



JUDICIAL REFORM INDEX

FOR

SERBIA

December 2003 Update

© American Bar Association

The statements and analysis contained herein are the work of the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), which is solely responsible for its content. The Board of Governors of the American Bar Association has neither reviewed nor sanctioned its contents. Accordingly, the views expressed herein should not be construed as representing the policy of the ABA. Furthermore, nothing contained in this report is to be considered rendering legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication was made possible through support provided by the U.S. Agency for International Development Serbia Mission, under the terms of the Associate Cooperative Agreement No. 169-A-00-01-00118-00 and Leader Cooperative Agreement No. ENI-A-00-00-00003-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the view of the U.S. Agency for International Development.

ISBN: 1-59031-390-9

Printed in the United States of America

Copyright © 2004 by the
American Bar Association and Central European and Eurasian Law Initiative
740 15th Street, NW, Washington, DC 20005

TABLE OF CONTENTS

Introduction	i
Serbia Judicial Reform Index (JRI) 2003 Update	iv
Serbia Background	1
Legal Context.....	1
History of the Judiciary	2
Structure of the Courts	3
Conditions of Judicial Service.....	5
<i>Qualifications</i>	5
<i>Appointment and Tenure</i>	5
<i>Training</i>	6
Serbia JRI 2003 Update Analysis	7
Table of Factor Correlations	9
I. Quality, Education, and Diversity	10
Factor 2 Selection/Appointment Process	10
Factor 3 Continuing Legal Education	12
II. Judicial Powers	12
Factor 5 Judicial Review of Legislation	12
Factor 6 Judicial Oversight of Administrative Practice	14
Factor 7 Judicial Jurisdiction over Civil Liberties.....	15
Factor 8 System of Appellate Review	16
IV. Structural Safeguards	17
Factor 14 Guaranteed Tenure	17
Factor 15 Objective Judicial Advancement Criteria	18
Factor 16 Judicial Immunity for Official Actions	20
Factor 17 Removal and Discipline of Judges	20
Factor 19 Judicial Associations	22
V. Accountability and Transparency	23
Factor 20 Judicial Decisions and Improper Influence	23
Factor 21 Codes of Ethics	24
Factor 22 Judicial Conduct Complaint Process.....	25
Serbia Rule of Law Chronology November 2001—Present	27

Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central and East European 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 as part of the JRI assessment 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 consistent format in each standard 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.

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

Acknowledgements

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

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

2003 JRI Update

This Serbia JRI 2003 Update is not intended to be an all inclusive follow-on report to the first JRI assessment conducted in 2002, but rather a snapshot of particular aspects of the judiciary and judicial reform in Serbia that have been most affected by recent legal and political developments. Therefore, instead of focusing on all 30 JRI factors, this Update focuses on 14 factors. The selection of these factors was based on information made available to ABA/CEELI during the assessment process and following consultations with both international and local stakeholders. A comprehensive assessment of the Serbian judiciary will be undertaken in 2005 at which time ABA/CEELI will again implement the Judicial Reform Index in its entirety by focusing on all 30 JRI factors.

Like the first-round JRI, the assessment process undertaken for the Serbia JRI 2003 Update involves examination of all laws and other normative acts and provisions that pertain to the organization and operation of the Serbian judiciary and utilizes a key informant interview process, relying on the perspectives of roughly 25-30 judges, lawyers, law professors, NGO leaders, and journalists that have expertise and insight into the functioning of the judiciary.

Each of the 14 factors evaluated as part of the Serbia JRI 2003 Update is assigned a correlation value of positive, neutral, or negative.¹ In addition, the Serbia JRI Update identifies the nature of the change or the trend since 2002. This trend is indicated in the Table of Factor Correlations that appears in this report's front-matter, and it is also noted in the conclusion box for each factor. The following symbols will be used: ↑ (upward trend, improvement); ↓ (downward trend; backsliding); and ↔ (no change; little or no impact).

This Update seeks to identify the extent to which shortcomings identified by the first-round JRI assessment have been addressed and overcome by state authorities, members of the judiciary, and others. Similarly, it notes those areas where there has been backsliding in the area of judicial independence or where efforts to reform the judiciary have stalled and have had little or no impact. In addition to informing international and local stakeholders about the state of judicial independence and reform in Serbia today, the observations and conclusions that flow from this JRI report will assist ABA/CEELI in its efforts to determine the efficacy of its judicial reform programs and to continue developing more informed and more targeted programs.

Assessment Team

The Serbia JRI 2003 Update assessment team was led by Andrew Solomon and benefited from the expertise and support of Aleksandra Aleksic, Molly Inman, Tijana Janic, Alisa Koljensic-Radic, Robert Lochary, Blazo Nedic, Nikola Vojnovic, and Gordana Walker. ABA/CEELI Associate Country Director Julie Broome provided editorial assistance and coordinated publication of this report. The conclusions and analysis are based on interviews that were conducted in Serbia in December 2003 and relevant documents available to the assessment team that were reviewed at that time. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

¹ Where the factor statement strongly corresponds to reality, it is assigned a "positive". If the factor statement is not at all representative of the actual conditions, it receives a "negative". In those instances that conditions correspond in some ways but not in others to the factor statement, a "neutral" value is assigned.

Serbia Background

Legal Context

The Republic of Serbia is one of two constituent republics forming the Union of Serbia and Montenegro. The Union of Serbia and Montenegro has been recognized and functions as the successor state to the Federal Yugoslav Republic, which was dissolved by the Yugoslav Assembly on 04 February 2003 pursuant to the terms of the EU-brokered **Belgrade Agreement** of 14 March 2002. This accord provided the framework for redefining relations between the neighboring states of Serbia and Montenegro within a single but decentralized federal structure based on a common constitution.

The **Constitutional Charter of the Union of Serbia and Montenegro** (Official Gazette SM, no. 1/03, 4 February 2003) and the law on its implementation (Law on the Implementation of the Constitutional Charter of the State Union of Serbia and Montenegro, Official Gazette SM, no. 1/03, 4 February 2003) were adopted by a 27-member joint Serbian-Montenegrin Constitutional Commission in December 2002. The Serbian National Assembly ratified both documents on 27 January 2003. Two days later, on 29 January 2003, the Assembly of Montenegro took similar action. The Constitutional Charter establishes the structure and competencies of Union-level institutions. These institutions include a parliament, a presidency, and a council of ministers. The Council of Ministers of the Union of Serbia and Montenegro oversees foreign affairs, defense policy and control over the armed forces, international economic relations, internal economic relations, and minority and human rights protections. In addition, the Constitutional Charter sets forth the structure, procedures, and jurisdiction of the Court of Serbia and Montenegro. Independence of the judiciary as a whole is not explicitly guaranteed in the Constitutional Charter. However, judges are considered independent in their work.

The **Charter on Human and Minority Rights** (Official Gazette SM, no. 6/03, 28 February 2003) is an integral part of the constitutional framework of the Union of Serbia and Montenegro. It guarantees a variety of fundamental rights, including the right to a fair trial by an independent and impartial court. Equality of all individuals before the law, the right to legal counsel, and the right to a legal remedy are also enshrined in this document. Any individual whose rights found in the Charter on Human and Minority Rights have been violated, by either the Union of Serbia and Montenegro or one of its two member states, may file a complaint with the Court of Serbia and Montenegro in certain circumstances.

At the member state level, the **Constitution of the Republic of Serbia** of September 1990 (Official Gazette RS, no. 1/90, 28 September 1990) was adopted by the now defunct Assembly of the Socialist Republic of Serbia. It continues to serve as the basic law throughout the territory of Serbia. The Constitution guarantees the fundamental rights and freedoms of Serbian citizens, including the right to equal protection before the law and the right to a fair trial. The Constitution also establishes the formal separation of powers and enshrines independence of the judiciary. A new constitution is being drafted by a working group of experts in order to harmonize the republic's legal system with that of the Constitutional Charter of the Union of Serbia and Montenegro, the law on its implementation, the Charter on Human and Minority Rights, as well as with international agreements ratified by the Union Assembly and the former Yugoslavia's Federal Assembly. Efforts to move this process forward have repeatedly stalled, largely due to unresolved political and electoral issues.

The judiciary in post-socialist Serbia is also regulated by a **package of laws on the judiciary** adopted in November 2001. They include the laws on Judges, on the Organization of Courts, on Seat and Territorial Jurisdiction of Courts and Public Prosecutors' Offices, on Public Prosecutors' Offices, and on the High Judicial Council (Official Gazette RS, no. 63/01, 8 November 2001). In combination with select sections of the Constitution, these laws provide the legal basis for the organization, jurisdiction, and operation of Serbia's courts of general and specialized jurisdiction;

professional freedoms and guarantees enjoyed by judges; and procedures for selecting and removing judges. The package of laws originally reflected many international standards on the administration of justice and judicial independence, especially in providing the judiciary with a substantial role in managing its own affairs. However, amendments to these laws in July 2002 and March 2003 shifted certain leading responsibilities, such as those involving decisions on judicial appointment and dismissal, to the executive and legislative branches of government. It is noteworthy that these amendments were not made available to the public or members of the judiciary for notice or comment prior to their adoption, a practice common to democratic societies.

History of the Judiciary

The contemporary judiciary and court system in Serbia has its roots in the emergence of an independent constitutional monarchy in the second half of the nineteenth century, which emerged after a prolonged period of Ottoman rule. The development of the Serbian judiciary was influenced by the legal traditions of its European neighbors, most notably Austria, Germany, and France. However, the most significant and enduring influence on Serbian courts today remains the legacy of socialist rule in Yugoslavia. Most of the major courts currently in existence, including the Constitutional Court, the Supreme Court, and the district and municipal courts date from this era. It was also during this period that the court system became a political instrument and individual judges were sometimes pressured to decide cases in a manner that satisfied the wishes of executive and legislative authorities.

Following the ouster of the regime of Slobodan Milosevic in October 2000, a democratically oriented government sought to strengthen the independence of the judiciary and enhance its role in advancing legal and judicial reforms. In November 2001, a new package of laws on the judiciary gave the judiciary unprecedented authority to regulate its own affairs. At the same time, however, the judiciary contained many judges considered to be political cronies of the former regime that not only lacked integrity but professional competency as well. Efforts to lustrate the judiciary to date have not proceeded according to any comprehensive plan, although a number of judges compromised by the Milosevic regime have either resigned voluntarily or have been dismissed. A number of judges identified with the former regime continue to work in courts throughout Serbia.

Many experienced and respected judges have also left the profession in recent years, often in search of more profitable employment as lawyers. As a result, a considerable number of judges within the judiciary are young and inexperienced in conducting judicial proceedings. This phenomenon, combined with intense public criticism of the judiciary, has undermined the status and authority of judges in the courtroom and their effectiveness in administering justice.

The establishment of the Judges Association of Serbia and the Judicial Center for Professional Education and Advanced Training (JTC) has improved the judiciary's institutional independence and its effectiveness. If these organizations are able to work in cooperation with the Ministry of Justice, which is authorized to oversee the organization of the judiciary and the operation of the courts, they will increase the likelihood that the judiciary will eventually function in a manner appropriate to a democratic society.

In an effort to facilitate cooperation in the area of judicial reform, the government of Serbia created an expert advisory group in January 2002, the Council for the Reform of the Judiciary. It is comprised of judges, prosecutors, and legal scholars, as well as representatives of the Ministry of Justice, National Assembly, non-governmental organizations, and the international community. The Council for Reform of the Judiciary has met on various occasions and adopted a Strategy for Judicial Reform but this project has yet to produce any concrete results, partially due to political infighting and an unresolved electoral process that has stalled most reform oriented efforts in Serbia.

The High Judicial Council and the High Personnel Council were established in accordance with the November 2001 package of laws on the judiciary to promote judicial reform, increase its efficiency, and improve the integrity of judges. The High Judicial Council is an independent expert body presently comprised of the Minister of Justice, Supreme Court President, State Public Prosecutor, six judges appointed by the Supreme Court, an appointee of the Bar Association of Serbia, and one member appointed by the National Assembly. In addition to submitting proposals to the National Assembly on judicial salaries, the HJC identifies and nominates candidates for judicial appointments. Many of its functions were limited in 2002 and 2003. In April 2003, its role in the appointment of prosecutors, for example, was curtailed completely. The High Personnel Council is a body comprised of nine judges of the Supreme Court. It is responsible for determining whether a judge should be removed from public office by the National Assembly for illegal, improper or unprofessional conduct. Like the High Judicial Council, the membership and competencies of the High Personnel Council have also been changed pursuant to amendments to the November 2001 package of laws on the judiciary.

Structure of the Courts

According to the Law on the Organization of Courts, the court system of Serbia is divided into courts of general jurisdiction and specialized courts. Courts of general jurisdiction include the Supreme Court, courts of appeal (which have not been constituted), and municipal and district courts. Specialized courts include the commercial courts and the yet to be constituted Administrative Court. Special court panels for investigating and prosecuting war crimes and organized crime have been established within the Belgrade District Court. In addition, a Constitutional Court hears and decides matters that involve the constitutionality of laws, regulations, and official acts.

The **Supreme Court** is the highest court of general jurisdiction in Serbia. As such, it functions to provide for the uniform application of law by courts of law. The Supreme Court may hear and decide cases on appeal from decisions of the High Commercial Court in addition to the courts of appeal and the Administrative Court once these particular courts are constituted and begin hearing and deciding cases. The Supreme Court may also issue advisory opinions on draft laws, but only in matters involving the judiciary. Its legal basis is provided for in the 1990 Constitution and several of the laws on the judiciary originally passed in November 2001. There is no separate law regulating the Supreme Court in Serbia. However, the Supreme Court does have its own rules of procedure. Currently, the Supreme Court is comprised of more than sixty judges. They normally sit and hear cases in five-member panels on criminal, civil, and administrative affairs. A panel of nine Supreme Court judges may review decisions of these five-member panels.

A new appellate structure organized around the **courts of appeal** was scheduled by law to begin working and hearing cases on appeal in 2002. However, the establishment of this new appellate court structure has been postponed on several occasions by legislative amendments. On 29 December 2004, the Constitutional Court was forced to postpone the most recent date by which the courts were to become operational. Given the current political situation in Serbia, it is virtually certain that judges will not be appointed to these courts until sometime well after 2004. Once constituted, however, the courts of appeal will be located in Belgrade and in the cities of Kragujevac, Nis, and Novi Sad. Decisions rendered by the district or municipal courts in the first instance will be reviewed and decided upon by one of these four appellate courts. With the establishment of the new appellate courts, the Supreme Court of Serbia will function like a court of cassation, rendering decisions on appeals on decisions issued by the appellate courts below.

There are 138 **municipal courts** and 30 **district courts** located throughout Serbia. The municipal and district courts are courts of general jurisdiction. They hear and decide cases in both civil and criminal matters. Municipal courts are exclusively courts of first instance with jurisdiction over criminal offenses punishable with up to 10 years of imprisonment as prescribed by law and civil matters of lesser importance. District courts also exercise first instance jurisdiction but in

matters of a more serious nature. Until the new courts of appeal are constituted, district courts will continue to serve as courts of second instance and hear appeals from municipal court decisions. Decisions of municipal and district courts may be appealed to the appellate courts once these courts are constituted. As courts of first instance, both the municipal and district courts often serve as the primary means by which most citizens of Serbia access the judicial system to protect their rights and receive a remedy in the event these rights have been infringed upon. More than 2,000 judges and 8,000 other personnel staff these courts.

The **Administrative Court**, located in Belgrade, will exercise first instance jurisdiction over administrative disputes and have the authority to review administrative acts throughout the entire territory of Serbia. It was most recently scheduled by law to begin hearing cases on 01 January 2004, but the Constitutional Court suspended implementation of the provisions on the court's establishment because the National Assembly has yet to appoint judges to this court. The Supreme Court will exercise second instance jurisdiction over decisions of the Administrative Court once this court is eventually constituted and begins functioning.

Commercial Courts of Serbia are specialized courts having jurisdiction over a wide range of commercial matters, including copyright, privatization, foreign investment, unfair competition, maritime, and other commercial activities such as bankruptcy proceedings and disputes arising out of commercial activity involving domestic and foreign entities. These courts are also responsible for the registration of commercial enterprises. There are 16 commercial courts located throughout the territory of the Republic of Serbia, and their decisions may be appealed to the High Commercial Court in Belgrade. Decisions of the High Commercial Court may be appealed to the Supreme Court. Close to 250 judges staff Serbia's commercial courts.

In July 2003, **special panels on war crimes** were established within the Serbian court system, several years following the conclusion of the Balkan wars of the 1990s. Pursuant to the Law on the Organization and Competencies of Government Authorities in Prosecuting Perpetrators of War Crimes of July 2003 (Official Gazette RS, no. 67/03, 1 July 2003), these panels have jurisdiction over alleged violations of Chapter XVI of the Basic Criminal Code in addition to crimes against humanity, violations of international law, and criminal acts as defined by Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY). The Belgrade District Court war crimes panel, comprised of 9 judges and 2 assistants, exercises first instance jurisdiction over all war crimes cases tried in the Republic of Serbia. For the time being, decisions of this panel may be appealed to the Serbian Supreme Court. When the new courts of appeal are constituted, second instance jurisdiction will be transferred to the Belgrade appellate court. The Office of the War Crimes Prosecutor, also established by the new law, issued its first indictments on 04 December 2003. Together, the special panels and the War Crimes Prosecutor will take the lead in the investigation and domestic prosecution of alleged war criminals in Serbia.

Special panels on organized crime have also been established pursuant to the Law on Organization and Competencies of Government Authorities in Suppression of Organized Crime of July 2002 (Official Gazette RS, no. 42/02, of 19 July 2002), as amended in March 2003 (Official Gazette RS, no. 27/03, 39/03, 67/03, of 19 March, 11 April, and 1 July 2003). They exercise jurisdiction over offenses involving criminal conspiracies such as money laundering, human trafficking, and extortion as well as illicit trade in arms, ammunition, and explosive substances. The special panels on organized crime also have jurisdiction over cases related to the assassination of the Serbian prime minister. The Belgrade District Court's special panel on organized crime exercises first instance jurisdiction in all these matters. It is comprised of 9 judges, working with 3 assistants, who will hear cases in panels of three. Decisions of this first instance special panel may be appealed to the appellate court in Belgrade, once that body is constituted. In the meantime, the Supreme Court will exercise second instance jurisdiction. In addition to the special panels, a special prosecutor's office and a special branch within the interior ministry have also been created in an effort to combat organized crime.

The **Constitutional Court** of Serbia determines whether laws, regulations, and other normative acts promulgated by state bodies of the Republic of Serbia are in conformity with the Serbian Constitution. It may also resolve conflicts involving jurisdictions between courts and state bodies. The Constitutional Court also has jurisdiction to decide matters involving the status and operation of political parties and organizations as well as certain election-related disputes. Proceedings may be initiated by state authorities, individuals, or by the court itself. Nine justices, appointed by the National Assembly, sit on the Constitutional Court.

At the newly reconstituted federal level, the **Court of Serbia and Montenegro**, located in Podgorica, exercises jurisdiction over disputes between the two member states of the Union of Serbia and Montenegro as well as over disputes between federal institutions and one or both of the Union's member states. Similarly, disputes over the competencies of institutions of the Union of Serbia and Montenegro fall within the jurisdiction of the Court. The Court may also determine whether the constitutions and laws of the two member states conform to that of the Constitutional Charter and the laws of the Union of Serbia and Montenegro. In addition, citizens whose rights under the Constitutional Charter have allegedly been violated may have their case decided upon by the Court. The Court of Serbia and Montenegro is comprised of 8 judges, with equal numbers of judges from both member states. The Union Assembly appoints these judges for a single term of office lasting six years. The Law on the Court of Serbia and Montenegro was published in the Official Gazette of Serbia and Montenegro on 19 June 2003. However, judges for the Court have not yet been appointed.

With the dissolution of the Federal Republic of Yugoslavia in February 2003, the Federal Constitutional Court, the Federal Court, the Federal Prosecutor's Office, and the federal military courts ceased to function. Jurisdiction over cases before these courts at the federal level at that time shall be transferred to the courts of either Serbia or Montenegro.

Conditions of Service

Qualifications

All judges must have formal university legal training. However, there is still no requirement that new judges have practiced before tribunals before taking the bench, nor are they required to take any specific courses in preparation for becoming a judge. New municipal court judges must have obtained two years of experience in the legal profession following the bar examination. Many of these judges satisfy this two-year requirement as a court apprentice or intern and then complete at least another two years as court assistants before assuming their official functions. Judges at higher courts are required to have between four and twelve years of post-bar exam legal experience to qualify for appointment. Judges may not hold either legislative or executive office, serve as a member of a political party, or engage in any other form of compensated employment, including paid legal services.

Appointment and Tenure

Judges are formally appointed by the National Assembly of Serbia upon receiving nominations of the High Judicial Council. If the proposed candidate is rejected by the National Assembly, the High Judicial Council shall propose another candidate. All judges in Serbia are appointed for life, but face mandatory retirement at the age of sixty-five or after forty years of service as a judge.

Court presidents are appointed and dismissed by the National Assembly on the recommendation of the Council for Questions of Judicial Administration, a body comprised of the Minister of Justice, President of the Supreme Court, four judges appointed by the National Assembly of Serbia, and the Chair of the Judiciary Committee of the National Assembly.

Training

Although there is no mandatory requirement that judges participate in continuing legal education, there is considerable emphasis being placed on training for Serbian judges. Most newly appointed judges have participated in trainings organized and conducted by the Judicial Center for the Professional Education and Advanced Training (JTC), a joint initiative of the Ministry of Justice and the Judges Association. These trainings are aimed at improving the practical skills required of a judge, such as conducting a hearing and examining witnesses. There are also a number trainings being offered in judicial ethics, commercial law, and international human rights law, especially the European Convention on Human Rights (ECHR). As a relatively new institution, the JTC faces considerable challenges in securing adequate funding and lacks sufficient staff and resources necessary to service the more than 15,000 legal professionals as well as court employees and support staff that are eligible to receive training.

Serbia JRI 2003 Update Analysis

This 2003 Update to ABA/CEELI's Judicial Reform Index for Serbia assesses specific aspects of the Serbian judiciary in light of significant developments that have occurred in Serbia since completion of the February 2002 JRI. It does not focus on all thirty JRI factors. Instead, the Serbia JRI Update has limited the scope of its inquiry to those factors most affected by the following significant developments:

- Formal opening of the Judicial Center for Professional Education and Advanced Training (JTC) in September 2002 and the subsequent trainings of judges from throughout Serbia;
- Establishment of the Council for Reform of the Judiciary and the adoption of the Strategy on Judicial Reform in October 2002;
- Adoption of amendments to the November 2001 package of laws in July 2002 and March 2003 effecting the appointment and dismissal of judges and other matters related to the independence and operation of the judiciary;
- Imposition of the state of emergency following the March 2003 assassination of Serbian prime minister and the launch of Operation Sabre aimed at combating organized crime;
- Dismissal of several dozen judges using legal and extra-legal means and the resignation of the President of the Supreme Court of Serbia in March 2003; and
- Increased scrutiny of judges and criticism of the judiciary by public officials through the mass media in addition to the *ad hoc* lustration of the judiciary following the October 2000 ouster of Slobodan Milosevic.

As these developments suggest, the path toward achieving judicial independence and a well functioning judiciary in Serbia has been beset by challenges and some discord. Agreement on a coherent and comprehensive strategy for judicial reform remains elusive. However, judicial reform remains an important concern of the Ministry of Justice and the judiciary itself. Both share many of the same goals, such as improving judicial efficiency and enhancing the competency of judges. Cooperation in the area of judicial education, evidenced by the establishment of the judicial training center, is one of the bright spots in the relationship.

The judiciary and the Ministry of Justice have clashed over changes in the process of appointing and dismissing members of the judiciary and other changes to the legal framework regulating the judiciary. Amendments to the November 2001 package of laws were initiated by the Ministry of Justice without disclosure or meaningful discussion with the judiciary. These amendments are widely viewed as an attempt to reassert executive authority over the judiciary and erode the judiciary's hard won gains in the area of judicial independence in the post-Milosevic era. Tensions also exist over the growing backlog of cases and length of proceedings, phenomena that can be partially attributed to the lack of material resources allocated to the judiciary.

Finally, it should be noted that because efforts to resolve Kosovo's final status have yet to produce a solution acceptable to all sides, the Kosovo judiciary is not a subject of this assessment. ABA/CEELI completed a separate JRI assessment for Kosovo in 2002. Similarly, the Update to the Serbia JRI will not address, in any considerable detail, the establishment of a Court of Serbia and Montenegro or other institutions of the Union of Serbia and Montenegro.

Table of JRI Factor Correlations

The Table of JRI Factor Correlations presented below identifies the 14 factor statements and factor correlations that make up the Serbia JRI 2003 Update. In addition to those from the 2003 Update, factor correlations from the 2002 JRI along with trend indicators are also provided for purposes of comparing the results of the two assessment inquiries.

ABA/CEELI would like to underscore that the factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Judicial Reform Index Factor		Correlation 2002	Correlation 2003	Trend
I. Quality, Education, and Diversity				
Factor 1	Judicial Qualification and Preparation	Negative	N/A	
Factor 2	Selection/Appointment Process	Neutral	Negative	↓
Factor 3	Continuing Legal Education	Negative	Neutral	↑
Factor 4	Minority and Gender Representation	Neutral	N/A	
II. Judicial Powers				
Factor 5	Judicial Review of Legislation	Negative	Neutral	↑
Factor 6	Judicial Oversight of Administrative Practice	Neutral	Negative	↓
Factor 7	Judicial Jurisdiction over Civil Liberties	Negative	Neutral	↑
Factor 8	System of Appellate Review	Positive	Neutral	↓
Factor 9	Contempt/Subpoena/Enforcement	Negative	N/A	
III. Financial Resources				
Factor 10	Budgetary Input	Negative	N/A	
Factor 11	Adequacy of Judicial Salaries	Negative	N/A	
Factor 12	Judicial Buildings	Negative	N/A	
Factor 13	Judicial Security	Neutral	N/A	
IV. Structural Safeguards				
Factor 14	Guaranteed Tenure	Positive	Neutral	↓
Factor 15	Objective Judicial Advancement Criteria	Neutral	Negative	↓
Factor 16	Judicial Immunity for Official Actions	Neutral	Negative	↓
Factor 17	Removal and Discipline of Judges	Neutral	Negative	↓
Factor 18	Case Assignment	Neutral	N/A	
Factor 19	Judicial Associations	Positive	Positive	↔
V. Accountability and Transparency				
Factor 20	Judicial Decisions and Improper Influence	Neutral	Neutral	↔
Factor 21	Code of Ethics	Negative	Neutral	↑
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Neutral	N/A	
Factor 24	Publication of Judicial Decisions	Negative	N/A	
Factor 25	Maintenance of Trial Records	Negative	N/A	
VI. Efficiency				
Factor 26	Court Support Staff	Neutral	N/A	
Factor 27	Judicial Positions	Neutral	N/A	
Factor 28	Case Filing and Tracking Systems	Negative	N/A	
Factor 29	Computers and Office Equipment	Negative	N/A	
Factor 30	Distribution and Indexing of Current Law	Negative	N/A	

N/A-Not Assessed in 2003

I. Quality, Education, and Diversity

Factor 2: Selection/Appointment Process

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

Conclusion	Correlation: Negative	Trend: ↓
<p>Amendments to the package of laws on the judiciary changed the role of the judiciary in appointing judges and court presidents by increasing the role of executive and legislative bodies in the appointment process. Criteria for the appointment of judges do exist, but they have not been adequately defined or consistently relied upon.</p>		

Analysis/Background:

The judicial appointment process set forth in the November 2001 package of laws on the judiciary has undergone changes following legislative amendments adopted in 2002 and 2003 (Official Gazette RS, no. 42/02, 19 July 2002, and no. 17/03, 27/03, 19 March 2003). Currently, judges are formally appointed by the National Assembly upon receiving nominations of the High Judicial Council. LAW ON THE HIGH JUDICIAL COUNCIL, arts. 1 and LAW ON JUDGES, art. 46; CONSTITUTION, art. 73(10). If the proposed candidate is rejected by the National Assembly, the High Judicial Council shall propose another candidate for consideration. LAW ON JUDGES, art. 46. Court presidents are appointed by the National Assembly on the recommendation of the Council for Questions of Judicial Administration, a body comprised of the Minister of Justice, President of the Supreme Court, four judges appointed by the National Assembly of Serbia, and the Chair of the Judiciary Committee of the National Assembly. *Id.*, art. 70.

Many of the changes made in the judicial appointment process over the past two years involve the role of the High Judicial Council (HJC) in nominating candidates for appointment. The HJC was established in January 2002 as an expert body dedicated to promoting judicial reform and guaranteeing judicial independence. It was also established to de-politicize the judicial appointment process. For this reason, the High Judicial Council originally enjoyed exclusive authority to nominate judges, court presidents, and prosecutors for appointment by the National Assembly. However, subsequent amendments to the package of laws transferred authority for the appointment of court presidents and prosecutors to bodies of the legislative and executive branches of government.

The Law on Judges, enacted in November 2001, provided that court presidents and judges would both be appointed by the National Assembly upon the nomination of the High Judicial Council. Following amendments to this law in March 2003, authority for proposing the appointment and dismissal of court presidents is now vested in the Council for Questions of Judicial Administration, the newly established advisory body of the National Assembly. Similarly, pursuant to amendments to the Law on Public Prosecutors adopted in July 2002 and April 2003 (Official Gazette RS, no. 42/02, 19 July 2002; and no. 39/03, 11 April 2003), the HJC no longer plays any role in the appointment of prosecutors. The Ministry of Justice and the government now nominate deputy prosecutors and public prosecutors respectively.

The National Assembly still appoints judges that are nominated by the HJC, but this procedure was changed somewhat in July 2002 and then again in March 2003. The July 2002 amendment allowed the National Assembly to reject nominees of the HJC and then proceed to appoint a

candidate proposed by a committee of the National Assembly. This provision was ultimately struck down by the Constitutional Court in February 2003 on the grounds that the limitation of the HJC’s role in the appointment process infringed on the principles of separation of powers and judicial independence as established by the Serbian Constitution (See Factor 8 on System of Appellate Review). In March 2003, the law was subsequently amended to allow the HJC to present additional nominees if those originally proposed are rejected by the National Assembly.

The High Judicial Council still nominates candidates on the basis of the same two criteria established by the law in 2001: “professional ability and worthiness.” LAW ON JUDGES, art. 45. However, it is unclear to what extent the National Assembly considers these criteria or debates the abilities of individual nominees in making its decisions to accept or reject judicial nominations made by the High Judicial Council.

Although most respondents indicated that the advent of the High Judicial Council has introduced more objectivity into the judicial appointment process, there remains some concern that political considerations and loyalties still play an important role in the appointment of judges, especially in the selection of court presidents.

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: ↑
<p>Continuing legal education is not mandatory but the establishment of a judicial training center has brought about increased emphasis on the importance of requiring judges to undergo practical skills-based training, especially those judges who have recently entered the profession. There is considerable interest and participation in trainings on substantive and procedural areas of domestic law and international human rights law.</p>		

Analysis/Background:

Until the founding of the Judicial Center for Professional Education and Advanced Training (JTC), pursuant to the December 2001 agreement between the Judges Association of Serbia and the Government of Serbia represented by the Ministry of Justice, Serbia lacked a specialized body responsible for developing and conducting continuing legal education programs for judges, prosecutors, and other legal professionals. Prior to this event, the Judges Association of Serbia played an important role in sponsoring and organizing periodic trainings for judges but this responsibility has been subsequently transferred to the JTC. Similarly, the JTC is now considered the competent authority for accrediting all legal trainings and educational programs conducted by non-governmental organizations and international organizations in Serbia, although its Program Council has yet to formalize and adopt any accreditation criteria.

Since the JTC began operating from its Belgrade headquarters in September 2002, and later from its branch office in Nis, it has conducted more than 130 seminars, trainings, roundtables or similar events on both substantive and procedural aspects of civil, criminal, and commercial law. The JTC has organized trainings to improve court administration, case management techniques, and knowledge of computers and foreign languages. Trainings in judicial ethics, international law and human rights, including the European Convention on Human Rights, and specialized areas of

law such as intellectual property, environmental law, and health law are also conducted on a periodic basis.

The work of the JTC is complemented by a variety of non-governmental organizations, international organizations, and international donors, which continue to sponsor and organize seminars and workshops for judges. However, it is unclear to what extent these *ad hoc* trainings have been evaluated and approved by the JTC.

Many JTC trainings are conducted off-site and involve the participation of groups of judges from different courts from throughout Serbia, rather than groups of judges from the same court. Lecture-based formats are common but trainings are becoming increasingly interactive in order to facilitate discussion and the sharing of expertise among judges themselves. The use of case studies and courtroom simulations are also being emphasized more. Despite these innovations and attempts to refine training techniques, standardized curricula have not yet been developed. Similarly, trainers, many of whom are drawn from the judiciary itself, receive little if any guidance or supervision in the preparation of training materials and in the conduct of the trainings.

Although judges are still not required by law to undergo continuing legal education, the new code of judicial ethics, adopted by the Judges Association of Serbia in October 2003, provides that a member of the JAS “shall endeavor to constantly advance his or her professional skills...through basic and further training.” STANDARDS OF JUDICIAL ETHICS, Canon 3, Principle 1. Moreover, prior to her resignation in March 2003, the former Supreme Court President reportedly informed all court presidents that newly appointed judges, i.e. those with 1-3 years of judicial experience, should participate in continuing legal education programs aimed at developing the basic skills required of a judge such as conducting a hearing, examining witnesses, and drafting a verdict. The JTC Managing Board now notifies court presidents of these types of trainings and calls upon them to encourage the participation of newly appointed judges working in their courts. Court presidents are reportedly disseminating the notice. The JTC claims to have trained most new judges in Serbia.

Many respondents expressed support for making continuing legal education mandatory for judges, particularly for the newly appointed judges. In addition, virtually all respondents from the judiciary have participated in roundtables, seminars, or workshops aimed at improving their knowledge and professional skills within the past two years. However, despite this increased emphasis on continuing legal education and the establishment of the judicial training center, it is still too early to determine if there has been any real improvement in the performance of judges.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

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

Conclusion	Correlation: Neutral	Trend: ↑
<p>After a period inactivity, the Constitutional Court of Serbia is hearing cases and issuing decisions on the constitutionality of legislation and official acts. The Court has demonstrated its independence from other branches of government by rendering decisions in several high profile matters.</p>		

Analysis/Background:

The nine-member Serbian Constitutional Court is the sole judicial organ competent to review and determine whether laws, regulations, and other normative acts promulgated by state bodies of the Republic of Serbia are in conformity with the Serbian Constitution of 1990. CONSTITUTION, art. 125. Neither the courts of general jurisdiction nor the so-called specialized courts are authorized to review the constitutionality of legislation or the legality of official acts. This function is solely that of the Constitutional Court.

Anyone, including private individuals, public authorities, and state agencies, may petition the Court to commence judicial review proceedings. These proceedings may be initiated by the Constitutional Court and the Supreme Court of Serbia as well. *Id.*, art. 128.

For much of 2001 and 2002, the Constitutional Court remained moribund, largely because it lacked an adequate number of judges to hear and decide cases. This changed on 21 June 2002 when the National Assembly appointed six new judges to the Court. These appointments followed the June 2001 reinstatement of the former court president who was previously sacked by the Milosevic regime. Currently, most of the judges on the Constitutional Court are well-known and respected by the legal profession, but several respondents suggested that some judges may have been appointed for reasons other than their legal knowledge and professional experience.

With a full complement of judges, the Constitutional Court is once again hearing cases and is in the process of rehabilitating itself as a credible and independent institution supporting the rule of law in Serbia. For instance, on 19 September 2002, the Court issued an interlocutory decision suspending implementation of five provisions of the July 2002 amendments to the Law on Judges, which regulates the appointment and dismissal of judges and court presidents (Decision no. 122/02, Official Gazette RS, no. 60/02, 25 September 2002). Subsequently, in its final decision of 11 February 2002, the Court found these five provisions amounted to an unconstitutional limitation of judicial powers (Decision no. 122/02, Official Gazette RS, no. 17/03, as amended 25/03, 27 February 2003). In February 2003, the Court also found that a provision preventing court presidents from hearing and deciding cases was unconstitutional as well. Several months later, on 05 June 2003, the Court suspended several amendments to the Law on Organization and Jurisdiction of State Organs in Fighting Organized Crime, which allowed the Ministry of Interior to detain individuals for up to 90 days without authorization of the judiciary.

In yet another high profile matter, in May 2003, the Constitutional Court ruled that a provision of the election law used by the Administrative Committee of the National Assembly to strip Democratic Party of Serbia (DSS) deputies of their parliamentary mandates was unconstitutional (Decision no. 197/02, Official Gazette RS, no. 57/03, 30 May 2003). The Administrative Committee, however, failed to implement the Court's order to return the mandates to the deputies within six months.

Most recently, on 29 December 2003, the Constitutional Court suspended provisions of the Law on the Organization of Courts, which established a 01 January 2004 deadline for the establishment of the new Administrative Court and appellate court structure. (Decision no. 480/03, Official Gazette RS, 130/03, 29 December 2003).

The Court is considering a petition filed by the Humanitarian Law Center in November 2003 that challenges the constitutionality of Article 70 of the Law on Judges. This provision establishes the Council for Questions of Judicial Administration and vests this body with authority to appoint and dismiss court presidents. (See Factor 15 on Objective Judicial Advancement Criteria). The Court is expected to rule on this issue sometime in the first half of 2004.

Public statements made by Constitutional Court judges, including Court President Slobodan Vucetic, on a variety of issues have also raised the profile of the Court as the final arbiter on

constitutional-related matters. These include statements on the constitutional implications of a possible referendum on Serbian independence, the election of the Governor of the National Bank, and limitations on civil and political rights that occurred during the state of emergency.

With the dissolution of the Federal Republic of Yugoslavia, the Federal Constitutional Court ceased to function. In its place, the yet to be constituted Court of Serbia and Montenegro will determine whether the constitutions and laws of the two member states conform to that of the Constitutional Charter and the laws of the Union of Serbia and Montenegro. CONSTITUTIONAL CHARTER OF THE UNION OF SERBIA MONTENEGRO, art. 46.

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.

<i>Conclusion</i>	<i>Correlation: Negative</i>	<i>Trend: ↓</i>
In addition to the continuation of delays in some administrative proceedings, the new Administrative Court of Serbia has not yet been constituted as required by law.		

Analysis/Background:

The judiciary is authorized by law to review administrative decisions and compel government agencies to act. LAW ON ADMINISTRATIVE DISPUTES, art. 4, 17 (Official Gazette RS, no. 46/96, 4 October 1996). First instance jurisdiction over administrative disputes is currently exercised by district courts and the Supreme Court’s administrative law department. However, the Law on the Organization of Courts of November 2001 provides for the eventual establishment of a specialized Administrative Court. LAW ON THE ORGANIZATION OF COURTS, arts. 10. This court, located in Belgrade, will exercise exclusive, first instance jurisdiction over all administrative disputes arising throughout Serbia. Decisions of the Administrative Court may be appealed to the Supreme Court, which will exercise second instance jurisdiction in a limited number of cases set forth by law.

Introduction of the Administrative Court has been beset by government inaction, delays, and missed deadlines similar to the failed attempts to establish the new appellate court system (See Factor 8 on System for Appellate Review). Although originally required by law to be constituted and ready to begin hearing and deciding cases by October 2002, the Administrative Court currently exists only on paper. This deadline was postponed on several occasions by amendments to the package of laws on the judiciary in July 2002 and March 2003 (Official Gazette RS, no. 42/02, 19 July 2002, and Official Gazette RS, no. 27/03, 19 March 2003) and most recently by a decision of the Constitutional Court on 29 December 2003.

At the present time, no judges have been appointed to the new court. Similarly, no facilities or other resources have been earmarked for the Administrative Court so it may begin functioning anytime in the near future. At this time, it remains unclear if the competent authorities have either the capacity, resources, or the political will to move forward with the establishment of the Administrative Court.

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: ↑
<p>Courts exercise jurisdiction over cases involving alleged violations of civil rights and liberties, and many judges participate in trainings on international human rights law, including the European Convention on Human Rights. However, the court system is not yet a reliable mechanism people look to in order to protect their civil rights and liberties.</p>		

Analysis/Background:

The 1990 Constitution of Serbia contains 59 articles identifying various freedoms and rights of citizens extended to citizens and individuals in Serbia. These rights and freedoms include both civil and political rights such as the right to life, liberty, political participation, and expression. The Constitution also guarantees the right to legal counsel and protects individuals from torture and degrading treatment. Responsibility for protecting these rights and freedoms is vested in the Serbian judiciary and court system, which exercises jurisdiction over alleged violations of civil rights and liberties protected by law. CONSTITUTION, arts. 12 and 95.

Although the judiciary did not play much of a role in the promotion and protection of civil rights during the Milosevic era, some human rights activists, non-governmental organizations, and lawyers did rely on the courts for obtaining legal remedies in response to rights violations. These cases were largely limited to protecting the rights of vulnerable segments of the population, such as internally displaced persons and refugees from the Balkan wars of the 1990s and Serbia's Roma population. Notably, a few judicial decisions during this period were reportedly influenced by reference to international agreements ratified by the former Federal Republic of Yugoslavia.

Since the ouster of the Milosevic regime, there has been gradual improvement in respect for civil rights and liberties in Serbia. It is likely that Serbian courts will play a greater role in human rights protection following the Union of Serbia and Montenegro's accession to the Council of Europe on 03 April 2003 and the subsequent ratification of the European Convention on Human Rights (ECHR) on 28 December 2003 (Official Gazette SM – International Treaties, no. 9/03, 26 December 2003). Provisions of the ECHR are now directly applicable within the Serbian legal system and may be used to influence and decide court cases. Moreover, increased emphasis on international human rights law and participation by judges in trainings on the ECHR suggest that members of the judiciary will be more attuned to the human rights dimension of many cases that come before them. (See Factor 3 on Continuing Legal Education.) However, many judges still do not view courts as institutions responsible for the protection and promotion of human rights.

The establishment of special panels to try alleged war crimes and violations of international human rights law during armed conflicts in the former Yugoslavia also suggests that the judiciary has the potential to play a more significant role in the promotion and protection of fundamental rights and liberties in a post-Milosevic Serbia. International financial support, technical assistance, and training has played an important part in revitalized efforts to conduct domestic war crimes trials in Serbia.

Factor 8: System of Appellate Review

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

Conclusion	Correlation: Neutral	Trend: ↓
<p>Judicial decisions may only be reversed through the appellate process. Executive and legislative authorities have repeatedly failed to take the steps necessary to constitute four new appellate courts, as set forth in law.</p>		

Analysis/Background:

It remains well established that judicial decisions may only be reviewed and reversed by a court through an appellate process set forth by law. LAW ON ORGANIZATION OF COURTS, art. 3. This fundamental principle of law and justice is widely recognized by legal professionals and applied in practice throughout the Serbian judicial system. However, recent efforts to reform the appellate process have on several occasions resulted in considerable confusion and uncertainty among judges as well as lawyers and individuals seeking protection of the courts.

The Law on the Organization of Courts, adopted in November 2001 as part of the so-called package of laws on the judiciary, provides for the establishment of a new appellate court structure based on four courts of appeals located in Belgrade, Kragujevac, Nis, and Novi Sad. LAW ON THE ORGANIZATION OF COURTS, art. 12. These new appellate courts will exercise second instance jurisdiction over decisions of municipal and district courts that fall within their territorial jurisdictions. They may also hear and resolve jurisdictional disputes between municipal and district courts. *Id.*, art. 23; LAW ON SEAT AND TERRITORIAL JURISDICTION OF COURTS AND PUBLIC PROSECUTOR'S OFFICES, art. 6 (Official Gazette RS, no. 42/02, 19 July 2002). Once established, these courts will likely alleviate the caseload of the Supreme Court and transform its role into something more like a court of cassation. The introduction of the new appellate structure may have the effect of unifying case law in Serbia, but its actual impact remains to be seen.

The original October 2002 deadline for the establishment of this new appellate court structure passed without any action by the National Assembly or the Government of Serbia to secure buildings for these courts or appoint the required number of judges and other court personnel. The National Assembly amended the law in order to postpone the deadline until 01 March 2003, but this deadline also passed without sufficient action on the part of executive or legislative authorities, due in part to a scarcity of funds and resources following the establishment of the special court panels on organized crime and war crimes. More than two weeks transpired before the National Assembly retroactively postponed the date by amending the law on 19 March 2003. During this interim period, judges were unsure how to proceed with cases that no longer fell within their jurisdiction according to law. Therefore, many proceedings, including those involving criminal detentions, were frozen until the legal basis for appellate proceedings was reestablished by the March amendments. These amendments also set a new date, 01 January 2004, for the establishment of the courts of appeal.

The failure of the National Assembly to appoint judges to these new courts or postpone their establishment before dissolving in November 2003, prior to the December parliamentary elections, threatened to throw the appellate system into chaos once again. Without a parliament in place to amend the law, another deadline loomed and uncertainty among judges and legal professionals increased yet again. On 29 December 2003, the Constitutional Court sought to fill this impending legal gap by issuing a decision to suspend the provision setting forth the statutory date by which the new appellate court structure must be established. The required legislative action will not be forthcoming until the new National Assembly elected in December 2003

convenes and begins drafting and adopting new laws. In the meantime, the existing appellate procedure established by the 1991 Law on Courts (Official Gazette RS, no. 46/91, as amended) continues to function on the basis of the decision of the Constitutional Court.

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: Neutral	Trend: ↓
All judges are appointed for lifetime terms of office that expire at age 65 or after 40 years of service. The dismissal of 35 judges by the National Assembly during the state of emergency came without any input from the High Personnel Council.		

Analysis/Background:

Judges enjoy lifetime tenure but must retire upon reaching 65 years of age or after 40 years of service. CONSTITUTION, arts. 101, 126; LAW ON JUDGES, art. 52. Article 101 of the Constitution of Serbia provides that the Supreme Court shall establish, in accordance with law, whether grounds exist for termination of a judge's tenure and then inform the National Assembly accordingly. The High Personnel Council (HPC) of the Supreme Court is responsible for determining whether judges have reached the mandatory age of retirement or have completed 40 years of service. LAW ON JUDGES, art. 56. A decision to this effect is communicated by the Supreme Court President to the National Assembly, which may then formally decide to terminate the judge's tenure. *Id.*, arts. 60, 63

Originally, pursuant to articles 56 and 57 of the November 2001 version of the Law on Judges, procedures for the review and dismissal of judges could be initiated by the court president or presidents of higher courts. However, the July 2002 amendments extended this prerogative to the Minister of Justice. These amendments also changed the procedure for selecting HPC members by vesting the National Assembly with responsibility for selecting members upon the nomination of the High Judicial Council.

The Constitutional Court found both of these provisions to be unconstitutional in a February 2003 decision. (See Factor 5 on Judicial Review of Legislation.) Specifically, the Court ruled that giving the Minister of Justice the authority to commence review and dismissal proceedings violated Article 101 which provides the Supreme Court with exclusive authority to determine grounds for terminating judicial functions and dismissing judges. The Constitutional Court also struck down the provision allowing the National Assembly to select HPC members on the grounds that it undermined the HPC as "an independent body of judicial power."

On 19 March 2003, the National Assembly dismissed 35 judges from office, including seven Supreme Court judges, amid accusations that the judiciary had failed to take tougher measures in dealing with remnants of the former regime as well as in prosecuting organized crime. DECISION ON TERMINATION OF JUDICIAL FUNCTION OF REGULAR COURT AND SPECIALIZED COURT JUDGES, Official Gazette RS 27/2003, 19 March 2003. The National Assembly's decision to purge the judiciary came following a recommendation of the Ministry of Justice and proposal of the Judiciary Committee of the National Assembly justifying the move on the grounds that all of the judges had

reached the mandatory retirement age of 65. The High Personnel Council was not involved in these events. (See Factor 17 on Removal and Disciplining of Judges.) Following the February 2003 Constitutional Court decision, its legal basis to act in this area became uncertain, thereby allowing the Judiciary Committee to assert itself and initiate dismissal proceedings in the place of the High Personnel Council.

Several respondents suggested that the mass dismissals in March 2003 were actually aimed at removing independent minded judges from office in addition to dealing with incompetent judges and those considered to have compromised their integrity during the Milosevic regime.

One of those judges dismissed by the National Assembly, for example, helped establish the Judges Association of Serbia in 1997 and was removed from office from the Milosevic regime in 1999, only to be reappointed several years later, in 2001, by the incoming DOS majority controlled National Assembly. This judge is reportedly considered to be one of the more independent-minded members of the Serbian judiciary.

Similarly, public criticism of the judiciary and pressure by executive and legislative authorities is widely viewed as having led some very competent judges, including the President of the Supreme Court Judge Leposava Karamarkovic, to resign prior to official expiration of their terms.

The issue of guaranteed tenure is invariably linked to decisions to remove judges associated with the Milosevic regime and efforts to lustrate the judiciary. How best to approach lustration is an issue that continues to divide the Ministry of Justice and members of the judiciary. A law on lustration has been adopted but has yet to be implemented. It lists judges among those public servants who can be held accountable for human rights violations. LAW ON ACCOUNTABILITY FOR VIOLATION OF HUMAN RIGHTS, art. 10 (Official Gazette RS, no. 58/03, 61/03, 3 June 2003). While most respondents welcome the codification of criteria and procedures for lustration, there is considerable skepticism that this law will be successful. It is also considered to be several years too late to have much of a credible impact. Moreover, there is some concern that the body responsible for overseeing lustration of public servants will not have the resources or authority to function effectively.

Factor 15: Objective Judicial Advancement Criteria

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

Conclusion	Correlation: Negative	Trend: ↓
Several criteria for advancement exist, but the promotion of judges, especially the appointment of court presidents, is still influenced by political considerations, although to a lesser degree than during the Milosevic era.		

Analysis/Background:

In recommending judges for appointment and promotion by the National Assembly, the High Judicial Council is required to take several criteria into consideration, including the “professional ability and worthiness” of possible nominees. LAW ON JUDGES, art. 45. Respondents indicated that these somewhat broad criteria may be defined in practice to include the following: number of cases completed, percentage of cases affirmed on appeal, record of completing cases in timely fashion, and an extensive curriculum vitae. Representatives of the Judges Association of Serbia (JAS) suggested that the newly adopted JAS code of ethics could one day be used as a basis for

determining the eligibility of candidates but it remains to be seen if the Ministry of Justice, National Assembly, or the High Judicial Council would support such a proposal or how this would work in practice given the fact the code is only binding on JAS members. The law also establishes specific length of service requirements, ranging from 4 to 12 years, which must be satisfied before a judge may be eligible for appointment to a higher court. *Id.*, art. 41.

While virtually all respondents agreed that these criteria form the basis of decisions on judicial advancement, there is renewed concern that other considerations, such as loyalty to the government or to a particular political party, still continue to play a factor in the promotion of judges to higher courts. The appointment of the Acting Supreme Court President by presidential order in March 2003 following the resignation of Judge Leposava Karamarkovic remains a subject of controversy. It is also viewed by many individuals within the legal profession as being a prime example of a promotion driven by politics rather than objective criteria. ORDER ON SPECIAL MEASURES IN THE JUDICIARY APPLICABLE DURING THE STATE OF EMERGENCY, Paragraph 1, 21 March 2003. Moreover, this appointment departed from the regular procedure for appointing presidents of the Supreme Court. According to the Law on Judges, members of the Supreme Court shall appoint the acting Supreme Court President, as opposed to either executive or legislative authorities. LAW ON JUDGES, art. 67. Judge Sonja Brkic was elected to the Supreme Court on April 11, 2003 and appointed as President of the Court on April 22, 2003 (Official Gazette RS, no. 43/03, 22 April 2003). Repeated attempts to meet with Judge Brkic for purposes of this assessment were unsuccessful.

The process for promoting judges to the position of court presidents has also been modified since November 2001, at which time the High Judicial Council enjoyed the legal authority to propose appointment of court presidents. This authority was subsequently transferred to a committee of the National Assembly by the July 2002 amendments, a move declared unconstitutional by the Constitutional Court in a February 2003 decision. Following the adoption of additional amendments in March 2003, proposals for the appointment and dismissal of court presidents are now submitted to the National Assembly by a body that includes the Minister of Justice, Chair of the National Assembly's Judiciary Committee, President of the Supreme Court, and four judges selected by the National Assembly among its members. LAW ON JUDGES, art. 70. The composition of this body, the Council on Questions of Judicial Administration, has increased speculation that political considerations may again be playing a significant role in judicial advancement.

The Constitutional Court is considering a November 2003 petition submitted by a non-governmental organization, the Humanitarian Law Center, on the constitutionality of Article 70 and the Council on Questions of Judicial Administration. This petition reportedly contends that vesting a predominantly non-judicial body with authority to regulate judicial appointments amounts to an infringement of judicial independence and conflicts with international standards on the appointment of judges. HUMANITARIAN LAW CENTER PRESS RELEASE, 18 November 2003. Although the majority of Council members are judges, many observers note that these judges are appointed by the National Assembly without formal input by the judiciary. Several respondents suggested that the Council on Questions of Judicial Administration is aimed at influencing court presidents but acknowledged that the power and influence of court presidents has been reduced in recent years.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Negative	Trend: ↓
Judges continue to enjoy qualified immunity for actions taken while performing their official duties. Several judges were taken into custody during the state of emergency, but no criminal proceedings related to their performance as judges were ever initiated.		

Analysis/Background:

Judges may not be detained for criminal offenses committed while performing a judicial function without the consent of the National Assembly. LAW ON JUDGES, art. 5.

In addition to high-ranking law enforcement and security officials, several judges were taken into custody during Operation Sabre, an extensive police operation launched to investigate the March 2003 assassination of the Serbian prime minister and crack down on organized crime. Among those detained were two judges from the Fourth Municipal Court in Belgrade. One of these judges gained notoriety after releasing Dejan “Bugsy” Milenkovic, a suspect in an earlier attempt to assassinate the Prime Minister. Both judges were held in custody and questioned for several hours before being released. No formal charges were brought against either of these two judges but one was eventually relieved of his duties as court president.

A prominent judge from the Belgrade District Court was also arrested by police several days after the state of emergency was imposed. Following a raid of his residence that yielded several weapons and a large sum of cash, the police publicly accused the judge in a press release of receiving bribes in exchange for releasing suspects from custody, including eight murder suspects and five former officials of the Milosevic regime. Executive and legislative authorities often referred to this arrest during Operation Sabre in order to substantiate the claim that the judiciary is responsible for the expansion of organized crime. After more than two months in detention, the judge was released following a decision of the Supreme Court. However, he was never charged with an offense related to his official duties, nor was he charged for any of the alleged offenses publicly alleged by the police. The judge faces prosecution for the illegal possession of weapons, which he claims he was authorized by the police to carry for protection while serving as a judge in Kosovo.

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: Negative	Trend: ↓
A procedure for disciplining and removing judges on the basis of certain criteria does exist, but this procedure was circumvented in order to dismiss a number of judges at the outset of the state of emergency.		

Analysis/Background:

The High Personnel Council (HPC) is a body of nine judges of the Supreme Court responsible for determining whether a judge may be removed from public office by the National Assembly. LAW ON JUDGES, arts. 37, 56-62. The High Personnel Council does not have the authority to remove judges. Rather, it is responsible for determining, based on information made available to it, whether the grounds exist for the National Assembly to terminate a judge's tenure. The HPC may reprimand or suspend a judge for up to a year but may do so only in the course of a formal investigation into alleged negligence or unprofessional conduct. *Id.*, art. 58.

The following grounds for the removal of judges have been established by law: conviction of a criminal offense punishable by at least six months imprisonment; a criminal conviction making him or her unworthy of a judge's function; negligent and unprofessional performance of official duties; or permanent loss of working capacity. *Id.*, art. 54. Negligent performance may include delaying a case, ignoring statutory deadlines, continuing functions determined to be incompatible with official duties, or otherwise acting contrary to criteria prescribed by the Supreme Court. *Id.*, art. 55. A judge is deemed to have performed unprofessionally if he or she demonstrates "a lack of success" according to prescribed Supreme Court standards. *Id.* Judges may also be removed after they have reached the mandatory retirement age of 65 or have served as a judge for 40 years. *Id.*, art. 56.

The competencies and composition of the HPC have been affected by legislative amendments in 2002 and 2003. According to the original procedures set forth in the November 2001 package of laws on the judiciary, the High Personnel Council determined whether a judge has reached retirement age or whether other reasons exist for his or her removal from office. The High Personnel Council was also responsible for recommending the removal of court presidents. HPC removal proceedings could be initiated by court presidents or presidents of higher courts. The Law on Judges was amended in July 2002 to allow the Minister of Justice to initiate proceedings before the High Personnel Council. In addition, the July 2002 amendments changed the procedure for selecting its members by vesting the National Assembly with the authority to select HPC members based on the nomination of the High Judicial Council. Both of these amendments, however, were found to be unconstitutional by the Constitutional Court in February 2003. For several weeks after this ruling, a legal gap prevented the High Personnel Council from functioning.

Since March 2003, decisions on the removal of court presidents no longer involve the involvement and recommendations of the High Personnel Council. This competency was transferred to the Council on Questions of Judicial Administration, composed of the Minister of Justice, Chair of the National Assembly's Judiciary Committee, President of the Supreme Court, and four judges selected by the National Assembly. LAW ON JUDGES, art. 70. Many respondents speculated that this move was initiated to restore executive and legislative authority over court presidents. Others respondents consider the establishment of this body as an infringement on judicial powers by the legislative and executive authorities. In November 2003, the Constitutional Court received a petition of the Humanitarian Law Center that challenges the constitutionality of Article 70. (See Factor 15 on Objective Judicial Advancement Criteria.)

Changes to the procedures for the removal and disciplining of judges have come amid numerous statements by public officials emphasizing the need to remove judges compromised by their conduct during the Milosevic era. Public officials have also repeatedly called upon the judiciary to begin removing judges that lack adequate skills and competency. Where and when the judiciary has failed to take concrete measures, public authorities have taken the initiative. For instance, on 12 June 2002, the Prime Minister and Minister of Justice presented the Supreme Court President and several other court presidents with a list of 12 urgent action items, including the dismissal of 50-100 judges within 15 days. In addition, during the state of emergency, 35 judges, including seven from the Supreme Court, were dismissed by the National Assembly on the proposal of a parliamentary committee (See Factor 14 on Guaranteed Tenure.) These moves were perceived

by many respondents as a means to remove independent minded judges from office as well as a way to deal with Milosevic era holdovers that remained within the judiciary. Other respondents note that the judiciary has not taken sufficient measures to deal with its own internal shortcomings.

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: ↔
<p>The Judges Association of Serbia continues to increase its membership and is taking a more proactive role in promoting the interests of judges, advancing judicial and legal reform, and enhancing the professional integrity and competency of judges throughout Serbia.</p>		

Analysis/Background:

The Judges Association of Serbia (JAS) has increased its membership to include roughly 1800 of the estimated 2400 judges in Serbia. In addition, JAS members are now able to participate in events and receive information about significant legal developments and decisions of the JAS Managing Board from 20 JAS branch offices. These offices are located in Belgrade, Nis, and Novi Sad as well as in smaller municipalities located throughout Serbia. Although the JAS is expanding its physical presence outside of Belgrade and increasing its capacity to involve more judges in its activities, several JAS branch offices do not yet have adequate office space or resources to provide services to members.

The JAS continues to play an active role in promoting the interests of the judiciary and advancing judicial and legal reforms. It has, for instance, adopted a new code of ethics for its members (See Factor 21 on Code of Ethics) and supported the work of the Judicial Center for Professional Education and Advanced Training (See Factor 2 on Continuing Legal Education), among other activities. In May of 2002, the JAS organized two roundtables in cooperation with the Ministry of Justice, the Supreme Court, the Prosecutor's Office, and the Association of Public Prosecutors that were dedicated to discussing and drafting amendments to the November 2001 package of laws on the judiciary. Close to 200 legal professionals including judges, court presidents, and public prosecutors participated in these events. The JAS is also actively engaged in efforts to draft a new Constitution of Serbia and is preparing commentary on sections of the working draft that will reportedly stress the importance of constitutionalizing judicial independence and the status of judges.

After a somewhat extended period of service, several of the original founders of the Judges Association are stepping down from positions of leadership. In November 2003, a new JAS Managing Board president was elected. Also, many newer members are reportedly assuming positions of authority within the association. In June 2003, the JAS also adopted a strategic plan, following a series of internal discussions and seminars involving many of its members. Strengthening organizational capacity and improving management of the organization are among its goals for the future. The JAS also remains committed to improving material position of judges in Serbia and increasing the judiciary's budget.

Judges enjoy a statutory right to form associations for purposes of advancing their interests and protecting the judiciary's independence. LAW ON JUDGES, art. 7. The JAS is the only professional association of judges in Serbia at this time.

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: Neutral	Trend: ↔
<p>Although there is no such thing resembling “telephone justice” anymore, comments made by public officials in the mass media about the judiciary may be influencing the thinking and decision-making of judges in particular types of cases.</p>		

Analysis/Background:

It remains well established by law that judicial decision-making should be conducted in an environment free from external influences. The Law on the Organization of Courts, for instance, prohibits “any use of office, media, and any public appearance that may influence the courts and outcome of a court proceeding.” Other forms of influencing judges, presumably by private interests, in their decision-making are also prohibited. LAW ON THE ORGANIZATION OF COURTS, art. 6. Similarly, the Constitution clearly states that courts of law “are autonomous and independent in their work.” CONSTITUTION, art. 96.

There has been improvement since the Milosevic era when government authorities would often seek to influence the outcome of cases either by manipulating case assignments, bribery, or direct pressure on judges. Most respondents indicated that so-called “telephone justice” no longer exists in Serbia and confirmed that cases are now assigned to judges on a random basis. To the extent direct forms of pressure are applied on judges, it is thought to be more likely in commercial cases involving a government interest or perhaps someone with ties to organized crime. In rural areas, some parties reportedly may be inclined to rely on personnel and family connections to influence the outcome of a case.

In general, judges are perceived to be rendering decisions based on the facts and law, especially as political influence over the judiciary has waned and the judiciary has asserted its independence from executive and legislative branches of government since the transfer of political power in 2000. This view is one held by lawyers, prosecutors, and judges themselves. At the same time, it is also believed that some members of the judiciary may be influenced by media statements of public officials regarding specific cases as well as general issues involving performance of the judiciary, such as the imposition of tougher penalties in criminal proceedings. And, it appears from their actions that some public officials view criticism of the judiciary as a means of influencing the conduct of judges.

Recent criticism of the judiciary by public officials has centered on the failure of many judges to conclude proceedings in a timely fashion. Judges are also often criticized for low conviction rates and for issuing insufficient sentences. Senior officials have also routinely commented on the conduct of proceedings connected to the March 2003 assassination of the Serbian prime minister. Some of these statements may have had the effect of undermining the presumption of innocence of the individuals involved. Other statements by public officials may have left the public with the impression that the judiciary is linked to organized crime. (See Factor 16 on Judicial Immunity.)

In addition to public statements, government authorities have relied on other techniques to apply pressure on the judiciary. For instance, on 10 June 2002, television crews were authorized by the

Ministry of Justice to film the courtrooms and offices of the Belgrade Palace of Justice in an apparent attempt to expose lack of discipline and lax working standards among judges. Two days later, on 12 June 2002, the Prime Minister and Minister of Justice presented the Supreme Court President and several other court presidents with a list of 12 urgent action items and deadlines for their implementation. This list called upon the judiciary to take the following measures: dismissal of 50-100 judges within 15 days; commencement and finalization of proceedings against 50-100 Milosevic-era authorities within 2 months; immediate imposition of tougher penalties; immediate “radical approach” to detention; and the immediate imposition of rigorous discipline and working standards. Several print media outlets subsequently published this list.

A number of respondents, including several judges, believe that some of the public criticism of the judiciary is indeed warranted and may have forced the judiciary to address some of its own internal shortcomings, including insufficient efforts to remove Milosevic-era judges considered to be professionally incompetent or believed to have violated the law or public trust while serving as a judge.

It should be noted that public criticism and other actions taken at the expense of the judiciary are also thought to have undermined the authority of some judges in their own courtrooms. As a consequence, several respondents claim public denunciation of the judiciary has encouraged parties to a proceeding to openly criticize the presiding judge and seek to influence the judge’s decision by threatening to file a formal complaint. (See Factor 22 on Judicial Complaint Process.)

Factor 21: Code of Ethics

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

Conclusion	Correlation: Neutral	Trend: ↑
<p>The Judges Association of Serbia adopted a new, more detailed, code of ethics that is enforceable and binding on all of its members. However, the code is not binding on all Serbian judges.</p>		

Analysis/Background:

The managing board of the Judges Association of Serbia (JAS) adopted a new code of ethics at the JAS Annual Meeting of October 2003. This code replaces a more general document adopted by the JAS in 1998. The new code of ethics sets forth standards of judicial conduct in the form of six canons. These canons consist of general statements addressing the independence, impartiality, professional competence, integrity, and the commitment of judges (incompatible activities), as well as conformity to the code. Each canon is followed by three to nine detailed principles which help to better define the canon and provide specific guidance to judges in the area of professional responsibility and conduct.

Major issues such as *ex parte* communications and inappropriate political activities are expressly dealt with by the new code, something that represents an improvement over its predecessor. The code limits judges from engaging in “political activities that could compromise independence of the judge.” STANDARDS OF JUDICIAL ETHICS, Canon 2, Principle 4. In contrast, the Law on Judges imposes an outright prohibition on membership in political parties. LAW ON JUDGES, art. 27. Public pronouncements are not prohibited provided they involve issues affecting the administration of justice and the operation of courts. *Id.* In order to ensure impartiality, the code prohibits judges

from engaging in *ex parte* communications unless authorized to do so by law. *Id.*, Canon 2, Principle 6.

Conflicts of interest are not dealt with explicitly in the code other than references to favoritism and occasions for disqualification from hearing cases. *Id.*, Canon 2, Principles 7 and 8.

There is considerable enthusiasm and growing support among judges for the new judicial ethics code. However, a number of judges and other members of the legal profession are still somewhat skeptical that it will have a real effect on the behavior of judges. This is partially due to the fact that adherence to the new code, like its predecessor, remains voluntary as opposed to mandatory. In addition, the code has not yet been incorporated into law, and it applies only to members of the Judicial Association of Serbia. Therefore, the code has no bearing on the conduct of several hundred judges that are not yet members of the JAS.

The overall effect of the code on the conduct of judges may also be diminished by failure to establish an effective enforcement mechanism. Although the JAS charter provides for a Court of Honor to supervise adherence to the code, this body remains inoperative at this moment. STATUTE OF THE JUDGES ASSOCIATION OF SERBIA, art. 49. Several members have been appointed by the JAS Assembly but the Court of Honor still lacks the full complement of members. Moreover, this body has yet to adopt its rules of procedure. However, once fully constituted and operational, the Court of Honor will conduct proceedings to determine whether an ethical violation has taken place. If the Court of Honor finds a violation has occurred, it may decide to terminate the guilty party’s membership in the association. *Id.*, art. 52.

At the moment, judges may not be held legally accountable for violations of the code, but support for some form of disciplinary responsibility regulated by law continues to grow.

Trainings on judicial ethics are conducted by the Judicial Training Center throughout Serbia, with the apparent support of the Judges Association of Serbia.

It is also worth noting that the October 2002 Strategy for Judicial Reform in Serbia called for the “codification of professional ethics and the implementation of rules on ethics. STRATEGY FOR JUDICIAL REFORM IN SERBIA, at 11. The document also called for the harmonization of standards of judicial ethics in Serbia with those found elsewhere in Europe. *Id.*, at 12.

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>
All parties to a proceeding may register complaints concerning the conduct of judges in the courtroom, and many take advantage of this right in order to complain about the length of proceedings.		

Analysis/Background:

Parties and other participants in a court proceeding, such as legal counsel, may complain “when they consider the proceeding delayed, irregular, or that there is any influence on its course and outcome.” LAW ON THE ORGANIZATION OF COURTS, art. 7. Complaints about judges and judicial conduct in the courtroom are relatively commonplace.

Although most complaints are reported to involve the duration of proceedings and delays in between proceedings, many complaints are filed by participants to a proceeding in response to what they claim is the presiding judge's lack of preparedness. Other complaints accuse judges of improper conduct including rude as well as unethical behavior. There is also reportedly a rise in the number of instances involving threats by parties to a proceeding to inform the Ministry of Justice that the judge is not performing in a professional or competent manner. Some complaints are registered with court presidents in an apparent attempt to intimidate judges and influence their decisions. A number of respondents claim that aggressive or intimidating behavior on the part of the parties in the courtroom is related to declining public trust in the judiciary partially brought about by statements of senior government officials. (See Factor 20 on Judicial Decisions and Undue Influence.)

Many judges readily admit that court proceedings can suffer from protracted delays but they claim deficiencies in procedural laws favor those parties seeking a continuance or other means to have the proceeding postponed. Serbia's procedural laws also oblige the court to collect evidence and confirm its validity, something that judges assert often slows proceedings considerably without the cooperation of law enforcement authorities. Similarly, some judges claim, and other respondents confirm, that they lack the appropriate resources for processing cases and are overburdened with an excessive caseload, due largely to having been assigned cases from judges that have recently retired. According to several respondents, it is not uncommon for some judges to carry caseloads of up to 350 cases at any given time.

Although court presidents are required to consider the complaint and inform the complainant of its resolution within fifteen days, several respondents asserted that response times often exceed this time limit. When final decisions on a complaint are rendered and communicated to the complainant, they are often general in nature and do not reflect any serious consideration of the issues stated in the complaint. Moreover, it is reportedly quite rare for a judge to be removed from a case based on a complaint by one of the parties to a proceeding.

Serbia Rule of Law Chronology, November 2001—Present

08 November 2001	National Assembly of Serbia adopts package of laws regulating the judiciary, including the Law on High Judicial Council, Law on Judges, Law on Organization of Courts, and Law on Seat and Territorial Jurisdiction of Courts and Public Prosecutors' Offices.
06 December 2001	Agreement on Establishment of Judicial Training Center signed by Ministry of Justice and Judges Association of Serbia.
28 January 2002	Decision on Establishing Judicial Reform Council, RoS Official Gazette No.3/2001, 28 January 02.
20 February 2002	Amendments to Law on Court Fees, RoS Official Gazette, No. 9/2002, 26 February 2002.
14 March 2002	EU-brokered Belgrade Agreement signed by FRY president and deputy prime minister, Serbian prime minister, and Montenegrin president and prime minister.
09 April 2002	Belgrade Agreement approved by parliaments of both Serbia and Montenegro.
24 May 2002	Roundtable on discussing amendments to package of laws on judiciary convened in Belgrade by Ministry of Justice, judges and prosecutors associations, and Supreme Court.
31 May 2002	Yugoslav Assembly ratifies Belgrade Agreement.
27 May 2002	Second roundtable on amendments to package of laws on judiciary convened in Kragujevac. Ministry of Justice did not participate.
11 June 2002	Minister of Justice circulates document containing 12 action items for the judiciary to pursue including dismissal of judges.
19 July 2002	National Assembly adopts amendments to package of laws on judiciary, and adopts Law on Organization and Competencies of State Organs in Fighting Organize Crime.
19 September 2002	Constitutional Court of Serbia adopts interlocutory decision to suspend implementation of five articles of Law on Changes and Amendments to Law on Judges.
27 September 2002	Judicial Center for Professional Education and Advanced Training of Judges and Prosecutors in the Republic of Serbia (JTC) officially declared open by the Minister of Justice, President of the Judges Association of Serbia, and the UNDP Resident Representative in Serbia.
09 October 2002	Strategy for Judicial Reform in Serbia adopted by Council for the Reform of the Judiciary.
06 December 2002	Constitutional Commission of Serbia and Montenegro adopts Constitutional Charter.

- 17 January 2003 Constitutional Commission of Serbia and Montenegro adopts legislation to implement Constitutional Charter.
- 27 January 2003 National Assembly of Serbia adopts Constitutional Charter and law on its implementation.
- 04 February 2003 Yugoslav Assembly adopts Constitutional Charter, establishing the new Union of Serbia and Montenegro.
- 11 February 2003 Constitutional Court of Serbia rules that provisions of the July 2003 amendments to the Law on Judges on appointment of judges, court presidents, and members of the High Judicial Council are unconstitutional.
- 12 March 2003 Prime Minister of Serbia Zoran Djindjic assassinated; state of emergency declared by the Acting President of Serbia pursuant to Article 83.8 of Constitution and Article 1 and 5 of the Law on State of Emergency.
- 13 March 2003 Operation Sabre launched by Serbian law enforcement to investigate assassination of Serbian prime minister and determine involvement of organized crime.
- 18 March 2003 Prime Minister designate Zoran Zivkovic makes keynote address to National Assembly highlighting need to strengthen police and judiciary in order to fight organized crime.
- 19 March 2003 Additional amendments to the Law on Judges adopted by National Assembly of Serbia.
- 19 March 2003 Law on the Organization and Competencies of State Organs in Fighting Organized Crime amended by National Assembly.
- 19 March 2003 Chair of National Assembly Judiciary Committee calls for resignation of Supreme Court President Leposava Karamarkovic.
- 19 March 2003 National Assembly of Serbia dismisses 35 judges, including 7 from the Supreme Court, who had reached the mandatory retirement age.
- 20 March 2003 Supreme Court President Leposava Karamarkovic resigns.
- 21 March 2003 Acting President of Serbia issues Order on special measures within the judiciary during the state of emergency, and then moves to replace Serbian public prosecutor and the President of the Supreme Court.
- 25 March 2003 Member of National Assembly reportedly states that 76 judges named by Justice Ministry as having taken part in election fraud under Milosevic regime would be dismissed under new order, followed by those judges that displayed their incompetence, and then those that regularly failed to convict defendants.
- 03 April 2003 Serbia and Montenegro admitted to Council of Europe as 45th member.
- 11 April 2003 Law on the Organization and Competencies of State Organs in Fighting Organized Crime amended by National Assembly of Serbia.
- 11 April 2003 Law on Office of the Public Prosecutor amended by National Assembly of Serbia.

- 22 April 2003 State of emergency lifted by acting President Natasa Micić.
- 05 May 2003 Law on Accountability for Violation of Human Rights adopted by National Assembly of Serbia.
- 19 June 2003 Law on State Court of Serbia and Montenegro adopted by Assembly of Serbia and Montenegro.
- 01 July 2003 National Assembly of Serbia amends Criminal Code.
- 01 July 2003 Law on Organization and Jurisdiction of State Organs in Proceedings Conducted Against Perpetrators of War Crimes adopted by National Assembly of Serbia.
- 01 July 2003 Law on the Organization and Jurisdiction of State Organs in Fighting Organized Crime amended by National Assembly of Serbia.
- 18 November 2003 Humanitarian Law Center petitions Constitutional Court challenging the constitutionality of Article 70 of the Law on Judges.
- 22 December 2003 Trial of 36 individuals charged in connection with Djindjić assassination opens before special panel on organized crime of the Belgrade District Court.
- 26 December 2003 Assembly of Serbia and Montenegro ratify European Convention on Human Rights and the Convention for the Prevention of Torture and Inhuman or Degrading Treatment.
- 29 December 2003 Constitutional Court renders decision postponing 01 January 2004 deadline for establishment of new administrative and appellate courts.