

JUDICIAL REFORM INDEX

FOR
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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 herein may impact significantly 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 this 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 the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral." *Cf.* Cohen, *The Chinese Communist Party and 'Judicial Independence': 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a



continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

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

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.

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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-Present), directed the finalization of the JRI. Assistance in research and compilation of the JRI was provided by Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI.

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Nicholas Georgakopolous, George Katrougalos, Giovanni Longo, Kenneth Lysyk, Roy Schotland, Terry Shupe, Patricia Wald, and Markus Zimmer.



Slovakia Background

The conclusions in this report are based on interviews conducted in Slovakia during Fall 2001 and relevant documents that were reviewed at that time. To the extent that the circumstances have changed materially (such as passage of the Act on the Judicial Council or national), the analysis reflects such changes.

Legal Context

The current Slovak legal system originated in 1918 when the independent state of Czechoslovakia was created from the Austro-Hungarian Empire. All laws of the Austro-Hungarian Empire were incorporated into the legal system of the new state. Slovakia, as a part of the former Czechoslovakia, is a continental legal system based on the Roman tradition.

In 1939, under pressure from fascist Germany, Czechoslovakia was split temporarily into two parts, and pursuant to a constitutional act, the Slovak State was created. This same act provided for the creation of a legal system characterized by clericalism and authoritarianism.

In 1948, the Communists modified this framework substantially. The socialist legal order they created remained in place until 1989. Following the “Velvet Revolution,” the Constitution and other laws were amended with the aim to abolish the one-party system, promote democratic changes and basic human rights.

In 1993, Slovakia became an independent state with its own Constitution. Slovakia is a Parliamentary Republic with a unicameral National Council (Parliament). The 150 members of the Parliament are elected to four-year terms based on proportional representation. The President is the Head of State and is directly elected to a five-year term. The President executes several functions including the appointment of ministers. The President has the right to dissolve Parliament under limited circumstances and may sign or veto laws. If the President chooses to exercise his veto power, Parliament may override the veto by absolute majority. The Prime Minister is the Head of Government and is appointed and removed by the President. The country's highest court of appeals is the Supreme Court. The Constitutional Court rules on constitutional issues.

History of the Judiciary

Despite its origins with the Austro-Hungarian Empire, Slovakia did not begin to fully enjoy an independent judiciary until well after the political and economic transition of 1989. After the separation of Czechoslovakia in 1993, under the rule of former Prime Minister Meciar, many questioned the government's commitment to the rule of law and an independent judiciary, citing allegations of improper influence on the courts and civil and political rights violations. The [former] government under Prime Minister Dzurinda reorganized the judicial system, worked to develop its institutional capacity and improve the stature of the judiciary. It has also worked to strengthen the powers of the Constitutional Court.

Structure of the Courts

The basic framework for the judiciary is set forth in the Slovak Constitution, the Act on Judges and Lay Judges, the Act on Courts and Judges, the Act on the Administration of Courts, and the Act on the Judicial Council. The Civil and Criminal Procedural Codes set forth the relevant procedural laws.



The Slovak judiciary is composed of the Constitutional Court, the Supreme Court, eight regional courts and fifty-five district courts.

The Supreme, regional and district courts are courts of general jurisdiction. They adjudicate criminal cases, as well as civil and commercial disputes, and also review administrative acts. **District courts** serve only as courts of first instance. **Regional courts** have both original and appellate jurisdiction. Their original jurisdiction includes administrative review of decisions issued by regional and local authorities, as well as certain criminal, civil and commercial cases. The regional courts located in Bratislava, Banská Bystrica and Košice also hear bankruptcy cases. **The Supreme Court** has both first instance and appellate jurisdiction and is the highest court of appeal in Slovakia. Its original jurisdiction includes reviewing administrative acts, and its other responsibilities include remanding cases to trial courts for further action and issuing legal opinions to ensure the uniform and consistent application of the law in Slovakia. The court system also includes military circuit courts and a Higher Military Court.

The **Constitutional Court** determines the compatibility of laws, decrees and regulations promulgated by Ministries, State agencies and local administrative bodies with the Slovak Constitution, constitutional laws and international treaties. The Constitutional Court also considers cases in which constitutional provisions are in conflict, and it hears complaints relating to the alleged violation of basic rights and freedoms occurring under Slovak law or ensuing from international treaties. The number of Constitutional Court judges was recently increased from ten to thirteen; their term of service was extended from seven to twelve years.

Judicial councils were formed at the Supreme Court and regional court level in order to strengthen judicial self-governance. These councils provide non-binding opinions to the Minister of Justice and chief judges on the court budget, work schedules, judicial evaluation, judicial appointment and advancement, the selection of court presidents and vice-presidents, and similar matters.

Recently, a national body, the Judicial Council of the Slovak Republic (JCSR) was formed. The Act on the Judicial Council came into effect in April 2002 (it was not in force when this report was prepared). The JCSR has 18 members: the Chairman who is the President of the Supreme Court; eight members elected by judges and three by each of the President, the National Council and the Government of Slovakia. The JCSR will act as the constitutional representative of the judiciary, and its powers will include: proposing judicial candidates, determining assignment and transfer of judges, electing and removing members of disciplinary senates; coordinating the activities of councils of judges; commenting on draft regulations relating to the judiciary; and commenting on draft documents relating to the judiciary that are submitted to Government and Parliament. In addition, upon agreement with the Ministry of Justice (MOJ), the JCSR will: adopt principles for the selection, appointment, promotion and evaluation of judges; approve principles for selecting district and regional court presidents and vice presidents; approve principles of judicial ethics; and determine the content of judicial education.

Conditions of Service

Qualifications

Judges must have formal university legal training that includes relevant courses in basic substantive and procedural areas of the law. Judges must also pass a professional judicial exam or an acceptable alternative prior to taking the bench. The Minister of Justice may waive the exam requirement if the candidate has practiced law for at least twenty years. The minimum age for judicial service was recently increased from twenty-five to thirty.



Appointment and Tenure

The newly created JCSR will propose judicial candidates and determine the assignment and transfer of judges. Judges for district and regional court positions will be selected by a five-person committee based on criteria such as skills, professional knowledge, health and psychological balance.

Until recently, district and regional judges served four-year probationary terms, following which they received life tenure on recommendation of the MOJ and the Government. In July 2001, the probationary period was abolished, and all district and regional court judges are now appointed for unlimited terms by the Slovak President. A judge elected for a probationary term under the former law can, upon appropriate recommendation and the expiration of his probationary term, receive a lifetime appointment regardless of his age.

Although there is no mandatory retirement age for judges, the President may, upon appropriate recommendation, remove any judge sixty-five or older without cause.

Training

Judges are not required to participate in continuing legal education programs. Instead, they are responsible for their own professional development. Continuing education courses are offered free of charge through the MOJ, and various international organizations also offer ad hoc judicial training programs. The creation of a Judicial Training Academy is under consideration.

Assessment Team

The Slovakia JRI 2001 Analysis assessment team was led Patrick Wujcik and Miro Sarisky, and benefited in substantial part from the efforts of Harold Bonacquist, Mark Seman, Adriana Sykorcinova, Juraj Corba, and Marilyn Zelin. ABA/CEELI Washington staff members Scott Carlson, Angela Conway, and Amanda Gilman served as editors. The conclusions and analysis are based on interviews that were conducted in Slovakia during Fall 2001 and relevant documents that were reviewed at that time. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.



Slovakia JRI 2002 Analysis

The Slovakia JRI shows a judicial system in transition. Significant steps have been taken in recent years to improve procedural rules, the quality and education of judges, and structural safeguards for the judiciary. Significant programs are also underway to improve court efficiency. Positive factor correlations will likely be achieved on several court efficiency issues once such reforms are complete.

While the reform factor correlations may serve to give a sense of the relative gravity of certain issues, ABA/CEELI would underscore that these factor correlations 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 activities.

Table of Factor Correlations

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



VI. Efficiency		
Factor 26	Court Support Staff	Negative
Factor 27	Judicial Positions	Negative
Factor 28	Case Filing and Tracking Systems	Neutral
Factor 29	Computers and Office Equipment	Negative
Factor 30	Distribution and Indexing of Current Law	Negative



I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

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

Conclusion	Correlation: Positive
Formal legal education is required for all judicial candidates. Judicial candidates and judges take courses relating to basic substantive and procedural areas of the law, but they rarely receive training or coursework relating to cultural sensitivity or the role of the judge in society.	

Analysis/Background:

A Slovak citizen thirty years or older can be appointed to a district or regional court if he has a Masters degree from the law faculty of a Slovak university or has completed similar studies at a university abroad. ACT ON JUDGES AND LAY JUDGES C.L. 385/2000 § 5(1) [hereinafter, ACT ON JUDGES]. Each candidate must also pass a professional judicial exam or an acceptable alternative (e.g., the exams required to become an advocate, prosecutor, notary or commercial lawyer). *Id.* § 5(1) and (3). The Minister of Justice may waive the exam requirement if the candidate has practiced law for at least twenty years. *Id.* § 5(3).

Judges must have formal university legal training that includes relevant courses in basic substantive and procedural areas of the law. However, they are not required to practice before tribunals prior to taking the bench. In addition, several respondents indicated that judicial candidates and judges receive little, if any, training on cultural sensitivity or the role of judges in society. ABA-CEELI, Judicial Reform Index Interview, Slovakia (November 2001) [hereinafter JRI Interview].

There is no formal, systematic training for newly appointed judges. Slovakia lacks a judges' school or training academy at which judges could receive such training, although development of such a school is currently under consideration.

The minimum age for judicial service was recently increased to thirty years. ACT ON JUDGES § 5. Many respondents believe the new requirement will ensure that judicial candidates are better qualified, with greater substantive and practical skills. However, some respondents were concerned that the elevated age requirement will reduce the pool of judicial candidates because qualified individuals will elect to remain in private practice or other lucrative fields. JRI Interview.

Factor 2: Selection/Appointment Process

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

Conclusion

Correlation: Neutral

Recent legislation clarified the methodology for judicial selection, which is carried out by a five-person committee appointed by the President. Factors to be considered in judicial selection include skills, professional knowledge and health. It is too early to determine whether the new methodology will result in a selection process governed by objective criteria.

Analysis/Background:

Prior to July 1, 2001, district and regional judges were, upon the Government's proposal, elected by Parliament to serve an initial four-year probationary term. At the end of the probationary term, judges receiving the recommendation of the MOJ and Government were appointed to life terms. Respondents indicated that the related process of screening and selecting judges lacked objective criteria and transparency and was subject to political influence. In particular, it was felt that if judges had to be confirmed by the Parliament, they could be subject to undue influence. JRI Interview. In order to address these concerns, the probationary period was abolished. CONSTITUTION OF THE SLOVAK REPUBLIC 1992 amended by C.L. 135/2001 art. 145 [hereinafter CONST.].

Recent amendments to the Slovak Constitution and the adoption of the Act on Judges clarify the methodology for selecting and appointing judges, create greater transparency in the process, and reduce the likelihood of political influence. The Constitutional amendments create the JCSR, composed of eighteen members. CONST. art. 141a. The JCSR's powers include, but are not limited to, proposing judicial candidates, determining assignment and transfer of judges, and electing and removing members of disciplinary senates. *Id.* art. 141a(4). The Act on the Judicial Council, providing for the competency and powers of the Judicial Council, was adopted in April 2002, and further elaborated the JCSR's powers to include: coordinating the activities of councils of judges; commenting on draft regulations relating to the judiciary; commenting on draft documents relating to the judiciary that are submitted to Government and Parliament; and, upon agreement with the MOJ, adopting principles for the selection, appointment, promotion and evaluation of judges and court presidents, approving principles of judicial ethics and determining the content of judicial education.

An amendment to the Act on Judges abolished the probationary term for judges and provided that judges be appointed by the President upon proposal of the JCSR. The Act also provides a limited framework for selection of district and regional judges. The court president must publicly announce the selection process for each judicial vacancy. ACT ON JUDGES § 28(1)-(2). Selection is carried out by a committee composed of the president and four individuals appointed by the president. *Id.* § 29. Factors to be considered include skills, professional knowledge, health and psychological balance. *Id.* § 28(3).

Constitutional Court judges are appointed by the Slovak President for twelve-year terms from among a group of nominees approved by the Parliament of the Slovak Republic. CONST. art. 134(2). The number of Constitutional Court judges was recently increased from ten to thirteen. *Id.* art 134(1).



The president and vice president of the Supreme Court are appointed for five-year terms by the Slovak President from the pool of Supreme Court judges. CONST. art. 145(3). They may be recalled by the President for any reason stipulated in the Slovak Constitution. *Id.*

Regional and district court presidents are appointed by the MOJ and oversee the administration of their respective courts. They can be removed with or without cause at any time. See ACT ON COURTS C.L. 335/1991 amended by 185/2002 §§ 39, 50(2) [hereinafter ACT ON COURTS].

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
Judges are not required to participate in continuing legal education programs. They are instead responsible for their own professional development. Continuing education courses are offered free of charge through the MOJ, and various international organizations also offer ad hoc judicial training programs.	

Analysis/Background:

Sitting judges are not required to undergo continuing legal education courses. Once it is fully functioning, the JCSR will determine the content of judicial education. See ACT ON JUDGES § 35(2). Until then, responsibility for training rests with the MOJ's education department and the presidents of the eight regional courts, who are tasked with organizing and supervising continuing education courses offered free of charge to judges and court staff. See ACT ON JUDGES § 35; ACT ON SEATS AND CIRCUITS OF COURTS IN THE SLOVAK REPUBLIC, STATE COURT ADMINISTRATION, DISPOSITION OF COMPLAINTS AND ELECTION OF LAY JUDGES C.L. 80/1992 amended by 328/1996 §§ 12-15. [hereinafter ACT ON COURT ADMINISTRATION].

Judges have the right, but not the obligation, to attend these courses. Each individual judge is obligated to improve his or her professional knowledge and skills. ACT ON JUDGES § 30(7). Judges are entitled to paid leave to improve their knowledge and skills necessary for performing their duties. *Id.* § 36(2). To enhance their qualifications, upon written approval of their court president, judges may take paid leave to pursue specialized substantive, administrative or appellate studies, or to obtain an advanced degree. See *id.* § 37.

Many respondents expressed concern over the lack of a formal system of legal education for judges, such as a judges' school. JRI Interview. Individual judges effectively determine the nature and extent of their continuing education. Although the MOJ must make training programs available, its funding and capacity to meet this obligation are limited, and judicial respondents indicated that many of their colleagues do not avail themselves of the programs offered.

In addition to the programs offered by the MOJ, several international organizations, such as ABA/CEELI and the Open Society Fund, offer judicial training courses on an ad hoc basis. These organizations usually cooperate with the MOJ and Slovak Judges Association ("SJA") to conduct training seminars on new laws, problematic aspects of existing laws and other issues. Judges, through the SJA, are taking a more active role in planning and conducting these training



programs. Although more programs are being held, they still do not occur with sufficient frequency or reach a sufficient number of judges to constitute formal, systematic training.

Many judges believe that the creation of a judicial academy is a fundamental precondition for achieving fully independent education for current and future judges. The European Union is funding a project to establish a judicial training academy to meet the educational needs of the judiciary. As currently contemplated, the academy would be established by law, be independent of the MOJ, and be responsible for the continuing legal education of all judges.

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion	Correlation: Positive
The courts generally reflect the ethnic diversity of the country. Women are well represented in district and regional courts, as well as on the Supreme Court.	

Analysis/Background:

Under the Act on Judges, selection of judicial nominees and judges must be made without regard to the applicant's sex, race, religion, politics, social background, nationality or ethnic origin. ACT ON JUDGES § 28. At the time of this report, woman held 758 of the 1,185 posts in district and regional courts. JRI Interview. Women also held thirty of the seventy-six Supreme Court positions and one of the ten Constitutional Court positions. JRI Interview.

There are no statistics regarding the representation of ethnic and religious minorities within the pool of judicial nominees or in the judiciary. All respondents agreed, however, that ethnic and religious minorities, with the exception of the Roma community, were well represented both in the pool of nominees and in the judiciary. The lack of Roma judges and judicial candidates has been attributed to the dearth of Romas attending law schools. JRI Interview.

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: Positive
The Constitutional Court has the power to determine the constitutionality of laws and official acts, and it can suspend the effectiveness of a challenged law or act pending final determination if continued application would jeopardize basic rights and freedoms or result in substantial economic damage. The Constitutional Court's decisions are enforced.	



Analysis/Background:

The Constitutional Court determines the compatibility of laws, decrees and regulations promulgated by Ministries, State agencies and local administrative bodies with the Slovak Constitution, constitutional laws and international treaties. CONST. art. 125(1). The Constitutional Court also considers cases in which constitutional provisions are disputed. *Id.* art. 128. The Constitutional Court can suspend the effectiveness of a challenged law, regulation or decree pending final determination if its continued application could jeopardize basic rights and freedoms or could result in substantial economic damage or other irreparable harm. *Id.* art. 125(2).

If the Constitutional Court determines that the law, regulation or decree in question is incompatible with the Slovak Constitution, constitutional laws or international treaties, its effectiveness is suspended. The entity that issued the law, regulation or decree must, within six months, bring it into compliance with the Court's decision or else it becomes invalid. *Id.* art. 125(3). The Court may also adjudicate disputes over the competency of central state administration bodies, unless otherwise stipulated by law.

The Constitutional Court may initiate proceedings at the request of the Slovak President, the Government, any court, the General Prosecutor, twenty percent or more of the members of Parliament, or an individual claiming that his rights have been violated under certain Constitutional provisions. *Id.* art. 130. A decision of the Constitutional Court is binding on all bodies of public authority, which are obliged to ensure execution of the decisions without undue delay. *Id.* art. 129(7). There is no legal recourse against a ruling of the Constitutional Court. *Id.* art. 133.

Almost all respondents agreed that the Constitutional Court was appropriately utilized to determine constitutional issues, and they also agreed that the Court fulfills its mandate. Even though some respondents expressed concern that the Court's decisions were not always followed or enforced by Parliament or Government, they felt that recent amendments to the Constitution and other laws created effective enforcement mechanisms that were previously lacking. JRI Interview.

Factor 6: Judicial Oversight of Administrative Practice

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

Conclusion	Correlation: Neutral
There are no special administrative courts in Slovakia. Instead, administrative cases can be heard by any court of first instance. Although the courts have the power to review administrative acts, the ability to compel government action or compliance with an administrative act is questionable.	

Analysis/Background:

Courts generally have the power to review administrative acts, unless otherwise stipulated by law. ACT ON COURTS § 3 (c) & (d). Anyone who claims to have been deprived of his rights or freedoms by the State's administrative practice may petition the court to review the practice. CONST. art. 46(2).



There are no special administrative courts in Slovakia. Administrative cases are usually heard by regional courts, whereas the Supreme Court hears cases relating to administrative bodies. Cases involving constitutional issues that do not fall within the jurisdiction of the district, regional or Supreme Courts may be heard by the Constitutional Court. However, the Supreme Court is charged with ensuring the unified interpretation and use of laws and regulations by examining the legality of decisions and actions of state administrative bodies. See ACT ON COURTS §16(c).

The judiciary's authority to review administrative acts is clear. However, several respondents noted that its ability to compel government action or compliance with administrative acts was undermined due to gaps in the Civil Procedure Code. JRI Interview. Amendments to the civil procedure code that went into effect in January 2002 are expected to fill these gaps. See CIVIL PROCEDURE CODE C.L. 99/1963 *amended by* 501/2001 §§ 247-248 [hereinafter CIV. PRO. CODE].

Many administrative acts are exempt from judicial review in administrative proceedings, such as decisions of administrative bodies in civil and commercial matters where the body represents the state as an owner or party to a legal relationship, and decisions of administrative bodies of a preliminary, procedural or disciplinary nature. See *id.* § 248. For example, acts of a state-owned company are not subject to review because they are considered acts of a private legal entity instead of governmental administrative acts. Civil proceedings and remedies are typically available in these instances. Several respondents expressed concern that these exemptions were overbroad. JRI Interview.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

Conclusion	Correlation: Positive
The civil judiciary has exclusive, ultimate jurisdiction over cases involving civil rights and liberties of civilians. The Constitutional Court hears complaints relating to alleged violations of basic rights and freedoms, and any decision or other act found to violate basic rights or freedoms will be annulled.	

Analysis/Background:

The civil judiciary has jurisdiction over cases involving the rights and freedoms of civilians. ACT ON COURTS § 3(a). Everyone is afforded equal treatment under the law and can protect their rights and freedoms before the courts. *Id.* § 7(1).

The Constitutional Court hears complaints relating to the alleged violation of basic rights and freedoms occurring under Slovak law or ensuing from international treaties. CONST. art. 127(1). Any decision, measure or other act found to violate basic rights or freedoms will be annulled. If the violation arose due to inactivity, the Constitutional Court may order the person or entity in violation to take appropriate action. *Id.* art. 127(2).

Respondents agreed that the courts are equipped to handle cases involving civil rights and liberties, and that potential litigants have sufficient confidence in the process to bring such claims before the courts. JRI Interview.



Factor 8: System of Appellate Review

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

Conclusion	Correlation: Positive
Judicial decisions may be reversed only through the judicial appellate process. The procedures for appellate review are set forth in the appropriate procedural codes.	

Analysis/Background:

District courts serve as the courts of first instance, except as otherwise provided under the law. ACT ON COURTS § 10. Regional courts typically serve as courts of appeal, but they do serve as first instance courts in certain types of cases. *Id.* § 13(1). The Supreme Court ensures unified interpretation and use of laws by reviewing decisions of the regional and district courts. *Id.* § 16.

The procedures for appellate review are set forth in the civil procedure code. See CIV. PRO. CODE §§ 201-243. All respondents agreed that judicial decisions are only reviewed through an appropriate appellate process. JRI Interview. No one believed that non-judicial reversals occurred.

Factor 9: Contempt/Subpoena/ Enforcement

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

Conclusion	Correlation: Neutral
The judiciary has adequate contempt, subpoena and enforcement powers. Judges are willing to invoke these powers, but other government branches often fail to provide the support required to make the powers meaningful.	

Analysis/Background:

The civil and criminal procedure codes provide the courts with contempt, subpoena and enforcement powers. Judges can order the police to bring in witnesses in civil and criminal cases and can also fine witnesses who fail to appear. CIV. PRO. CODE §§ 52-53; CRIMINAL PROCEDURE CODE, C.L. 141/1961 *amended by* 182/2002 §§ 66(1), 90 & 98.

Cases are often delayed by the failure of a party, lawyer or witness to appear. Judges have, and are willing to exercise, contempt and subpoena powers, but they do not always receive the cooperation and support of other government branches in enforcing these powers. Many respondents shared anecdotes indicating that police, after a cursory effort, will discontinue any attempt to serve a subpoena. For example, police are said to discontinue attempts at service at an individual's home if the doorbell is not answered on the first ring. JRI Interview. It is believed that recent amendments to the Civil Procedure Code streamlining delivery, service and other processes will improve the effectiveness of the judiciary's contempt and subpoena powers. The changes provide that if it is not possible to deliver documents to a person at their regular address or other address known to the court, the document will be deemed delivered three days after



receipt of the returned mail, whether or not the intended recipient is aware. See CIV. PRO. CODE § 47.

Similar problems exist in enforcing judgments. Respondents indicated that although adequate powers exist, they are not necessarily effective, as enforcement can take anywhere from several days to several years depending upon the type of case. Although a system of private executors exists, it is not widely utilized, and its fees (twenty percent of the value of executed property) are considered high. JRI Interview.

III. Financial Resources

Factor 10: Budgetary Input

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

Conclusion	Correlation: Negative
The Constitutional and Supreme Courts have their own chapters in the State budget. Regional and district courts are financed through the MOJ's budget chapter. However, in practice, the judiciary's ability to influence decisions about its funding levels and expenditures is extremely limited.	

Analysis/Background:

The Constitutional Court has its own chapter in the State budget. ACT ON BUDGETARY RULES, C.L. 303/1995 *amended by* 559/2001 § 2 (1)a-2. The Supreme Court was also granted its own budget chapter in 2001. Funding for the JCSR is to be included in the Supreme Court budget. Regional and district courts are financed through the MOJ's budget chapter.

Recent amendments to the Constitution grant the JCSR the right to comment on the draft budget for the courts. CONST. art. 141a(4)(f). In practice, however, the judiciary has limited input into the budgetary process and no meaningful opportunity to influence the allocation of funds to the courts. Regional and district courts are fully dependent on the MOJ for the development of their budgets and the administration and distribution of funds. Budgets are prepared with little or no involvement of regional and district court presidents. Similarly, court presidents have limited discretion in spending. Significant spending decisions are made or must be approved by the MOJ. JRI Interview.

The MOJ controls how the funds it receives are allocated and spent by its constituent parts, including the judiciary. See Act on COURT ADMINISTRATION ACT § 12(1)b. Many respondents, however, believed that the MOJ's power to influence the budgetary process is limited, and that power over the state budget and allocation is concentrated within the Ministry of Finance. JRI Interview.



Factor 11: Adequacy of Judicial Salaries

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

Conclusion	Correlation: Positive
Judicial salaries are adequate for a judge to support his family without recourse to outside income. The average judicial salary is approximately triple the average salary in Slovakia, and salaries of district and regional judges are comparable to those of members of Parliament.	

Analysis/Background:

Judicial salaries are, in general, adequate for judges to support their families without recourse to outside income. The average judicial salary is approximately triple the average Slovak salary and, according to most respondents, is high enough to attract a sufficient pool of qualified candidates to the bench. Supreme Court salaries are equivalent to those of Government ministers. Salaries of district and regional judges are comparable to Parliamentary salaries. Attorneys in the private sector, however, can earn significantly more than judges.

Monthly salaries of Constitutional Court judges are determined by Parliament. See ACT ON THE ORGANIZATION OF THE CONSTITUTIONAL COURT AND ITS PROCEDURAL RULES, C.L. 38/1993 amended by 124/2002 § 17 (referencing ACT ON SALARIES OF SOME CONSTITUTIONAL OFFICIALS C.L.120/1993 § 16(1) stating that judges on the Constitutional Court receive salaries equal to 1.3 times the salary of a member of Parliament). District, regional and Supreme Court judges receive a base salary determined by factors including their years of experience. See ACT ON JUDGES § 67. Judges also receive additional monthly bonuses if, among other duties, they serve as president or vice president of a court or are responsible for training other judges. See *id.* §§ 68-69.

The Act on Judges creates a new salary scale that becomes effective in 2003. Under the new scale, the base salary of a Supreme Court judge will be 130 percent of the salary of a member of Parliament. The base pay of district and regional judges will range from 90 to 130 percent of the salary of a member of Parliament. ACT ON JUDGES §§ 66-67. The Act on Judges also provides for additional benefits and significant increases to judicial pensions. See ACT ON JUDGES §§ 65-80 & 95.

Factor 12: Judicial Buildings

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

Conclusion	Correlation: Neutral
Most judicial buildings are conveniently located and easy to find. However, there are significant differences in the quality and condition of judicial buildings from district to district.	



Analysis/Background:

Most judicial buildings throughout the country are conveniently located and easy to find. There is a wide disparity, however, in the quality and condition of judicial buildings. Even so, several respondents noted that, in general, court facilities are in as good condition as other public buildings.

Differences in the quality and condition of buildings is often linked to the administrative-territorial reform instituted in 1996, when the number of district and regional courts was increased from 38 to 63 (55 district and 8 regional courts). JRI Interview. Court facilities built or refurbished in connection with the 1996 expansion, such as those in Banska Bystrica and Pezinok, are well-furnished and in good repair, with adequate court and office space. Many older court buildings have adequate court and office space, but are in need of refurbishing. The state budget has allocated several million [SKK] for reconstruction of older buildings in the past, but this amount was insufficient to meet all needs. The Government's 2002-2004 budget contains additional funds for refurbishing court buildings.

Factor 13: Judicial Security

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

Conclusion	Correlation: Negative
Judges and judicial premises do not receive adequate protection from security threats. Court security is minimal, and the inability to adequately ensure judicial protection, particularly in organized crime cases, can impact how cases are adjudicated.	

Analysis/Background:

Judges, upon request in justifiable circumstances, are entitled to protection for themselves, their families, and their homes. ACT ON JUDGES § 34(5). Although the legal guarantee of protection exists, those interviewed indicated that there is no functioning system of protection outside the courthouse, limited security within the courthouse, and there are limited resources to address either issue. JRI Interview.

Entry to courthouses is screened by security personnel, and some courts have metal detectors. Typically, no additional security personnel are located within the building or in any courtroom.

Although none of the interviewed judges reported being the subject of threats, most respondents recounted threats to members of the judiciary. There are several well-known instances of threats relating to organized crime cases, and one judge is said to have resigned his post rather than decide a case for fear of personal safety. JRI Interview. The MOJ has considered creating a specific court for organized crime cases to address issues raised by shortcomings in security. Judges on such a court, if established, would receive around-the-clock security.



IV. Structural Safeguards

Factor 14: Guaranteed tenure

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

Conclusion	Correlation: Positive
All district and regional court judges are appointed for unlimited terms. Although there is no mandatory retirement age, the President, upon a motion of the JCSR, may remove any judge sixty-five or older without cause.	

Analysis/Background:

Constitutional Court judges are appointed for twelve-year terms by the Slovak President from among a group of nominees approved by the Parliament of the Slovak Republic. Recently the number of Constitutional Court judges was increased from ten to thirteen. CONST. art. 134(2) Supreme Court judges are proposed by the Minister of Justice and appointed by the Judicial Council. ACT ON JUDGES § 11 (1). The president and vice president of the Supreme Court are appointed by the President for five-year terms from the body of Supreme Court judges. CONST. art. 145(3).

Previously, district and regional judges were initially elected for a four-year probationary term, and the minimum age for service in the judiciary was twenty-five. At the end of the probationary term, judges receiving the recommendation of the MOJ and Government were appointed to life terms. Effective July 1, 2001, the probationary period was abolished. All district and regional court judges are now appointed for unlimited terms by the Slovak President. CONST. art. 145(1). The minimum age for service was also raised to thirty. Under the new law, a judge elected for a probationary term under the former law can, upon appropriate recommendation and the expiration of his probationary term, receive a lifetime appointment regardless of his age. *Id.* art. 154b.

Although there is no mandatory retirement age for judges, Parliament may, on the recommendation of the JCSR, remove any judge age sixty-five or older without reason. The MOJ will make removal recommendations until the JCSR is fully implemented. To date, no such recommendation has been made.



Factor 15: Objective Judicial Advancement Criteria

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

Conclusion	Correlation: Neutral
New processes exist for filling judicial vacancies and advancing judges through the judicial system. Factors to be considered include morality and character, participation in training sessions and seminars, lecturing and publication, as well as evaluations by the president and vice president of the court. It is too early to evaluate the effectiveness of the new processes or application of the criteria.	

Analysis/Background:

Prior to the adoption of the Act on Judges in 2000, there was no formal and objective system for evaluating and promoting judges. Many respondents indicated that evaluations and promotions were based upon the number of cases processed and various subjective factors, including political and personal relationships. Now, the Act on Judges requires mandatory evaluations based upon, among other things, a substantive review of judges' decisions and their performance vis-a-vis revised court statistics that take into consideration the relative difficulty of cases decided. In addition, the Act on the Judicial Council provides that the JCSR, with the agreement of the Ministry of Justice, can adopt principles for selection and evaluation of judges.

The court president is required to publicly announce all judicial vacancies and the related selection process. ACT ON JUDGES § 28 (1)-(2). Selection is carried out by a five-person committee appointed by the court president. *Id.* § 29. Factors to be considered in determining the successful candidate include skills, professional knowledge, health and psychological balance. *Id.* § 28(3)

The Act on Judges also established a formal system for judicial advancement to courts of higher instance. Each vacancy must be publicly announced and filled through a competitive process. The "Principles of Selection of Judges for Promotion to Higher Instance Courts or Senior Judicial Offices," adopted on April 19, 2001, set forth the terms and conditions of judicial selection and promotion. See §§ B(II), D(II), E(I). Factors considered include morality and character, participation in training sessions and seminars, lecturing and publication, as well as evaluations by the president and vice president of the court. It is too early to evaluate the effectiveness of these selection and advancement processes given their recent adoption.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Positive
Judges have immunity for official actions. Accordingly, judges cannot be held civilly or criminally liable for any act carried out or opinion expressed within the scope of their authority.	



Analysis/Background:

The Slovak Constitution provides that Constitutional Court judges enjoy the same immunities as members of Parliament. CONST. art. 136(1). Ordinary court judges also possess immunity from prosecution for their decisions and for other minor offenses. ACT ON JUDGES §§ 29(a), 115. Slovak law provides for some civil liability. See ACT ON RESPONSIBILITY FOR DAMAGES CAUSED BY DECISION OF A STATE AUTHORITY OR INCORRECT OFFICIAL PROCEDURE, C.L. 58/1969. §§ 13(1), 15. Judges are liable for criminal acts. However, they may only be prosecuted for such acts with approval of the Constitutional Court. CONST. art. 136 (2)-(4). If it refuses to give consent, judges cannot be prosecuted until the end of their terms. The Constitutional Court also has the discretion to consent to the criminal prosecution judges who sit on the Court itself. *Id.*

Several respondents suggested that the scope of immunity is overly broad because it covers actions other than those taken in a judge's official capacity. A judge, for example, can refuse to pay traffic fines. JRI Interview.

Factor 17: Removal and Discipline of Judges

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

Conclusion	Correlation: Neutral
Judges can be removed if they have been convicted of an intentional criminal offense or sentenced for any other criminal offense, or have committed a disciplinary offense incompatible with the execution of their office or are unable to perform their duties due to health reasons. A disciplinary offense occurs if judges' actions, or failure to act, creates justified doubts about their independence, conscientiousness, impartiality or efforts to conclude proceedings fairly without undue delay. Although grounds for removal and discipline are enumerated, the disciplinary process is non-transparent and unevenly applied.	

Analysis/Background:

The Constitution provides that the Slovak President, upon motion of the JCSR, can remove any judges who: have been convicted of an intentional criminal offense; sentenced to imprisonment and have not received a suspended sentence for any other criminal offense; have committed a disciplinary offense incompatible with the execution of their office; no longer meet basic eligibility requirements; or are unable to perform their duties for more than a year due to health reasons. CONST. art. 147.

A disciplinary offense occurs if a judge's action or failure to act creates justified doubts about his/her independence, conscientiousness, impartiality or efforts to conclude proceedings fairly without undue delay. A gross disciplinary offense occurs if a judge willfully breaches his/her duty to decide a case impartially and without bias. ACT ON JUDGES § 116(2). In addition to removal, penalties for disciplinary offenses include admonishment, reduction in salary, monetary fine and transfer. *Id.* § 117(1)-(2).

A disciplinary proceeding against a judge commences when a petition is filed by the Minister of Justice or the president of the regional or district court at which the judge serves. *Id.* § 120(2). If the content of the petition requires explanation of the stated facts, the chairman of the disciplinary senate must make appropriate preliminary inquiry. See *id.* § 123. The case is then heard at an



oral proceeding before the senate. *Id.* § 126-127. The decision of the disciplinary senate can be appealed to an appellate disciplinary senate by either party. *Id.* § 131.

Prior to January 2001, each court had a disciplinary senate of five judges that heard cases involving a judge of the same level. For example, a disciplinary senate of five Zilina district court judges would consider charges asserted against a Zilina district court judge. Beginning in April 2002, disciplinary proceedings against judges are conducted by three-person senates composed of one Supreme Court judge, one district court judge, and one regional court judge. Five-member senates consisting of Supreme Court judges oversee appeals from disciplinary hearings. See ACT ON JUDGES § 119(6). The JCSR determines the number of disciplinary senates to be established. ACT ON JUDGES § 119(5), as amended by ACT ON JUDICIAL COUNCIL C.L. 185/200 art. II, point 50. At the time of publication, nine first instance disciplinary senates (each with three members) and two appellate senates (each with five members) have been established.

Oral proceedings before disciplinary senates are public. See ACT ON JUDGES § 127(8). Few disciplinary proceedings take place, however. Accordingly, it is difficult to evaluate the objectivity or fairness of the process. Media representatives and attorneys, however, report rarely having access to information on disciplinary proceedings. Additionally, many respondents believe that the disciplinary senates are reticent to take action against their colleagues. JRI Interview. The failure to openly disclose proceedings and their insular nature feed the perception that the judicial system is protecting itself and that courts are corrupt.

Factor 18: Case Assignment

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

Conclusion	Correlation: Neutral
Cases are assigned in accordance with the methodology developed by the court president. Most of these systems are easily manipulated and cannot guarantee the transparent assignment of cases. Automated case assignment is currently being implemented nationally at district level courts.	

Analysis/Background:

The court president has the authority to assign and reassign cases. Some presidents have tried to create non-computerized systems for random case assignment (*e.g.*, assigning the first incoming case to the judge first named on a list, the second incoming case to the second judge on the list, etc.). However, many presidents exercise their authority liberally and misuse of the system is widespread. The lack of standard, objective and transparent assignment procedures increases the potential for judge-shopping and corrupt practices. See *generally* MARKUS ZIMMER, ADMINISTRATIVE AND STRUCTURAL REFORM IN THE COURT SYSTEM OF THE REPUBLIC OF SLOVAKIA REPORT AND RECOMMENDATIONS (ABA-CEELI) (2000) [hereinafter ZIMMER REPORT].

In addition to corruption, case assignment practices create significant delays in case processing. Several weeks transpire between the date a civil case is filed and the date the plaintiff learns to whom it was assigned. The defendant typically waits an average of six to eight weeks or in some cases even longer to receive notification. JRI Interview.



Comparatively, civil cases filed in the Banska Bystrica district court are randomly assigned by computer. The system uses a computerized random number generator to assign cases electronically once they are filed with the court. Using this new application, a case is assigned a number and a judge within minutes of being filed, and parties are notified in a timely manner. Sufficient security safeguards were designed to prevent any manipulation of the application. ZIMMER REPORT.

This case assignment system is part of an automated case management system piloted in Banska Bystrica and currently being implemented nationally. Nearly all respondents believed this system would greatly improve transparency in the assignment of cases. Note: at the time of this report's publication, an amendment to the Act on Courts stipulating that all courts must randomly assign cases using a software program approved by the MOJ took effect. See Act on Courts § 26(2).

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
Judges are free to form and join judicial associations that represent their interests. Three associations currently exist, although only one is effectively engaged in activities supportive of an independent judiciary.	

Analysis/Background:

There are three judicial associations currently active in the Slovak Republic. The Slovak Judges Association, which was founded in 1990, represents approximately sixty percent of the judges in Slovakia. JRI Interview. It holds annual assemblies, has several working groups, and is actively engaged in training and other activities supportive of an independent and effective judiciary. It is well known by, and receives significant financial support from, the international community.

The SJA and MOJ enjoy a positive working relationship. SJA representatives serve on various legislative-drafting committees formed by the MOJ. Both groups, with the assistance and support of the international community, jointly design and conduct judicial training programs. The Union of Slovak Judges was established in 1999 by judges in the Zilina region after the MOJ removed the presidents of Zilina's district and regional courts. Circumstances surrounding the Union's creation suggest that it is a political response and counterweight to MOJ policy. Its engagement in lobbying, training and other activities supportive of an independent and professional judiciary is limited in scope.

The Association of Women Judges was also founded in 1999. Its activities are, for the most part, limited to promoting the rights and role of women in the judiciary. Many of its members also belong to other judicial associations.



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
The public perceives corruption to be widespread in the justice system. Respondents, while recognizing that corruption exists, believe that most judicial decisions are based solely on the facts and law, without undue influence from senior judges, private interests or other branches of government.	

Analysis/Background:

Corruption in the justice system is perceived to be widespread. A recent survey of households, businesses and public officials measured their perceptions of corruption. J. ANDERSON, CORRUPTION IN SLOVAKIA, RESULTS OF DIAGNOSTIC SURVEYS, PREPARED AT THE REQUEST OF THE GOVERNMENT OF THE SLOVAK REPUBLIC BY THE WORLD BANK AND THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT XII, XIII, 34 (2000). When asked if the judicial process was free of corruption, 8% “totally disagreed,” 22% “rather disagreed,” 41% “rather agreed” and 29% “totally agreed.” *Id.* at xi, xii, & 34. Thirty-five percent of the businesses surveyed had been involved in a court case in the prior two years, and nearly 19% of such businesses reported encountering bribery. *Id.* at 34. The average bribe exceeded 25,000 SKK (approximately \$500 USD). *Id.* Of the 13% of households involved in court proceedings, 25% reported paying a bribe to a court employee, judge or attorney. *Id.* Bribes were paid to expedite trials and influence decisions, among other court-related activities. *Id.* at 35.

The quality and fairness of judicial decisions was also perceived as a problem. When asked if Slovak courts delivered fair and unbiased decisions, “7% “totally disagreed,” 28% “rather disagreed,” 44% “rather agreed” and 21% “totally agreed.” *Id.* at 34. Of the businesses involved in court proceedings during the prior two years, 35% thought the process was unfair or biased. *Id.* at xii.

JRI Interview respondents uniformly agreed that some judicial decisions were based on improper influences, inducements or pressures from private interests or government, and acknowledged that public perception of judicial corruption was problematic. However, most believed that the majority of judges were honest and decided cases solely on the facts and law. They also indicated that, whereas issues of political influence and cronyism were rampant in Communist days, the decision-making process was now significantly more transparent. JRI Interview.



Factor 21: Code of Ethics

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

Conclusion	Correlation: Negative
<p>Principles of judicial ethics were recently adopted relating to issues such as judicial independence, dignity of office, conflicts of interest, fairness and impartiality, professionalism and education, and outside activities. However, they do not provide detailed guidance to judges and are not widely disseminated or followed. Ethics training is not required of new or sitting judges.</p>	

Analysis/Background:

After several years of discussing whether an ethical code was necessary or appropriate, the SJA in 2000 adopted eight canons of ethics relating to judicial independence, dignity of office, conflicts of interest, fairness and impartiality, professionalism and education, and outside activities. These canons were non-binding and not enforced in practice.

In October 2001, the Council of Judges and MOJ adopted certain Principles of Judicial Ethics pursuant to section 26(2) of the Act on Judges. The Principles are intended to formulate appropriate standards of judicial conduct without undermining judicial independence and are categorized into three general articles containing principles similar to those set forth in the SJA's canons. They are also intended to strengthen public confidence in an independent and impartial judiciary. Judges are not required to undergo training relating to the newly adopted Principles, either before or after taking office.

The Principles are statements of general principles that do not provide detailed guidance to judges. Many respondents, including several judges, were unaware of the content or adoption of the Principles. Further, there does not appear to be an existing or contemplated mechanism for enforcing the code of ethics, and violation of the principles set forth therein is not grounds for discipline under other legislation governing judicial discipline. JRI Interview. The lack of appropriate enforcement mechanisms undermines the efficacy of the Principles.

Factor 22: Judicial Conduct Complaint Process

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

Conclusion	Correlation: Neutral
<p>A complaint process exists under which attorneys and parties can raise objections to the continuing participation of a judge in a particular case or to the conduct of a trial or hearing. However, implementation and enforcement issues reduce the system's effectiveness and offset its benefits to judicial accountability.</p>	



Analysis/Background:

Participants in a court proceeding can file a complaint with the appropriate administrative body based on inappropriate judicial conduct, undue delay in proceedings, or a violation of the dignity of proceedings by court personnel. ACT ON COURTS § 6(1); ACT ON ADMINISTRATION OF COURTS § 17. The presidents of the Supreme, regional and district courts are responsible for processing complaints filed against judges and staff of their respective courts. *Id.* §§ 21-23. The complaint must be processed within two months, and the party who filed the complaint must be given written notification of the proceedings. *Id.* §§ 25(1)-26. Limited review procedures also exist. *Id.* § 27(1).

Complaints may also be filed on constitutional grounds (e.g., delay in a court proceeding) with the Constitutional Court. Citizens with concerns may also petition the European Court of Human Rights.

A special complaint process exists for cases involving alleged judicial bias. See CIV. PROC. CODE §§ 15-16.

The existing complaint process creates a viable system in which attorneys and parties can raise objections to the continuing participation of a judge in a particular case or to the conduct of a trial or hearing. The system does not, however, provide a mechanism for judges and the public to register complaints concerning judicial conduct. Furthermore, implementation and enforcement issues reduce the system's effectiveness and offset its benefits to judicial accountability. Several respondents indicated that complaints are summarily processed, disciplinary actions are rarely taken, and that records of proceedings and actions are seldom kept. Similarly, several attorneys expressed concern that having judges from the same court investigate claims of misconduct was ineffective, as the judges tended to "protect their own." JRI Interview.

Factor 23: Public and Media Access to Proceedings

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

<i>Conclusion</i>	<i>Correlation: Positive</i>
Court proceedings are generally open to the public and media. However, several practical impediments to public access exist, such as limited space, overzealous security personnel and limited notice of hearings.	

Analysis/Background:

The Slovak Constitution establishes the right to a public trial. CONST. art. 48. Court proceedings are public, unless otherwise provided by law, and judgments must be rendered publicly. See ACT ON COURTS § 8(1)-(2).

Court proceedings can be audio taped and videotaped. The presiding judge decides whether taping will be allowed on a case-by-case basis. ACT ON JUDGES § 34(3).

Although court proceedings are generally open to the public and media, there are several practical impediments to public access, such as limited space, overzealous security personnel and limited notice of hearings. Some respondents indicated that security guards, on occasion and without reason or explanation, refuse to let the media and public enter the courthouse.



Members of the media also have difficulty gaining access to court calendars and dates for proceedings. JRI Interview.

These issues are being examined by a judicial-media relations working committee which, with ABA/CEELI's assistance, has begun to institute court spokespersons in each of Slovakia's eight regional courts, conduct training programs on judicial-media relations, and initiate a public outreach campaign designed to increase media and public access to the courts.

Factor 24: Publication of Judicial Decisions

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

Conclusion	Correlation: Neutral
All Constitutional Court and some Supreme Court decisions are published and readily available. Regional and district court decisions are rarely published and not readily available.	

Analysis/Background:

Rulings and opinions of the Constitutional Court are regularly published in the Collection of Laws. ACT ON THE ORGANIZATION OF THE CONSTITUTIONAL COURT AND ITS PROCEDURAL RULES C.L.38/1993 § 33(2). They are also available on the Court's website. The Supreme Court publishes the Collection of the Decisions and Opinions of the Courts, which usually includes a limited selection of Supreme Court decisions. Regional and district court opinions are rarely published, although they are sometimes included in the Collection.

With respect to unpublished decisions, litigants typically receive a copy of the decision, but public and media access is limited and requires approval from the court president.

Factor 25: Maintenance of Trial Records

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

Conclusion	Correlation: Negative
Courts do not create verbatim transcripts of proceedings. Typically, the official record of a proceeding consists of a judge's summary of the testimony of witnesses and the arguments of counsel. Records of proceedings that are maintained are not readily available to the public.	

Analysis/Background:

Courts do not produce verbatim transcripts of proceedings. Typically, the official record of a proceeding consists of a judge's summary of the testimony of witnesses and the arguments of counsel. The judge either dictates the record to a typist or tape records it for subsequent transcription. Parties have the right to object to, or comment upon, the judge's record, but find it difficult to build a record for appeal since the summary reflects the judge's perception of the evidence and arguments and is often shaded by the conclusions.



Public access to court records is extremely limited, as privacy interests are believed to outweigh the public's right to know. There appears to be no discernable standard for the nature and extent of public access. Many respondents believed that only the parties had access to case files and court records. Those who believed the public could access court records could not elucidate a methodology for doing so. JRI Interview.

VI. Efficiency

Factor 26: Court Support Staff

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

Conclusion	Correlation: Negative
Judges lack adequate support staff to effectively handle their caseloads and maximize productivity. Retaining qualified staff is difficult because staff salaries are not competitive with salaries in the private sector.	

Analysis/Background:

Each judge in the district and regional courts is typically assigned one support staff who functions as a recorder and secretary. The overall ratio of judges to support staff is approximately 1: 2.5 (1,184 judges, 2,996 staff at the time of publication), but this figure includes maintenance, housekeeping and security staff in addition to court administration assistants. JRI Interview; ZIMMER REPORT. Retaining qualified staff is difficult because staff salaries are not competitive with salaries in the private sector.

At the time this Analysis was conducted, the pilot court management project was only in effect in Banska Bystrica. Under the new system, judges and administrative staff jointly manage and process cases. Otherwise, judges do their own legal research and handle most case-related administrative functions. The court management project will be operational in all district courts in 2003.

At the time this Analysis was conducted, a draft Law on Higher Judicial Officers was being considered. The law allows for creation of a cadre of judicial officers who, in civil and criminal proceedings, could be empowered by the presiding judge to conduct certain judicial proceedings and take certain actions, including making decisions on the merits in a limited range of matters. The addition of such judicial officers could alleviate the administrative burden currently shouldered by judges.



Factor 27: Judicial Positions

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

Conclusion	Correlation: Negative
The number of judges and new judicial positions to be created is determined by the Ministry of Justice. However, in practice, the creation of new judicial positions is driven by the availability of financial resources, not substantive need.	

Analysis/Background:

The number of judges and other court personnel is determined by the MOJ. ACT ON COURTS § 36(1); ACT ON ADMINISTRATION OF COURTS § 12(1)(a). However, in practice, the creation of new judicial positions is driven by the availability of financial resources, not substantive need. Although the MOJ controls how the funds it receives are spent by its constituent parts, including the judiciary, most respondents believe that the budget is not flexible enough to allow the creation of judicial positions as and when needed. JRI Interview.

Factor 28: Case Filing and Tracking Systems

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

Conclusion	Correlation: Neutral
The current system of case filing and tracking is very basic. The lack of efficient systems, coupled with procedural codes that task judges with the minutiae of case management, leads to significant delays in case processing. Nationwide adoption and implementation of the automated case management system currently being utilized in Banska Bystrica's district court should greatly increase the efficiency of case processing and will likely result in a positive correlation.	

Analysis/Background:

The presiding judge of a court assigns and reassigns cases and monitors case processing. Significant delays occur both in case assignment and processing, since many administrative functions are performed manually, including the preparation of various court forms. The legislative framework also contributes to delays in case processing, as procedural codes burden judges with significant administrative functions. Judges claim to spend fifty to seventy percent of their time performing administrative functions that could be delegated, such as ensuring that each case file includes all the necessary documents and contacting litigants if a required document has not been filed. *See generally* ZIMMER REPORT. Judges also play a social advocacy role, advising plaintiffs through the litigation process. The civil procedure code was recently amended to alleviate certain of these administrative burdens.

In 1999, the MOJ, in conjunction with the Swiss government, developed a pilot case management system in Banska Bystrica's district court designed to reduce delays in processing and achieve greater court efficiency. The project includes automating practices such as case assignment, modifying procedures and reassigning staff to improve case processing capacity. Under the computerized system, judges can monitor the status of a case and review on screen a list of case



processing tasks to determine the status of various tasks and the actions required to move the case to the next stage of adjudication. The judge can then, through the system, assign the tasks to a designated staff member. Court forms are also completed online. The system also produces a daily calendar of court proceedings for purposes of organizing courtroom work. See ZIMMER REPORT.

The MOJ, Banska Bystrica District Court and SJA, in cooperation with ABA/CEELI, EU Phare and the Open Society Fund, have developed a package of financial and technical assistance for the nationwide rollout of the case management system in 2002. The MOJ anticipates that all courts will have automated case filing and case management capabilities in 2002 and should be encouraged to continue this course of reform.

Factor 29: Computers and Office Equipment

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

Conclusion	Correlation: Negative
The judiciary currently lacks a sufficient number of computers to enable it to handle its caseload in a reasonably efficient manner. However, each judge is scheduled to receive a computer in 2002 under an EU Phare program.	

Analysis/Background:

In general, the judiciary lacks sufficient computers to handle its caseload in a reasonably efficient manner. Other office equipment, such as photocopiers, is readily available.

Most computers in the court system are used by support staff for word processing. The level of available technology varies significantly from court to court. Some courts have a sufficient number of computers and others courts share a limited number of computers among their judges. The level of technology increased significantly in 2002, however, when each judge received a computer under an EU Phare program. The program also provided court staff with the requisite number of computers for implementing the above-mentioned case filing and management system in courts throughout the country.

Factor 30: Distribution and Indexing of Current Law

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

Conclusion	Correlation: Negative
Judges are entitled to receive all the legal regulations, professional literature and other information necessary for the proper performance of their office, but the judiciary's limited budget restricts the amount and quality of legal research materials available to judges. Judges generally do not have adequate access to new legislation or legal literature.	



Analysis/Background:

The Act on Judges provides that all judges are entitled to receive all the legal regulations, professional literature and other information necessary for the proper performance of their office. ACT ON JUDGES § 35, 52(1). In practice, the judiciary's limited budget restricts the amount and quality of legal research materials available to judges. Funds are available within the budget to provide each judge with compiled laws and regulations (the Collection of Laws), as well as regularly published periodicals providing updates of new laws and amendments and publications of certain judicial decisions (the Judicial Review). Still, many respondents indicated that judges, out of necessity, often share copies of these materials. JRI Interview. Judges may, however, purchase professional literature, among other things necessary to secure due work conditions. They are entitled to monthly reimbursement of such costs in an amount up to one-half the basic monthly judicial salary. *Id.* § 52(2).

District judges, in particular, have limited access to treatises and other legal literature. Those wishing to access such materials usually purchase them on their own or go to the nearest regional court where collections are more comprehensive, but still limited.

Some computer-based research tools are available. In an effort to make Slovak laws and court decisions more accessible to the courts and government agencies, the MOJ developed a searchable electronic database that includes a collection of all Slovak laws, published decisions of the Constitutional Court dating from 1993, and published decisions of the Supreme Court dating from 1974. Even though the database is already available to MOJ personnel via internal agency networks and workstations, the courts currently cannot access this information due to their lack of computers and network infrastructure. They should gain access to this database once computers have been delivered under the EU Phare program mentioned above.

In 2001, ABA/CEELI put the finishing touches on its Judicial Reform Index (JRI), an assessment tool designed to examine 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, ABA/CEELI believes the JRI will prove to be a valuable tool for legal professionals working on judicial reform throughout the globe.

ABA/CEELI designed the JRI around 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 the *Council of Europe's European Charter on the Statute for Judges*. Drawing on these norms, ABA/CEELI compiled a series of thirty statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary.

With each JRI, the thirty statements are evaluated to determine whether they correlate with the local conditions, and the results of the thirty separate evaluations are collected in a standardized format. For each factor, there is a description of the basis for this conclusion and an in-depth analysis, detailing the various issues involved. Cataloguing the data in this way permits users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated within a given country—over time. ABA/CEELI intends to capitalize on this feature with the development of a proprietary database that will house the entire collection of information.

In developing the JRI, ABA/CEELI drew upon a diverse range of experts, and ABA/CEELI acknowledges that this finished product owes an incredible debt to a long list of professionals. Many hours of pro bono time were devoted to this project over the course of the last several years, and ABA/CEELI thanks all of those who took part in this process. In addition, ABA/CEELI would like to recognize the United States Agency for International Development (USAID) for its support, which has been two-fold. From the very beginning of this project, USAID has provided intellectual support for the JRI concept, and, most recently, the USAID Missions in the field have been forthcoming with financial support for the completion of the country-specific reports. Without the support of all involved, the JRI would not have been possible. In the months and years to come, ABA/CEELI hopes to build upon these contributions seeking constructive feedback from these original supporters—and those who will use the JRI—to make this an even better tool in the future.

