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Introduction

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

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

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

Assessing Reform Efforts

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

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

Id. at 615.

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

> The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including

> these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

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

ABA/CEELI's Methodology

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

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

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

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

ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

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

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

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

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

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

Social scientists could argue that some of the assessment criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

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

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Assessment Team

The Serbia JRI 2005 assessment team was led by Andrew Solomon, Director of Research and Outreach Programs at the American Society of International Law (ASIL), and benefited in substantial part from the expertise and support of Jelena Bujosevic and Milica Golubovic. In addition, Molly Inman, Jelena Jolic, Alisa Koljensic-Radic, Blazo Nedic, and Melissa Zelikoff provided assistance in conducting the assessment and finalizing the report. Nataliya Dromina also provided research support. The conclusions and analysis are based on interviews that were conducted in the Republic of Serbia in June 2005 and relevant documents that were reviewed at that time. ABA/CEELI's Judicial Reform Focal Area Coordinators Simon Conte and Olga Ruda served as editors and prepared the report for publication. The assessment team met with 39 individuals in six Serbian cities and towns. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

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 separate JRI assessments for Kosovo in 2002 and 2004.

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 Republic of Yugoslavia, which was dissolved by the Yugoslav Assembly on February 4, 2003 pursuant to the terms of the EU-brokered **Belgrade Agreement** of March 14, 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 of the Union of Serbia and Montenegro [O.G.S.M.] No. 1/03, Feb. 4, 2003) [hereinafter CONST. CHARTER] and the law on its implementation (LAW ON THE IMPLEMENTATION OF THE CONSTITUTIONAL CHARTER OF THE STATE UNION OF SERBIA AND MONTENEGRO, O.G.S.M. No. 1/03, Feb. 4, 2003) were adopted by a 27-member joint Serbian-Montenegrin Constitutional Commission in December 2002. The Serbian National Assembly ratified both documents on January 27, 2003. Two days later, on January 29, 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** (O.G.S.M. No. 6/03, Feb. 28, 2003) is an integral part of the constitutional framework of the Union of Serbia and Montenegro. It guarantees a variety of fundament 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 of the Republic of Serbia [O.G.R.S.] No. 1/90, Sept. 28, 1990) [hereinafter CONST.] 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 in order to harmonize the republic's legal system with that of the Constitutional Charter, 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.

The judiciary in post-socialist Serbia is also regulated by a **package of laws on the judiciary**, which was originally adopted in November 2001 (O.G.R.S. No. 63/01, Nov. 8, 2001). This package 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. 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. Following the adoption of amendments to the Law on Judges and Law on the High Judicial Council in April 2004, the judiciary regained some of its institutional independence as well as the influence it previously enjoyed in the appointment of judges and court presidents.

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, who 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. At the same time, while a number of judges identified with the former regime continue to work in courts throughout Serbia, new judges have also entered the profession since 2000. Among this latter group are many judges who have benefited from both domestic and international efforts to improve judicial education, as well as to promote awareness of judicial ethics and professional responsibility.

The establishment of the **Judges Association of Serbia** (JAS) and the **Judicial Center for Professional Education and Advanced Training** (JTC) has improved the judiciary's institutional independence and its effectiveness in supporting the rule of law in Serbia. Despite considerable challenges, both have sought to raise the status of the profession and the qualifications of individual judges. 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 Serbian judiciary will eventually function in a manner appropriate to a democratic society.

The **High Judicial Council** (HJC) was established in accordance with the November 2001 package of laws on the judiciary to promote judicial reform and the independence of the judiciary. The HJC is an independent expert body presently comprised of five permanent members that include the Minister of Justice, Supreme Court President, State Public Prosecutor, an appointee of the Bar Association of Serbia, and one member appointed by the National Assembly. There are also two groups of ad-hoc members, which include six judges appointed by the Supreme Court and two prosecutors, one appointed by State Public Prosecutor deputies and another appointed by the joint session of district Public Prosecutors. Many of the HJC's competencies were limited in 2002 and 2003, such as its role in the appointment of prosecutors, which was curtailed completely. This competency, in addition to others set forth in the 2001 version of the Law on the High Judicial Council, was restored by the April 2004 amendments. Following these amendments, the HJC is

once again responsible for proposing the number of judges and prosecutors required for the efficient functioning of the judicial system and for the names of prospective judges and prosecutors to the National Assembly for appointment.

The **High Personnel Council** (HPC) is a body comprised of nine judges of the Supreme Court. It is responsible for determining whether a judge should be removed from office by the National Assembly for illegal, improper or unprofessional conduct. The HPC may suspend judges and order other disciplinary measures in response to unprofessional judicial conduct. Like the HJC, the membership and competencies of the HPC were changed pursuant to amendments to the November 2001 package of laws on the judiciary. In addition, the HPC was suspended pursuant to a February 2003 decision of the Constitutional Court but was reconstituted following the April 2004 amendments to the Law on Judges. These amendments also provided for the establishment of a **Monitoring Board**, comprised of five Supreme Court judges, which may review the processing time of case files and judgments in an effort to guard against judicial negligence and incompetence. Once it completes this review, it may recommend that the HPC initiate disciplinary proceedings.

In an effort to facilitate judicial reform after 2000, the government of Serbia has created several expert advisory groups. In 2002, for instance, it established the Council for Reform of the Judiciary, which eventually adopted a Strategy for Judicial Reform. However this initiative failed to produce any concrete results and the Council remained a moribund body for much of its rather limited existence. The **Commission on Judicial Reform** was created by the government in April 2004 to contribute to legislative reform, to initiate judicial education programs, and to cooperate with international efforts aimed at improving the independence of the Serbian judiciary in accordance with European legal standards. Its seven members includes the Minister of Justice, who chairs the Commission, the Deputy Minister of Justice, the Supreme Court President, two other members of the Supreme Court, one representative of the Serbian Bar Association, one representative of the Serbia and Montenegro Bar Association, and a Secretary. The Commission drafted a Platform for the Strategy for Judicial Reform in September 2004, which set forth a framework for improving the efficiency of the courts and reducing the length of proceedings, facilitating the establishment of a new court network, improving initial and continuing education for members of the judiciary, and increasing the availability and use of information technologies. This document served as a starting point for the development of the National Judicial Reform Strategy, which was subsequently made public by the Ministry of Justice in July 2005. The Strategy, which was developed in consultation with international advisers, sets forth a framework for judicial reform that focuses on improving the independence, transparency, accountability, and efficiency of the judiciary through a series of short-, medium-, and long-term reforms that span 2006-2013.

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 still have not been constituted), and municipal and district courts. Specialized courts include the commercial courts and the yet to be constituted Administrative Court. Special panels for 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 the courts. 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 three-member and 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 appeals in 2002. However, the establishment of this new appellate court structure has been postponed on several occasions by legislative amendments. It is presently scheduled to begin functioning on January 1, 2007. Once eventually constituted, 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 as a court of cassation, rendering decisions on appeals 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 the district courts often serve as the primary means by which most citizens of Serbia access the judicial system to protect their rights and to 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** 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 initially scheduled by law to begin hearing cases on January 1, 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 or designate other resources, including a building in Belgrade, where the court will be headquartered. The Supreme Court will exercise second instance jurisdiction over decisions of the Administrative Court once this court is eventually constituted and begins functioning, which is currently scheduled for January 1, 2007.

Commercial courts of Serbia are specialized courts having jurisdiction over a wide range of commercial matters, including copyright, privatization, foreign investment, unfair competition, maritime, bankruptcy proceedings, and other disputes arising out of commercial activity involving domestic and foreign entities. There are 18 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, **specialized 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 (O.G.R.S. No. 67/03, July 1, 2003; *as amended*, *see* O.G.R.S. No. 135/04; O.G.R.S. No. 61/05) [hereinafter LAW ON PROSECUTING PERPETRATORS OF WAR CRIMES], 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's 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 December 4, 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.

Specialized 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 (O.G.R.S. No. 42/02, July 19, 2002), as amended in March 2003 (O.G.R.S. No. 27/03, March 19, 2003; O.G.R.S. No. 39/03, April 11, 2003; and O.G.R.S. No. 67/03, July 1, 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 reconstituted federal level, the **Court of Serbia and Montenegro** 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 the Union of Serbia and Montenegro on June 19, 2003. However, not enough judges have been appointed to make it fully operational. And, until an adequate facility is prepared for the Court's headquarters in Podgorica, it is provisionally headquartered in Belgrade's Palace of the Federation.

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 that time, including those involving the military, has now been 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 must have practiced before tribunals prior to taking the bench, nor are they required to have completed any specific courses in preparation for becoming a judge. New municipal court judges must have obtained at least two years of experience in the legal profession following the bar examination. Many of these judges satisfy this two-year requirement as a court intern and then complete at least another two years as a judicial assistant before assuming their official functions.

Judges at higher courts are required to have between four and twelve years of post-bar exam professional experience to qualify for appointment. Judges may not hold either legislative or executive office, be 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 from the HJ C. If the HJC's nominee is rejected by the National Assembly, the HJC shall propose another candidate for appointment. The National Assembly may not under any circumstances appoint a judge that has not first been nominated by the HJC. The HJC determines nominees on the basis of their professional abilities, the quality of their work, and other basic criteria such as academic performance and published scientific and professional papers. Court presidents are also elected by the National Assembly following their nomination by the HJC.

Training

Although there is no mandatory requirement that judges participate in continuing legal education, considerable emphasis continues to be placed on the training for Serbian judges. Many newly appointed as well as more experienced 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. Other domestic and international organizations also conduct trainings for judges. For the most part, 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 of trainings being offered in judicial ethics, commercial law, and international human rights law, especially the European Convention on Human Rights and law of the European Union. As a still 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 2005 Analysis

The Serbia JRI 2005 analysis reveals that Serbia has made some important strides in reforming the judiciary and providing structural safeguards for its independence. The April 2004 amendments to the package of laws on the judiciary restored many of the competencies the judiciary enjoyed when this legislation was adopted in 2001, including its role in the appointment and removal of judges. Other legislative changes, combined with the computerization of some courts, create the potential to improve the efficiency and to decrease the length of proceedings. Efforts to improve education and raise the qualifications of the profession also offer potential for improving the performance and the status of judges. However, Serbian judicial reform has not yet resolved many obstacles to an independent, accountable, and efficient judiciary. The appointment process remains politicized and judges can sometimes be subject to direct or indirect pressures and improper influences in rendering decisions. Judicial salaries remain low and the judiciary has no real input into the budgetary process. Also, courts still suffer from a lack of material resources and less than optimum working conditions.

The factor correlations and conclusions in the Serbia JRI 2005 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Serbia JRI Volume I (2002) and the Volume I Update implemented in December 2003. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA/CEELI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

Judicial Reform Index Factor		Volume I Correlation (2002)	Update Correlation (2003)	Volume II Correlation 2005	Trend
I. Quality, Education, and Diversity					
Factor 1	Judicial Qualification and Preparation	Negative	n/a	Neutral	↑
Factor 2	Selection/Appointment Process	Neutral	Negative	Negative	↔
Factor 3	Continuing Legal Education	Negative	Neutral	Neutral	↔
Factor 4	Minority and Gender Representation	Neutral	n/a	Neutral	↔
II. Judicial Powers					
Factor 5	Judicial Review of Legislation	Negative	Neutral	Positive	↑
Factor 6	Judicial Oversight of Administrative Practice	Neutral	Negative	Negative	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Negative	Neutral	Neutral	↔
Factor 8	System of Appellate Review	Positive	Neutral	Neutral	↔
Factor 9	Contempt/Subpoena/Enforcement	Negative	n/a	Negative	↔
III. Financial Resources					
Factor 10	Budgetary Input	Negative	n/a	Negative	↔
Factor 11	Adequacy of Judicial Salaries	Negative	n/a	Negative	↔
Factor 12	Judicial Buildings	Negative	n/a	Neutral	↑
Factor 13	Judicial Security	Neutral	n/a	Neutral	↔
IV. Structural Safeguards					
Factor 14	Guaranteed Tenure	Positive	Neutral	Neutral	↔
Factor 15	Objective Judicial Advancement Criteria	Neutral	Negative	Negative	↔
Factor 16	Judicial Immunity for Official Actions	Neutral	Negative	Neutral	↑
Factor 17	Removal and Discipline of Judges	Negative	Negative	Neutral	↑
Factor 18	Case Assignment	Neutral	n/a	Neutral	↔
Factor 19	Judicial Associations	Positive	Positive	Neutral	↓
V. Accountability and Transparency					
Factor 20	Judicial Decisions and Improper Influence	Neutral	Neutral	Neutral	↔
Factor 21	Code of Ethics	Negative	Neutral	Negative	↓
Factor 22	Judicial Conduct Complaint Process	Neutral	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Neutral	n/a	Neutral	↔
Factor 24	Publication of Judicial Decisions	Negative	n/a	Negative	↔
Factor 25	Maintenance of Trial Records	Negative	n/a	Negative	↔

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

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

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

Conclusion	***Correlation: Neutral***	***Trend:*** ↑

Judges must have a law degree, at least two years of professional experience, and have passed the bar examination. Some law faculties offer expanded and improved curricula, including practical skills based training for students, but court internship programs are considered to be inadequate.

Analysis/Background:

Judges are required to have earned a university-level degree in law and to have passed the bar examination in order to be considered eligible for election. LAW ON JUDGES art. 41 (O.G.R.S. No. 63/01, Nov. 8, 2001). They are also required to have anywhere from two to twelve years of practical work experience, depending on the court. For instance, an individual must have two years of professional experience before being elected as a municipal court judge. *Id.* This type of experience is usually acquired through court internships and then by working as a judicial assistant. To be elected to higher courts, judges must have the following professional experience: four years experience for the commercial courts; six years experience for the district courts; eight years experience for the High Commercial Court, Administrative Court, and the courts of appeal, when these courts are in fact created; and twelve years experience for the Supreme Court. *Id.*

Individuals who wish to pursue a career as a judge must obtain formal legal education, following the completion of secondary education, at one of Serbia's many universities. The four main public law faculties in Serbia include those housed at the universities of Belgrade, Novi Sad, Kragujevac, and Nis. These universities offer undergraduate degrees in law, which typically span eight semesters over four academic years, as well as graduate and post-graduate law degrees. In addition, a private law faculty in Belgrade, the Business Law Faculty, was formed by the former professors of the University of Belgrade in 2002 and is expected to graduate its first undergraduate class in 2006.

During the first and second years, most faculties offer a compulsory curriculum of general courses such as the history and theory of law, roman law, economics, and sociology, in combination with introductory courses in constitutional, civil, criminal, administrative, labor, inheritance, and family law. More advanced and specialized courses are offered in the third and fourth years, including, *inter alia*, commercial law, contracts, civil and criminal procedure, and international law.[1]

University instruction has traditionally placed more emphasis on lecture-based formats and theoretical knowledge as opposed to interactive teaching methods and providing students with practical lawyering and judging skills. Moreover, some courses did not necessarily reflect the latest developments in the law and lacked adequate instructional materials. There was also little, if any,

[1] The following law faculties post curriculum and other information on their websites: Belgrade (http://www.ius.bg.ac.yu); Novi Sad (http://www.pravni.ns.ac.yu); Kragujevac (http://www.jura.kg.ac.yu); Nis (http://www.prafak.ni.ac.yu); and the Business Law Faculty (www.fpp.edu.yu).

opportunity to take elective courses in order to develop a specialization while in law school. No significant attention was given to discussing the role of the judge or the courts in a democratic society, legal and judicial ethics, or anything akin to cultural sensitivity.

In recent years, several law faculties have introduced reforms aimed at raising the qualifications of their graduates by modernizing curricula and innovating teaching methods. The Nis Law Faculty, for instance, adopted a new curriculum in 2003, based in part on contemporary European standards for higher education. Now students may choose from among seven concentrations or study modules (criminal, civil, administrative, commercial, financial, international, and jurisprudence) and more than two dozen elective courses on advanced topics of domestic and international law. It has also organized Serbia's first civil law legal clinic, which took place from April 2002-March 2003. The Novi Sad Law Faculty offers numerous new electives, including roughly 15 courses on European and European Union law taught in English by professors from German universities. Students at the Novi Sad Law Faculty may also register for courses from a new elective group on Practical Legal Education. This elective group, which has received financial support from ABA/CEELI, offers courses in legal research and writing, legal ethics, and two courses in judicial practice. Other law faculties such as the Belgrade Law Faculty and the Business Law Faculty are experimenting with offering courses on legal research and writing, preparing teams for international moot court competitions, and exposing professors to new teaching methods as part of a two-year USAID funded project implemented by the National Center for State Courts.

Law faculty graduates seeking to enter the judiciary must spend at least two years working as a court intern in a municipal, district, or commercial court before they are eligible to sit for the bar examination. LAW ON THE ORGANIZATION OF COURTS art. 62 (O.G.R.S. No. 63/01, Nov. 8, 2001); LAW ON THE BAR EXAMINATION art. 2 (O.G.R.S. No 16/97, April 16, 1997). This requirement increases to three years for those working in government agencies, while individuals working in commercial enterprises, institutions, and organizations must have four years experience to be eligible. During this time, interns are supposed to gain practical skills and improve their substantive knowledge of the law though on-the-job training. The President of the Supreme Court is responsible for developing the general framework for training court interns. LAW ON THE ORGANIZATION OF COURTS art. 64; *see also* COURT RULES OF PROCEDURE arts. 8, 67. Each court president, in turn, is responsible for developing a training program for his or her own court within this framework. *Id.* This responsibility includes defining the program's scope and duration, as well as monitoring its implementation and the individual judges who supervise interns on a daily basis. *Id.* art. 67.

Training for interns and for judicial assistants has reportedly improved in some courts, but largely remains inadequate, particularly in regards to developing skills for managing cases and conducting hearings. The quality of the internship experience depends significantly on the interest and availability of the supervising judge — which can vary considerably not only from court to court but from judge to judge. Recent proposals to develop a comprehensive judicial reform strategy recognize this problem and advocate the reorganization of the current training program and the introduction of measures to improve its rigor. *See* Ministry of Justice of Serbia, PLATFORM FOR THE STRATEGY FOR JUDICIAL REFORM at 4 (Sept. 2004) [hereinafter PLATFORM FOR THE STRATEGY FOR JUDICIAL REFORM]. Other proposals contemplate the creation of a two-year academic track for aspiring judges beginning in the third year of law school and increased emphasis on clinical legal education. *See id.* at 3; Ministry of Justice of Serbia, DRAFT NATIONAL JUDICIAL REFORM STRATEGY § III.E.2 (July 2005) [hereinafter DRAFT NATIONAL JUDICIAL REFORM STRATEGY].

As noted above, a court intern is eligible to sit for the bar examination after completion of their second year, although some interns wait until the third year of their internship. The bar examination is conducted under the auspices of the Ministry of Justice over two to three days, and includes oral and written components. Subjects tested orally include constitutional, criminal, civil, administrative, labor, and private international law. Although candidates are required to draft mock

complaints or judicial decisions in areas of civil and criminal law, the examination is considered highly theoretical and unrelated to the day to day practice of law and the work of judges.

Efforts to reform the bar examination by various groups, including the Organization for Security and Cooperation in Europe and the Young Lawyers of Serbia in conjunction with members of the judiciary are ongoing, but have yet to achieve any concrete results.

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: ↔***
Legislative amendments in April 2004 have restored the role of the judiciary in the election of judges it enjoyed in 2001. Although the High Judicial Council has given greater specificity to objective criteria which exist for nominating and electing judges, many nominations are considered to be influenced by political considerations and nepotism.		

Analysis/Background:

The process for electing judges was changed in April 2004 pursuant to amendments to the package of laws on the judiciary, which includes the Law on Judges and the Law on High Judicial Council. These amendments came in the wake of a tense period surrounding the assassination of the Serbian prime minister in March 2003, in which executive and legislative bodies assumed greater control over judicial appointments at the expense of the role of the judiciary itself in this process. The April 2004 amendments had the effect of restoring most of the competencies enjoyed in 2001 by the High Judicial Council (HJC) in electing judges and court presidents. As it now stands, judges are elected by the National Assembly on the basis of nominations received from the HJC. CONST. art. 73(10); LAW ON JUDGES art. 46; LAW ON HIGH JUDICIAL COUNCIL art. 1 (O.G.R.S. No. 63/01, Nov. 8, 2004, *as amended*). If the HJC's nominees are rejected by the National Assembly, the HJC then proposes additional nominees for consideration. LAW ON JUDGES art. 46. The National Assembly may not elect anyone who was not first nominated by the HJC, which was the case between July 2002 and April 2004.

In addition, the April 2004 amendments did away with the controversial March 2003 provision (Article 70) of the Law on Judges that created the Council for Questions of Judicial Administration. One month earlier, on March 19, 2004, the Constitutional Court struck down this provision as unconstitutional. This body, which was predominately non-judicial in nature, had been vested with the authority to propose the appointment and dismissal of court presidents. In accordance with the current Law on Judges, the National Assembly now elects court presidents following their nomination by the HJC, much as it did prior to March 2003.

The HJC is comprised of five permanent members, including the President of the Supreme Court, the Republic Prosecutor, the Minister of Justice, a lawyer appointed by the Bar Association of Serbia, and a representative of the National Assembly, who is appointed on the recommendations of the Supreme Court. When the HJC considers nominations to the judiciary, its five permanent members are joined by six *ad hoc* members, i.e. judges appointed by the Supreme Court. This body is required to consider each candidate for nomination on the basis of two objective criteria established by law, "professional ability and worthiness." LAW ON JUDGES art. 45. Although these criteria have been viewed as quite broad and ambiguous, there have been attempts to give them

greater specificity. In 2002, for instance, the Supreme Court defined these criteria, for purposes of assessing current judges and judicial assistants, to include the number of pending cases, the type and complexity of cases, the number of reversed, affirmed, and modified decisions, the length of time in drafting decisions, the timeliness and efficiency of handling cases, and the conduct in the courtroom. *See* STANDARDS FOR THE ASSESSMENT OF THE MINIMUM OF SUCCESS IN THE PERFORMANCE OF JUDICIAL FUNCTIONS art. 1 (O.G.R.S. No. 36/2002, No. 41/2002, and No. 80/2005) [hereinafter STANDARDS FOR THE ASSESSMENT OF JUDICIAL PERFORMANCE].

It was not until April 2005, however, that the HJC issued its own definition of the two criteria established by the Law on Judges. In its decision of April 1, 2005, the HJC established the standards for considering candidates based on these criteria. Pursuant to this decision, the HJC will now assess the "professional ability" of both first-time candidates and of candidates for higher instance courts on the basis of "the quality of work and the realized efficiency coefficient during the three year period prior to application." DECISION ON STANDARDS AND CRITERIA FOR THE PROPOSAL OF CANDIDATES FOR THE APPOINTMENT OF JUDGES AND COURT PRESIDENTS art. 1 [hereinafter DECISION ON STANDARDS AND CRITERIA FOR THE APPOINTMENT OF JUDGES]. The HJC will also consider the length of time spent earning a law degree, academic performance, academic knowledge, and published scientific and professional papers. *Id*. If the first-time candidate has been employed as a judicial assistant, the HJC considers the assessment of the candidate's performance by the court president, the opinions of those judges with whom the individual worked, as well as the following performance indicators: number of cases received over the prior three years, number of draft decisions, number of draft decisions returned for correction, and number of draft decisions taking more than 15 days to prepare. *Id*. art. 2. Somewhat more general criteria for other first-time candidates from other judicial bodies, the bar, and outside the judiciary also exist. *See id*. arts. 3-5.

The "worthiness" of all candidates is assessed on the basis of information and recommendations about the individual candidate's reputation in the community, tolerance displayed in professional discussions, and readiness to consider opinions of other participants in a proceeding. *Id*. art. 14.

Although the judicial appointment process is considered less politicized than it was during the Milosevic era and in the recent past, the prevailing view is that political considerations and nepotism continue to take precedence over the objective criteria that do exist. This is in part due to the fact that the HJC operates in closed sessions and little is known about its decision-making process. Moreover, the HJC reportedly only meets for very brief periods despite having numerous applicants to consider for nomination. Many judges and other observers surmise that instead of giving serious consideration to each individual applicant, a list of pre-approved candidates is circulated and agreed upon following some bargaining among the HJC members. In addition, many nominees recently elected by the National Assembly are considered by their peers to be unqualified and lacking in professional experience.

Efforts to impart greater transparency into HJC deliberations, such as publishing a schedule of meetings in advance and issuing press releases on a frequent basis, could go far in changing the perception of some that candidates for judicial nominations are given inadequate consideration.

Frustration over the caliber of a handful of candidates nominated by the HJC in January 2005 led a group of judicial assistants, who were not nominated, to draft an open letter suggesting that these nominations had more to do with the nominees' relationships to sitting judges and other public officials than their qualifications. The signatories to this letter, which was published in several newspapers, called upon the HJC to explain the basis for these nominations. *See Judicial Assistants Point to Nepotism: Cousins Elect Judges*, BLIC, January 18, 2005. This initiative is thought to have caused the Judiciary Committee of the National Assembly to return these nominations to the HJC, which subsequently re-opened the application process. Letter writing campaigns of this sort are reported to be more commonplace.

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: ↔***

Although participation in continuing education remains voluntary, many judges take advantage of training opportunities provided by the Judicial Center for Professional Education and Advanced Training (JTC), as well as by other international and domestic non-governmental organizations. The JTC faces significant challenges ahead, including financial, that it must overcome if it is to realize its objective to be the leading organization for judicial education in Serbia.

Analysis/Background:

The Judicial Center for Professional Education and Advanced Training (Judicial Training Center, the JTC) was established in December 2001 with the participation and support of the Ministry of Justice and the Judges Association of Serbia. Its stated purpose is to improve the knowledge and effectiveness of judges, prosecutors, and other legal professionals in Serbia through continuing education programs in civil, commercial, criminal, and human rights law, as well as courses in case management and other practical skills.[2] Between 2002 and 2004, the JTC organized 231 events that involved a total of 6,706 legal professionals. *See* Judicial Training Center, ANNUAL REPORT 2004 at 2. Trainings are held at the JTC's headquarters in Belgrade and at locations throughout Serbia in cooperation with local courts and other domestic and international partners. The JTC has also organized several study tours to judicial training centers in Europe, in addition to regional conferences and seminars that include participants from neighboring countries.

Despite its initial successes in establishing and expanding judicial training opportunities, the JTC faces significant challenges that it must overcome if it is to realize its objective to be the leading organization for judicial education in Serbia. Chief among these is securing funding for the development of a standardized curriculum and resources for implementing the training programs. Although the JTC has received funding from domestic and international sources, it still does not have an adequate financial base to ensure sustainable operations.

Because much of its existing funding comes from international donors, much of the JTC's activity is viewed as being mostly donor-inspired.

To date, the JTC has not yet developed a standard core curriculum for judicial education despite its ongoing activities. It has, nevertheless, recently adopted a plan to systematize and standardize its training programs and methodologies. *See* Judicial Training Center, FRAMEWORK ANNUAL CURRICULUM ON JUDICIAL TRAINING AND PROFESSIONAL ADVANCEMENT at 8. This plan remains to be implemented. Moreover, plans to establish branch offices outside of Belgrade have yet to be fully realized. A branch office in Nis has operated over the course of the past several years but the JTC has been unable to open a branch in Novi Sad.

Although the government has not played a very pro-active role in judicial training, it is considering a state-supported judicial training institute along the lines of those found in other European countries. *See* DRAFT NATIONAL JUDICIAL REFORM STRATEGY § III.E.2. At present, it is unclear how this goal would affect the existing JTC and its efforts to raise the qualifications and expertise of judges. It could mean converting the existing JTC fully into a state institution such as a judicial academy.

[2] The JTC operates a website at http://www.pcsrbija.org.yu.

International organizations and non-governmental organizations continue to conduct or sponsor trainings for judges and other legal professionals on substantive areas of law, including international human rights law and significant developments in domestic law such as provisions of the new Civil Procedure Code. Trainings by domestic organizations, such as the Judges Association of Serbia, are ongoing as well. While enthusiasm for continuing education remains strong among most members of the judiciary, particularly among younger judges, there is frustration with the quality of some trainers and a perception that there is too much focus on the European Convention on Human Rights and international human rights law.

Factor 4: Minority and Gender Representation

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Women are well represented in the judiciary, but they do not hold leadership positions or sit on criminal panels to the same extent men do. Judges in some courts are drawn from local ethnic minority communities but obstacles remain in conducting proceedings in minority languages such as Albanian and Hungarian.		

Analysis/Background:

The Constitution of Serbia guarantees everyone, including women and members of Serbia's minority communities, freedom of employment and equal access to employment. CONST. art. 35.[3] There are no explicit provisions in the package of laws on the judiciary regarding gender or minority diversity among the judges.

In terms of overall numbers, women are well represented in the judiciary and continue to make up the majority of judges in municipal and district courts. However, men tend to be assigned to criminal departments more frequently and in greater numbers, even though there are numerous women jurists specializing in criminal matters. Men also hold more court president positions in courts throughout the country. For instance, in the 146 courts of general jurisdiction and 18 commercial courts, there are 61 female court presidents compared to 103 male court presidents. The notable exception is that of the Supreme Court of Serbia, whose president is a woman.[4] The current President of the Supreme Court is Vida Petrovic-Skero, a longtime proponent of judicial reform. Most observers welcomed her election in March 2005 as a positive step toward greater reform of the Serbian legal and judicial systems.

The large number of women is often attributed to the low salaries earned by judges. As noted in the 2002 Serbia JRI, there are numerous quips about this phenomenon. Indeed, one male judge remarked that he remains a judge only because his wife is a successful doctor and earns a very good salary.

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[3] According to the 2002 census, the national or ethnic breakdown of Serbia's population is as follows: Serb, 82.86%; Hungarian, 3.91%; Bosniak, 1.82%; Romany, 1.44%; Croat, 0.94%; Montenegrin, 0.92%; Albanian, 0.82%; and Slovak, 0.79%. Women make up roughly 51% of the total population of 7.49 million. *See* Republic of Serbia Statistical Office, FINAL RESULTS OF THE CENSUS 2002 (Communication No. 295, Dec. 24, 2002).

[4] Leposava Karamarkovic and Sonja Brkic have also held the post of Supreme Court President in recent years. Notably, Judge Karamarkovic resigned in March 2003, in the wake of the assassination of Serbian Prime Minister Zoran Djindjic, citing crude media and political pressure. Judge Brkic was elected shortly thereafter to succeed her.

Members of various ethnic communities, including ethnic Hungarians and ethnic Albanians, are represented within the judiciary. Yet it remains unclear whether their numbers are proportional to the overall size of these communities within the general population. In the Presevo Municipal Court, for instance, there are 3 ethnic Albanian judges and 2 ethnic Serb judges, including the court president, in addition to 21 ethnic Serbs, 11 ethnic Albanians, and 2 Roma which make up the court's administrative staff. There are no ethnic Albanian judges in the Bujanovac municipal court, and one ethnic Albanian judge in the Vranje district court. There is reported to be some representation of ethnic and religious minorities in Vojvodina, as well as in Sandzak.

A system exists, the goal of which is to ensure access to justice for Serbia's ethnic minorities. Its elements include posting signs on court buildings in both minority languages and in Serbian, as well as providing court documents, (e.g., forms, summons, writs, and transcripts), conducting proceedings, and issuing decisions in these languages.

The presence of judges from minority ethnic communities, however, does not necessarily ensure that proceedings will be conducted in the language of parties to the dispute as allowed by law. *See* LAW ON OFFICIAL USE OF LANGUAGE AND ALPHABET arts. 1, 11-12 (O.G.R.S. No. 48/94, July 20, 1994). While some judges can and do reportedly conduct proceedings in the language of their ethnic community, there is some hesitation to do so because the judges do not have a full command of minority languages, particularly with regards to legal terminology. A deficit in the number of interpreters and courtroom typists who are proficient in minority languages also creates difficulties in holding proceedings in languages other than Serbian. In southern Serbia, for instance, where there are sizable ethnic Albanian communities, there is an inadequate number of qualified Albanian language interpreters, in large part due to lack of funding for this service. The situation is reportedly better in Vojvodina, where it is somewhat more common to conduct proceedings in Hungarian, the language of the predominant national minority in the region.

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***	***Trend:*** ↑
Although the Constitutional Court has not operated with a full complement of judges, it has exercised its jurisdiction to review the constitutionality of legislation and official acts in several high profile cases.		

Analysis/Background:

Only the nine-member Serbian Constitutional Court has jurisdiction to review the ultimate constitutionality of laws, regulations and other normative acts promulgated by state bodies of the Republic of Serbia. CONST. 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 in such a fashion. This function is solely that of the Constitutional Court. Individuals, public officials, and state agencies may initiate judicial review proceedings. The Constitutional Court itself may also initiate these types of proceedings. *Id.* art. 128.

Despite some challenges to its independence, the Court continues to rehabilitate itself and overcome its Milosevic-era reputation as a politicized body that was seldom independent in its

views and decision-making. For instance, in July 2004, the Court ruled that several of the regulations imposed by the government during the state of emergency did not conform to the Constitution. These included regulations related to freedom from arbitrary arrest and detention, the right to legal representation, and government censorship of the media.

In April 2004, the Court rendered another important decision, one that arguably contributed to the rule of law and the separation of powers, when it ruled that Article 70 of the Law on Judges violated several provisions of the Constitution. The effect of this decision was to return authority over judicial appointments to the High Judicial Council from the now defunct Council for Questions of Judicial Administration. Also in April 2004, the Court issued a temporary ban on the implementation of legislation that granted subsidies and compensation to individuals awaiting or standing trial at the International Criminal Tribunal for the former Yugoslavia in The Hague.

And in yet another important case involving the status of the judiciary as an equal branch of government, the Court found in its decision of June 16, 2005, that the December 23, 2004 Government Conclusion No. 121-8431/2004, relating to judicial salaries, did not conform to the Law on Judges and the Law on Public Prosecutors Office. Following this decision, on July 15, 2005, the National Assembly adopted amendments to the Law on Judges, the Law on the High Judicial Council, and the Law on Public Prosecutors Office.

For much of its recent history, the Constitutional Court has been plagued by vacancies and has operated with less than a full complement of judges. Throughout part of 2004 and the beginning of 2005, the Court functioned with no more than seven judges, something which contributed to a growing backlog of cases before the Court. This situation could improve somewhat following the election of two judges nominated by the Serbian president in June 2005. The President's press service also announced that a third nominee would be proposed to replace a judge who is scheduled to retire in September 2005. *See Tadic Proposes Constitutional Court Candidates*, B-92 NEWS RELEASE, June 26, 2005.

Unlike many of their predecessors, several of the judges on the Court are well-known and respected by the legal profession for their knowledge of the law and for the quality of their decisions in most cases. Similarly, the Court's president continues to play a relatively high-profile role in issuing public statements on constitutional issues and matters related to the Court.

At the Union of Serbia and Montenegro level, the Court of Serbia and Montenegro is vested with authority to 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 Montenegro. CONST. CHARTER art. 46. In the event there is a conflict, the Court is authorized to invalidate the laws and other normative acts of the two member states. However, difficulties are expected in the implementation of the Court's decisions at the member state level, as a result of gaps or uncertainties in the enforcement framework.

Like with other Union-level institutions, the establishment of the Court has been slow in coming. Although the Court began to operate under a temporary solution forged in January 2005, it was not established in Podgorica as originally envisaged, principally due to the unavailability of refurbished and modern facilities. For the time being, the Court is provisionally headquartered in Belgrade's Palace of the Federation. Moreover, not enough judges have been appointed to the Court to make it completely operational, and its financing has not been fully secured. The financial contribution expected from Montenegro (around €235,000 during 2004 and roughly the same amount for 2005) has either not been disbursed or has not been channeled to the Court. Lack of adequate funding exacerbates important problems involving the shortage of equipment, such as computers, and the lack of qualified staff. In addition, the Court has inherited a huge backlog from the former Federal Court of Yugoslavia. In short, its future will largely depend on the viability of the Union of Serbia Montenegro, which remains an unsettled question.

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: Negative***	***Trend: ↔***

Courts of general jurisdiction continue to exercise jurisdiction over administrative acts in anticipation of the establishment of the Administrative Court, which has again been postponed. The enforcement of judgments rendered against the government parties reportedly remains problematic.

Analysis/Background:

The judiciary is authorized to review administrative decisions and to compel the government agencies to act. LAW ON ADMINISTRATIVE DISPUTES arts. 1, 17 (O.G.R.S. No. 46/96, April 10, 1996). At the present time, first instance jurisdiction over administrative disputes is exercised by district courts and, in certain cases, the administrative department of the Supreme Court. Many disputes involve administrative decisions of municipal governments, the pension fund, the national postal and telecommunications service, and health care issues. The reviewing court may vacate the administrative decision and remand it to the relevant government body or render its own decision.

Courts occasionally order the authorities to compensate citizens whose rights are violated by administrative acts or the actions of government authorities. However, the regular implementation of these decisions remains a challenge. The government is reportedly prone to delay or obstruct the decision of the court in these types of instances.

According to the Supreme Court's statistical report for 2004 (an internal document on file with ABA/CEELI [hereinafter SUPREME COURT'S REPORT FOR 2004]), in 2004, the Supreme Court and district courts received a total of 10,639 new administrative cases.

As noted in the December 2003 Update to 2002 Serbia JRI, the Law on the Organization of Courts of November 2001 provided for the eventual establishment of a specialized Administrative Court in Belgrade with exclusive, first instance jurisdiction over all administrative disputes arising throughout Serbia. *See* arts. 12, 26. This Court was originally required by law to begin hearing and deciding cases by October 2002, but this deadline was postponed on multiple occasions, by amendments to the package of laws on the judiciary in July 2002 and March 2003 (*see* O.G.R.S. No. 42/02, July 19, 2002; O.G.R.S. No 27/03, March 19, 2003) and by a decision of the Constitutional Court in December 2003. The latter was necessary to fill an impending jurisdiction gap when the National Assembly recessed prior to legislating an extension for the establishment of a new court network. It was not until March 18, 2004 that the Law on the Organization of Courts was amended to provide for the establishment of this new network, including the Administrative Court, by January 1, 2007. *See* art. 81, *as amended* (O.G.R.S. No. 29/2004, March 17, 2004).

For the time being, efforts to appoint judges to the new court as well as to secure buildings and other resources for it are more or less on hold — reportedly on account of financial and resource constraints. It remains to be seen whether the vision for a new judiciary, which includes the creation of a modern court network, as articulated by the draft National Judicial Reform Strategy, will expedite efforts to earmark the resources necessary for constituting the Administrative Court by the current 2007 deadline. *See* DRAFT NATIONAL JUDICIAL REFORM STRATEGY § II.E. A decision on the number of judges and lay judges for the Administrative Court must be taken by June 1, 2006. LAW ON JUDGES art. 80 (*as amended*).

Once constituted, 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.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***

The judiciary continues to exercise jurisdiction over cases concerning fundamental rights and freedoms protected by the Constitution. Domestic trials of war crimes have begun but only a few cases have been prosecuted. Following the ratification of the European Convention on Human Rights, lawyers are now filing applications before the European Court of Human Rights.

Analysis/Background:

The 1990 Constitution of Serbia contains 59 articles that enumerate various rights and freedoms 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 representation and protects individuals from torture and inhumane and degrading treatment. Responsibility for protecting these rights and freedoms is vested in the Serbian judiciary, which exercises jurisdiction over alleged violations of civil rights and liberties protected by law. CONST. arts. 12, 95. The Criminal Code also identifies numerous offenses against civil rights and liberties as well genocide, war crimes, and slavery. *See generally* BASIC CRIMINAL CODE chap. 16.[5]

The Belgrade District Court exercises first instance jurisdiction over crimes against humanity and international law as well as those international crimes found in Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY). This jurisdiction is set forth in the Law on Prosecuting Perpetrators of War Crimes. Following the adoption of this law in 2003, the court established a war crimes panel that is presently trying one case, the Ovcara case. At least three investigations are underway out of roughly 300 files the panel has managed to compile. Two other high-profile war crimes cases (Sjevernin and Podujevo) were initiated prior to the establishment of this panel and are being tried under the auspices of the Belgrade District Court's criminal department.

The level of knowledge, expertise, and efficiency of judges presiding over war crimes cases has reportedly improved significantly following two years of intensive training and support provided by international donors. A handful of judges and prosecutors have also visited the ICTY in The Hague through its outreach program, where they have participated in trainings on international humanitarian law and learned about how the Tribunal functions.

Although respect for civil and political rights in Serbia has improved since the Milosevic era, some human rights activists and lawyers believe that the courts are not yet a reliable means to promote and protect fundamental rights and freedoms, particularly with regards to minority rights in southern Serbia. Nevertheless, there is some optimism this will improve over time, especially now that the provisions of the European Convention on Human Rights (ECHR) are directly applicable within the

[5] The new Criminal Code of the Republic of Serbia (O.G.R.S. No. 85/2005), adopted on September 29, 2005, combines the Basic Criminal Code and the Criminal Code of the Republic of Serbia. The unified code enters into force on January 1, 2006.

Serbian legal system.[6] More judges and lawyers are becoming familiar with the ECHR and the jurisprudence of the European Court of Human Rights in Strasbourg, largely as a result of numerous ECHR trainings organized by international donors and others, including the Belgrade Center for Human Rights and the Judicial Center for Professional Education and Advanced Training.[7] However, while reference to the Convention in court proceedings is reportedly more commonplace, it is still too early to determine the extent to which the ECHR influences judges in their decision making. Similarly, it is not yet clear whether exposure to this and other aspects of international human rights law has affected the extent to which the judiciary views itself as a mechanism for human rights protection.

What is certain is that the ECHR is being relied upon more by lawyers and human rights activists. In 2004, for instance, a total of 676 applications were lodged against the Union of Serbia Montenegro before the European Court of Human Rights. Of this amount, approximately 450 were allocated to a decision making body of the Court. Only one petition was referred to the authorities of Serbia and Montenegro for follow-up. To date, the European Court of Human Rights has not issued any judgments involving Serbia.

On January 26, 2005, the Council of Europe's Parliamentary Assembly appointed Dragoljub Popovic as a judge of the European Court of Human Rights. Popovic, who taught constitutional and comparative law in Belgrade, previously served as ambassador to Switzerland.

The ombudsman law, adopted on September 29, 2005, created an independent parliamentary ombudsman for the protection of human rights. LAW ON THE OMBUDSMAN OF SERBIA art. 1 (O.G.R.S. No. 79/2005, Sept. 16, 2005). It is of some significance that this institution is vested with authority to initiate misdemeanor, criminal, and other proceedings against administrative authorities who are alleged to have violated the rights and freedoms of citizens of Serbia. *Id.* art. 20.

Factor 8: System of Appellate Review

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
A new Civil Procedure Code offers the potential to reduce the length of proceedings by limiting the number of appeals before a final judgment is rendered. The establishment of the envisioned court network, including new appellate courts, has been postponed yet again.		

Analysis/Background:

Individuals enjoy equal protection of the law in court proceedings and are guaranteed the right to appeal decisions concerning their rights and freedoms. CONST. art. 22. Judicial decisions may only be reviewed and reversed by a court through an appellate process set forth by law. LAW ON THE ORGANIZATION OF COURTS art. 3. This remains a fundamental principle of law and justice that is widely recognized throughout Serbia. It is also something that is strongly practiced without any reported instances of non-judicial reversals. However, the appellate process has suffered from shortcomings related to the existing structure of the court system, as well as certain procedural peculiarities that contribute to the overall length of judicial proceedings.

[6] The Union of Serbia Montenegro ratified the ECHR on December 26, 2003 (*see* O.G.S.M.-International Treaties No. 9/03, December 26, 2003).

[7] Several judges have suggested that ECHR-related trainings are too commonplace and that members of the judiciary may have reached a saturation point in terms of exposure.

As noted in the December 2003 Update to 2002 Serbia JRI, the Law on the Organization of Courts, adopted in November 2001, originally set an October 2002 deadline for the establishment of a new appellate structure comprised of four courts of appeal located in Belgrade, Kragujevac, Nis, and Novi Sad. Once they begin functioning, these courts will exercise second instance jurisdiction over decisions of municipal and district courts falling within their respective territorial jurisdictions. LAW ON SEAT AND TERRITORIAL JURISDICTION OF COURTS AND PUBLIC PROSECUTORS' OFFICES art. 6 (O.G.R.S. No. 42/02, July 19, 2002). Their establishment will most likely increase the efficiency of the appellate system by reducing the burden on certain courts, such as the Belgrade District Court. This court reportedly processes up to 62% of all second instance cases in Serbia. The creation of the courts of appeal will also have the effect of limiting the jurisdiction of the Supreme Court, which is currently very broad, in such a way as to transform the court into a court of cassation.

Unfortunately, the competent authorities have repeatedly failed to allocate funding, designate the appropriate buildings, appoint judges, or provide other resources necessary for the functioning of the new court network. As a result, the deadline for establishing the courts of appeals (in addition to a new Administrative Court, as described in Factor 6 above) has been postponed on multiple occasions, first by amendments to the package of laws on the judiciary in July 2002 and March 2003 (*see* O.G.R.S. No. 42/02, July 19, 2002; O.G.R.S. No 27/03, March 19, 2003), and then by a decision of the Constitutional Court in December 2003. This was then followed by yet another amendment to the Law on the Organization of Courts, which set the current deadline of January 1, 2007 for the courts to begin functioning. *See* art. 81, *as amended* (O.G.R.S. No. 29/2004). Failure to meet these previous deadlines created significant uncertainty among members of the judiciary, and ultimately contributed to the length of proceedings and inefficiencies in the appellate process. Notably, a decision on the number of judges and lay judges for the courts of appeal must be made by June 1, 2006. *See* LAW ON JUDGES art. 80 (*as amended*).

Until the new court network is put in place, the existing appellate process as established by the Law on the Organization of Courts in 1991 will continue to function. In other words, district courts will continue performing their appellate function by hearing appeals from the municipal level involving both criminal and civil matters. In addition, the Supreme Court will hear and decide cases on appeal from the district courts and cases on appeal from the High Commercial Court in Belgrade, which exercises appellate jurisdiction over cases decided by the commercial courts located throughout the country. *See* LAW ON THE ORGANIZATION OF COURTS arts. 14, 25.

The existing courts that exercise appellate jurisdiction remain quite active in considering cases on appeal. First instance judgments in both civil and criminal matters are often appealed, according to most informed sources. Parties to a proceeding have fifteen days to appeal a first instance judgment. CIVIL PROCEDURE CODE art. 355; CRIMINAL PROCEDURE CODE art. 363. Judgments may be appealed on procedural grounds, as well as on the basis of errors in the application of law or in the determination of facts. CIVIL PROCEDURE CODE art. 360; CRIMINAL PROCEDURE CODE art. 367. According to the SUPREME COURT'S REPORT FOR 2004, every third decision of municipal courts in the first instance and almost every first instance decision of district courts is appealed. In 2004, a total of 83,972 appeals were filed. The breakdown of appellate decisions is presented in the following table:

APPELLATE DECISIONS BY SERBIAN COURTS IN 2004

	Affirmed, %	**Remanded, %**	**Reversed by higher court, %**
Municipal courts – civil departments	60	30	10
Municipal courts – criminal departments	55	25	20
District courts – civil departments	57	13	30
District courts – criminal departments	58	20	22

Source: SUPREME COURT'S REPORT FOR 2004.

Prior to the adoption of the new Civil Procedure Code in 2004, there were no limits on the number of times a party could appeal a judgment in the first instance — and many cases would be appealed more than once. Moreover, it was not uncommon for cases to bounce back and forth between first and second instance courts several times before a final judgment was issued. Not only did this contribute to the overall length of time it took to resolve the dispute, but it increased the costs incurred by the parties in litigating the matter. After February 2005, when the new procedures entered into force, on the second appeal of a first instance judgment, the second instance court will try the case itself and render a judgment. CIVIL PROCEDURE CODE art. 369. Once this occurs, the case cannot be sent down to the first instance again. Most judges as well as lawyers welcome this procedural reform as a significant improvement in the law and one that has the potential to increase the efficiency of the courts in disposing of cases over the long-term.

Factor 9: Contempt/Subpoena/ Enforcement

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

Conclusion	***Correlation: Negative***	***Trend:*** ↔

Although judges have subpoena, contempt, and enforcement powers, they are not effectively implemented in practice. The failure of witnesses and parties to appear when summoned often contributes to procedural delays and increases the length of proceedings.

Analysis/Background:

Judges enjoy the power to subpoena witnesses, experts, and parties pursuant to the codes of civil and criminal procedure. Subpoenas in both civil and criminal matters are first served by mail. In addition to identifying the witness by name and occupation, subpoenas indicate the nature, time, and place of the proceeding.

Individuals properly summoned as witnesses are obliged to comply with the subpoena and are informed in the subpoena itself of the consequences of failing to appear. Those who do not appear in response to a subpoena may be subject to a fine (30,000 dinars [€366] in civil matters or 100,000 [€1,220] dinars in criminal matters). CIVIL PROCEDURE CODE art. 247; CRIMINAL PROCEDURE CODE art. 108. Judges may also issue warrants for the witness to be brought before the court by force or imprisoned, if the individual fails to respond on his/her own accord. CIVIL PROCEDURE CODE art. 247; CRIMINAL PROCEDURE CODE art. 307.

The delivery of subpoenas is reportedly ineffective and is often cited as one of the contributing factors in the overall length of proceedings, particularly in civil proceedings. Many subpoenas do not reach the intended recipient because people often do not notify the public authorities of address changes. Although there are some attempts by the courts, working in coordination with the prosecutors and the municipal authorities, to ensure subpoenas are properly served, significant problems remain. In addition, many individuals who are properly served are believed to avoid appearing by submitting false medical or other excuses.

Rather than fully exercising their subpoena powers, some judges are prone to reschedule hearings several times in order to hear the testimony of a particular witness and develop the record so that the case will not be sent back on appeal. Thus, many proceedings take an excessively long time to complete. Moreover, proceedings are sometimes delayed by lawyers who wish to call additional witnesses. Prior to the enactment of the new Civil Procedure Code, lawyers could call new witnesses at any time throughout the proceeding, something also considered as contributing to the overall length of proceedings.

Judges enjoy contempt powers to remove from the courtroom anyone who disrupts the proceedings or otherwise fails to comply with an order of the presiding judge. CIVIL PROCEDURE CODE art. 181; CRIMINAL PROCEDURE CODE art. 299. These powers are not fully exercised even though parties to a proceeding can often demonstrate a lack of respect for the judge and for the rules of the courtroom.

The enforcement of civil judgments is exercised by the courts pursuant to the Law on Executive Procedures and provisions of the Civil Procedure Code. Although the legal framework provides a mechanism for enforcement of judgments, it is a time consuming and not always successful process. According to the SUPREME COURT'S REPORT FOR 2004, there were 711,262 enforcement proceedings (cases) in Serbian courts in 2004. 512,061 of these involved new cases.

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***	***Trend: ↔***

The judiciary does not have an independent budget and has no meaningful ability to influence the amount of funding it receives from the state budget via the Ministry of Justice and how this funding is ultimately spent. Delays in allocating funds to courts often impede their operations and contribute to the inefficient administration of justice.

Analysis/Background:

Funds for the judiciary and the operation of the court system are allocated on the basis of the state budget. LAW ON THE ORGANIZATION OF COURTS art. 77. The National Assembly determines this amount based on the recommendation of the Ministry of Finance, which, in turn, is based on a proposal of the Justice Minister for the overall annual budget of the Ministry of Justice. This proposal reportedly takes into account input received from all court presidents, including the President of the Supreme Court, regarding estimated annual expenses for the courts they manage.[8] Court presidents collect and provide this information, which has some approximation to individual court operational budgets, to the Justice Ministry officials in accordance with their responsibilities for court administration prescribed by law and the Court Rules of Procedure. *Id.* arts. 48, 49; COURT RULES OF PROCEDURE arts. 6, 7, 8. The Ministry of Justice, in turn, maintains authority over the disbursement of budgetary funds to the judiciary and supervises financial and material outlays necessary for the operation of courts. LAW ON THE ORGANIZATION OF COURTS art. 66; COURT RULES OF PROCEDURE arts. 3, 4.

The annual budgets of Serbian courts from 2002 to 2005, by type of court, are as follows:

[8] For a comprehensive overview of the court budget planning process, *see generally* Booz Allen Hamilton, REPUBLIC OF SERBIA: COURT ADMINISTRATION ASSESSMENT & IMPLEMENTATION PROPOSAL at 14-19 (Sept. 2004) [hereinafter Booz Allen Hamilton, COURT ADMINISTRATION ASSESSMENT].

ANNUAL JUDICIAL BUDGET (in Euros)

	2002	2003	2004	2005
Supreme Court	1,333,448	2,187,032	2,455,559	2,497,962
District Courts	10,156,896	21,232,525	15,392,515	13,639,962
Municipal Courts	39,363,914	67,920,902	49,304,029	45,118,266
Commercial Courts	5,742,362	9,414,967	7,185,549	6,555,911
TOTAL	**56,596,620**	**100,755,426**	**74,337,652**	**67,812,101**

Source: Budget amounts for 2002-2005 reflect those reported in the State Budgets for 2002 (O.G.R.S. No. 86/2002),[9] 2003 (O.G.R.S. No. 35/2003),[10] 2004 (O.G.R.S. No. 115/2004),[11] and 2005 (O.G.R.S. No. 66/2005),[12] using an official exchange rate of the National Bank of Serbia from January 1 of the particular year (€1 = 58 CSD for 2002; €1 = 61 CSD for 2003; €1 = 68 CSD for 2004; and €1 = 79 CSD for 2005).

The funds allotted to courts from the budget are believed by most sources to be insufficient. Most courts operate with considerable overhead that include expenses for lay judges, court experts, interpreters, and security, in addition to electricity and heat. The Belgrade District Court, for instance, reported operational costs in the amount of 455 million dinars (€6.25 million) for 2004. Monthly expenses of the First Municipal Court in Belgrade total as much as 5 to 6 million dinars. The Ministry of Justice, however, is viewed as being slow in allocating sufficient funds to these and other courts throughout the country. Many courts are therefore unable to pay for basic services, let alone qualified experts to assist with complex criminal cases that may involve, for instance, DNA evidence or other issues that may fall outside the competence of the court. A municipal court in southern Serbia reported that at one point it only had 700 dinars (less than €10) available in its account to pay for electricity and other services. As a result, it is not uncommon for court presidents to spend a considerable amount of time negotiating with service providers over the payment of outstanding debts. According to the Ministry of Justice, it only functions as the transfer point between the Ministry of Finance and the courts, and therefore should not be viewed as responsible for delays in the disbursement of funds.

Sixty percent of all proceeds generated from so-called court taxes, such as fees for filing petitions, requesting court transcripts and copies of decisions and judgments, are earmarked for judicial use, i.e. salaries, material costs, and operational expenses.[13] *See* LAW ON COURT TAXES arts. 3, 51 (O.G.R.S. No. 09/2002, March 6, 2002, *as amended*, O.G.R.S. No. 61/2005, July 18, 2005). However, these taxes often go uncollected. When they are collected, and then subsequently contributed toward the state budget, courts sometimes do not recover their proportional share of these funds. Moreover, court presidents do not necessarily enjoy autonomy from the Ministry of Justice in spending the little amount that is eventually provided to them.

The general consensus among judges and other informed observers is that the lack of an independent judicial budget undermines the judiciary's institutional independence and provides the

[9] Originally reported in the following CSD amounts: Supreme Court, CSD 77,340,000; District Courts, CSD 589,100,000; Municipal Courts, CSD 2,283,107,000; and Commercial Courts, including the High Commercial Court, CSD 333,057,000.

[10] Originally reported in the following CSD amounts: Supreme Court, CSD 133,409,000; District Courts, CSD 1,295,184,000; Municipal Courts, CSD 4,143,175,000; and Commercial Courts, including the High Commercial Court, CSD 574,313,000.

[11] Originally reported in the following CSD amounts: Supreme Court, CSD 166,978,000; District Courts, CSD 1,046,691,000; Municipal Courts, CSD 3,352,674,000; and Commercial Courts, including the High Commercial Court, CSD 488,617,360.

[12] Originally reported in the following CSD amounts: Supreme Court, CSD 197,339,000; District Courts, CSD 1,077,557,000; Municipal Courts, CSD 3,564,343,000; and Commercial Courts, including the High Commercial Court, CSD 517,917,000.

[13] Until July 2005, fifty percent of court taxes proceeds were earmarked for this purpose.

executive and legislative branches yet another way to influence the judiciary. They stress that there can be no judicial independence without financial independence. Many judges also note that the judiciary's dependence on the Ministry of Justice for funds sometimes erodes the administration of justice, in that many witnesses, and court appointed experts and attorneys fail to appear because they conclude they will not be paid for doing so. According to a recent report, this dependence, combined with the centralization of decisions involving judicial administration, impedes the ability of court presidents and others to experiment with administrative innovations to improve the efficiency of their courts in managing their caseloads and dispensing of cases in a timely manner. *See* Booz Allen Hamilton, COURT ADMINISTRATION ASSESSMENT at 15.

The Ministry of Justice has addressed the implications of the current budgetary process and the issue of an independent budget authority for the judiciary in its draft National Judicial Reform Strategy. In this document, it explicitly links the judiciary's institutional independence with its role in the budget formulation process and its authority over judicial salaries, material costs, and other budgetary matters. It envisions a new process, whereby the judiciary would exercise independent budget authority through the High Judicial Council in conjunction with the Serbia's Treasury, the Ministry of Finance, and the National Assembly. *See* DRAFT NATIONAL JUDICIAL REFORM STRATEGY § III.B.2.

Factor 11: Adequacy of Judicial Salaries

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

Conclusion	***Correlation: Negative***	***Trend: ↔***
Judicial salaries remain unsatisfactorily low and do little to attract or retain qualified judges. Despite some improvement, salaries of judges have not been increased as frequently as those of other public servants.		

Analysis/Background:

The issue of judicial salaries remains a source of considerable concern and consternation among members of the judiciary. Most judges contend that their salaries are unsatisfactorily low, despite legal guarantees that salaries must be sufficient enough to maintain their independence and to provide for their families. *See* LAW ON JUDGES art. 4. Judicial salaries have improved somewhat since 2002 and do exceed the national average. According to the PLATFORM FOR THE STRATEGY FOR JUDICIAL REFORM, the average monthly salary in July 2004 in Serbia was €420 for a municipal court judge, which is more than double the overall average monthly salary in Serbia of €200. The President of the Supreme Court reportedly earns roughly €500 per month. Nevertheless, they are still considered inadequate for a middle class existence. As a result, many judges as well as court personnel, including judicial assistants, continue to leave the judiciary for more financially rewarding careers as practicing attorneys. For example, between December 2004 and September 2005, the Belgrade Bar Association reportedly registered six judges, one prosecutor, and thirteen judicial assistants as lawyers. In 2004 and 2003, about fifteen people per year from the judiciary were registered. *Judges Escaping into the Bar*, GLAS JAVNOSTI, Oct. 3, 2005.

As noted in the 2002 Serbia JRI, the relatively low salaries of judges in comparison to those in the private sector keep many law students from considering a career in the judiciary. With the best and brightest legal professionals seeking better salaries outside the judiciary, the overall competency and qualifications of judges continues to decline.

Judges also express frustration over salaries that do not adequately reflect the importance and status of the profession and a lack of real parity with other public servants. It should be noted that Articles 31 and 32 of the Law on Judges (prior to the July 2005 amendments) sought to establish parity of judicial salaries with other public servants, by providing that the salary of the Supreme Court President cannot be lower than the salary of the Prime Minister, while the salary of a Supreme Court justice cannot be lower than the salary of a minister It also linked the salaries of lower level judges to the Supreme Court level salaries. In practice, salaries for judges and other public servants, including the President, members of the National Assembly, and Government ministers and staff, are regulated by the Law on Salaries in Government Bodies and Public Services (O.G.R.S. No. 34/2001, June 18, 2001). According to this Law, the Government establishes the base salaries of all public servants. The Law also determines coefficients for calculating the exact salary amount for specific categories of public servants, including judges, based on their function. Some of these coefficients are as follows: President of the Republic (15.00); President of the National Assembly and the Prime Minister (12.00); Presidents of the Constitutional Court and Supreme Court (10.50); President of the High Commercial Court (9.60); Supreme Court justices (9.40); High Commercial Court judges (9.00); District Court Presidents (8.30); District Court and Commercial Court judges and presidents of Municipal Courts (7.50); and Municipal Court judges (6.90).

The debate over judicial salaries intensified following a Conclusion of the Government No. 121-8431/2004, issued on December 23, 2004, in which it established a higher base salary for public servants, but excluded judges, as well as members of the National Assembly and the President of the Republic, from this increase. Coming in the wake of decisions by the National Assembly to raise the salaries of parliamentarians on three separate occasions, this Conclusion prompted an immediate and negative reaction on the part of the judiciary. Many judges viewed it as yet another example of efforts to undermine the independence of the judiciary and its status as a co-equal branch of government. The Judges Association of Serbia and the Prosecutors Association of Serbia argued it was also a violation of law and subsequently petitioned the Constitutional Court to consider the legality of the action.

On June 16, 2005, the Constitutional Court rendered a decision in the matter, in which it found that the Government's Conclusion of December 2004, as it related to the salaries of judges and prosecutors, violated the Law on Judges and the Law on the Public Prosecutors' Office. That same day the Minister of Justice stated that the Government would respect the Court's decision. The National Assembly, in turn, adopted amendments to the Law on Judges regarding judicial salaries on July 15, 2005. However, these amendments abolished provisions of Articles 31 and 32 that mandated the parity of judicial and executive branch salaries. Pursuant to these amendments, the High Judicial Council (HJC) may now adopt a decision, with the consent of the Ministry of Justice, to increase the salaries of court presidents and judges by 20%, depending on their work and performance. Notably, those judges assigned to cases involving war crimes and organized crime may have their salaries increased by up to 100%. *See* LAW ON HIGH JUDICIAL COUNCIL art. 13; LAW ON JUDGES art. 34.

Following the July 18, 2005 amendments to the Law on Judges, on July 28, 2005 the Government adopted another Conclusion No. 120-4830/2005-1 regarding salaries of judges, prosecutors, state attorneys, and magistrates. This Conclusion, which became applicable as of July 2005, establishes a two-tier system of base salaries. Section 1 of the Conclusion defines a guaranteed net base salary of 4,460 dinars (approximately €53.35) for all judges (compared with a base salary of 4,906 dinars from December 23, 2004). Section 2 of the Conclusion defines salary supplements for judges at different levels. These supplements are as follows: CSD 5,625 (€68.6) for Supreme Court justices, CSD 2,988 (€36.4) for district and municipal court presidents, and CSD 1,918 (€23.4) for district and municipal court judges. Finally, Sections 3 and 4 provide that these supplements would be applied only if budget income derived from court taxes and filing fees is deemed sufficient. While the impact of this Conclusion remains to be seen in practice, it is of significance that it was promulgated and imposed not by the National Assembly but by the Government.

The following table compares judicial salaries to those of other senior executive branch officials. These amounts represent the base salary multiplied by the coefficient from the Law on Salaries in Government Bodies and Public Services, but exclude the working experience supplement of 0.5% to 20% per year of service and any other supplements that the HJC may apply according to the Law on Judges and the Law on High Judicial Council. The maximum supplement of 20% is provided to judges whose length of service is 40 years.

JUDICIAL SALARIES COMPARED TO EXECUTIVE BRANCH OFFICIALS (in CSD)

	With supplement	Without supplement	Prime Minister	Minister
Supreme Court President	105,892	46,830	105,888	90,005
Supreme Court Judge	70,011	41,924		
District Court Judge	47,835	33,450		
Municipal Court Judge	44,068	30,774		

Source: Law on Salaries in Government Bodies and Public Services.

Factor 12: Judicial Buildings

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

Conclusion ***Correlation: Neutral*** ***Trend: ↑***

Although conveniently located, most judicial buildings are in need of structural renovation and information technologies to improve the efficient dispensation of justice as well as the working conditions for judges and other court personnel. Some court buildings have been renovated, including the Supreme Court, the High Commercial Court, and the premises for the war crimes and organized crime panels of the Belgrade District Court.

Analysis/Background:

The physical infrastructure and working conditions in most courts remains inadequate, with many judges often forced to share small offices with colleagues and sometimes with their judicial assistants and court interns. Workspaces for other court personnel, including those in the court registry offices, libraries, and administrative departments, are also small and overcrowded in some courts. Cramped and uncomfortable workspaces have a negative effect on the motivation and performance of judges. Some cope by working from home, sometimes with their assistants. Others reportedly work on their cases during the weekends in order to have their offices to themselves.

Some judicial buildings, particularly those in urban centers such as Belgrade, Nis, and Novi Sad, suffer from an insufficient number of courtrooms. With few courtrooms in relation to the growing number of cases, it is sometimes necessary for more than two judges to share a single courtroom. This situation requires developing a schedule, in which each judge will alternate the number of days he or she will have access to the courtroom each week for the purposes of hearing a case. The shortage of courtrooms and difficulty in scheduling their use are several factors contributing to the overall length of proceedings. Related to this is the overall poor quality or ineffective use of information technologies and a lack of audiovisual equipment.

Most experts and observers recognize the importance of improving the working conditions of judges and the buildings that house Serbia's courts. The Ministry of Justice concluded in its July 2005 draft National Reform Strategy that "poorly equipped and maintained facilities" restrict access

to justice and affect the responsiveness, efficiency, and fairness of the judicial system. *See* § I.C. Similarly, the Judges Association of Serbia linked the appearance of judicial buildings and working conditions of judges with public perceptions regarding the judiciary and its performance in its November 2004 document, BASICS OF THE JUDICIAL REFORM STRATEGY. The lack of adequate space and appropriate buildings is often cited by members of the judiciary and other informed observers as one of the principal reasons that the new court network, which will eventually include the courts of appeal and the Administrative Court, was not established in 2002 as originally required by law.

Some efforts have been taken in recent years to improve working conditions of judges. For example, in 2002, the Supreme Court obtained an additional building where the President of the Court, its secretariat, and several court departments are now located. In addition, the High Commercial Court moved into a renovated space in April 2005. Another small but noteworthy improvement has been the renovation of Courtroom No. 1 of the Belgrade District Court, which, following its inauguration in June 2005, can accommodate dozens of participants and observers in a modern and comfortable facility. It also is equipped with state-of-the-art audiovisual equipment and information technologies, as well as facilities for securing criminal defendants prior to their appearance in the courtroom. Funding for renovation of this courtroom was provided by the European Union through the European Agency for Reconstruction. However, more clearly needs to be done to improve the working conditions of judges and court personnel and to increase the capacity of the judicial system to cope with the growing number of cases. Accordingly, the Ministry of Justice is reportedly planning to house the Supreme Court, the High Commercial Court, and the eventual Belgrade Court of Appeal and Administrative Court together in a newly renovated building in Belgrade.

In 2003, a former military courthouse was renovated in order to accommodate the newly established Belgrade District Court's panels which specialize in organized crime and war crimes cases. This building occupies 4,000 square meters and includes space for four courtrooms, secure facilities for witness protection, offices for judges and prosecutors, as well as staff and security personnel, a media center, translation resources, and other support services. The largest of the four courtrooms, Courtroom No. 1, can accommodate upwards of 500 people, including defendants, defense counsel, prosecutors, and observers. The entire building is equipped with advanced information technologies, computers, and audiovisual systems. It is envisioned that this facility will one day also maintain detention units for up to 60 detainees. Nevertheless, even this building reportedly suffers from lack of space and courtrooms.

Until such a time that something akin to professional court executives are put in place, the court president is responsible for managing the judicial building that houses his or her court. This responsibility entails performing a variety of administrative tasks, such as assigning offices and courtrooms, maintaining the infrastructure, and ensuring the functioning of the building's physical plant. *See* COURT RULES OF PROCEDURE chap. VIII. These tasks reportedly consume a significant amount of time. As a result, court presidents have less time to devote to other duties related to management of the court operations and to supervising the performance of judges. It is therefore not surprising that many complain that more must be done to improve the working conditions of judges and the infrastructure of judicial buildings.

Most judicial buildings are clearly designated and conveniently located, particularly those in smaller municipalities and rural areas. Often judicial buildings are located near the center of the city or town, close to other government buildings. Judicial buildings located in communities inhabited by minority (non-Serb) populations display signs and information in multiple languages. The Novi Sad District Court and the municipal courts, for instance, display signs in Serbian, Hungarian, Slovak, and Ruthenian languages. The municipal court building in Presevo, a predominately ethnic-Albanian inhabited area, is clearly marked in both Serbian and Albanian languages. This court also posts information about how the court functions in both languages. This initiative and other projects in Presevo and southern Serbia aimed at improving transparency in the judiciary and

access to justice have been funded by the United Kingdom's Department for International Development.

Photographs of judicial buildings, including municipal and district courts, throughout Serbia may be viewed online via the Ministry of Justice website, www.mpravde.sr.gov.yu.

Factor 13: Judicial Security

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Verbal intimidation and threats against judges are not uncommon, but actual physical violence is rare. Measures aimed at ensuring the safety of judges and other court personnel have improved but there is considerable room for enhancing security in judicial buildings.		

Analysis/Background:

The Law on the Organization of Courts establishes a uniformed security service (court guards) responsible for maintaining order and security of people and property in judicial buildings throughout Serbia. *See generally* LAW ON THE ORGANIZATION OF COURTS chap. 7. Court guards are authorized to carry weapons and use physical force, including the use of firearms, in limited circumstances. *Id.* art. 74. Otherwise, weapons and other dangerous instruments are explicitly barred from judicial buildings and the courtrooms. CIVIL PROCEDURE CODE art. 307; CRIMINAL PROCEDURE CODE art. 291. Court guards operate under the jurisdiction of the Ministry of Justice and are considered separate from the police. The police can provide protection for judges and other judicial personnel and their families, but only upon the request of court presidents. LAW ON THE ORGANIZATION OF COURTS art. 76.

Court guards are typically stationed at the entrance to judicial buildings, which are also equipped with security equipment. However, there appears to be some variation in the type and use of these resources from court to court. For instance, security personnel in some courts are uniformed and armed, whereas in others they are sometimes plain clothed and without any visible weapons. There is considerable concern that court guards are not adequately trained. Metal detectors are located at the entrances to many judicial buildings, including those in rural areas. Nevertheless, they are not vigilantly monitored and are sometimes situated in such a way so as to be easily ignored or evaded, phenomena previously noted in the 2002 Serbia JRI. X-ray screening devices, which have been installed in a few of the larger judicial buildings, such as the Belgrade Palace of Justice, appear to be somewhat more closely monitored. Judges and their staff are issued official identification cards and badges. Court presidents can require that identification badges are worn during working hours (*see* COURT RULES OF PROCEDURE art. 72), but few personnel apparently elect to do so.

Few, if any, secure areas exist in judicial buildings that are off-limits to the public and offer employees some sense of privacy. Once visitors or employees enter, they are free to roam throughout the building unimpeded and reportedly often do so. Visitors are neither escorted nor required to wear any identification badges. Moreover, judges and court personnel are also forced to share restrooms with the public. Further, although Article 81 of the Court Rules of Procedure requires that courtrooms must be locked when not in use by judges or staff, many rooms reportedly remain unlocked and are easily accessibly throughout the day. In addition, there are, for the most part, no separate entrances to courtrooms for judges. Notably, there is a courtroom in the Novi Sad District Court that is configured to allow judges to enter from a separate entrance. And the

renovated courtroom of the Belgrade District Court has a special facility akin to a holding tank for criminal defendants appearing in court. In most other courts, however, all personnel, including judges, must enter and exit the courtroom through the same door as the parties, the public, and the media.

The small size of most courtrooms, combined with the lack of separate entrances, also poses serious security risks. This is particularly the case in criminal proceedings where violent offenders may sometimes sit in close proximity to the judge and others, but also creates concerns in civil proceedings because court guards are seldom present during those hearings.

Physical intimidation and attacks on judges are rare but not unheard of in Serbia. The murder of a judge during the Milosevic period was widely believed to have been linked to the regime. However, there have been no similar violent incidents in recent years. Verbal threats and intimidation are much more common. This phenomenon has increased concerns among judges and judicial personnel over their safety, and has also led the judiciary to take the lead in addressing security in judicial buildings, as opposed to waiting for the Ministry of Justice to implement more stringent security measures. For example, the First Municipal Court in Belgrade is initiating a pilot project to enhance security in the Belgrade Palace of Justice by introducing a key card system to lock and unlock doors.

The building which houses the specialized panels of the Belgrade District Court is considered to provide the highest level of security for judges and personnel. Individuals seeking entry to the building are screened at the entrance and are required to surrender their mobile phones as well as identification cards. When the panels are in session, the general public may attend without any prior notice. However, individuals must schedule a visit in advance and be cleared by security at all other times. In contrast to most other judicial buildings, this facility has separate courtroom entrances for judges. Also, judges are separated from the accused and the general public by means of bullet proof glass.

Like other aspects of institutional reform, however, the problem of judicial security remains unresolved in part due to the absence of real court budgets and an independent budget authority for the judiciary.

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: ↔***
Constitutional and legislative guarantees of lifetime tenure for judges exist and are generally respected in practice, although the use of irregular procedures to remove judges during the state of emergency have left some members of the judiciary feeling insecure in their positions.		

Analysis/Background:

The Constitution guarantees the lifetime tenure of judges, including those serving on the Constitutional Court. CONST. arts. 101, 126. Notably, this tenure expires at 65 years of age or after 40 years of service, whichever comes first. LAW ON JUDGES art. 52. Judges may resign on their own accord or be removed before their official retirement only in accordance with reasons, *e.g.* criminal conduct, incapacity to perform judicial functions, and negligence or unprofessional

conduct, as well as procedures established by law. *Id.* arts. 54, 62. The High Personnel Council (HPC) of the Supreme Court is responsible for making a formal determination as to whether a judge has reached the point of retirement or if there are other grounds for the termination of judicial tenure. *Id.* art. 56. The President of the Supreme Court, in turn, communicates a decision to this effect to the National Assembly, which may then formally act to terminate the judge's tenure. This procedure for removal of judges is explained in greater detail in Factor 17 below.

Judicial positions are considered permanent. Once elected to a specific court, a judge has the right to remain on that court until retirement. Although judges may be transferred to other courts of the same type and instance by a decision of the High Judicial Council, they must first provide their written consent. *Id.* arts. 16, 17. In other words, a judge may not be transferred from his/her position against his/her will. Under certain circumstances, the President of the Supreme Court may temporarily appoint judges to another court for up to a year. *Id.* art. 18.

Despite these guarantees, there have been attempts, some successful, to terminate the tenure of judges and purge them from the judiciary using extra-legal means and irregular procedures. The most egregious of such instances came during the state of emergency in 2003, when the National Assembly circumvented the HPC and dismissed 35 judges on the recommendation of the Ministry of Justice and the proposal of the Judiciary Committee of the National Assembly. None of these judges has re-entered the judiciary or re-applied to do so even though the political climate has improved somewhat. Although some are said to be enjoying their retirement, about half of this group are reportedly now working as law professors or are practicing law. Some have even been invited on occasion to participate in government sponsored working groups. Notably, a small subset of this group still has some influence among the local legal community and the international donor community.

No attempts by either the executive or the legislative branches to remove judges through irregular procedures have apparently taken place since the state of emergency was lifted in April 2003. At the present time, constitutional and legislative guarantees for judicial tenure remain respected in practice. However, many judges are reportedly now cautious when dealing with cases that could put them at odds with government interests and those of some political parties. There is also some concern among members of the judiciary as a consequence of reports that adoption of a new Constitution would require all judges to resign and stand once again for election by the National Assembly.

In 2004, the term of office of court presidents elected in accordance to the 2003 amendments to the Law on Judges (*see* O.G.R.S. No. 27/03, March 20, 2003) was terminated *ex lege* when the Law on the Amendments to the Law on Judges (O.G.R.S. No. 44/2004, April 23, 2004) was adopted. *See* art. 15.

Serbian authorities have thus far been unable to resolve the issue of how to effectively address the role of those judges associated with the former Milosevic regime. A controversial law on lustration, adopted in 2003 by the National Assembly, placed judges on the list of public officials that could be removed from office for human rights violations. *See* LAW ON ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS art. 10 (O.G.R.S. No. 58/03, No. 61/03, June 3, 2003). Implementation of this law has been beset by numerous obstacles, including lack of resources and authority for the body charged with overseeing the investigation of alleged offenders. It has yet to be used to remove any judges or any other officials from their positions.

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: ↔***

Objective criteria related to "professional ability and worthiness" are used to assess candidates for promotion, but political considerations continue to influence the advancement of judges and the election of court presidents. A decision by the High Judicial Council to provide greater specificity to the existing objective criteria may have a positive effect on judicial advancement.

Analysis/Background:

The High Judicial Council (HJC) nominates judges for promotion and advancement to more senior positions, including court presidents, with the final promotion decision approved by the National Assembly. LAW ON THE HIGH JUDICIAL COUNCIL art. 1; LAW ON JUDGES art. 46. Pursuant to amendments to the Law on Judges in April 2004, if the National Assembly fails to elect the nominee, the HJC then submits another nominee for consideration. The National Assembly may not promote a judge that has not been nominated by the HJC, which was the case from July 2002 through April 2004.

Judges wishing to be considered for advancement have fifteen days from the time an announcement of a judicial vacancy is published in the SLUZHBENI GLASNIK (OFFICIAL GAZETTE) by the HJC to submit a formal application. LAW ON JUDGES arts. 42, 43. In addition to materials submitted by the applicant, the HJC also relies on information included in the judge's personnel file, as well as the opinions of the judge's colleagues and performance statistics from the court's office of administration. *Id.* art. 44.

According to the Law on Judges, the HJC considers applicants for advancement on the basis of two rather broad standards: "professional ability and worthiness" in the performance of judicial functions. *Id.* art. 45. In addition, judges must also satisfy specific length of service requirements, ranging from 4 to 12 years, in order to be promoted to a more senior position. LAW ON JUDGES art. 41.

The advancement standards were first defined in 2002 by the Supreme Court to include the number of pending cases, the type and complexity of cases, the number of reversed, affirmed, and modified decisions, the length of time in drafting decisions, the timeliness and efficiency of handling cases, and the conduct in the courtroom. *See* STANDARDS FOR THE ASSESSMENT OF JUDICIAL PERFORMANCE art. 1. The HJC may also consider the so-called orientational norm, established by the Ministry of Justice, on the number of cases judges should complete each month. *See* ORIENTATIONAL STANDARDS FOR DETERMINING THE REQUIRED NUMBER OF JUDGES AND EMPLOYEES IN MUNICIPAL AND DISTRICT COURTS art. 3 (O.G.R.S. No. 47/98) [hereinafter STANDARDS FOR DETERMINING THE NUMBER OF JUDGES AND COURT EMPLOYEES].

In April 2005, the HJC issued a decision, in which it provided more clearly defined standards by which it will assess the "professional ability and worthiness" of judges. With regard to "professional ability," these standards include the number of completed cases, the number of reversed, affirmed, and modified decisions in relation to the overall number of completed cases involving ordinary or extraordinary legal remedies, and the percentage of reversed decisions in relation to the total number of decisions. DECISION ON STANDARDS AND CRITERIA FOR THE APPOINTMENT OF JUDGES art. 6. The opinions and recommendations of a candidate's colleagues, as well as those of the local bar association, public prosecutor's office or the public defender's office may also be taken into consideration. *Id.* arts. 10, 12. Criteria for assessing the "worthiness" of the candidate are now

defined to include the candidate's reputation in the community, tolerance displayed in professional discussions, and readiness to consider the opinions and views of other participants in court proceedings. *Id.* art. 14. The HJC must provide a "justification" for nominations it submits to the National Assembly. LAW ON JUDGES art. 45. Notably, decisions of the HJC to reject a candidate for nomination need not be justified.

Many judges believe that political connections and loyalty to government officials continue to play a factor in judicial promotions despite the advent of objective criteria set forth by law. A lack of transparency surrounding the deliberations of the HJC in its decision-making contributes to this perception. The promotion of many judges perceived to be mediocre by their colleagues is considered to be an example of this phenomenon. The politicization of judicial advancement is also thought to have an impact on how some judges decide cases that involve the interests of the government or political parties.

In March 2004, the Constitutional Court declared Article 70 of the Law on Judges to be unconstitutional. This article, enacted in March 2003, established a predominately non-judicial body, the Council on Questions of Judicial Administration, which was authorized to submit proposals on the appointment and removal of court presidents to the National Assembly. The effect of this decision was to eliminate this body, which was widely perceived as an attempt to influence the work of the judiciary through the appointment of court presidents. As it now stands, court presidents are elected by the National Assembly following nomination by the HJC. LAW ON JUDGES art. 70.

In July 2005, and then again in September 2005, the National Assembly considered a proposal submitted by the HJC for the election of 68 judges and reelection of 120 court presidents. Although HJC members were unanimous in their support of these judges, the National Assembly voted against the reelection of 17 court presidents, including several prominent judges. Two notable judges who were not reelected are the now former presidents of the First and Second Municipal Courts in Belgrade. Although neither was dismissed as a judge, both ultimately resigned claiming their professional credibility had been ruined. Many observers view this decision by the National Assembly as yet additional evidence of the political horse-trading that has come to dominate the judicial appointment process, as well as of the prevailing influence of the legislative branch over the judiciary.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	***Correlation: Neutral***	***Trend:*** ↑

Judges enjoy constitutional and legislative guarantees of immunity but not to the same extent as representatives of other branches of government. There were several instances in which the immunity of judges was threatened during the state of emergency, but since then judicial immunity has been generally respected in practice.

Analysis/Background:

Members of the judiciary may not be detained or subjected to prosecution for alleged criminal offenses committed in the course of their official duties without the approval of the National Assembly. CONST. art. 96; *see also* LAW ON JUDGES art. 5. The Serbian government and the National Assembly also enjoy constitutional guarantees of immunity but, in contrast to the judiciary, these bodies exercise ultimate authority and control over the parameters of immunity afforded to

their members.[14] Of the three branches of government, the immunity afforded to the judiciary is therefore considered to be the weakest. Some observers assert that this undermines the independence of the judiciary and its status as a co-equal branch of government.

Judges also enjoy other constitutional and legislative protections when carrying out their judicial functions. Specifically, judges may not be held liable for opinions and decisions rendered in the course of court proceedings. LAW ON JUDGES art. 5. According to the Law on Judges, the "Republic of Serbia" is considered liable for any damage or harm done to an individual as a result of a judge's "unlawful or improper work" or willful and gross negligence. *Id.* art. 6. In this event, a judge may be required to compensate the government for any monetary damages it was ordered to pay the aggrieved party. Judges do not enjoy immunity or any special protections related to their non-official conduct.

In the period following the March 2003 assassination of the Serbian Prime Minister, several judges were taken into custody and questioned as part of the government's efforts to crack down on organized crime.[15] During this period, the judiciary came under intense public criticism and was on the receiving end of allegations that it was indirectly responsible for the growth of crime and corruption. There were also attempts to implicate judges in this type of illegal activity. One judge, for instance, was detained for two months on weapons charges before being released following a decision of the Supreme Court. He was subsequently tried for illegal possession of a firearm and acquitted by the final decision of the Supreme Court in June 2005.

Although no instances of politically motivated encroachments on judicial immunity reportedly occurred in 2004 or 2005, the former president of the commercial court in Zrenjanin was prosecuted and convicted of receiving close to 30,000 euros in illegal payments from commercial enterprises. *Disgraced Judge Sentenced*, B-92 NEWS RELEASE, Feb. 19, 2004.

In September 2005, a Supreme Court judge was arrested on corruption charges in connection with allegedly receiving a bribe in return for intervening in an appeal involving a criminal gang. *Senior Judge and Prosecutor Arrested*, B-92 News Release, Sept. 15, 2005. That same month, a former Justice Minister was detained for close to 48 hours on suspicion of corruption for his alleged role in freeing a member of the same gang during Operation Sabre. He was released without being charged. *Former Justice Minister Released From Custody*, B-92 NEWS RELEASE, Sept. 30, 2005.

Factor 17: Removal and Discipline of Judges

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

Conclusion	***Correlation: Neutral***	***Trend:*** ↑
The High Personnel Council relies on basic criteria and regular procedures when determining whether grounds exist for removing a judge. A new body, the Monitoring Board of the Supreme Court, may initiate disciplinary proceedings if it finds judges are not performing their function in a diligent fashion.		

[14] It should be noted that the National Assembly is vested with the authority to decide issues related to presidential immunity.

[15] For more on the detention of judges during Operation Saber, *see* Factor 16 on Judicial Immunity for Official Actions, *in* December 2003 Update to 2002 Serbia JRI.

Analysis/Background:

The High Personnel Council (HPC) is a body comprised of nine justices of the Supreme Court responsible for determining whether a judge may be removed from public office by the National Assembly. LAW ON JUDGES arts. 36, 37, 55-58. The HPC does not enjoy the authority to remove judges itself. Rather, it is only responsible for determining, based on the information made available to it by authorized persons and bodies, whether grounds exist for terminating a judge's tenure and removing him/her from the judiciary. The National Assembly is the only body authorized to formally remove a judge from office. CONST. art. 73(10). In addition, the HPC may reprimand or suspend a judge for up to one year, but may do so only during its investigation into whether grounds exist for recommending that judge's removal.

Judges may be removed or otherwise disciplined on the following grounds established by law: conviction of a criminal offense punishable by at least six months imprisonment, a criminal conviction making him/her unworthy of a judge's function, negligent and unprofessional performance of official duties, and permanent loss of working capacity. LAW ON JUDGES art. 54. Negligent and unprofessional performance may include delaying a case, ignoring statutory deadlines, engaging in behavior determined to be incompatible with official duties, or otherwise acting contrary to criteria and standards prescribed by the Supreme Court. *Id.* art. 55.

The Supreme Court has prescribed the following standards for assessing the performance and professionalism of judges: the number of pending cases, the type and complexity of cases, the number of cases a judge should complete per month, the number of reversed, affirmed, and modified decisions, the length of time in drafting decisions, the timeliness and efficiency of handling of cases, and the conduct towards participants in a court proceeding. *See* STANDARDS FOR THE ASSESSMENT OF JUDICIAL PERFORMANCE arts. 1, 4.[16] For purposes of assessing the efficiency of judges, this document also establishes the specific number of cases that all judges should complete each month, depending on the court and the department to which they are assigned. *Id.* arts. 3-12.

Procedures before the HPC regarding the conduct of a judge may be initiated by the court president, the president of the higher instance court, and the President of the Supreme Court. LAW ON JUDGES art. 56. In July 2002, amendments to the Law on Judges were adopted to allow the Minister of Justice to initiate removal proceedings, but the Constitutional Court ruled in February 2003 that, under the Constitution, only the Supreme Court may establish whether grounds exist for removing a judge from office.

The April 2004 amendments to the Law on Judges also created the Monitoring Board of the Supreme Court, with the authority to initiate removal proceedings before the HPC. This new body, comprised of five judges of the Supreme Court (one administrative, two criminal, and two civil judges) reviews the processing of case files and judgments in an effort to guard against judicial negligence and incompetence. *Id.* art. 40(b). It is also perceived by some as a measure to reduce the length of proceedings and to guard against the increase in case backlogs.

To date, the Monitoring Board has received a total of 1,722 cases, most of which involve civil litigation. Of this total number, it has only managed to review 426 cases, and made 13 recommendations to the HPC to initiate removal proceedings. Its president has complained about the composition of the Monitoring Board and appealed for the appointment of two additional members in order to deal with the large number of cases.

[16] Similar performance standards, often referred to as an "orientational norm," have been established by the Ministry of Justice but are purportedly used only in staffing courts with an adequate number of judges. *See* STANDARDS FOR DETERMINING THE NUMBER OF JUDGES AND COURT EMPLOYEES art. 3.

If, upon reviewing the facts of the matter in question, the HPC decides that grounds do exist for removing a judge, it must inform the President of the Supreme Court, who then notifies the National Assembly. *Id.* art. 60. Although a judge does enjoy the right to respond to the allegations leveled against him/her before the HPC and to appeal the decision to the General Session of the Supreme Court, there is some concern that a judge does not enjoy an adequate opportunity to put on a defense once the proceedings have been initiated.

The procedures for the removal of judges as set forth by law have reportedly been respected in practice since 2003, when irregular procedures were used by government authorities to remove judges. As discussed in greater detail in Factor 14 above, 35 judges were then dismissed by the National Assembly following a recommendation of its Judiciary Committee.

According to the SUPREME COURT'S REPORT FOR 2004 and the data presented by the HPC during a 2005 conference in Vrnjacka Banja, the HPC received a total of 112 cases during 2004-2005, including 78 cases received in 2004 and 34 cases received during January-September 2005. In 25 cases, the HPC considered whether grounds for dismissal exist. Of this number, it determined that such grounds existed in five cases, and informed the National Assembly accordingly. Only one judge has reportedly been dismissed by the National Assembly. The HPC has also reprimanded two court presidents and four judges. Proceedings against one court president and four judges are pending as of September 2005.

Factor 18: Case Assignment

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Cases are for the most part assigned according to a random method, but some cases may be assigned to judges based on their particular areas of expertise. Court presidents do have the discretion to depart from the random assignment of cases, as well as to exclude judges from individual cases in several defined circumstances.		

Analysis/Background:

Cases are assigned to judges on a random basis "according to an order independent of the personalities of the parties and the circumstances of the legal matter" and in a "manner prescribed by the Court Rules of Procedure." LAW ON JUDGES art. 21; *see also* COURT RULES OF PROCEDURE art. 48. In general, the system requires that, upon receipt, incoming cases be logged in the court registry by a clerk who then assigns each case to either a single judge or a panel in a sequential order in accordance with the annual schedule set by the court president. COURT RULES OF PROCEDURE art. 48. In practice, this is done, most commonly, by entering all the information and making the assignments by hand, as opposed to entering data and assigning cases through a computerized method of case assignment, although several larger courts of general jurisdiction, including the Belgrade District Court, do enter case file data into a database. The court president may decide to deviate from the random case assignment system only if the judge is "overworked," or is "legitimately hindered." LAW ON JUDGES art. 22. There are also allowances for directing specific types of cases to judges who specialize in that subject matter (*see* COURT RULES OF PROCEDURE art. 44), and some judges do report that they are often assigned cases based on their expertise in areas such as labor and employment law.

Judges are required to conduct hearings in a timely fashion and to provide updates, so that the court registry reflects the status of the case accurately. *Id.* art. 61. If a first instance case has not been concluded within a six-month statutory term, the judge shall notify the court president. LAW ON JUDGES art. 25.

A case may be reassigned to another judge, pursuant to a decision of the court president, if the proceedings become protracted, if the judge's caseload is found to be excessively burdensome, or in response to a prolonged absence on the part of the judge. *Id.* art. 22; COURT RULES OF PROCEDURE arts. 47, 50, 51. Judges can also be excluded or disqualified from hearing a case by the court president, upon a motion of one of the parties, in both civil and criminal proceedings. Grounds for exclusion and disqualification involve the existence of a conflict of interest and other grounds to suspect bias on the part of presiding judge. CIVIL PROCEDURE CODE arts. 65-72; CRIMINAL PROCEDURE CODE arts. 40-45. For instance, a judge may be disqualified from hearing a case if he or she is related to one of the parties or has a financial interest in the matter.

Although it is believed that case assignment can still be manipulated by court presidents if they elect and are determined to do so, many judges suggest that the system functions much more transparently and fairly than it did during the Milosevic era, when it was common for politically sensitive cases to be directed to those judges trusted by the regime. However, there is broad agreement that the system could benefit from additional safeguards against manipulation, as well as measures aimed at ensuring that judges are not burdened by the assignment of an excessive number of cases.

Several judges noted that they have been assigned cases which they would rather not have received, because they are too politically sensitive and could affect their prospects of advancement if they are forced to rule against one of the interested parties.

Factor 19: Judicial Associations

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

Conclusion	***Correlation: Neutral***	***Trend: ↓***
The Judges Association of Serbia continues to promote the interests of the profession, participate in constitutional and legislative drafting projects, and conduct continuing education trainings, but it has lost some of its momentum and the influence it wielded in recent years.		

Analysis/Background:

Judges enjoy the right to association for purposes of protecting the independence of the judiciary and other interests of the profession. LAW ON JUDGES art. 7. Many judges exercise this right by joining the Judges Association of Serbia (JAS), which was originally established in 1997 with a total of 600 judges. The JAS was registered as a professional organization in 2001 and is the only association of its kind for judges in Serbia. At the present time, the JAS has an estimated 1,700 members, including both sitting and retired judges. Members pay a nominal fee of 100 dinars per month (roughly €1.20) to maintain their privileges. Of this amount, half is earmarked for the organization's overall general operating budget, while the other half goes to the individual JAS branch to which the judge also belongs. There are now reportedly 25 branch offices throughout Serbia, a somewhat greater number than a few years ago, but many of them lack sufficient financial resources and the capacity to function effectively. However, branches in Nis, Novi Sad, Valjevo, Zejecar, and Zrenjanin are somewhat active and are organizing programs and activities on

an occasional basis. Nonetheless, most of the Association's activities remain driven from its Belgrade headquarters and reliant on the financial and technical support of international donors.

The JAS played a relatively active role in promoting judicial reform and the interests of judges throughout much of the immediate post-Milosevic era, by participating in legislative reform, developing a code of judicial ethics, and advocating for higher judicial salaries. It also contributed greatly to improving the expertise of judges by organizing workshops and supporting the establishment of the Judicial Center for Professional Education and Advanced Training. In addition, the JAS began publishing a monthly newsletter (INFORMATOR) and a quarterly bulletin, both of which provide members of the judiciary and others with information regarding significant legal developments and issues associated with judicial reform. In May 2004, the JAS also published a brochure commemorating the bicentennial of the establishment of the first modern court of Serbia in Valjevo. Finally, the JAS also maintains a website at www.sudije.org.yu.

However, the JAS appeared to lose momentum sometime in 2004. Some attribute this to the state of emergency and Operation Saber,[17] which sapped the judiciary's motivation to assert its institutional independence. It is also explained, in part, by difficulties in attracting new members and activating existing members to participate in projects and initiatives, a challenge that many private voluntary organizations face. Most observers and informed sources believe, however, that the Association's programmatic drift is attributable to the leadership transition that took place at the end of 2003, when some of the Association's more senior leaders began to step down. As of late, the JAS has taken a more active posture toward advancing judicial reform and promoting the interests of the profession through concrete programmatic initiatives.

The appointment of two spokespersons in October 2004 has helped the JAS in its efforts to communicate its message more effectively, and also to improve the public image of the judiciary. In addition, the JAS organized a press conference to address the issues of corruption and judicial selection, which was well attended by local media outlets.

Despite some of its organizational shortcomings, representatives of the JAS did manage to participate in roundtables and to provide commentaries on the draft Civil Procedure Code and the mediation legislation. The JAS also drafted a report in November 2004, in which it offered proposals for a new judicial reform strategy based on international standards. In anticipation of the draft Constitution, the JAS published a booklet on the CONSTITUTIONAL POSITION OF THE JUDICIARY, in which it proposed provisions for the new Constitution, and offered a comparative analysis of constitutional provisions on the judiciary found in 24 European constitutions, which was prepared by ABA/CEELI. Both reports were forwarded to the Ministry of Justice, which did not formally respond.

However, when the Ministry of Justice released its draft National Judicial Reform Strategy in July 2005, it delegated the implementation of its provisions to a Strategy Coordination Commission consisting of nine members from the judiciary and legal community, including one JAS member and one member of the Prosecutors Association of Serbia. *See* DRAFT NATIONAL JUDICIAL REFORM STRATEGY § II.B.

[17] Operation Saber was launched on March 13, 2003, by Serbian law enforcement authorities to investigate the assassination of the Serbian Prime Minister, Zoran Djindic, and to determine the involvement of organized crime.

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: ↔***

Although pressure on the judiciary has eased somewhat, legislative and executive authorities can and sometimes do use the media to publicly criticize judges in order to influence judicial decision-making.

Analysis/Background:

It remains a well-established principle that the judiciary is an independent branch of government and that judicial decision-making should be conducted free from external influences. The independence of the judiciary and individual judges in their decision-making is guaranteed by a variety of constitutional and legislative provisions. Judicial independence, for example, is enshrined in the Constitution, which clearly states that courts of law are "autonomous and independent in their work." *See* art. 96. In addition, the Law on the Organization of Courts distinguishes judicial authority as being independent from that of the legislative and executive branches of government. *See* arts. 1, 3. The use of public office and the media, as well as "any other form of influence on the court," are prohibited by law. *Id.* art. 6. Moreover, individual judges are considered independent in conducting court proceedings and rendering judgments on the basis of their understanding of both facts and law. LAW ON JUDGES arts. 1, 19.

Although the judiciary today enjoys a higher degree of independence than it did during the Milosevic era, when political influence and so-called "telephone justice" were endemic, vestiges of this period remain and continue to impede its genuine independence. This was particularly apparent in 2002 and 2003, when amendments to the package of laws on the judiciary eroded its influence over the election and dismissal of judges. At the same time, criticism of the judiciary by public officials, including the Minister of Justice, over poor performance, low conviction rates, and purported links to the former regime and to organized crime reached a critical point. In addition, the dismissal and forced retirement of judges by the National Assembly, in the wake of the March 2003 assassination of the Serbian Prime Minister, had the combined effect of intimidating judges and sapping the motivation of some to support greater institutional independence of the judiciary in relation to the Ministry of Justice. During this period, some judges were believed to have carried out their official functions and rendered decisions in such a way as to avoid alienating government interests. Whether or not this type of conduct was due to direct pressure or influence cannot be determined.

The easing of political tensions in 2004 has been accompanied by an environment conducive to judicial independence. This is evidenced by the improved dialogue over judicial reform strategies between the judiciary and the Ministry of Justice, as well as the 2004 amendments to the package of laws on the judiciary. Some of the overt pressure and public criticism of the judiciary has abated as well, although the Minister of Justice and others have made several public statements critical of the judiciary. As a result, suspicions do remain that the government authorities and members of the parliament still seek to influence the judiciary, the conduct of judges, and judicial decision-making in high-profile political and commercial cases by exerting pressure through media statements. Many also believe that the judiciary's continuing reliance on the Ministry of Justice for material resources and salaries impedes its institutional independence and opens the door to undue influence and political pressure on judges in the conduct of proceedings. The June 1, 2005, decision of the Belgrade District Court to annul an Interpol arrest warrant for Mira Markovic (the

wife of Slobodan Milosevic) is considered by many international and domestic observers to be one such example. *See Charges Against Mira Markovic Suspended, but Not Decision on Detention*, BLIC ONLINE NEWS REPORT, June 2, 2005; *see also* Council of Europe, SERBIA AND MONTENEGRO: COMPLIANCE WITH OBLIGATIONS AND COMMITMENTS AND IMPLEMENTATION OF THE POST-ACCESSION CO-OPERATION PROGRAMME (8th Report, March-June 2005) (July 13, 2005) There are also occasional attempts, according to first-hand accounts and press reports, to manipulate the work of prosecutors and investigating judges, so that investigations are prematurely closed and kept from going to trial. *See Case of the Vanishing Chainsaw,* B-92 NEWS RELEASE, Aug. 8, 2005; *Who Turned Off the Chainsaw*, B-92 NEWS RELEASE, Aug. 9, 2005.

The extent, to which private interests, including organized crime, seek to influence the judiciary, is unclear, but allegations of corruption and improper influence are somewhat common. According to one press report, the former acting President of the Supreme Court alleged that there were at least fifteen cases of judges accepting bribes in 2004, ostensibly in return for rendering a decision favorable to the bribe-payer. *See Corruption in Local Courts*, B-92 NEWS RELEASE, Dec. 14, 2004. Also in 2004, the president of the commercial court in Zrenjanin was convicted of taking bribes from commercial enterprises. *Disgraced Judge Sentenced*, B-92 NEWS RELEASE, Feb. 19, 2004. The Ministry of Justice reports that there are over 30 cases of alleged corruption within the judiciary that they are aware of.

The use of personal and family connections to influence the outcome of a case is also still reportedly a problem, particularly in rural areas, but this type of influence is considered less prevalent and effective than in the past.

Factor 21: Code of Ethics

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

Conclusion	***Correlation: Negative***	***Trend:*** ↓
The Standards of Judicial Ethics of the Judges Association of Serbia have not proven effective in influencing the professional conduct of judges. Many judges now support the combination of ethical standards and disciplinary rules adopted as legislation for regulating judicial conduct.		

Analysis/Background:

The professional responsibility and ethical conduct of judges are presently addressed by a non-binding code of ethics adopted by the Judges Association of Serbia (JAS), as well as by a combination of basic provisions found in the Law on Judges. The JAS STANDARDS OF JUDICIAL ETHICS [hereinafter JAS STANDARDS], which were adopted in October 2003 with considerable fanfare and enthusiasm on the part of a segment of the judiciary, set forth six canons of judicial conduct.[18] These canons, or standards, consist of general statements on the independence, impartiality, professional competence, integrity, incompatible activities, and conformity to the code. Each canon is followed by three to nine detailed principles that help to better define the canon and provide specific guidance to judges with respect to discharge of their official duties and out of court conduct.

[18] The original ethics standards adopted by the JAS in 1998 are still available in Serbian on the JAS website at http://www.sudije.org.yu/static_content/serbian/associations_acts/code. The Standards from 2003 are not posted online.

The JAS Standards prohibit *ex parte* communications in connection with other principles aimed at strengthening judicial impartiality, such as avoiding conduct that could give rise to the suspicion or appearance of favoritism. *See* Canon 2, Principles 6, 8. They also proscribe judges from using their official positions to advance their own private interests, as well as those of others, including those of their relatives. *Id.* Canon 4, Principle 5.[19] And while judges are limited by the Standards from "political activities that could compromise the independence of the judge or impair the impression of impartiality," they are at liberty to participate in civic, charitable, and religious activities. *Id.* Canon 2, Principles 4, 5.

Pursuant to the Law on Judges, judges are barred from holding public office, joining a political party, and receiving compensation for legal services and other types of public or private work other than "scientific or expert work." *See* art. 27.

Grounds for the exclusion and the disqualification of judges from a case based on conflicts of interest are found in the Civil and Criminal Procedure Codes. For instance, judges are prohibited from hearing a case if they are related by family ties to one of the parties to the proceeding in addition to a variety of other grounds that could affect the impartiality of the judge and therefore the fairness of the proceeding. *See* CIVIL PROCEDURE CODE art. 66; CRIMINAL PROCEDURE CODE art. 40.

Enforcement of the JAS Standards continues to be a major challenge and stumbling block. To date, it has not been used too root out corruption or to deter unethical and unprofessional conduct among members of the judiciary with any degree of effectiveness. The Court of Honor envisaged by the JAS Statute as the body responsible for enforcing compliance with the Standards was not fully constituted and never became operational as a result. It was instead replaced, pursuant to amendments to the JAS Statute adopted in November 2004, by a seven-member body called the Commission for Ethical Issues. In contrast to its predecessor, which could act to exclude members from the Association, the Commission may only adopt opinions and issue recommendations regarding violations of the Standards. STATUTE OF THE JUDGES ASSOCIATION OF SERBIA arts. 49, 52. The seven-member Commission was appointed in June 2005 and subsequently participated in a JAS-organized roundtable on corruption within the judiciary.

Because adherence to the JAS Standards remains voluntary, the new Commission, much like the Court of Honor that preceded it, may prove to have only limited success in supervising the professional conduct of judges. It could prove to have more impact in this regard if it serves as an informational resource to judges on ethical issues, something the JAS has reportedly contemplated. Some consideration has also been given to having the Commission serve as an outreach mechanism for raising the public's awareness and understanding of issues related to ethics and the judiciary.

Despite broad distribution of the JAS Standards to members of the judiciary, there is still a high degree of disinterest in and even an unawareness of its provisions. In addition, the emphasis placed on judicial ethics and the applicability of the JAS Standards has for the most part faded. This is largely due to the non-binding character of the Standards, the continued skepticism over the effectiveness of their supervisory mechanism, and the absence of any defined and enforceable sanctions other than the possible expulsion from the JAS membership.

Throughout 2004, the JAS conducted a series of seminars on judicial ethics, one of which included the participation of the acting presidents of the Supreme Court and the Belgrade District Court.

There is a growing sentiment throughout the judiciary and elsewhere in favor of regulating the ethical and professional conduct of judges through the combination of ethical standards and disciplinary rules, i.e. by law. The Draft National Judicial Reform Strategy, for instance, notes the importance of devising clear disciplinary standards as a means to improve public confidence in the

[19] In April 2004, the National Assembly enacted the Law on Conflict of Interest, which applies to all public officials except for members of the judiciary and prosecutors.

judiciary. *See* § III.C.1. Most sources, including senior judges, suggest that disciplinary rules should be incorporated into the existing Law on Judges as opposed to enacting a comprehensive and legally binding code of judicial ethics on the basis of the JAS Standards.[20] The JAS intends to take the initiative in this area by drafting a set of comprehensive disciplinary rules and offering this eventual document to the Ministry of Justice and the National Assembly for adoption. There is, however, no guarantee that this proposal will be adopted by the executive and legislative authorities. Nonetheless, the Ministry of Justice has indicated it will consider the views of the judiciary in this matter.

Factor 22: Judicial Conduct Complaint Process

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Parties to a dispute and others are generally aware of their right to file complaints involving judicial conduct and frequently do, although many complaints are deemed to be frivolous.		

Analysis/Background:

Parties to a dispute and other participants in a court proceeding, including lawyers and witnesses, may register complaints about the conduct of the presiding judge "when they consider the proceeding delayed, irregular, or when there is any influence on its course and outcome." LAW ON THE ORGANIZATION OF COURTS art. 7. Complaints of this nature must be filed with the immediate court president, the court president of the higher instance court, or the Ministry of Justice's department for court supervision. The court president has fifteen days to consider the complaint and notify the petitioner of a decision on the complaint and measures undertaken in response to it. *Id.* art. 52; *see also* COURT RULES OF PROCEDURE art. 8. If the complaint was originally filed with the higher instance court or the Ministry of Justice, the president of the court or the Minister must be notified as well. LAW ON THE ORGANIZATION OF COURTS art. 52. Possible sanctions in response to these types of complaint include warnings or reassignment from the case.

Judges may also be excluded or disqualified from hearing a case upon a motion of one of the parties, in both civil and criminal proceedings. Grounds for exclusion and disqualification include the existence of a conflict of interest and other grounds to suspect bias on the part of presiding judge. CIVIL PROCEDURE CODE arts. 66-72; CRIMINAL PROCEDURE CODE arts. 40-45. For instance, a judge may be disqualified from hearing a case if he or she is related to one of the parties.

Complaints may be included in the case file, as well as find their way into the judge's personnel files, which are maintained on all judges and court staff by the Ministry of Justice. In addition to basic biographical information, personnel files can include information regarding academic performance, professional experience and productivity, and any disciplinary sanctions. LAW ON THE ORGANIZATION OF COURTS arts. 68, 69. This file is relied upon when considering an individual for promotion, as well as in any decisions related to professional status.

[20] This approach reflects the suggestion of the Council of Europe's Consultative Council of European Judges (CCJE) that two sets of rules on judicial conduct be drafted. These would include a code or standards of judicial ethics, adopted by a judicial association, which set forth the highest standards of judicial conduct that each judge should aspire to achieve. In addition, the CCJE recommends the adoption by the legislature of disciplinary rules in the form of a law that would provide grounds for disciplinary responsibility and dismissal.

In accordance with the 2004 amendments to the Law on Judges, a new body, the Monitoring Board, has been established. It enjoys the authority to review court files, either *ex officio* or upon a complaint.

Court presidents report that they continue to receive a significant number of complaints. However, they also assert that many are frivolous and without any basis in fact. For example, it is not uncommon for one of the parties to complain that the presiding judge was rude or was otherwise unprofessional in the courtroom. A number of complaints, however, do allege judicial misconduct or incompetence that contribute to unreasonable delays in court proceedings. While many judges readily admit that proceedings can be beset by continuances, they also claim that until recently they had little choice under the procedural codes but to schedule additional hearings because witnesses often do not appear when subpoenaed. It is too soon to determine whether amendments to the Civil Procedure Code, which were enacted in February 2005, will have any real effect on the number of complaints involving length of court proceedings, although they do offer potential to do so.

There is also some evidence to suggest that participants to a proceeding view complaint procedures not so much as a way to deter or respond to judicial misconduct but as a means of intimidating judges in the courtroom. Negative media reports about the judiciary and public criticism of judges by the government officials may in fact contribute to the tendency of parties to occasionally resort to this rare tactic.

As noted in Factor 21 above, members of the Judges Association of Serbia (JAS) are required to discharge their official duties in accordance with the JAS Standards of Judicial Ethics. In the event a judge violates one of the provisions on professional responsibility and conduct, anyone, including the general public, may petition the Commission for Ethical Issues. The utility of this body as a complaint mechanism, however, remains to be seen, in part because of its limited authority and inability to directly sanction offenders. It is also unclear at the present time whether efforts to make the public aware of this mechanism will prove to be effective.

Factor 23: Public and Media Access to Proceedings

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Proceedings are open to the public and the media, but may be closed under certain circumstances as set forth by law. Although the appointment of court spokespersons has improved the transparency of court operations in some areas, many courtrooms are not large enough to accommodate the public or the media.		

Analysis/Background:

The Serbian Constitution provides that all trials shall be open to the public but also allows for statutory exceptions "for the purpose of preserving a secret, protecting morals, and the interests of minors, or protecting other public interests." *See* art. 97. According to the Civil Procedure Code, which provides similarly worded exceptions, decisions to exclude the public must be explained and made public. *See* art. 310. Analogous provisions are also included in the Criminal Procedure Code and in the Court Rules of Procedure. Notably, appeals against rulings that bar someone from the proceeding are precluded by law. Although accredited journalists may have access to courtrooms, they must receive permission from the court president to record or film the proceedings. COURT RULES OF PROCEDURE art. 55.

The openness of trial proceedings and court operations is generally respected in practice. Some courts have dedicated information stations and bulletin boards where announcements and communications regarding the court and clients services are made available. *Id.* art. 85. The Belgrade District Court and the First Municipal Court provide this information to the public through their websites.[21] Courts also post the schedule of proceedings for a given day outside individual courtrooms in order to facilitate greater accessibility. However, the small size of many courtrooms, particularly in cities such as Belgrade and Novi Sad, remains a significant practical impediment to improved transparency and accessibility, particularly in criminal proceedings that can sometimes generate considerable public interest. There is simply not enough physical space in many courtrooms to accommodate the public or the media, in addition to the parties, witnesses, experts, and other participants in the proceeding. The renovation of the Belgrade District Court's Courtroom No. 1 may improve transparency and accessibility in high-profile proceedings, but this courtroom, as well as facilities used by the specialized panels for organized crime and war crimes are the only courtrooms of this kind at the moment.

Larger courts, including the Supreme Court and some district and municipal courts, have appointed spokespersons in an effort to provide the public and the media with information about specific cases before the courts and to improve the transparency of the justice system, as well as the public perceptions of the judiciary. COURT RULES OF PROCEDURE art. 34.[22] These spokespersons are typically judges, some of whom have received training in media relations techniques. The First Municipal Court in Belgrade, for instance, appointed two judges in 2002 to serve as media spokespersons for its civil and criminal departments. The Belgrade District Court has also appointed spokespersons, including spokespersons for its war crimes and organized crimes panels. In addition, these panels, which are located in a separate building, are supported by a public relations service and a media center where journalists may monitor proceedings via closed-circuit broadcasts.

Some non-governmental organizations and civic groups do attend hearings in high-profile cases, particularly those dealing with human rights violations, organized crime, and the Djindjic assassination. Members of the bar and law students are known to occasionally observe proceedings but usually on an *ad hoc* basis only.

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: Negative***	***Trend: ↔***
In general, access to judicial decisions is limited to the parties to a proceeding. Law students, legal scholars, and others may be granted access by the court president on a case-by-case basis.		

Analysis/Background:

Once a judicial decision is rendered, it is forwarded to the court office where the original is kept along with other relevant materials in the case file. The nature of the decision is also recorded in the register. In larger courts, so called court practice departments compile the legal positions

[21] Information about Belgrade District Court proceedings is available at www.okruznisudbg.yu. The website of the First Municipal Court is located at www.prvisud.com.

[22] At the same time, indications that public perception of the judiciary is improving may be tempered by reports that confidence in the judiciary overall remains low. *See*, *e.g.*, Booz Allen Hamilton, COURT ADMINISTRATION ASSESSMENT at 11.

expressed in judicial decisions for the purposes of monitoring and studying the jurisprudence of the court, as well as that of higher courts based on certain cases received from them. COURT RULES OF PROCEDURE arts. 24, 25.

Judicial decisions are not published along with laws and other normative acts in the OFFICIAL GAZETTE OF SERBIA. Nor are they made available with any regularity in any of the legal databases that have been developed by commercial vendors. However, select cases and information of the Supreme Court of Serbia and other courts are published on an annual basis in special Bulletins. These publications are only intended for the judiciary, and not the general public.

Only parties to the case may receive a copy of the judicial decision. In some instances, and with the permission of the court president, law students and researchers may be granted access to judicial decisions and court practice. This, however, does not occur very frequently.

The Supreme Court is considering the creation of an electronic legal database that will include all of its case law (court practice), legal commentaries, and possibly information about the European Union law, the European Convention on Human Rights, and the jurisprudence of the European Court of Human Rights. Once developed, this database would be made available online so that all judges could search for landmark Supreme Court cases and other information for use in their decision-making. In addition to facilitating the uniformity of judicial decisions throughout Serbia, this database could improve judicial reasoning. A resource like this could also prove useful to lawyers, some of whom do refer to the jurisprudence and to specific cases of the Supreme Court in their pleadings. In addition, several international donors are also supporting the development of legal databases that will include case law. The European Agency for Reconstruction, for example, is developing a database of all civil, criminal, commercial, and administrative legislation and case law (court practice).

To the extent judicial decisions and other information about the judiciary are made available to members of the academic community, the media, the legal profession, and others, familiarity with and confidence in the judiciary will most likely increase.

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***	***Trend: ↔***
The method for compiling transcripts of courtroom proceedings is time consuming and does not ensure that the record is accurate or reliable. Public access to transcripts and other court documents remains limited.		

Analysis/Background:

A written transcript is prepared for each first instance hearing based on the judge's oral summary of statements or testimony of the parties and their legal representatives, and the statements of witnesses, experts, and other participants. CIVIL PROCEDURE CODE arts. 117, 118; CRIMINAL PROCEDURE CODE art. 174. Transcripts also include the following basic information: name of the court; time, day, and venue of the proceeding; composition of the panel; subject matter of the dispute; and the names of the parties, legal representatives, and third parties present. CIVIL PROCEDURE CODE art. 118; CRIMINAL PROCEDURE CODE art. 175. There are no verbatim records of court proceedings or testimony rendered in court, except the transcripts developed by the specialized panels on organized crime and war crimes as noted below. Summary transcripts are

drafted by court reporters while the court is in session using typewriters, but sometimes computers are used. Judges must pause throughout the hearing to dictate what has been said. This method of creating transcripts increases the possibility that statements made in court may only be partially summarized or interpreted incorrectly. And, according to one recent estimate, this stop and start method tends to prolong proceedings by as much as 30-40%. *See* Booz Allen Hamilton, COURT ADMINISTRATION ASSESSMENT at 34.

A number of judges, including many appellate-level judges, as well as lawyers believe much needs to be done to improve the accuracy and reliability of transcripts, either by using court stenographers or by introducing new technologies into the courtroom.

At the present time, audiovisual recording equipment is only used by the war crimes and organized crime panels of the Belgrade District Court — largely as a result of international donor support and technical assistance. Audio recordings of proceedings before these panels are transcribed and provided to the parties in hardcopy format. It is envisioned that one day these transcripts will be provided on CD-ROM. No other courts in Serbia have audiovisual recording systems or personnel trained to efficiently use this type of courtroom technology to develop comprehensive and detailed records of courtroom proceedings for use on appeal.

As noted in the Draft National Judicial Reform Strategy, restrictions remain on public and media access to court records, such as non-confidential information related to investigations and trials, as well as transcripts. Consequently, access to case records, including the transcripts, is limited. Only parties to a case and their legal representatives, or persons such as witnesses and experts who have provided testimony, may view the transcript for purposes of making an objection. CIVIL PROCEDURE CODE art. 120; CRIMINAL PROCEDURE CODE art 177. Following an oral or written request, copies of the transcript will be made available to the parties and their legal representatives for a fee of 13 dinars per page (roughly €0.15). LAW ON COURT TAXES § VIII, par. 33.

Once a case is completed, the transcript along with the entire case file is stored in the court archives where it remains accessible only by the parties. Like most other documents in the files, transcripts are maintained only in hardcopy format. Limited access to case files may be granted by the court president to researchers and legal scholars, but these requests remain uncommon.

The situation with public access to information related to the courts and prosecutors offices could improve to some extent following the adoption of the Law on Free Access to Information of Public Importance, which entered into force on November 13, 2004. Previously, as noted in the 2002 Serbia JRI, there was no system for providing the public or the media with access to court files, including transcripts, and other information related to specific cases. Under the new legislative framework, courts are required to provide information upon request. When deciding whether to grant access to information, the courts, acting in the first instance, are required to balance the citizens' right to know with interests of state security or citizens' privacy rights. Court decisions to deny access may be appealed to the Public Information Commissioner. For implementation of this law to be successful, it will need to overcome a culture of secrecy that has pervaded within the Serbian state structures and the judiciary for decades.

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***	***Trend: ↓***
Judges do not have adequate support of judicial assistants and court interns, who typically support more than one judge. Many qualified judicial assistants leave the judiciary for more lucrative employment in private practice or elsewhere.		

Analysis/Background:

Judges are supported in their work by judicial assistants and court interns, as well as by other administrative staff such as secretaries, typists, and registry and other clerical employees. Courts also employ enforcement agents, accountants, information technology specialists, interpreters, security guards, drivers, couriers, and maintenance and housekeeping personnel. LAW ON THE ORGANIZATION OF COURTS art.54; COURT RULES OF PROCEDURE art. 65.

According to estimates published by the Ministry of Justice, the breakdown of administrative employees per type of court in 2004 is as follows:

NUMBER OF JUDGES AND COURT STAFF PER TYPE OF COURT

Type of Court	Number of Courts	Number of Judges[23]	Number of Staff[24]
Supreme Court	1	66	141
District Courts	30	429	2,326
Municipal Courts	138	1,653	13,928
Commercial Courts	18	208	1,773
TOTAL:	**187**	**2,365**	**18,168**

Source: PLATFORM FOR THE STRATEGY FOR JUDICIAL REFORM at 5.

Judicial assistants (law faculty graduates who have passed the bar exam) serve as the principal resource for judges in discharging their judicial duties related to managing cases and conducting proceedings. They perform legal research and analysis, prepare legal positions, and draft judicial decisions and other documents under the supervision of the judges to which they are assigned. LAW ON THE ORGANIZATION OF COURTS art. 55.

Court interns generally provide judges and judicial assistants with basic administrative support in managing files and drafting documents, but their actual duties may vary from court to court. Interns may be employed for a period of up to three years in between graduation from a law faculty and taking the bar examination. They are eligible to take the bar examination after their second year. Interns who pass the bar examination with a distinguished mark qualify for full-time employment as judicial assistants.

[23] The "number of judges" likely refers to the actual number of judges working at the time, as opposed to the total number of judicial positions.

[24] The "number of staff" likely includes all professional and administrative and technical support personnel.

By most accounts, the level and quality of support which judges receive in managing their caseloads and preparing decisions is insufficient. This is partly due to the fact that judges are forced to share judicial assistants and court interns with their colleagues in accordance with Court Rules of Procedure. In municipal courts, for instance, there is one judicial assistant and one court intern for every four judges. *See* STANDARDS FOR DETERMINING THE NUMBER OF JUDGES AND COURT EMPLOYEES art. 5. At the district court level, there is one judicial assistant for every four judges and one court intern for every five judges. *Id.* While there may be some variation in practice, there is virtual unanimity among judges that additional support staff is required given the ever-increasing caseloads.

Without greater support, many judges must perform non-judicial tasks considered more appropriate for administrative staff, such as scheduling courtrooms for upcoming hearings and drafting basic documents and correspondence, in addition to conducting hearings and rendering decisions. This problem is particularly acute for newer and younger judges, who reportedly do not receive the same amount of assistance as their more senior colleagues. These administrative burdens are widely cited as contributing to the overall length of proceedings and are often used to explain some of the judiciary's inefficiencies.

It is also quite common for experienced and capable judicial assistants to seek more lucrative employment outside the judiciary, often as attorneys, because of the relatively low salaries they receive working for the courts. Municipal court interns, for instance, only receive 15,000 dinars (roughly €180), while judicial assistants at the municipal level earn 18,000-22,000 dinars (roughly €220-268). Judges often complain that they have lost some of their best assistants to law firms and are forced to make do with less qualified and less experienced support staff that remains. The loss of competent court staff, combined with failure to recruit adequate replacements, has also been identified as one of the main problems facing the courts today. *See* PLATFORM FOR THE STRATEGY FOR JUDICIAL REFORM at 9. Not only does this brain drain complicate the day-to-day work of judges in managing cases and other judicial matters, but it may also have long-tem implications for the overall professional competency of the judiciary as a whole. Continuing education for court staff is limited at the present time but has been identified as a priority. *See* DRAFT NATIONAL JUDICIAL REFORM STRATEGY § III.E.2.

Due to the lack of adequate space in some judicial buildings, many judges are forced to share their offices with judicial assistants and court interns.

Factor 27: Judicial Positions

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

Conclusion	***Correlation: Neutral***	***Trend: ↔***
A system does exist for creating new judicial positions based on the caseload and efficiency of the court, but there is often considerable delay in the appointment of new and replacement judges.		

Analysis/Background:

The National Assembly determines the total number of full-time professional and lay judges for each court based on a recommendation of the High Judicial Council (HJC). LAW ON JUDGES art. 9. The actual number of full-time judges in Serbia at the present time, however, varies by source and therefore remains somewhat unclear. According to published reports, it could fall somewhere between 2,356 and 2,698 judges. Thus, in its PLATFORM FOR THE STRATEGY FOR JUDICIAL REFORM, the Ministry of Justice indicates that there are a total number of 2,356 judges in Serbia's 187

commercial, municipal and district courts, and the Supreme Court. *See id.* at 5. In contrast, the total number of judges identified by the DECISION REGARDING THE NUMBER OF JUDGES AND LAY JUDGES IN COURTS is a bit higher at 2,698. Finally, according to Ministry of Justice statistics published in EUROPEAN JUDICIAL SYSTEMS: FACTS AND FIGURES (Council of Europe Publishing, April 2005), there are 2,500 professional judges. *See id.* at .34. There are also reports that as many as 20-30% of all judicial positions remain vacant.

The system for determining the number of judges for each court involves an examination of the number and character of cases received over the preceding three years and the number of cases a judge is required to complete each month. *See* STANDARDS FOR DETERMINING THE NUMBER OF JUDGES AND COURT EMPLOYEES art. 2. In the event an additional position is required or a vacancy occurs, the court president informs the Ministry of Justice and requests that a judge be appointed. The Ministry of Justice, in turn, informs the HJC that a position needs to be filled. Once a new position is created or a vacancy arises, it is advertised in the OFFICIAL GAZETTE and in local newspapers. Also, in those instances in which a court's work has been inhibited due to the suspension of a judge or other legitimate reasons, the President of the Supreme Court may appoint a judge to that court for up to one year. LAW ON JUDGES art 18.

There is often a considerable delay in the appointment of replacement and new judges. Positions can sometimes remain unfilled for over one year. This is particularly common, according to many sources, for unfilled positions in many of the smaller courts in rural regions of Serbia. However, the problem of unfilled positions also plagues larger courts such as the Belgrade District Court. No new judges were appointed to this court in 2004 despite the fact that several were appointed to the Supreme Court, while a number of judges resigned in order to practice law as attorneys. As a result, the number of judges assigned to this court decreased from 120 at the beginning of 2004 to 112 at the end of the year.

The question of how many judges are appropriate for a country with a population of roughly 7.5 million, and given the number of cases before the courts, is controversial. Some judges and other informed sources suggest that there are too many judges in Serbia. Oddly enough, some of these same people claim that their courts are understaffed. Others contend that there are not enough judges.

In the event the judiciary undergoes a reorganization that involves decreasing the total number of judicial positions, it would most likely need to be done over a period of several years, and be part of a comprehensive strategy to increase the efficiency of courts throughout Serbia. In addition, it would require that appropriate severance and retirement packages be made available.

Factor 28: Case Filing and Tracking Systems

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

Conclusion	***Correlation: Neutral***	***Trend: ↑***
The existing system of case management and tracking remains rudimentary and inefficient in most courts, although some progress has been made by specific courts in improving case processing through computerization projects supported by international donors.		

Analysis/Background:

The lack of a modern case management and tracking system is widely considered to be one of the constraints on court performance, and a factor contributing to the growth of case backlogs. In

general, courts manage case files manually, entering information about the case, including the date it was received, the names of the parties, information about the nature of the complaint, and the file number, in the court registry by hand before it is assigned to a judge or panel of judges. The case file number includes the short title of the registry book, an ordinal number, the last two numbers of the year in which the case is received, and the code of the judge or panel to which the case is assigned (e.g., XIV P-1234/05). *See* COURT RULES OF PROCEDURE art. 151.

When a case file is opened, a list of enclosures is prepared and then updated as additional documents and materials become available. *Id.* art. 153. Although all documents should be organized sequentially based on the date they were received, many files become quite disorganized over time. Judges and judicial assistants often have to spend some time searching the file for a particular document.

Once the judge schedules hearings and begins to try the case, the registry is updated to reflect the information regarding the status of the case, such as the date of hearings, complaints, decisions rendered, sanctions imposed, etc. Judges are required to conduct hearings in a timely fashion and to provide updates, so that the court registry reflects the status of the case accurately. *Id.* art. 61. If a first instance case has not been concluded within a six-month statutory term, the judge shall notify the court president. LAW ON JUDGES art. 25.

In some courts, case file information is reportedly included in a computer database, but complete case files do not exist electronically, nor do judges have access to this information if a court's computers are not networked, which is often the case.

Many courts are still not adequately equipped with information technologies, including both the hardware and the software systems for efficient case management and tracking. However, there are several international donor-funded projects underway to develop computerized case tracking and management systems. The European Agency for Reconstruction (EAR), for instance, has funded a court computerization program that encompasses the delivery and installation of computer hardware and software to thirteen of the largest district and municipal courts. As part of this effort, EAR developed a case information management program based on the SENA software application. This program was made available to the Ministry of Justice for use by the judiciary in September 2004. The Ministry of Justice is still reportedly considering whether it will adopt this software and introduce it countrywide. In addition, the National Center for State Courts is implementing a USAID award to enhance case management and court administration. This initiative includes working with judges and court personnel from six courts (including the Belgrade District Court, the First Municipal Court of Belgrade, the Belgrade Magistrate Court, and district and municipal courts in Kragujevac and Novi Pazar) on the development and implementation of a case flow management improvement plan, which is aimed at increasing the efficiency and reducing the overall number of backlogged cases in courts of general jurisdiction.

The Commercial Court Administrative Strengthening Activity (CCASA), a USAID-funded project of Booz Allen Hamilton, involves improving the commercial courts' computer network infrastructure in order to streamline case processing. Commercial court judges suggest that the CCASA project has alleviated some of their administrative burdens related to the lack of modern information technologies for document sharing and has allowed them to focus more on traditional judicial functions.

The Draft National Judicial Reform Strategy notes the inefficiencies caused by the current labor-intensive system for managing cases. It suggests that the Ministry of Justice will address this phenomenon by developing a cadre of court administrators who will take the lead in overseeing a case management system similar to that being developed in the commercial courts. *See* DRAFT NATIONAL STRATEGY FOR JUDICIAL REFORM § III.D.2.

Until recently, there was no meaningful and effective alternative dispute resolution mechanism for alleviating the burden on Serbian courts and improving their efficiency. However, the new Civil

Procedure Code, introduced in December 2004, set forth the basic legal framework for improving mediation in civil matters. *See* CIVIL PROCEDURE CODE arts. 11, 148, 154. In addition, a new Law on Mediation (O.G.R.S. No. 18/2005) was adopted in March 2005, followed by the adoption of Rules on the Training Program for Mediators and Rules on Maintaining the List of Mediators (O.G.R.S. No. 44/2005) in May 2005. Finally, in July 2005, a new Family Law (O.G.R.S. No. 44/2005), one which requires mediation in matrimonial proceedings, was introduced.

Several courts have undertaken efforts to introduce mediation as a form of alternative dispute resolution. For instance, the Second Municipal Court in Belgrade, which has run a small mediation program since 2003, has established a mediation department with support from the World Bank's SEED Program. As of September 2005, this department had successfully mediated over 500 disputes. First Municipal Court in Belgrade has also established, with assistance from the EAR, a pilot mediation project aimed at training judges as mediators in 2005. In addition, the Ministry of Justice, through its mediation working group, intends to establish a Mediation Center in 2006 that will coordinate mediation activities throughout the country in an effort to increase the use of mediation as an alternative to court proceedings.

Factor 29: Computers and Office Equipment

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

Conclusion	***Correlation: Neutral***	***Trend:*** ↑
Despite increasing emphasis and attention, the availability of computers is limited and their use remains *ad hoc*. Not all judges and court personnel are proficient in computers and information technologies.		

Analysis/Background:

Specific uses for computers in court administration and in the administration of justice are outlined in the Court Rules of Procedures. These include general word processing tasks, accounting, creating the registry and other court administration records, printing case file folders, and updating regulations and so-called "court practice." *See* art. 124. However, in practice, much of this type of work is often performed somewhat inefficiently, using typewriters or by hand.

Many courts are still not adequately equipped with information technologies, including computers. According to estimates of the Ministry of Justice, there are reportedly about 3,000 computers at the judiciary's disposal. *See* PLATFORM FOR THE STRATEGY FOR JUDICIAL REFORM at 6. Several international donor-funded computerization programs have improved the situation by providing computer hardware and software systems to select courts throughout the country, but these initiatives are piecemeal at the present time. For instance, Booz Allen Hamilton, through the USAID-funded Commercial Court Administrative Strengthening Activity (CCASA) project, has focused its efforts on the Belgrade and Nis commercial courts. A European Union-funded court modernization project of the European Agency for Reconstruction, totaling €12 million, has provided computer hardware and software to the judiciary, but this initiative is only aimed at thirteen of the largest municipal and district courts. The United Kingdom's Department for International Development is reportedly making a limited number of computers available to several courts in southern Serbia.

Computers can be found in courts elsewhere, such as in Bujonvac, Presevo, Valjevo or Vranje, but they are sometimes outdated and of poor quality. In addition, they are often made available only to the court president and administrative staff.

In addition, computers and information technologies are not necessarily being utilized efficiently, if at all, by those judges who do have access to them. Many do not have basic computer skills, such as word processing or familiarity with the use of the Internet and email applications. Only a few courts, such as the Supreme Court and the High Commercial Court, have their own email systems. Moreover, few courts have installed their own internal networks that can be used by judges and court personnel for document sharing and other workflow uses, including case management (See Factor 28 on Case Filing and Tracking Systems). Access to external computer networks and legal databases also remains very limited. As a result, it is not uncommon for computers to remain switched off most the time. Lack of computers is also one of the reasons why some judges prefer to work from their homes as opposed to their offices, where they rely on their own computers. Some judges with computer access reportedly do use them to draft decisions, organize their files, and perform research, yet many others continue to dictate their decisions to typists or to their assistants.

Notably, the Ministry of Justice has identified "underutilization of information technologies and automated systems" as one of the judiciary's perpetual weaknesses that eventually needs to be overcome in order to increase its efficiency and responsiveness. *See* DRAFT NATIONAL JUDICIAL REFORM STRATEGY § I.C.

Factor 30: Distribution and Indexing of Current Law

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

Conclusion	***Correlation: Neutral***	***Trend:*** ↑

In addition to the Official Gazette, judges and other court personnel may obtain laws, judicial decisions, and other legal information though online databases and CD-ROMs made available by commercial providers, as well as through Bulletins and other publications of various courts.

Analysis/Background:

Domestic laws and legal information are published in the OFFICIAL GAZETTE OF SERBIA *(*SLUZHBENI GLASNIK REPUBLIKE SRBIJE*)*, which has compiled and made legislation, government regulations, and other normative acts available to members of the judiciary and the legal profession since 1945. The OFFICIAL GAZETTE (www.glasnik.com) is distributed in hardcopy and on CD-ROM to subscribers throughout the country.[25] Subscription fees begin at 9,000 dinars (roughly €108). Because some courts only have a few subscriptions, judges continue to rely on photocopied excerpts of significant legal developments and information about the law to stay abreast of changes in the law.

Most courts have a library where judges and their staff may find copies of the OFFICIAL GAZETTE and other legal materials. COURT RULES OF PROCEDURE art. 37. In addition, larger courts have a special department that organizes that court's decisions and sometimes receives the decisions of other courts. These materials are made available to judges and their staff upon request. So called court practice (case law) departments, which are headed by a judge appointed by the court president, create and manage records of legal positions through the use of general and special

[25] Similar publications, such as the MUNICIPALITY OFFICIAL GAZETTE, the EDUCATIONAL GAZETTE, and the OFFICIAL GAZETTE OF SERBIA AND MONTENEGRO, are also made available.

registers. *Id.* art. 27. They also monitor and analyze case law of the court and, on occasion, obtain the case law of other courts. *Id.*; *see also* LAW ON THE ORGANIZATION OF COURTS art. 35.

For the time being, select Supreme Court decisions are also distributed to judges through its annual BULLETIN. LAW ON THE ORGANIZATION OF COURTS art. 30. Other courts also publish Bulletins. An electronic database of Supreme Court decisions is also being contemplated, but has not yet gone online. Other legal periodicals as well as some expert commentaries are published, but they do not necessarily receive wide distribution. Moreover, some judges complain that these materials are not delivered in a timely fashion.

Many legal professionals, including judges, rely increasingly on legal databases and information made available online or through CD-ROMs. Some laws and legal instruments are available on the websites of the Government of Serbia (www.srbija.sr.gov.yu), the Ministry of Justice (www.mpravde.sr.gov.yu), and the Ministry of Finance (www.mfin.sr.gov.yu). While these resources are helpful to the general public and do improve transparency in government to a certain degree, they are not very practical or useful to judges in their work.

Of those judges with access to computers and the Internet, more and more are making use of legal databases and information services developed by commercial vendors. The two most comprehensive and popular of these are Paragrafnet (www.paragrafnet.com) and Ing-Pro (www.ingpro.co.yu). Both offer regular updates on the Serbian legal system, including statutes and decisions of the government and its ministries. Significant decisions of the Supreme Court and of district courts are also sometimes included in these databases. An increasing number of courts are subscribing to these services and providing judges with these resources — either through CD-ROM updates or through online access. Judges who use these resources suggest that their advent has led to a significant improvement in the availability of legal information.

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.

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