- causing a serious deterioration of human relations at the court that impairs the performance of the judicial office; and
- committing a serious violation of the rights of a party or other participant that may damage the reputation of the court and the judicial office.

LAW ON COURTS art. 69.

The RJC has issued guidelines identifying what constitutes “unprofessional and unethical performance” of a judge’s office. See REGULATIONS ON THE PROCEDURE AND WAYS OF DETERMINING INCOMPETENT AND UNETHICAL PERFORMANCE OF THE JUDICIAL FUNCTION No. 08-238/2, art. 22 (6 Oct. 1995). [hereinafter RJC REGULATION NO. 08-238/2]. Annexes attached to these regulations list various elements of unprofessional or unethical conduct. Following are some of the more important ones:

- demonstrated ignorance about the substantive laws and other regulations upon which a case should have been decided;
- lack of awareness of new laws, decisions of the higher courts, or legal scholarship;
- frequent and intentional delays of hearings;
- frequent reversals by a higher court due to incorrect application of the law;
- actions by the judge suggesting an interest in a case;
- failure to comply with the principle of independence;
- demonstrated partiality toward the parties;
- actions demonstrating a love of power and desire to rule over people;
- propensity to receive gifts and rewards or becoming subject to external influences; and
- seeking to withdraw from a case because of its complexity or difficulty.

RJC REGULATION NO. 08-238/2, annexes A, B.

The final ground for removal of a judge—permanent loss of capacity to carry out the judicial office—is based on “documentation with findings and opinion by a competent health commission.” LAW ON THE RJC art. 20. Such commissions function under the Ministry of Health.

Although the primary responsibility for discipline and removal of judges rests with the RJC, the Assembly ultimately decides whether to remove a judge. CONST. arts. 68, 105; LAW ON COURTS arts. 38, 39. The RJC may discipline judges short of removal, without recourse to the Assembly. CONST. art. 105.

Allegations of grounds for dismissal or removal of a judge may be filed with the RJC by the judge’s court president, the president of the higher court, or the general session of the Supreme Court. LAW ON THE RJC arts. 25, 32. To evaluate such complaints, the RJC gathers data from the Ministry of Justice on the judge’s performance, including the number of cases resolved and the quality and promptness of such decisions. *Id.* art. 34. Three members of the RJC, including its president, are appointed to a commission to investigate the complaint. LAW ON THE RJC art. 24. Proceedings are closed to the public, and the judge has the right to reply to the charges. LAW ON THE COURTS art. 68; LAW ON THE RJC art. 23. After the investigation is complete, if two-thirds of the RJC vote to recommend removal of the judge, the matter will be referred to the Assembly.⁵ LAW ON THE RJC art. 30. On the Supreme Court’s proposal, the RJC may decide to suspend a judge from office during the investigation of a crime, during disciplinary proceedings, and during proceedings for dismissal. LAW ON THE COURTS art. 70.

⁵ Provisions in the Law on the RJC allowing appeal of the commission’s initial determination to the full RJC and the Supreme Court were held unconstitutional. DECISION OF THE CONSTITUTIONAL COURT OF MACEDONIA, O.G.R.M. No. 26/93 (1993).

Since 1996, the RJC proposed the removal of ten judges for “unprofessional and unethical performance of the judicial office,” and the Assembly removed all but one of them. Most proposals for removal were for unprofessional conduct, particularly for issuing a low volume of decisions. This marks a significant change from the pre-RJC era, when judges were seldom removed for poor performance.

Some interviewees suggested that the procedures of the RJC and the Assembly are not adequately transparent, because specific reasons for removing a judge are never disclosed to the public. A lawyer stated that in a few instances when judges were about to be removed from office, they voluntarily resigned and went into private practice as advocates, thereby avoiding discipline. However, a representative of the RJC responded that in such a case the RJC would not allow the judge to avoid removal for cause by resigning and, if there were evidence of corruption, would file criminal charges as well.

Removal of Constitutional Court judges is not within the authority of either the RJC or the Assembly. A judge of that court may be removed only if he or she is convicted of a crime and sentenced to six months or more imprisonment or permanently loses the capacity to perform official duties, as determined by the Constitutional Court itself. CONST. art. 111.

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: ↑
Cases are usually assigned randomly; however, court presidents have discretion to assign a case to any judge.		

Analysis/Background:

Cases are usually assigned to judges randomly based on the order in which they were filed. Each incoming case is assigned a number based on the order of filing and on that basis is assigned to a judge. Because clerks in the court registry office assign numbers to incoming cases, the process can be subject to abuse. In any event, court presidents have discretion to assign a case to any judge in his or her court.

According to interviewees, cases may not always be assigned randomly. For example, when a number of cases are filed within a short period, their order may be arranged to produce the desired result. Sometimes cases are given a number after they are assigned to a judge. One interviewee said that she had heard, but could not declare with certainty, that court clerks can be bribed to assign cases to a particular judge. Interviewees for the Macedonia JRI 2002 had reported widespread bribery of court clerks to insure that cases are assigned to specific judges. Whether interviewees for the present JRI were reluctant to admit such practices or whether bribery of clerks has in fact become less common remains to be seen. Several interviewees also suggested that in criminal matters police occasionally wait to arrest a suspect until a favored investigating judge is on duty, in order to influence case assignment. Prosecutors mentioned that one problem with random assignment of cases is that complicated criminal cases are sometimes assigned to inexperienced judges.

A judge can be removed from a case only if he or she recuses himself or herself or if a party demonstrates that there is a conflict of interest. LAW ON CIVIL PROCEDURE arts. 65-70; LAW ON CRIMINAL PROCEDURE arts. 36-40. Recusal is required when the judge was involved in the case previously, either as a party or a witness, is related to the parties or their legal representatives, or adjudicated the case in a lower instance, or when there are other circumstances calling the judge’s impartiality into question. *Id.* When a judge becomes aware of a reason for recusal, he or she is required to stop work on the case and inform the president of the court, who may then designate another judge to handle the case. *Id.*

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: Positive	Trend: ↔
The Macedonian Judges Association (MJA) works to protect the interests of the judiciary and has been active in judicial training, publication, and securing enactment of an independent court budget law.		

Analysis/Background:

The Macedonian Judges Association, a voluntary non-governmental and non-political organization, was established in December 1993. According to its mission statement, the MJA “strives towards enhancing the professional stature of judges and the independence of the judiciary as a whole, encouraging democratic reforms and processes, and for full observance of the rule of law principle and human rights and freedoms.” The MJA has some 633 members. It has been funded largely by ABA/CEELI and other donor organizations, but also receives revenue through membership dues. Monthly dues of MKD 150 (approximately \$2.80) are deducted from each judge’s salary. The MJA is working with ABA/CEELI to develop a long-term sustainability plan.

The MJA has been extremely active, conducting training programs in 1999 and 2000, as well as helping to establish the Center for Continuing Education (CCE). It also adopted a code of ethics for its members. See Factor 21 below. The MJA does not actively lobby the Assembly, but it has been the driving force behind the recent adoption of an independent court budget law. See Factor 10 above. The MJA also publishes the monthly *Judicial Informer*, a newsletter with information about MJA activities and texts of important new laws, and the quarterly *Judicial Review*, which includes academic articles relating to the judiciary. Both are distributed free of charge to all judges in Macedonia.

Many, though by no means all, judges who were interviewed were satisfied with the MJA’s work on their behalf. Some of the MJA’s detractors opposed the notion of a judges’ association of any kind, whereas others thought the MJA should be more active in areas such as lobbying.

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: ↔
Although its extent is difficult to quantify, improper influence in the form of corruption, political pressure, or favors for friends is thought to be widespread.		

Analysis/Background:

Determining the extent of improper influence on the judiciary is extremely difficult. Neither the judge or judges involved, nor those who employ improper influence, have any incentive to reveal its existence. As a result, there is usually little direct evidence of improper influence, and yet the belief that in Macedonia political influence or corruption affects many decisions is widespread. This belief may be due, as some interviewees suggested, at least in part to the fact that it is easier to blame an adverse decision on improper influence than to admit that one's claim or defense was weak. Delays can also contribute to the perception of improper influence. Low judicial salaries are another factor contributing to the public's belief that corruption is common.

Political influence on judicial decision-making is viewed as a significant problem in the judiciary. Because political considerations appear to play a role in the selection and advancement of judges (see Factors 2 and 15 above, respectively), some interviewees believe that judges are susceptible to political influence. Indeed, several years ago a judge stated his belief that the judicial branch was under great pressure from the executive branch. See *Judiciary: Power or Executor*, NOVA MAKEDONIJA, 18 Oct. 1999. On the other hand, several interviewees argued that political influence was uncommon, one suggesting that when it did occur it was more likely to be in a criminal case. One judge described an attempt to use political influence in a case for which he was responsible. He said that when he decided in accordance with the law he was punished by losing an opportunity for advancement to a higher court. It is uncertain whether such attempts to use political influence are the exception or the rule. Arguing that improper influence is rare, another judge pointed out that judges have to justify their decisions in written opinions and are subject to reversal if they decide in accordance with political pressure rather than the law.

Influence by private interests also appears problematic, though difficult to quantify. Slightly more than 50% of those polled in a public opinion survey said that they believed most or almost all judges were involved in corruption—about the same percentage as for most civil servants. Forum – Center for Strategic Research and Documentation, *Macedonian Empirical Report*, sec. 6 (Feb. 2002). Yet only 6.75% reported that they themselves had provided a judge with cash, a gift, or a favor to resolve a problem. *Id.* sec. 7. When asked about the extent of corruption in the judiciary, one judge who was interviewed responded, “No comment.” He then explained that whenever a judge makes an expensive purchase people assume that he received a bribe. A Supreme Court judge argued in an interview that corruption is uncommon; in his thirty years of experience only four or five judges were convicted of corruption. *There Is No Government That Does Not Want the Judiciary on its Side*, VEST 959 (13 Sept. 2003). Turning to more recent history, he noted that the RJC has not found any judge guilty of corruption. *Id.* A number of other interviewees also asserted that the existence of corruption must be regarded as merely speculative until there are convictions of judges for accepting bribes. One judge argued that corruption in the judiciary is less common than in other parts of government. Public opinion in Macedonia supports this view. In a survey conducted by Gallup International, only 15.4% of those

polled said that, if they could eliminate corruption from an institution, they would do so in the courts, compared to 28.2% who would eliminate corruption in political parties. Transparency International, *Global Corruption Barometer* (2003). Corruption is thought to be common in high stakes commercial litigation. One lawyer said that bribery is more common in enforcement cases and that enforcement judges expect to be bribed to take action. On the other hand, one lawyer contended that outright corruption among judges is rare and that court employees are more commonly bribed than judges. One judge also reported allegations that lawyers sometimes solicit money from clients for bribes and then keep the money themselves.

Another common form of influence is based on personal connections. Several judges stated that it was not uncommon for friends or colleagues to ask them to expedite a case in which they have a personal interest, a practice, most contended, that would not affect the ultimate decision in the case.

In its survey of human rights in Macedonia, the U.S. State Department concluded that “[t]he judiciary was generally weak and was influenced by political pressure and corruption, in part due to low salaries; however, there were no reports of widespread abuse or systemic corruption.” U.S. Department of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2002, MACEDONIA sec. 1.e (2003).

Whether improper influence in the form of corruption, political pressure, or favors for friends is as widespread as many believe, the perception that it exists is an issue the judiciary must address if judges are to be viewed as independent.

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: Negative	Trend: ↔
Ethical provisions are included in the Macedonian Judges’ Association (MJA) voluntary ethics code and in the Law on Courts. However, these provisions are not comprehensive, and the code lacks an effective direct enforcement mechanism. There is no mandatory ethics training for judges.		

Analysis/Background:

Macedonia lacks a compulsory code of judicial ethics. In 1994, the MJA adopted a voluntary code of ethics, a relatively brief document that did not aim to be comprehensive. Rather, it consists of “the most significant principles by which judges shall be guided when performing the judicial office” MACEDONIAN JUDGES’ ASSOCIATION CODE OF JUDICIAL ETHICS art. 1 (1994) [hereinafter CODE OF JUDICIAL ETHICS] Although not comprehensive, the code does include specific guidance for judges. For example, it requires judges to avoid business activity, performing a non-judicial office, and providing legal assistance. CODE OF JUDICIAL ETHICS art. 11. The code discourages *ex parte* communications, although it does not expressly prohibit them: “Outside the courtroom, [a judge] shall always *endeavor* to provide for the presence of both parties at the same time, *i.e.*, counselor, attorney, plaintiff, and the like.” *Id.* art. 7 (emphasis added). The code does not, however, include an enforcement mechanism; it merely provides that a judge is “morally liable” if he or she violates the code. *Id.* art. 13. Nevertheless, failure to comply with the code is an element the RJC considers when deciding whether to discipline or recommend removal of a judge. RJC Regulation No. 08-238/2 art. 22; element B(7). Thus far, the RJC has not disciplined

or recommended removal of a judge for failure to comply with the code, but the RJC’s position is that a judge who fails to comply with the code could be subject to discipline on the basis of “unprofessional and unethical performance of the judicial function.”

Interviewees differed widely in their assessment of the code. Many claimed that it was ineffective and often ignored in practice, whereas others said that it provided adequate guidance on important issues. In any event, a committee of the MJA is working to revise and expand the code in light of experience gained in the past ten years.

One lawyer observed that in some instances the avoidance of *ex parte* communications by judges can lead to corruption by court employees, with whom lawyers were forced to deal. Employees sometimes solicited MKD 1,000 or 2,000 “for the judge,” but in all likelihood for themselves. Another interviewee suggested the need for a code of ethics for court employees.

The Law on Courts contains a number of miscellaneous provisions on ethical issues. For example, it prohibits judges from performing any other public function or engaging in any other profession, unless authorized by law to do so (e.g., teaching or engaging in scientific projects at a university may be allowed), nor may they belong to any political party or engage in political activities. LAW ON COURTS art. 50. Judges who violate these norms are subject to removal. *Id.* art. 69. In addition, a judge may not accept gifts from parties or other persons directly or indirectly interested in a case before the judge. *Id.* art. 54.

Judicial ethics training is not compulsory in Macedonia. Although there is no requirement that judges receive training in the code, perhaps because it is voluntary, such training has been offered. In addition, before joining the MJA, a judge must sign a statement that he or she has read and agrees to the statutes and regulations of the MJA, including the Code of Judicial Ethics. Membership in the MJA is officially voluntary, but virtually every Macedonian judge is a member.

Factor 22: Judicial Conduct Complaint Process

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

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
A process for registering complaints exists, but its effectiveness is uncertain. Improvements may result as the new Republic Judicial Council (RJC) implements different procedures for responding to complaints.		

Analysis/Background:

There are several ways for judges, lawyers, and the public to complain about judicial misconduct. Complaints may be filed with the court president, the RJC, the Ministry of Justice (MOJ), the Ombudsman’s Office, or the judicial committee of the Assembly. They are typically forwarded to the relevant court president, who is expected to investigate them and respond to the complainants. It is unclear how effective the complaint process has been in the past. Some interviewees said that the majority of complaints are groundless and filed by disappointed litigants. Others suggested that the process is typically *pro forma* and rarely results in any action against judges. More detailed procedures for investigating and responding to complaints could help to increase public confidence in the process, which in the past has lacked transparency.

A significant number of complaints are filed each year, most prompted by delays in the processing of cases. In 2003 through the end of October, the MOJ received 637 complaints

concerning judges. The RJC reported that during October and November 2003 it received 10-15 complaints per day. Because about half of these complaints resulted from the RJC's failure to respond to earlier complaints, the RJC now makes an effort to answer complaints promptly. A member of the RJC said that complaints can be a valuable source of information about the performance of judges, as well as an effective way to discover oversights that can be corrected easily. By responding to complaints in a timely fashion, the RJC hopes to increase public confidence in the judiciary.

Factor 23: Public and Media Access to Proceedings

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

Conclusion	Correlation: Neutral	Trend:↔
Court proceedings are generally open to the public and media; however, there may be problems in some courthouses accommodating the public and media.		

Analysis/Background:

The Constitution provides that “[c]ourt hearings and the passing of verdicts are public,” but the public may be excluded “in cases determined by law.” CONST. art. 102. The principle that court procedures are open to the public is also included in the Law on Courts. LAW ON COURTS art. 10. However, the public can be excluded from proceedings involving divorce, adoption, paternity determination, and guardianship. See LAW ON FAMILY arts. 105, 224, O.G.R.M. 80/92.

Despite the Constitution's broadly worded exception to public access, court proceedings are usually, though not invariably, public. According to one interviewee, trial observers have occasionally been excluded from proceedings. In one case, the defense raised the exclusion of the public on appeal. Even though the basic court had not entered an order excluding the public, the court of appeal held, without analysis, that it was obvious there had been sufficient justification for excluding the public.

Although courtrooms are generally not spacious, there is usually room for observers to attend, but the situation varies from court to court. In some courthouses, the limited number of courtrooms sometimes forces judges to hold hearings in their offices, which are generally too small to accommodate the public and the media in addition to participants. According to interviewees, the public and media have little interest in attending most trials, and hearings in high profile cases are usually held in large courtrooms. In general, though, courthouses are not well prepared to receive the public or the media: there are few public waiting rooms, few public restrooms, and no press centers. However, the new Supreme Court building is an exception. The lobby in front of the conference hall where general sessions are held is large enough to accommodate the press.

Videotaping of court proceedings is allowed with the permission of the president of the Supreme Court. According to journalists who were interviewed, permission to videotape is usually though not invariably granted. When it is granted, the president of the court council hearing the case has authority to specify procedures for videotaping, such as which portions of the proceeding may be taped.

Judges do not ordinarily give interviews. Only the president of a court or a judge authorized by the president may provide information regarding the work of the court to the media. LAW ON COURTS art. 89. A number of court presidents recently appointed spokespersons who meet with the press regularly.

A coalition of eighteen NGOs, “All for Fair Trials,” established a trial observation network in April 2003. Its purpose is to determine the extent to which international fair trial standards are observed in the basic courts. Representatives of the coalition reported that court presidents have been cooperative, and its observers encountered resistance to monitoring hearings on only one occasion.

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>Most judicial decisions are unpublished, but scholars and other interested parties can usually obtain permission to review them. Excerpts of important Supreme Court decisions are published, but most higher court decisions are only circulated internally within the court.</p>		

Analysis/Background:

Most basic and appellate court decisions are not published. The parties receive a copy of the court’s decision, but, as in the case of court records, a scholarly researcher or other interested person needs permission from the court president for access to the decision. If the case involves privacy concerns—juvenile, divorce, or family law issues—permission is usually denied.

Appellate court and Supreme Court decisions are circulated internally for use by the other judges. The Supreme Court published annual compilations of its decisions, although it has not done so since 2001 because of lack of funds. Excerpts of significant Supreme Court decisions are now published in the MJA’s newsletter, *Judicial Informer*, as are occasional appellate court decisions. Excerpts of Supreme Court, Constitutional Court, and appellate court decisions are also sometimes published in the Macedonian Business Lawyers Association newsletter. Decisions of the Constitutional Court are published in the *Official Gazette*, as well as in annual compilations.

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: ↑
<p>Although verbatim transcripts of proceedings are not made, a written summary of the proceedings is included in the case file. The parties and their lawyers have access to these minutes, as well as other court records, although the public cannot easily obtain them.</p>		

Analysis/Background:

Courts do not produce verbatim transcripts of proceedings. Instead, the official record of a court proceeding consists of the judge’s oral summary of the testimony of witnesses and the arguments of counsel, dictated to a typist for inclusion in the case file. Thus, they reflect the judge’s perception of the evidence and arguments. Several lawyers who were interviewed asserted that these minutes are not always accurate and sometimes reflect the judge’s bias, but they conceded

that lawyers may object if they believe them to be inaccurate. Indeed, one person asserted that it is a lawyer’s responsibility to ensure that they are accurate. Other interviewees contended that the minutes are quite accurate. One explained that a skillful judge’s summary can help to clarify the otherwise confused testimony of a witness.

Public access to court records is restricted, and generally only the parties and their lawyers have access to the case file. Others who desire to review the record must demonstrate their interest in the matter to the president of the court council hearing the matter or, after the file is sent to the court archives, to the court president. In criminal cases, a nonparty is not permitted to review the case file, but only the decision, and then only if he or she demonstrates to the court president a reasonable justification for doing so, such as scholarly research.

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: ↔
The level of support staff varies from court to court. Although the statistics that are available suggest that staff levels exceed mandated levels, many observers believe the courts are understaffed.		

Analysis/Background:

Judges are supported by professional and administrative staff. Court assistants perform legal research and prepare drafts of court decisions. Court interns provide more limited professional assistance. The number of assistants and interns varies from court to court, but court assistants are more commonly found in the higher courts than in the basic courts. The number of authorized court positions is specified in court rules approved by the minister of justice. But see LAW ON COURTS art. 92 (each court with more than seven judges must have a secretary). Under these rules, for example, basic courts are supposed to have 2.4 employees per judge, including one typist per judge and one court assistant for every two judges.

Although a number of courts reportedly do not have sufficient numbers of staff, available statistics do not support such claims. Statistics for all basic courts are not available, but a survey of ten basic courts conducted by the Ministry of Justice in March 2002 revealed that these courts had 4.4 employees per judge, and two of the three appellate courts had a ratio of 4.2 employees per judge. In 2002, there were 2,132 employees engaged in court administration and 656 judges. *Assessments and Conclusions of the Supreme Court of the Republic of Macedonia regarding the Reports on the Operation of the Courts in the Republic of Macedonia in 2002*, sec. 1, JUDICIAL INFORMER, No. 31 (Sept. 2003) [hereinafter 2002 REPORT]. This represents an average ratio of 3.25 support staff per judge. Nevertheless, many interviewees contended that the courts are understaffed, particularly in the case of court assistants. In December 2002, the Supreme Court temporarily increased the number of authorized court assistants, but only for two years. For example, in one appellate court with fifteen judges, seven court assistants were employed, three of them on a temporary basis. Some interviewees consider mandated staffing levels inadequate. One judge asserted that each judge should have a court assistant, while another argued for two assistants per judge.

Factor 27: Judicial Positions

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

Conclusion	Correlation: Neutral	Trend: ↔
A system exists to create new judicial positions as needed, based on judicial performance quotas. In practice, new positions are rarely created.		

Analysis/Background:

The Assembly determines the number of judges in each court. LAW ON COURTS art. 41. When a court president believes that additional judges are needed, he or she submits a request to the Supreme Court. The number of judges needed in each court is determined by dividing the number of new cases filed annually by the average number of cases each judge is expected to complete that year (approximately 350). Consideration is also given to the population in the court's jurisdiction. A general session of the Supreme Court considers such requests and, if the court believes a request is justified, it will recommend that the Assembly authorize additional positions.

In practice, new judicial positions are rarely created. Since 1996, a number of courts have requested new positions, but the Supreme Court did not propose that the Assembly establish them. However, at its general session in April 2003 the Supreme Court concluded that requests from the Skopje I, Bitola, Kumanovo, and Gostivar basic courts for increasing the number of judges appear justified and will decide whether to propose an increase in the number of judges for those courts. 2002 REPORT sec. 6.

Many interviewees remarked on the backlog of cases, which may suggest a need for additional judges, unless structural changes are made to increase the efficiency of the courts. One change that many suggested was the re-establishment of some specialized courts, at least for commercial cases and for minor crimes. The situation is generally acknowledged to be worse in Skopje and other major cities than in smaller jurisdictions. The problem of backlogs is also viewed as more serious in the basic courts than in the appellate courts and the Supreme Court (except for the Supreme Court's administrative appeal caseload, discussed in Factor 6 above). On average, civil cases reportedly take a year and one-half to two years before a decision is reached.

Interviewees offered several reasons for the backlog of cases in the courts. Several pointed to the 1996 reorganization of the courts, which eliminated specialized courts (including commercial and minor offense courts) and gave the basic courts broad first instance jurisdiction. LAW ON COURTS arts. 30, 32. Other factors cited include the increased complexity of cases now being filed, ineffective use of subpoena and enforcement powers (see Factor 9 above), and the growing number of collection cases filed by public utility companies. 2002 REPORT sec. 4 (enforcement of monetary claims of utilities).

The following statistics provided by the Supreme Court show a general decline in the backlog of cases in recent years (the backlog of cases at the end of each year is shown as "Pending from Prior Year" in the following year).⁶

⁶ The number of resolved cases may not be completely accurate. In its review of the reports of the basic courts for 2002, the Supreme Court commented regarding civil and commercial enforcement cases that, "in some courts, contrary to the Rules of Procedure of Courts, some unfinished cases were inaccurately presented as finished." 2002 REPORT sec. 4.

Basic Courts

Year	Criminal Cases			Civil Cases		
	Pending from Prior Year	Filed	Resolved	Pending from Prior Year	Filed	Resolved
1998	301,879	269,117	315,128	97,183	98,281	105,855
1999	255,840	173,718	270,806	85,820	81,387	92,569
2000	158,751	206,206	198,660	64,941	77,620	72,662
2001	166,297			69,899		

Courts of Appeal

Year	Criminal Cases			Civil Cases		
	Pending from Prior Year	Filed	Resolved	Pending from Prior Year	Filed	Resolved
1998	1,411	14,967	15,729	337	3,908	3,935
1999	649	16,059	16,212	1,567	16,252	16,856
2000	496	14,166	14,411	963	15,629	15,243
2001	251			1,349		

Supreme Court

Year	Criminal Cases			Civil Cases		
	Pending from Prior Year	Filed	Resolved	Pending from Prior Year	Filed	Resolved
1998	2	2	4			
1999	1	21	21	40	90	75
2000	2	19	19	53	91	98
2001	2			46		

Corresponding statistics for 2001 and later years are unavailable. Nevertheless, it appears that the number of cases pending from prior years in the Supreme Court has remained relatively constant, but the number of such cases in the appellate courts and basic courts is gradually being reduced. According to the Supreme Court's assessment of court operation in 2002, the number of pending cases in the basic courts declined by 20.34% in 2002. 2002 REPORT sec. 2.

Factor 28: Case Filing and Tracking Systems

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

Conclusion	Correlation: Negative	Trend: ↔
<p>The current system of case filing and tracking relies on longhand notations in the court register. A computerized case tracking and management system is expected to replace the current system soon.</p>		

Analysis/Background:

The standard case filing system is specified in the internal rules for each court. As a general rule, each new case is entered in a register maintained by the court registry office and then assigned to a judge. After assignment to the judge, progress of the case is left to his or her discretion. The register is updated to reflect developments in the case. Entries in the register are made by longhand; no computer case tracking and management system presently exists. Nor is there any mechanism to ensure that cases are heard in a reasonably efficient manner.

The European Agency for Reconstruction (EAR) is developing case tracking and management software, as well as providing the necessary hardware. See Factor 29 below. The Macedonian Court Modernization Project is also working to improve court administration, including development of caseload management and delay reduction programs. When these systems are fully implemented, presidents of courts will have tools to ensure that cases are handled in an efficient and timely manner.

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 Macedonian judicial system presently has an insufficient number of computers and other equipment, but the Ministry of Justice (MOJ) has undertaken significant efforts in recent years to provide computers and computer skills training for judges and court personnel.</p>		

Analysis/Background:

Many courts lack sufficient numbers of computers, but the situation is improving as a result of a recent computerization effort. According to the MOJ, approximately \$2.5 million was allocated to court computerization in the 2002 budget. Although the installation of computers had been hampered by inadequate electrical systems in a number of courts, the MOJ has devoted funds to address this problem. As a result of these efforts, it is estimated that 40% of the courts' needs for computers has been met. The European Agency for Reconstruction (EAR) plans to spend €4.5 million for additional computers over the next few years. This will meet another 50-60% of the courts' needs. The EAR is also providing computer skills training to augment the training the MOJ has provided. See Factor 3 above.

Although much progress has been made, a number of interviewees commented that the computers provided thus far are without some needed software and, as a result, are generally used only for word processing. As noted above in Factor 28, however, the EAR is developing case tracking and management software.

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 current laws and Constitutional Court decisions, as well as excerpts of selected Supreme Court decisions. Limited electronic legal databases are also available to judges, but their coverage is limited.</p>		

Analysis/Background:

All laws and decisions of the Constitutional Court are published in the *Official Gazette*, but until 2003 courts could only afford one or two subscriptions for the entire court. Each judge now receives a free copy of the *Official Gazette* and no longer has to rely on photocopies. In addition, since 1 January 2004 the *Official Gazette* has been available to subscribers on the Internet. See www.slvesnik.com.mk. Excerpts of significant Supreme Court decisions are published in the Macedonian Judges Association's newsletter, *Judicial Informer*. However, publication of annual volumes of the Court's decisions was discontinued several years ago. Publication and distribution of appellate court decisions reportedly occurs only sporadically.

As computerization of the courts proceeds and more judges gain access to the Internet, legal databases will become increasingly important tools for legal research. Presently, although electronic databases of laws exist, they are selective in their coverage and not always currently updated. The Macedonian Legal Resource Center, an internationally-funded NGO, produces CD-ROMs containing a selection of important laws, with regular updates. These resources are also available on the Internet through the Center's website, although it has not been updated since mid 2002. See www.mlrc.org.mk. Selected laws relating to the economy are posted on the Ministry of Finance website in both Macedonian and English. See www.finance.gov.mk. The Agency for Privatization of the Republic of Macedonia also has a database with selected laws relating to the economy, which have been translated into English. Other such laws are posed on the Economic Chamber of Macedonia's website. See www.mchamber.org.mk.