COMPARATIVE ANALYSIS OF CRIMINAL DEFENSE ADVOCACY

IN

ALBANIA, BOSNIA AND HERZEGOVINA, KOSOVO, MACEDONIA, AND SERBIA

WITH SUGGESTIONS FOR THE DEVELOPMENT OF
A REGIONAL RULE OF LAW NETWORK

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Introduction

The Comparative Analysis of Criminal Defense Advocacy in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, and Serbia assessment was conducted as a part of the American Bar Association Rule of Law Initiative’s (ABA ROLI) Balkans Regional Rule of Law Network (BRRLN) Program, a three-year regional program implemented by ABA ROLI with the support of the United States Agency for International Development (USAID). The BRRLN program intends to strengthen the rule of law in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, and Serbia, by building mechanisms for collaboration and sharing best practices, tools, and knowledge among the region’s bar associations and justice-sector civil society organizations (CSOs). The purpose of this assessment was to evaluate the relative strength, independence, and effectiveness of the defense bars in the five target countries and present recommendations for programmatic interventions to be deployed during the BRRLN program.

The findings of this assessment were intended to answer the central question: What does a strong, independent, and effective criminal defense bar look like, and how could a regional network of defense lawyers help achieve this? Specifically, this assessment will be used to 1) establish a baseline for the BRRLN program by surveying the current state of the criminal defense bars in the five target countries, and 2) produce recommendations for potential programmatic interventions by analyzing the assessment findings. Informed by the assessment findings and recommendations, ABA ROLI will identify potential members of the Rule of Law Network, launch an in-person roll-out conference to build relationships between members, shape a mission for the network, and develop thematic taskforces comprising small groups of local stakeholders that will work together in person and through an online forum to address the most pressing needs of the network.

ABA ROLI understands that there is no uniform agreement on the particulars of criminal defense advocacy and criminal justice sector reform. In particular, ABA ROLI acknowledges that there are differences in legal cultures that make certain issues more or less relevant in a particular context. However, after more than two decades of working on these issues in the field, and conducting similar assessments of prosecutorial, judicial, and legal profession reforms ABA ROLI is comfortable drawing on its knowledge to conclude that the factors identified here have significant impact on criminal defense advocacy and reform. Thus, an examination of these factors creates a basis upon which to structure programming and assess important elements of the reform process.

Methodology

ABA ROLI drew on several assessment tools that it has already developed, including the Detention Procedure Assessment Tool (DPAT), Access to Justice Assessment Tool (AJAT), Judicial Reform Index (JRI), Legal Profession Reform Index (LPRI), and Prosecutorial Reform Index (PRI), using these to help design the structure and process of this assessment. In order to address the issue of differences in legal cultures, ABA ROLI used a wide set of international standards to create a common picture of what a strong, independent, and effective criminal defense bar looks like. The sources for these standards include the Council of Europe’s Recommendations on the Freedom of Exercise of the Profession of Lawyer; the International Bar Association Standards for Independence of the Legal Profession, Policy Guidelines for Training and Education of the Legal Profession, International Principles on Conduct for the Legal Profession; Council of Europe’s Recommendations on the Freedom of Exercise of the Profession of Lawyer; the United Nations Basic Principles on the Legal Professions, Basic Principles on the Role of Lawyers; and the World Bank Civil Society Overview. ABA ROLI also referred to international law, including the International Covenant on Civil and
Political Rights (ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (ECHR).

After identifying what a criminal defense bar should look like, ABA ROLI compiled a set of ten factors, which contribute to the existence of a strong, independent, and effective criminal defense bar and correspond to a healthy criminal defense system. ABA ROLI divided these factors into three main thematic areas. These themes and factors are 1. The Practice of Criminal Defense Law, including factors on Education and Qualification, Licensing and Professional Development, Professional Independence, and Ethics, Discipline, and Immunity; 2. The Duties of Lawyers and the Rights of Clients, including factors on the Lawyer/Client Relationship, Protecting the Rights of the Accused, and Promoting Access to Justice; and 3. Relationships with Non-Governmental Criminal Justice Actors, including factors on Professional Associations of Lawyers, Civil Society, and The Media and General Public. The international standards and laws that ABA ROLI used to analyze the information for each factor are explained in the text box at the beginning of the factor. Prior to the factor analysis, this report provides extensive background information on the region and countries assessed, in order to help the reader put the information analyzed in the factors in its historical and legal context.

ABA ROLI used a rights-based approach when identifying factors to consider. In a rights-based approach, the assessor examines the system to evaluate whether and if so how the holder of the rights, in this case the accused, is well served and empowered by the system. The rights-based approach ensures that the evaluator is asking these questions alongside questions of whether and if so how the duty bearer, in this case the defense advocate, is upholding their responsibilities. The rights-based approach allowed ABA ROLI to highlight the role defense advocates and a healthy defense bar have in upholding human rights principles and standards. This is of particular relevance to the five target countries as they look toward EU integration.

This report begins with an executive summary, briefly highlighting major findings of the assessment. Then information on the history of the region, the institutional structures of each country, and the status of criminal law reforms is presented, allowing the reader to place the factor analysis in its historical and legal context. The ten factors follow, each including a statement of the relevant international law and standards, analysis of the de jure and de facto situation in each country, comparative highlights, and questions for consideration. Finally, the appendix contains suggestions for the agenda of the BRRLN, highlighting seven key areas in which advocate could cooperate on a regional level to develop and support reform.

This information analyzed in this report was gathered through key informant interviews conducted throughout Albania, Bosnia and Herzegovina, Kosovo, Macedonia, and Serbia in November and December 2013 and January 2014, and a review of relevant legislation, data, and materials as cited in the body of the report. Interviewees included approximately 175 advocates, prosecutors, judges, development professionals, CSO staff, academics, and other criminal justice professionals. Records of relevant authorities and a confidential list of interviewees are on file with ABA ROLI. ABA ROLI is extremely grateful to all those who were interviewed or provided assistance for this assessment.

Assessment Team

The assessment was conducted by Elizabeth Givens, ABA ROLI Regional Program Director, Ashley Martin, ABA ROLI Senior Program Manager, and Jessie Tannenbaum, ABA ROLI Senior Legal Analyst, who also served as overall coordinator of the assessment. The assessment team also included field coordinators in each of the five countries: Vana Kasapi (Albania), Azra Kuci (Bosnia
and Herzegovina), Adelina Sokoli (Kosovo), Biljana Nastovska (Macedonia), and Milan Nikolic (Serbia). The team received strong support from ABA ROLI staff in Washington, DC, including Program Officer Sarah Bumbarger, Program Associate Zlata Unerkova, Administrative Assistant April Hewko, Research Fellow Katherine Wright, Europe and Eurasia Division Director Alexandra Belenkaya, and Director of Research and Assessments Simon Conté. Other ABA ROLI staff members who participated in a working group to develop the assessment methodology included Senior Legal Analyst Jim Wormington, Deputy Director of Research and Assessments Olga Ruda, Ecuador Country Director Al Amado, and Senior Criminal Law Advisor Mary Greer.
Executive Summary

The *Comparative Analysis of Criminal Defense Advocacy in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, and Serbia* reflects encouraging developments in a region that has spent recent decades in constant change. From the breakup of the former Yugoslavia and fall of socialist regimes, through the wars that wracked the region, to a transition to democratic governance and aspirations of accession to the European Union, advocates have seen their profession change dramatically, most recently with criminal procedure reforms and the implementation of adversarial systems in four of the five countries assessed (Albania being the exception). While advocates in the region face many challenges, this report also reflects many positive trends.

Education, Qualification, Licensing, and Professional Development

Positive Findings:

- All five countries require would-be advocates to hold a degree in law, complete a traineeship, and pass a bar exam.
- Advocates in all five countries are encouraged to engage in continuing legal education and professional development, although Kosovo is unique in making this mandatory.
- Interviewees reported no bias or discrimination in registering as an advocate.
- Advocates in Macedonia and Serbia have received training sponsored by the Chambers of Advocates and NGOs on skills needed to practice under the new Criminal Procedure Codes.

Areas for Improvement:

- Interviewees reported that legal education is overly theoretical and does not adequately prepare graduates to work as trainee advocates.
- Members of ethnic minorities and marginalized groups are not well represented in the legal profession, and some countries reported low representation of women.
- Kosovo is the only country with a functioning training center for advocates, although plans are underway to develop training centers in Albania and Serbia.
- Advocates in several countries believed that entry fees and/or annual dues are too high.

Professional Independence and Ethics

Positive Findings:

- The Chambers of Advocates in all five countries function independently and autonomously, and their independence is protected by law.
- Serbian, Bosnian, Macedonian, and Kosovar advocates believed that most advocates carry out their duties to clients independently, autonomously, and without outside influence.
- All five countries have ethics codes and structures for disciplinary sanctions, although Kosovo is unique in demonstrating transparent enforcement of discipline.
- Advocates in all five countries have varying levels of protection from having their offices searched or from being detained or arrested.

Areas for Improvement:

- Advocates in Albania identified corruption as a major impediment to independence, while in Macedonia advocates were concerned about government requirements that intrude upon their duties of confidentiality and loyalty to clients.
Interviewees reported that ethics codes are generally not enforced and disciplinary sanctions are rarely applied, although the Kosovo Chamber of Advocates has recently stepped up enforcement.

Advocates in all countries reported being prevented from seeing their clients at police stations, or that arrestees are not always informed of their right to counsel by the police.

**Client Relationships, Defendants’ Rights, and Access to Justice**

**Positive Findings:**

- Advocates are aware of their responsibilities toward clients and did not have concerns about the lawyer/client relationship as regards private clients.
- Systems for appointing free representation for indigent clients exist in all five countries, although many interviewees identified problems with these systems.
- In Kosovo, the Chamber of Advocates participates in Law Day events and the Justice and People Campaign to educate the public about their rights and provide free legal assistance.

**Areas for Improvement:**

- The overwhelming majority of interviewees considered the systems for appointing counsel ex officio for indigent defendants to be broken. Defendants facing shorter sentences (roughly less than eight years, although this varies by country) are not guaranteed counsel, and defendants unable to afford the costs of a defense investigation will be reliant on prosecutors to conduct a thorough investigation and disclose exculpatory evidence. In Albania, the defense has no right to conduct an investigation at all. In all countries, advocates that their fees are not paid on time, in full, or at all in ex officio cases.
- Advocates in Macedonia and Serbia had concerns about equality of arms under their new Criminal Procedure Codes, although implementation of the Codes was too new to determine whether their concerns would be realized.
- Free legal aid, other than court-appointed counsel, is rare in criminal cases throughout the region, and the Chambers of Advocates have not supported the development of legal aid systems.
- The legal profession has not been active in promoting access to justice, either at a societal level or by actively encouraging advocates to provide free legal assistance.

**Civil Society, Media, and the General Public**

**Positive Findings:**

- All countries have civil society organizations working in the justice sector. Their criminal justice work primarily focuses on trial monitoring and advocacy for victims. Civil society groups are also providing free legal aid, primarily in civil cases.
- Trials and hearings are public unless an exception specified by law applies, and members of the media have access to the courts and to information on legal proceedings in practice.
- The ethics codes in all five countries cover interactions between advocates and members of the media, and advocates generally abide by these standards.

**Areas for Improvement:**

- Advocates generally do not collaborate with CSOs in areas of mutual interest, and were unsure how it would benefit them to work together with CSOs.
- The public perception of advocates is poor, and the legal profession does not conduct public education campaigns that could raise respect for the profession.
• The legal profession is generally not active in promoting civic education or public knowledge of civil rights.

These conclusions are discussed in depth, with country-by-country analysis, in the ten factors below. Following the analysis are suggestions for setting the agenda of the Balkans Regional Rule of Law Network, including suggestions in the areas of training, outreach, increasing the capacity of Chambers of Advocates, criminal law reform, representation of indigent defendants, civil legal aid, and collaboration with civil society.
Regional Overview

Albania, Bosnia and Herzegovina (BiH), Kosovo, Macedonia, and Serbia are countries located in Southeast Europe and occupy central areas of the Balkan Peninsula. In recent history, these countries are often classed as part of the Western Balkans, which is a political rather than geographical term used by European Union [hereinafter EU] to embrace Albania and all the states in the territory of former Yugoslavia except Slovenia.

These countries are relatively small in size and have populations from less than 2 million (Kosovo) to more than 7 million (Serbia). The region is ethnically diverse with most countries maintaining a majority ethnic/religious group, one major minority group, and smaller groups of other minorities. Albania occupies an area of 28,748 sq.km, Bosnia and Herzegovina 51,197 sq.km, Kosovo 10,908 sq.km, Macedonia 25,713 sq.km, and Serbia 88,361 sq.km. Aside from bordering each other, these countries are surrounded by Croatia, Hungary, Romania, Bulgaria, Greece, and Montenegro.

The population of Albania is 2,800,138, Bosnia and Herzegovina 3,791,622, Kosovo 1,733,872, Macedonia 2,087,171, and Serbia 7,186,862. The demographics of each country reflect the ethnic and religious diversity of the region. According to the 2011 census, Albania's population is 82.58% Albanians and below 1% Greeks, Macedonians, Aromanians, and Roma, while 13.96% of inhabitants did not report their ethnicity. In Bosnia and Herzegovina it is estimated that among the three constituent peoples Bosniaks make 48% of the population, Serbs 37.1%, and Croats 14.3%. Kosovo is an estimated 92% Albanian and 4% Serb, with Bosniaks, Gorani, Turks, and Roma estimated to make up less than 1% of the population. According to the 2002 census, Macedonia's population is 64.2% Macedonian, 25.2% Albanian, 3.9% Turkish, 2.7% Roma, 1.8% Serb, and 2.2% other. Serbia’s census from 2011 indicates that Serbs make up 83.32% of the total population, while the largest other ethnic groups are Hungarians (3.53%), Roma (2.05%), and Bosniak (2.02%).

This region of Europe has been the intersection of Sunni Islam and Christianity, as well as a meeting point between Orthodox and Roman Catholic Christianity, and these three faiths are present in all the countries in the region. Muslims are the majority in Albania and Kosovo, while Orthodox Christianity is dominant in Serbia and Macedonia. It is estimated that BiH is approximately 40% Muslim, 31% Orthodox Christian, and 15% Roman Catholic. Other religions represented in the region are Judaism and Protestant Christianity, but there are also a varying percentage of atheists in each of the states.1

Economically, Albania, BiH, Macedonia, and Serbia are classified as upper-middle income, while Kosovo is classified as lower-middle income. The gross national income per capita level in Albania is USD 4,030, Bosnia and Herzegovina USD 4,750, Kosovo USD 3,600, Macedonia USD 4,620, and

Serbia USD 5,280. World Bank Country Data, available at http://data.worldbank.org/indicator/NY.GDP.PCAP.CD. The countries’ economies are dominated by the services and agricultural production. All the countries have similar challenges in their economic systems, reflected through the very high unemployment rates especially among the younger population, bad management of public finances, growing public sector and large informal sector. The functioning of market mechanisms is still hampered by excessive state involvement and legal uncertainty. See European Commission Progress Reports, available at http://ec.europa.eu/enlargement/news_corner/key-documents/index_en.htm.

The five countries and their citizens, although diverse in demographic, ethnic, and religious structure, share a similar history.

Historical Background

Slavic tribes started settling the Balkans during sixth Century AC significantly changing the previous demographic structure by assimilating and displacing older inhabitants of the region, such as Greeks and Illyrians. During the Medieval period, pagan Slavic tribes started converting to Christianity and establishing first states around ninth century. From 15th until 19th century the region was under Ottoman rule which left a strong mark on the culture, and changed religious structure of population by bringing Islam into the region. After the Berlin Congress of 1878, Serbia formally gained its independence from the Ottoman Empire, while other territories continued to be divided between the Ottoman and Austro-Hungarian Empires. Albania gained its independence from the Ottoman Empire in 1913. At the beginning of 20th century, after two Balkan Wars and the First World War, a unified Slavic territory emerged called the Kingdom of Serbs, Croats and Slovenes (later the Kingdom of Yugoslavia) encompassing today’s Macedonia, Kosovo, Montenegro, Bosnia and Herzegovina, Croatia and Slovenia. During the Second World War, the region was occupied by the Nazis and the opposition largely came from communist parties. After the war, these parties suppressed internal political opponents and took power in both states, creating the Socialist Federal Republic of Yugoslavia and the People’s Republic of Albania, later renamed the People’s Socialist Republic of Albania.

Yugoslavia and Albania were each led by strong dictators and lacked respect for human rights and political freedoms, but were also very different. Albania belonged to the Eastern Bloc of communist countries joined under the Warsaw pact and dominated by the Soviet Union. Its society was very closed and freedom deeply repressed under dictator Enver Hoxha. Yugoslavia, under Josip Broz Tito, distanced itself in 1948 from Russia and was one of founders of non-aligned movement, a group of states that were not formally aligned with any power block. Yugoslavia created a more open economic and political system that cooperated with both the Eastern block and the West. Internally, Yugoslavia was organized into six republics: Bosnia and Herzegovina, Croatia, Montenegro, Macedonia, Serbia, and Slovenia. Serbia, the largest Yugoslav republic, also included two autonomous provinces: Kosovo and Metohija, renamed the Socialist Autonomous Republic of Kosovo in 1974, and Vojvodina. The Yugoslavian constitution from 1974, gave each republic more autonomy from the central government including the two autonomous though they included as part of Serbia.

At the end of the twentieth century, the changes sweeping through the Soviet Union and Eastern Bloc transformed both countries. In this period Albania faced significant political, social, and economic changes. After protests taking place in the late 1980s and early 1990s, the People’s Socialist Republic was dissolved and the Republic of Albania was founded in 1992. In the same year,
a new Democratic Party replaced the Communist government, but the country suffered economic collapse and experienced large social problems. The crisis continued and escalated to armed rebellion in 1997. The war in Kosovo also affected Albania as a large number of Kosovar Albanians found refuge within Albania’s borders. After a decade of political unrest, during the last 15 years, Albania’s political situation has settled, democracy has been strengthened, and the country has been able to undertake some reforms necessary for EU and NATO accession.

Yugoslavia went through more dramatic changes that resulted in its dissolution into seven new countries. In the beginning of the 1990s, several republics within Yugoslavia began moving toward independence. In 1991 Slovenia declared its independence, and was followed by Croatia. Macedonia declared its independence on April 5, 1992. Two days later the Republika Srpska, a part of BiH with a majority Serb population, declared its independence from BiH and further declared its intention to remain part of Yugoslavia. An armed conflict began in Bosnia in April 1992 among three factions: the Army of Republika Srpska, primarily composed of Bosnian Serbs with support from Serbia; the Croatian Defense Council, primarily composed of Bosnian Croats fighting for the secession from Bosnia of a territory called the Croatian Republic of Herzeg-Bosnia, with the support of Croatia; and the Army of the Republic of BiH, primarily composed of Bosniaks who wanted to maintain the territorial integrity of BiH. The conflict lasted until September 1995; on November 21, 1995, the presidents of Croatia, BiH, and Serbia, met in Dayton, Ohio where they reached a peace accord, which was signed in Paris later that year. Trials for war crimes and genocide committed during that conflict continue to this day before the International Criminal Tribunal for the former Yugoslavia [hereinafter ICTY] and the Court of BiH.

In 1989, Slobodan Milosevic, the President of Serbia, violated the 1974 Yugoslav Constitution by revoking the autonomy of Kosovar and Vojvodina, which caused great dissatisfaction among the majority Kosovar Albanian population. In 1990, the Kosovo Assembly declared an independent state called the Republic of Kosova, which was recognized only by Albania, with parallel institutions to those established by the Serbian government. Simultaneous to the dissolution and destabilization of Yugoslavia, conditions for Kosovar Albanians continued to deteriorate and in 1998 the tensions escalated into an armed conflict between the Kosovo Liberation Army (KLA) and Yugoslav Army. This conflict drew the attention of the international community, and in March 1999 NATO forces began a military intervention against Serbia. The war ended after three months with the June 9, 1999, signing of a Military-Technical Agreement in Kumanovo between the Yugoslav Army and NATO. The next day, the UN Security Council adopted Resolution 1244, establishing the UN Interim Administration Mission in Kosovo [hereinafter UNMIK] under the transitional protection of the UN. On February 17, 2008, Kosovo declared independence as the Republic of Kosovo and was recognized as an independent state by the USA and a majority of EU member states. However, this provoked a very strong reaction from the Serbian Government, which opposed international organizations’ recognition of Kosovo’s independence and began diplomatic efforts to annul the effects of such recognition. In spite of Serbia’s non-recognition of Kosovo’s independence, under the auspices of the EU the Serbian Government has participated in series of meetings with representatives from Kosovo. As a result of these negotiations, on April 19, 2013, the governments of Kosovo and Serbia signed the Brussels Agreement regulating their relations and providing a basis for future stabilization and cooperation. Trials for war crimes committed during the Kosovo war also continue before the ICTY and Serbian courts.

Macedonia was the only State to secede peacefully from Yugoslavia, and at the peak of the Kosovo armed conflict it housed more than 200,000 Kosovar Albanian refugees; it also housed refugees from the Bosnian war. In 2001, an armed insurrection by the Albanian National Liberation Army,
the stated purpose of which was to promote the rights and autonomy of Macedonia’s Albanian minority, arose and was resolved by the August 2001 Ohrid Agreement.

The Federal Republic of Yugoslavia, later renamed the State Union of Serbia and Montenegro, that was founded after the dissolution of the Socialist Federal Republic of Yugoslavia in 1992 and included only Serbia and Montenegro, formally continued existing until Montenegro declared its independence after a referendum on May 21, 2006. On June 5, 2006, the National Assembly of Serbia declared Serbia to be the legal successor to the former state union.

The armed conflicts in Croatia, Bosnia-Herzegovina, and Kosovo led to huge migrations of people between the states resulting in large demographic changes, and causing numerous problems for both internally displaced persons [hereinafter IDPs] and host countries. It is estimated that 400,000 persons are still internally displaced or refugees in the Western Balkans and facing large social, economic, legal and administrative problems. See UNHCR 2012 GLOBAL REPORT, available at http://www.unhcr.org/51b1d6440.html.

The countries within the scope of this assessment all have made EU membership a goal and are working on reforms aimed at fulfilling accession criteria and aligning their legislation with the EU acquis communautaire (accumulated legislation, acts, and court decisions constituting EU law). In June 2003, at the Thessaloniki European Council summit, all five countries were identified as potential candidates for EU membership. Currently, they are at different stages of the accession processes. Albania, which has potential candidate status, submitted its application for membership in 2009, and in 2012, the EU Commission recommended that Albania be granted candidate status, subject to completion of reforms in the areas of judiciary, public administration, and parliamentary rules of procedures. Bosnia and Herzegovina has potential candidate status and has ratified the Stabilization and Association Agreement (SAA) but it has not yet entered into force. Kosovo also has potential candidate status but the EU has established a firm presence in Kosovo through the EULEX rule of law mission in Kosovo, Special Representative in Kosovo and Kosovo International Civilian Office. Macedonia has been a candidate country since 2005, and in 2009 the EU Commission recommended accession negotiations be opened. Serbia gained candidate status in 2012, and in 2013, the European Council agreed to open accession negotiations with Serbia. The Stabilization and Accession Agreement came into force the same year. On January 21, 2014, the first intergovernmental meeting took place, which marked the formal start of Serbia’s accession negotiations. See EU Website, Countries, at http://europa.eu/about-eu/countries/index_en.htm.

Albania, Bosnia and Herzegovina, Macedonia, and Serbia are members of the Council of Europe [hereinafter COE] and United Nations [hereinafter UN] and states parties to these bodies’ major human rights treaties impacting the criminal justice system, including inter alia the European Convention on Human Rights and Fundamental Freedoms [hereinafter ECHR]; the International Covenant on Civil and Political Rights [hereinafter ICCPR] and its second Optional Protocol (aiming at the elimination of the death penalty); and the Rome Statute of the International Criminal Court. Kosovo is not yet a member state of the COE or UN, because a number of those bodies’ member states have not yet recognized Kosovo’s independence, and thus has not ratified COE and UN treaties.

**Criminal Law Developments in the Region**

All the countries share a similar legal heritage. Their legal systems are founded on Romano-Germanic legal traditions and overlaid with features from communist/socialist rule. All five
countries employed a European, inquisitorial system wherein the court played a major role in conducting the criminal procedure and determining the evidence in a case. Investigative judges conducted the initial investigation, provided evidence, and determined the facts in the case. Their role was to seek the material truth in the case and although the parties were allowed to propose evidence, their powers were limited. These systems were widely considered ineffective at protecting defendants’ rights, had high conviction rates, and prioritized suppression of crime.

In the last decade, all the countries except Albania have reformed their criminal procedure codes and introduced adversarial or quasi-adversarial systems based on equality of arms and modeled on common law criminal justice systems. The court’s role has changed drastically and judges are now expected to ensure the procedural fairness of the proceedings, but not to lead them. The burden of proof has shifted to the prosecution including the adoption of prosecutor-led investigations. Defendants are now expected to challenge the State’s evidence and present their own case. Equality of arms is the central principle informing the new criminal procedure codes and defense counsel has been given broader procedural rights and responsibilities. Other common law features aimed at increasing efficiency within the system have likewise been introduced, such as plea bargaining and deferral of prosecution.

The countries are at varying levels of implementation of procedural reforms. Bosnia began implementing criminal procedure reforms in 2003, while Kosovo, Serbia, and Macedonia began implementing the new codes in late 2013. Albania has not reformed its criminal procedure, but has made recent changes to criminal law and criminal justice policy. All the countries have experienced challenges as they transform their legal systems.

**Legal Context**

**Albania**

*Government Structure*

Albania is a parliamentary republic. The judicial power is exercised by the Supreme Court, as well as by the courts of appeal and courts of first instance, which are established by law. The People’s Assembly may by law establish courts for specific areas, but not an extraordinary court. Beside the judiciary, part eight of the Constitution foresees the organisation and functioning of the Constitutional Court which is provided to be outside of judiciary system and guarantees respect for the Constitution and has the exclusive right of its final interpretation. *Constitution of the Republic of Albania (adopted Nov. 28, 1998).*

From the day of its full international recognition as an independent state in 1913 up to the end of World War I, Albania benefited from very few legal and institutional developments in the justice system. The most significant development occurred during the period 1925 to 1928 and 1928 to 1939 under the presidency and the kingdom of Ahmet Zogu I. During this period, Albania adopted the most modern and advanced legal framework of the time, based on the traditions of European countries such as France, Germany, Italy, and Switzerland. From 1939 until 1945, Albania was under Fascist and Nazi occupations. At the end of World War II, the Communist Party led by Enver Hoxha, who later maintained a severe dictatorship, created and presided over an extreme totalitarian regime. During this period of time, there was little or no space for an independent judiciary and the justice system was colloquially characterized as a “telephone justice system,” in which judges took instructions from the executive branch, party leaders, and prosecutors (then
known as “investigators”). During Hoxha’s leadership and under the Communist government, the institution of criminal defense advocacy was outlawed, providing criminal defendants with no protection from the state. In 1991, the communist regime in Albania fell and created a possibility for the establishment of an independent and impartial judiciary system.

Currently, 23 years after the fall of communism, the Albanian justice system is struggling to become more independent, professional, responsible, and impartial. The Albanian judiciary is striving to find a proper balance within the state structure of Albania, as well as with the international legal and institutional framework. The full accession to the North Atlantic Treaty Organisation [hereinafter NATO] and the integration process into the European Union and other international structures provide compelling frameworks for the Albanian justice system to act in accordance with internationally recognized standards and adapt to the requirements of international law as well as EU law.

Court Structure

The total number of judges of all judicial levels is set by decree of the President of the Republic, on the recommendation of the Minister of Justice. To become a judge at the District Court level, generally one must “have full capacity to act,” have completed higher judicial education, have completed the Magistrate School, have not been convicted of a crime, and have a good reputation. In addition, one must be 25 years old or older. LAW ON THE ORGANIZATION OF THE JUDICIAL POWER OF THE REPUBLIC OF ALBANIA art. 19 (adopted Dec. 28, 1998, last amended 2007).

Currently, there are 21 District Courts (first-instance courts), six Courts of Appeal, the First Instance Court for Serious Crimes, the Appellate Court for Serious Crimes and the Supreme Court. District courts try cases by a single judge and three-judge panels depending from the amount of the controversy in civil cases or the potential punishment for the criminal cases. The First Instance Court for Serious Crimes and the Appellate Court for Serious Crimes were established in 2004 in response to the need to combat organised crime and with the purpose to increase the performance of the Albanian judiciary in trying serious criminal cases.

The Courts of Appeals sit in six judicial regions: Durres, Gjirokastra, Korca, Shkodra, Tirana, and Vlora. They hear both criminal and civil cases in three-judge panels and may examine matters of both facts and the law. For some specific cases, the Court of Appeals may also try cases as an ordinary first instance court.

One important recent initiative with the courts structure is the establishment of Administrative Courts, through the adoption of the LAW ON THE ORGANIZATION AND FUNCTIONING OF ADMINISTRATIVE COURTS AND ADMINISTRATIVE DISPUTES (adopted Apr. 2012, entered into force Nov. 4, 2013). The law reforms the general legal framework of administrative cases involving individuals and public bodies, and is designed to ensure the effective protection of individual rights and legitimate interests of the people through a fair and timely trial. The administrative courts have operated since November 2013 and although relatively new, the hope is that these courts will positively influence the performance of administrative agencies, improve the business climate in Albania and ensure that individuals are able to resolve their disputes with agencies in a timely manner.

The Supreme Court of the Republic of Albania is the highest court in the country and also the last remedy within the Albanian justice system. It is composed of 19 judges, tries cases by three-judge and five-judge panels and has jurisdiction over decisions of the Courts of Appeals, and under special circumstances foreseen by law, may also review decisions of the first instance courts. CRIMINAL
The Constitutional Court of the Republic of Albania is composed of nine judges who hear cases en banc and does not formally belong to the judiciary. It is independent from all other instances of the judicial branch. The Constitutional Court decides on a number of issues including the compatibility of a law with the Constitution or with international agreements; the compatibility of international agreements with the Constitution, prior to their ratification; the compatibility of normative acts of the central and local organs with the Constitution and international agreements; conflicts of competencies among the powers as well as between central government and local government; and the constitutionality of parties and other political organizations. ALBANIA CONSTITUTION part 8.

The decisions of the Constitutional Court are not subject to review by any other domestic body, but may be appealed to the European Court of Human Rights on the grounds of the violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms and protocols thereto.

**Structure of the Legal Profession**

The profession of advocate is a free, independent, self-directed, and self-regulated profession. The profession may be practiced by any Albanian citizen that meets several conditions, including the following: has completed the higher legal education, has successfully completed the training program for potential lawyers, has registered in a bar association and in the Ministry of Justice as assistant to an advocate, has completed a one-year traineeship, has passed the bar examination, has moral and civic integrity, and has not been convicted for offenses committed intentionally, under the provisions of the Advocates Ethics Code. With recent changes to the law and regulations, it is mandatory to attend the School of Advocates, which is a nine-month training program that prepares would-be advocates for the bar examination and also plans to provide regular CLE for licensed advocates. Advocates are organized in the National Chamber of Advocates [hereinafter NCA]. There are approximately 6,800 advocates registered with the NCA, although only about 1,500 are practicing.

**Trainees** are recently graduated jurists who are undergoing a one- or two-year traineeship in a court, prosecutor's office, advocate's office, notary office, or other office that implements laws, to fulfill the requirements to sit for the bar examination. The Law on Advocacy regulates the position of the Law Trainees and defines them as graduated lawyers registered in the Registry of Law Trainees and eligible to enter take the bar examination when they have completed the School of Advocate program. LAW ON ADVOCACY OF THE REPUBLIC OF ALBANIA (adopted July 23, 2003, last amended September 27, 2012) [hereinafter ALBANIA LAW ON ADVOCACY].

**Jurists** are those lawyers that have not been licensed or registered with the Albanian Chamber of Advocates. After their university education is complete, they work as advisors to governmental institutions and agencies, as in-house counsel to corporations, and as staff attorneys for NGOs. A jurist cannot represent a client in a criminal court and, generally, cannot represent clients other than his/her employer in civil and administrative matters.
**Notaries** in Albania conduct legal services through editing legal acts and performing notary actions, in accordance with the Constitution and legislation. Notary, in the exercise of his profession, is free and is subject only to law. *Law on Notaries of the Republic of Albania* art. 1 (*adopted 1995, last amended 2011*).

The Albanian Constitution provides that the office of the **prosecutor** exercises the power of criminal prosecution and represents the state in criminal matters. Prosecutors are organized and operate as a centralized organ attached to the judicial system. *Albania Constitution* art. 148. The Council of the Office of the Prosecutors organizes the competition for the appointment of prosecutors, examines work evaluations and disciplinary violations committed by prosecutors and gives its opinion about draft acts of the General Prosecutor and about investigative practice. This organ has an advisory function and presents its opinion in each case to the General Prosecutor.

**Status of Criminal Law Reforms**

Recent criminal law reforms in Albania have focused on the accountability, impartiality, and professionalism of judges and prosecutors. Albania is also in the process of making changes to the codes of criminal, civil, and administrative law. The criminal law reforms focus on the elimination of delays in criminal proceedings to better uphold rights to due process and fair trial, in accordance with international obligations and other human rights interests addressing a range of issues voiced by the international community, such as improving the procedural position of defense advocates in trials, increasing the quality of service advocates provide to criminal defendants, and adding to the list of cases in which criminal defendants must have a defense advocate.

In addition to initiatives to improve the courts’ performance in processing cases, the Ministry of Justice approved in 2012 amendments to the Law on Advocacy. The changes to this law aim to solve the immense problem of postponement of hearings due to the absence of advocates, by establishing a procedural law that links advocates’ absences to disciplinary proceedings, and introducing changes to the rights and obligations of advocates, which are identified by the Ministry of Justice in cooperation with the National Bar Association. Also, these amendments provide for the creation of the National School of Advocates as a body of the National Chamber of Advocates that will conduct training programs to prepare advocate-trainees for practice and to help licensed advocates maintain their professional knowledge through continuing legal education.

The June 2013 amendments to the Criminal Code introduced or amended 41 articles to, inter alia, impose stricter punishments for those convicted of murdering members of the police force, murdering their spouses, committing homicide motivated by blood feuds, and unlawfully possessing weapons. *Criminal Code of the Republic of Albania* (*adopted Jan. 27, 1995, last amended June 2013*). The Criminal Code also now implements several international obligations that had not yet been reflected in Albanian law, such as the COE’s Convention on Action against Trafficking in Human Beings.

**Bosnia and Herzegovina**

Bosnia and Herzegovina (BiH) has a unique political structure. The State is divided into two entities, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS), and the Brčko District of Bosnia and Herzegovina (BD), which functions under a decentralized system of local government. The territory of the FBiH is divided in ten cantons (Una-Sana Canton, Posavina Canton, Tuzla Canton, Zenica-Doboj Canton, Bosnia-Podrinje Canton, Central Bosnia Canton, Herzegovina-
Neretva Canton, West Herzegovina Canton, Sarajevo Canton and Canton 10). Every canton is further split in municipalities. The RS does not have a cantonal structure; it is only divided into municipalities.

**Government Structure**

*State (BiH) Level*

**The Presidency**

BiH has a three-member presidency: one Bosniak and one Croat, each directly elected from the territory of the FBiH, and one Serb directly elected from the territory of the RS. *Constitution of the Republic of Bosnia and Herzegovina* art. V (adopted Dec. 14, 1995) [hereinafter BiH Constitution]. The chairmanship of the presidency rotates every eight months. The chairman is the head of state for the duration of those eight months. The powers of the presidency are primarily in the area of foreign policy, appointment of ambassadors, representing the state in international and European organizations and institutions and seeking membership in those organizations and institutions, negotiating, denouncing, and (with the consent of the Parliamentary Assembly) ratifying international treaties, coordination with international and non-governmental organizations and other functions necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities. *Id.* V.3.

**The Parliamentary Assembly**

The country’s legislative power is in the hands of the Parliamentary Assembly of BiH. The Parliamentary Assembly has two houses: the House of Peoples and the House of Representatives. *BiH Constitution* art. IV. The House of Peoples has 15 Delegates, two-thirds from the FBiH (including five Croats and five Bosniaks) and one-third from the RS (five Serbs). Nine members of the House of Peoples comprise a quorum, provided that at least three Bosniak, three Croat, and three Serb Delegates are present. *Id.* IV.1

The House of Representatives has 42 Members, two-thirds elected from the territory of the FBiH, one-third from the territory of the RS. A majority of all members elected to the House of Representatives comprise a quorum. *Id.* IV.2

**The Council of Ministers**

The Council of Ministers has executive powers. Its Chairman (Prime Minister) is nominated by the president and his/her appointment is subject to approval by the House of Representatives. The ministers and their deputies are nominated by the Chairman of the Council of Ministers, and must also be approved by the House of Representatives. No more than two-thirds of all ministers can be appointed from the territory of the FBiH. *Id.* V.4. The Chairman, the ministers and their deputies form the cabinet. They oversee foreign, economic and fiscal policy and represent the national government.
**Entities**

*The Federation of BiH*

The FBiH has a president and two vice-presidents (they must be different nationalities), who are members of the executive power. CONSTITUTION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA IV. B.1. art. 1 (adopted June 24, 1994, last amended 2003) [hereinafter FBiH CONSTITUTION]. The government of the FBiH is headed by the prime minister and includes 16 ministers. *Id.* IV.A.a. The FBiH Parliament is comprised of the House of Representatives and the House of Peoples. *Id.*

In addition, every canton has its own government headed by the Premier. The Cantonal Premier has his own cabinet, and he is assisted in his work by cantonal ministries, services and agencies. Every canton also has its own (cantonal) assembly as a legislative body.

*The Republika Srpska*

The RS has a president and two vice-presidents, who are members of the executive power (they must be different nationalities). CONSTITUTION OF REPUBLIKA SRPSKA art. 83 (adopted Dec. 7, 1992, last amended 2003) [hereinafter RS CONSTITUTION]. The government of the RS is headed by the prime minister and includes 16 ministers. *Id.* art. 92, *as supplemented by amendment LXXXIV.* The RS has a unicameral legislative body, the National Assembly, with 83 representatives. *Id.* art. 71.

*The Brcko District*

The District Government consists of the Mayor and the Heads of Departments. STATUTE OF THE BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA art. 46 (adopted Dec. 7, 1999). The District Assembly is unicameral legislative body and it is composed of twenty-nine Councilors. *Id.* art. 24.

*Other*

The Office of the High Representative [hereinafter OHR] is an ad hoc international institution created under the General Framework Agreement for Peace in BiH and responsible for overseeing implementation of civilian aspects of this Agreement. See OHR Website, at [http://www.ohr.int](http://www.ohr.int). Among its other duties, the OHR focused on establishing the rule of law in BiH and declared some important laws that were later adopted by the BiH legislative body.

*Court Structure*

*State (BiH) Level*

The **Constitutional Court of BiH** is composed of nine judges (four are selected by the House of Representatives of the FBiH, two are selected by National Assembly of the RS, and the remaining three members are selected by the President of the European Court of Human Rights after consultation with the Presidency of BiH). The judges must be distinguished jurists of high moral standing. The judges selected by the President of the European Court of Human Rights cannot be citizens of BiH or of any neighboring country. BiH CONSTITUTION art. VI.1.
Its main duty is to be the interpreter and guardian of the Constitution of BiH. *Id.* art. VI.3. This implies a review of constitutionality of laws of BiH. Within this overriding duty, it has different types of jurisdiction:

1) **exclusive jurisdiction** to decide any dispute that arise under the Constitution between the Entities or between BiH and an Entity or Entities, or between institutions of BiH. In effect, the Court has to decide on positive or negative conflicts of jurisdiction, or any other dispute that may arise. *Id.* art. VI.3 (a).

2) **jurisdiction** over issues whether any provision of an Entity's constitution or a law of an Entity is compatible with the Constitution of BiH. *Id.* art. VI.3 (a).

3) **jurisdiction** to examine whether an Entity's decision to establish a special parallel relationship with a neighboring state is consistent with the Constitution including provisions concerning the sovereignty and territorial integrity of BiH. *Id.* art. VI.3 (a).

4) **appellate jurisdiction** over issues under the Constitution arising out of a judgment of any other court in BiH. *Id.* VI.3 (b).

5) **jurisdiction** over issues referred by any court in BiH concerning whether a law, on whose validity its decision depends, is compatible with the Constitution, with the European Convention on Human Rights and its Protocols, or with the laws of BiH or concerning the existence of or the scope of a general rule of public international law. *Id.* VI.3 (c).

The first three types of disputes can only be referred by a member of the Presidency, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, one-fourth of the members of either chamber of the Parliamentary Assembly, or one-fourth of either chamber of a legislature of an Entity. *Id.* art. VI.3 (a).

In addition, the Constitutional Court has jurisdiction in the case of obstruction of the work of the House of Peoples of the Parliamentary Assembly of BiH. In that case, the Constitutional Court resolves a dispute in which a proposed decision of the Parliamentary Assembly, according to the opinion of a majority of the delegates representing any of the three constituent peoples in the House of Peoples (Bosniak, Serbs or Croats), is considered to be destructive to 'the vital national interest', whilst at the same time all 'parliamentary means' for the resolution of this issue in the House of Peoples have been exhausted. *Id.* IV.3.(f).

On July 3, 2002, the Parliament of BiH adopted the **LAW ON THE COURT OF BIH** which was earlier promulgated by the High Representative in BiH. The Court of BiH (informally called the State Court) was formally established by the Decision of the High Representative dated May 8, 2002, when the first seven judges of the Court were appointed. Presently the Court of BiH has 53 judges. All of them are citizens of BiH (at the beginning the Court had international judges as well). Both first instance panels and appellate panels are comprised of three judges (one being presiding judge). The Court of BiH has three divisions: criminal, administrative and appellate. **LAW ON THE COURT OF BIH** art. 10.

The Court of BiH has jurisdiction over criminal, administrative and civil cases, but also the authority to review first-instance and second-instance court decisions upon legal remedies (appellate jurisdiction).

In criminal matters the Court has first-instance jurisdiction in cases involving criminal offenses defined in the Criminal Code of BiH and other laws of BiH and cases involving criminal offenses stipulated by the laws of the FBiH, the RS and the BD if such criminal offense endanger the sovereignty, territorial integrity, political independence, national and international personality of BiH or have serious repercussions or detrimental consequences to the economy of BiH, or have other detrimental consequences to BiH or it can cause serious economic damage or other
detrimental consequences beyond the territory of an Entity or the BD. The Court acts as a second instance body regarding verdicts or decisions of the Court rendered in criminal cases and extraordinary legal remedies filed against final decisions of the Court in criminal cases. *Id.* art. 7.

The Court has jurisdiction to take a final and legally binding position on the implementation of laws of BiH and international treaties at the request of any entity court or any court of the BD entrusted with the implementation of a law of BiH and to issue practical directions on the application of substantive criminal laws of BiH falling within the competence of the Court, pertaining to genocide, crimes against humanity, war crimes and violations of the laws and customs of warfare, and individual criminal responsibility related to those crimes, ex officio or at the request of any court of the Entities or of the BD. It also has jurisdiction to decide on any issue related to international and inter-Entity criminal law enforcement, including relations with Interpol and other international police agencies, such as decisions on the transfer of convicted persons, and on the extradition and surrender of persons, requested from any authority in the territory of BiH by a foreign country or international courts or Tribunals and to decide on any conflict of jurisdiction between the courts of the Entities and the Court of the BD and between the Court of BiH and any other Court. *Id.*

**The Federation of BiH**

The **Constitutional Court of the FBiH** is composed of nine judges. The **FBiH Constitution** IV. C. 9. The candidates for judges are nominated by the President of the **FBiH** with the concurrence of the Vice Presidents, their nomination must be approved by a majority of the present and voting members of the House of Peoples. The judges are finally selected and appointed by the High Judicial and Prosecutorial Council (HJPC). *Id.* IV. C. 6.

The Constitutional Court deals with disputes between Cantons, between a Canton or Cantons and the Federal government, between Federal institutions, decides on the constitutionality of Federal, Cantonal and Municipal regulations and decide on questions which arise under legislation regulating immunity. *Id.* IV. C. 10. The Constitutional Court jurisdiction also includes deciding on the vital national interest on both the federal and cantonal level, as well as deciding on removal of the President and Vice-Presidents pursuant to the Constitution of the Federation of BiH. *Id.* V.2.7b and IV.B.3.

There are currently 29 judges working at the **Supreme Court of the FBIH.** All judges are appointed and disciplined by the High Judicial and Prosecutorial Council [hereinafter HJPC]. The Supreme Court has four divisions: Criminal Division, Civil Division, Administrative Division, and Division for Registering and Monitoring of the Court Practice.

The Supreme Court of the FBIH is the highest appellate court in the FBIH. **Law on Courts of the Federation of Bosnia and Herzegovina** art. 18 *(adopted* July 4, 2005, *last amended* Dec. 29, 2009). The appellate jurisdiction of the Court comprises deciding upon ordinary legal remedies against rulings of the cantonal courts; deciding upon extraordinary legal remedies against final court decisions and deciding upon legal remedies against rulings of its own Panels. The Supreme Court also decides on conflicts of jurisdiction between cantonal and municipal courts from different cantons; deciding on transfer of territorial jurisdiction from one court to another when the law prescribes it and carrying other tasks as stipulated by the law. *Id.* art. 29.

There are ten **Cantonal Courts** in the FBIH. Cantonal Courts have first instance jurisdiction, appellate jurisdiction, and jurisdiction over some other legal matters prescribed by the Law. *Id.* art. 28. They have the first instance jurisdiction in criminal matters for which the principal punishment
of an imprisonment sentence of more than ten years or long term imprisonment is prescribed by the law; in criminal matters falling within jurisdiction of the Court of BiH upon the Court's decision to transfer its jurisdiction; in administrative disputes and requests for the protection of rights and freedoms set forth in the Constitution of the FBiH. *Id.*

Second instance jurisdiction of Cantonal Courts comprises deciding on appeals against rulings of Municipal courts, as well as deciding on other ordinary and extraordinary legal remedies as provided by the law. *Id.*

Additionally, the jurisdiction of Cantonal Courts includes resolving conflicts of territorial jurisdiction between Municipal Courts from the same canton; deciding on transfer of jurisdiction from one Municipal Court to another; acting upon motions for pardon in accordance with the Law; deciding on the deletion of conviction and termination of security measures and legal consequences of a conviction; acting upon motions for international legal aid; deciding on motions for recognition of foreign judgments and other tasks as stipulated by the Law. *Id.*

There are 28 Municipal Courts in the FBiH. Their jurisdiction encompasses first instance jurisdiction in criminal and civil cases, as well as jurisdiction in other matters prescribed by the Law. *Id.* art. 27. Their criminal jurisdiction includes adjudicating criminal matters for which the principal punishment of a fine or an imprisonment sentence of up to ten years is prescribed by the law; adjudicating criminal matters falling within jurisdiction of the Court of BiH, upon the Court's decision to transfer its jurisdiction; adjudicating all criminal matters concerning juveniles; deciding on the deletion of conviction and termination of security measures and legal consequences of a conviction; acting upon motions for pardon in accordance with the Law. *Id.* art. 28. First instance jurisdiction in civil cases includes adjudicating all civil disputes. *Id.*

*Republika Srpska*

The Constitutional Court of the RS is composed of nine judges. The judges are selected by the National Assembly. RS CONSTITUTION art. 116.

The Constitutional Court decides on constitutionality of laws and both the constitutionality and legality of regulations and general acts, as well as programs, statutes and other general acts of political organizations. It also resolves conflict of jurisdiction between legislative, executive and judicial branch and conflict of jurisdiction between agencies of the RS, city and municipality. *Id.* art. 115. It has jurisdiction to monitor events of interest for the achievement of constitutionality and legality, inform the highest constitutional bodies of the RS on the status and problems in that area, offer opinions and proposals for adoption of laws and decide on questions of immunity and protection of vital interest. *Id.*

The Supreme Court of the RS has 21 judges, including the court President. All judges are appointed and disciplined by the HJPC. The Supreme Court has three divisions: Criminal Division, Civil Division and Administrative Division.

The Supreme Court of the RS is the highest appellate court in the RS. Its main task is to ensure unified enforcement of laws. Its jurisdiction also includes deciding on ordinary legal remedies against rulings of District courts in the RS; deciding on extraordinary legal remedies against final rulings of the courts; deciding on legal remedies against rulings of its own Panels; resolving conflict of jurisdiction between courts and deciding on transfer of territorial jurisdiction from one court to
another, in accordance with the law. LAW ON COURTS OF REPUBLIKA SRPSKA art. 35 (adopted Dec. 23, 2004, last amended Dec. 29, 2009).

There are five District Courts in the RS (Banja Luka, Bijeljina, Doboj, Trebinje, and East Sarajevo). These Courts have first instance jurisdiction, appellate jurisdiction and jurisdiction over some other legal matters prescribed by the Law. Id. art. 31. Their jurisdiction in the RS mirrors the jurisdiction of the Cantonal Courts in the FBiH.

District Commercial Courts are established for the same areas as District Courts. They have special jurisdiction over intellectual property matters, disputes related to maritime law and aeronautical law, bankruptcy and liquidation proceedings, issues related to unfair competition, disputes arising from foreign investments, registration of legal entities and other disputes arising from trade of goods, services, loan stocks, etc. Id. art. 33. The High Commercial Court has appellate jurisdiction over first instance rulings of District Commercial Courts as well as jurisdiction to resolve conflicts of jurisdiction between District Commercial Courts, to decide on transfer of jurisdiction from one District court to another, and ensure unified enforcement of laws. Id. art. 34.

Basic Courts are established for municipalities in the RS. There are 19 Basic Courts in the RS. Their jurisdiction in the RS mirrors the jurisdiction of Municipal Courts in the FBiH.

The Brcko District

The Appellate Court of the Brcko District has eight judges, including the President. All judges are appointed and disciplined by the HJPC.

The jurisdiction of the Appellate Court comprises deciding on ordinary legal remedies against rulings of the Basic Court in the BD as well as deciding on extraordinary legal remedies against final court rulings. THE LAW ON COURTS IN THE BRCKO DISTRICT art. 22 (adopted July 2007, last amended Oct. 12, 2011) [hereinafter BD LAW ON COURTS].

Jurisdiction of the Basic Court of the BD comprises first instance jurisdiction in both criminal and civil matters, as well as jurisdiction over some other legal matters as prescribed by the law. Id. art. 21. Criminal jurisdiction encompasses adjudicating all criminal matters; adjudicating criminal matters falling within jurisdiction of the Court of BiH, upon the Court's decision to transfer its jurisdiction; deciding on the deletion of conviction and termination of security measures and legal consequences of a conviction and acting upon motions for pardon in accordance with the Law.

First instance civil jurisdiction of the Basic Court comprises adjudicating all civil disputes; adjudicating administrative disputes; adjudicating commercial disputes; conducting bankruptcy and liquidation proceedings; adjudicating disputes related to assessment of constitutionality and legality. BD LAW ON COURTS art. 21.

Structure of the Legal Profession

The legal profession in BiH includes the following professionals:

In addition to earning a bachelor's degree in law and passing bar exam, advocates must have at least two years of professional experience after passing the bar exam, they must pass the advocates exam, and they must be registered with their entity Chamber of Advocates. They are entitled to
represent clients in any proceeding before any court or administrative authority in BiH, including in criminal proceedings. Attorneys are entitled to form joint offices and law firms.

Both entities have a **Chamber of Advocates**: the Chamber of Advocates of the FBiH and the Chamber of Advocates of the RS (they are further divided into regional chambers). All advocates must be registered with one of the regional chambers, depending on the location of their office. Approximately 900 advocates are registered with the Chamber of the FBiH, while approximately 500 advocates are registered with the RS Chamber. The Chambers of Advocates RS must confirm the existence of all the conditions required for the individuals to become advocates. They also have a duty to protect the rights and interests of advocates registered with them.

**Trainee** advocates are must have graduated in law and established employment in a law firm, law office, or joint law office under the supervision of an advocate who is registered in the Registry of Advocates of the relevant entity and has been practicing law for at least five years. Trainees are registered in a Registry of Legal Trainees and are subject to the same ethical and professional responsibility requirements as advocates. Upon completion of two years of work as a trainee, the trainee is eligible to take the advocate exam.

**Lawyers** are individuals who have graduated from a university with at least a bachelor's degree in law and who successfully passed the bar exam (which can be taken after acquiring at least two years of professional legal experience). They can work as legal officers in courts and prosecutor's offices. They can also work as in-house counsel, in which case they are entitled to represent clients in certain proceedings before the courts or administrative authorities.

**Public notaries** must hold a bachelor's degree in law and have passed the bar exam and the notary exam. Public notaries are appointed public officials and they authenticate legal deeds and contracts, draft legal documents, and certify signatures. The public notary system was introduced for the first time in the legal system of BiH in 2007.

**Employees of the Free Legal Aid Offices** established in Brcko District and several Cantons in the FBiH are entitled to represent defendants unable to afford private counsel in civil and criminal cases (in the RS they are only entitled to deal with civil cases). In addition to earning a bachelor’s degree in law and passing the bar exam, they must have at least three years of professional experience after passing the bar exam.

**Prosecutors** must have graduated from a university with at least a Bachelor’s degree in law, passed the bar exam and have at least three years (for Cantonal/District Prosecutor), five years (for State/Federal/Republic Prosecutor or Cantonal/District Chief Prosecutor) of professional legal experience after passing the bar exam.

**Status of Criminal Law Reforms**

Full judicial reform in BiH started in 2003 with the restructuring of the court and prosecutorial system, the adoption of new criminal and criminal procedure codes, and the establishment of some new judicial institutions. The Court of BiH and the BiH Prosecutor’s Office of BiH were established, as were the HJPC and Judicial and Prosecutorial Training Centers in the FBiH and the RS.

Regarding criminal procedure, BiH transitioned from an inquisitorial to a mixed system that contains both inquisitorial and adversarial elements. The introduction of adversarial elements did not go smoothly, but after ten years of practice this system is more accepted now. The most
dramatic change was the complete removal of investigative judges and transfer of investigative responsibilities to prosecutors. Unlike before, the new procedure prohibits victims from conducting subsidiary and private prosecutions—the prosecutors alone decide on initiating and ending the investigations. Plea bargaining was also introduced by the new BiH’s criminal procedure codes to speed up the proceedings. Regarding the trial phase, the presentation of evidence was made more adversarial and party-led and the cross-examination of witnesses was introduced.

Although there are four criminal procedure codes in BiH (state, two entities, and BD), the criminal procedure is similar in all of them (with some minor differences).

**Kosovo**

In 1999, a UN Security Council resolution placed Kosovo under a transitional administration, the UN Interim Administration Mission in Kosovo (UNMIK). An UN-led process began in late 2005 to determine Kosovo’s permanent status. The negotiations ran in stages between 2006 and 2007, and on February 17, 2008, the Kosovo Assembly declared Kosovo independent. To date, 104 countries have recognized Kosovo, among them 23 EU countries and the United States. Since 1999, Kosovo has experienced different degrees and involvement from the international community. The International Civil Office (ICO) was established in Pristina in 2008 following the declaration of independence of Kosovo. Its role was to advise and assist the government and public institutions of Kosovo during a period of supervised independence. The ICO was appointed by the 25 members of the International Steering Group states to ensure the implementation of the Comprehensive Proposal for the Kosovo Status Settlement and to support the European integration of Kosovo.

In April 2008 the Assembly of the Republic of Kosovo adopted a new Constitution that entered into force in June 2008. In its basic provisions, the Constitution defines Kosovo as a multiethnic society based on rule of law, specifies the separation of powers (Kosovo Constitution arts. 3§ 1,4), defends the state’s territorial integrity, defines Albanian and Serbian as the official languages (id. art. 5), provides for participation in international organizations (id. arts. 17–20), and rules out any union with another state (id. art. 1 §3).

**Government Structure**

The **Kosovo Assembly** is the legislative body of the Republic of Kosovo directly elected by the people. Id. art. 63 – 82. The Assembly is a unicameral chamber composed of 120 seats. Id. art. 63 §1. It includes 20 reserved seats: ten for Kosovo Serbs and ten for non-Serb minorities such as Bosnians and Roma. The Kosovo Assembly is responsible for electing a President/Deputy President.

The **President** is the head of state and represents the unity of the people of the Republic of Kosovo. Id. art. 83–91. The president of Kosovo is elected by the Kosovo Assembly. The president’s functions are to represent Kosovo abroad and oversee the implementation of foreign policy; promulgate laws approved by the Assembly; and appoint and dismiss the Prime Minister (id. art. 84 § 14), the Kosovo President of the Supreme Court (id. art. 84 § 15), Kosovo Judges (id. art. 84 § 16), appoint and dismiss the Chief Prosecutor (id. art. 84 § 17) and the Prosecutors (id. art. 84 § 18) and appoint Judges to the Constitutional Court (id. art. 84 § 19). The Government of Kosovo exercises the executive power in compliance with the Constitution and the law and consists of the Prime Minister, deputy Prime Minister(s), and Ministers. Id. art. 92-101. The **Prime Minister** is nominated by the President and elected by the Assembly.

The Kosovo **Chief State Prosecutor** represents the highest prosecution position in Kosovo. Id. art.
109. The Kosovo Prosecutorial Council [hereinafter KPC] is an independent institution and serves
as the oversight body of the Prosecutorial System in the Republic of Kosovo. Id. art. 110. According
to the law on the KPC, the overall purpose is to ensure an independent, professional and impartial
prosecution system, reflecting the multiethnic nature of Kosovo as well as the internationally
recognized principles of gender equality. LAW ON THE KOSOVO PROSECUTORIAL COUNCIL (adopted Sept.
30, 2010, entered into force Jan. 1, 2011). To fulfill this goal the KPC is responsible for recruiting and
proposing for appointment, training, evaluating, disciplining, transferring, dismissing and
promoting prosecutors, and for administering the prosecution offices throughout Kosovo. The KPC
is composed of members both from the prosecution offices (prosecutors) and from other
professional backgrounds, such as civil society, academia, and advocates. The Minister of Justice as
an ex officio member.

Court Structure

The Constitution of Kosovo defines the judicial power as unique, independent, fair, apolitical, and
impartial, and is exercised by the court. Id. art 102–111. The Supreme Court of Kosovo is the
highest judicial authority. Id. art 103. At least fifteen percent of the judges of the Supreme Court
shall be from non-majority communities in Kosovo. Id. art 103 § 3.

The Constitutional Court is the final authority for the interpretation of the Constitution and the
compliance of laws with the Constitution. The Constitutional Court of the Republic of Kosovo was
established in January 2009 and its legal basis derives directly from the Kosovo Constitution.
KOSOVO CONSTITUTION arts. 112–118; LAW ON THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Law on Courts, portions of which went into effect on January 1, 2011, and portions of which
went into effect on January 1, 2013, provided for a reorganization of the court system consisting of:
Basic Courts, Court of Appeal and the Supreme Court. LAW ON THE COURTS OF THE REPUBLIC OF KOSOVO
art.4, 8 (adopted Jul. 24, 2010) [hereinafter KOSOVO LAW ON THE COURTS].

Basic Courts act as first-instance courts in Kosovo; basic courts exist in Pristina, Gnjilane, Prizren,
Gjakova, Peja, Ferizaj and Mitrovica, and in addition to the main headquarters, each basic court has
its branches. Id. art. 9, 10. The Basic Courts are organized in different departments according to
subject matter, including commercial matters, administrative cases, serious crimes, minors, and a
general department for all other matters. Id. arts 12–14.

The Court of Appeal serves as a court of second instance, with territorial jurisdiction throughout
the Republic of Kosovo. The seat of the Court of Appeal is in Pristina. Id. art 17.

The Supreme Court is the highest judicial instance in Kosovo and has jurisdiction throughout the
territory of Kosovo. The Supreme Court is competent to adjudicate requests for extraordinary legal
remedies against final decisions of the courts of Republic of Kosovo and review second instance
decisions of the courts on contested issues, as well as to define principles and legal remedies for
issues that have importance for unique application of Laws by the courts in the territory of Kosovo.
The Supreme Court headquarters are in Pristina. Id. art. 21, 22. The Supreme Court includes the
Appeal panel of the Kosovo Property Agency and the Special Chamber of the Supreme Court, whose
judges are part of the Supreme Court. Id. art. 21(2).

The Kosovo Judicial Council [hereinafter KJC] is an independent institution that oversees the
judicial system of Kosovo. KOSOVO CONSTITUTION arts. 103, 108. The KJC is by law a fully
independent institution in the performance of its functions. The KJC’s mission is to ensure that the Kosovo Courts are independent, professional and impartial, and fully reflect the multi-ethnic nature of Kosovo and follow the principles of gender equality. The KJC is responsible for recruiting and proposing candidates for appointment and reappointment to judicial office. The KJC is also responsible for transfer and disciplinary proceedings of judges. The KJC is composed of 13 members; as of early 2014, there are 11 current members and two vacancies. LAW ON THE KOSOVO JUDICIAL COUNCIL (adopted Nov. 3, 2010).

The Kosovo Judicial Institute [hereinafter KJI] is an independent professional body with the exclusive mandate to train judges and prosecutors and organize the preparatory examination for judges and prosecutors. LAW ON ESTABLISHING THE KOSOVO JUDICIAL INSTITUTE (adopted Apr. 1, 2008).

EULEX is an integrated European Union Rule of Law Mission in Kosovo operating in the fields of justice, police, and customs. In April 2009, EULEX became fully operational. The EU Joint Action of February 2008 and Council Decision of June 2010 and June 2012 provide the legal basis for the Mission. EULEX Justice staff is active in all Kosovo Courts and at all instances. EULEX retains limited executive powers, in particular to investigate, prosecute and adjudicate serious and sensitive crimes in cooperation with the Kosovo justice institutions.

**Structure of the Legal Profession**

The profession of advocate is an integrated part of the judicial system guaranteed by the Kosovo Constitution (art. 111) and is regulated by LAW ON ADVOCACY OF THE REPUBLIC OF KOSOVO (adopted May 31, 2013) [hereinafter KOSOVO LAW ON ADVOCACY], and through the Kosovo Chamber of Advocates [hereinafter KCA]. The KCA is an independent professional organization, with the capacity of a legal person and with public authorities established by Law. KOSOVO LAW ON ADVOCACY art. 41. Its mandate is to organize and regulate the profession of advocacy as a free and independent service.

The Kosovo legal profession is currently comprised of the following categories of practitioners:

**Advocates** must graduate from a law faculty in a four-year program or a three plus two program, complete a one-year traineeship with a registered advocate, court, or prosecutor office or two years in public administration, pass the bar examination, and obtain a license to practice law from the Kosovo Chamber of Advocate. KOSOVO LAW ON ADVOCACY art. 10. The Kosovo Constitution defines the Advocacy Profession as an independent profession, which shall provide services in the manner provided by law. KOSOVO CONSTITUTION art. 111. There are approximately 600 advocates registered with the KCA.

**Trainees** are recently graduated jurists who are undergoing a one- or two-year traineeship in a court, prosecutor’s office, advocate’s office, or other legal office, to fulfill the requirements necessary to sit for the bar examination. The Law on Advocacy regulates the position of legal trainees and defines them as graduated lawyers registered with the KCA in the Register of Law Trainees, who are taking part in training to become an advocate.

**Jurists** are those lawyers who have not been licensed and registered with the Kosovo Chamber of

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2 One source stated that as of January 1, 2014, the KCA has officially changed its name to the Kosovo Bar Association. Public information on the website states the name as Kosovo Chamber of Advocates. http://www.oak-ks.org (last visited March 17, 2014).
Advocates. After completing their university education, jurists work as advisors to governmental institutions and agencies, in-house counsel to corporations, and staff attorneys for NGOs. A jurist cannot represent a client in criminal court and, generally, cannot represent clients other than his or her employer in civil and administrative matters.

**Notaries** are professional lawyers and public officials who prepare and certify a range of documents needed for official purposes, such as statements and records on legal matters or transactions. **Law on Notaries of the Republic of Kosovo**, art. 3, § 2, 2.1 (adopted Nov. 25, 2008). The notary also certifies and confirms that copies of documents are true copies of the originals, certifies signatures and certifies sworn statements. *Id.* 2, § 2.2 – 2.4.

A **Prosecutor** is an independent position with authority and responsibility for the prosecution of persons charged with committing criminal acts or other acts as specified by law. With the recent reorganization of the judiciary, the prosecution also went through the process of reform and now the structure of the prosecution includes an Office of the Chief State Prosecutor, appearing before the Supreme Court; a Special Prosecutor, appearing in cases in the Serious Crimes Department of the Basic Court in Pristina; an Appellate Prosecution Office, appearing before the Courts of Appeal; and seven basic prosecution offices appearing before the basic courts. **Law on the State Prosecutor of the Republic of Kosovo** (adopted Oct. 29, 2010). Prosecutors must possess a law degree, and pass the bar exam, the exam for prosecutors and judges, and the legal education exam (unless they have practiced as an advocate for at least five years, have seven years’ of legal experience, or previously held the position of prosecutor or judge for three years).

**Status of Criminal Law Reforms**

Over the past few years the criminal justice system in Kosovo has fundamentally changed. Many new criminal laws and regulations have been adopted and are in the process of being adopted, yet the criminal legislation continues to evolve. In the area of criminal law, there was wide agreement that Kosovo needed a unified criminal legal framework, which would serve the purpose of combating crime while at the same time incorporating international standards for the protection of human rights and freedoms.

The adoption of the Provisional Criminal Code and the Criminal Procedure Code of Kosovo on April 6, 2004, was a first step to move from an inquisitorial criminal justice system of the 1977 Yugoslav Code of Criminal Procedure. Under the new Code, investigations were conducted in response to qualified complaints and were dominated by investigating judges to a “quasi-adversarial” or a “hybrid” adversarial tribunal, where the court retained some of its investigative and inquisitorial powers, but the prosecutor and defense counsel had far greater roles.

In 2012, Kosovo promulgated a new Criminal Procedure Code; the new Code entered into force on January 1, 2013. The Criminal Procedure Code changes the principles for investigations of serious, complicated crimes, and clarifies and simplifies applications of the Criminal Procedure Code to human rights law and EU accession acquis. Since the implementation of the 2004 Provisional Code, Kosovo’s Criminal Procedure Code has changed the way the criminal justice system is structured, changing the parties’ duties and rights, but the 2012 Code introduces other complicated changes. Because of the complex nature of the newest 2013 changes, as well as the speed with which the 2012 Code entered into force, one of the greatest challenges facing the Kosovo criminal justice system today is the successful enforcement/implementation of the new criminal code in practice.
**Macedonia**

**Government Structure**

The Republic of Macedonia is a multiparty parliamentary democracy which political system is divided between legislative, executive and judicial powers. The Constitution is the highest act in the country regulating the basics of the Macedonian society sovereign and independent, civil and democratic state and with institutional framework that guarantees development of parliamentary democracy, guaranteeing human rights, civil liberties and national equality. **Constitution of the Republic of Macedonia (adopted Nov. 17, 1991, last amended Apr. 12, 2011).**

The **National Assembly** is a representative body of the citizens and holds the legislative power. It is composed of 120–140 seats, and members are elected to four-year terms. *Id.* arts. 61, 63.

The **President of the Republic of Macedonia** represents the Republic, and she/he is Commander-in-Chief of the Armed Forces of Macedonia. The President is elected in general and direct elections, for a term of five years (maximum two terms). *Id.* arts. 79, 80. Within 10 days following an election, the President entrusts the mandate for constituting the Government to the party or parties with a majority in the Assembly. *Id.* art. 90.

The executive power is vested in the **Government**, composed of the Prime Minister and Ministers. The Government is responsible for proposing the laws, the budget, and other regulations passed by the Assembly. It determines the policies for execution of laws and other regulations of the Assembly and is responsible for their execution, decides on the recognition of states and governments, establishes diplomatic and consular relations with other states, proposes the Public Prosecutor, proposes the appointment of ambassadors and representatives of the Republic of Macedonia abroad and appoints chiefs of consular offices, and also performs other duties stipulated by the Constitution and law. *Id.* arts. 88, 89, 91.

**Court Structure**

The judicial power is exercised by the courts in the Republic of Macedonia. They are autonomous and independent instructions in the system. The judicial power in the Republic of Macedonia is executed by Basic Courts, the Administrative Court, Appellate courts, and the Supreme Court of the Republic of Macedonia.

The **Basic Courts** conduct trials in the first instance. The basics courts are divided into two categories: courts with basic competence and courts with enhanced competence. Within the basic courts with enhanced competence, specialized court departments are set up for specific types of disputes. Basic courts having basic competence adjudicate first instance criminal cases and misdemeanors, as follows:

1. Criminal acts which by law are sanctioned by a penalty of imprisonment of up to 5 years, unless the competence of another court has been provided for to decide on certain criminal acts;
2. Criminal acts which by a separate law shall be assigned to a to court of basic competence;
3. Misdemeanors, unless it is provided that certain types of misdemeanors shall be decided on by a state administration authority or organization or another authority exercising public authorizations, in which case the basic courts adjudicate complaints and appeals against actions taken by these courts.
The basic courts may also conduct investigative actions regarding criminal acts falling within its competence. **Law on the Courts of the Republic of Macedonia** art. 30 (*adopted* 2006, *entered into force* Jan. 1, 2007).

**Appellate Courts**, which have seats in Bitola, Gostivar, Skopje and Stip, decide on appeals against basic court decisions, conflicts of jurisdiction between first instance courts, and may have other work as specified by law. *Id.* arts. 24, 33.

The **Administrative Court** has jurisdiction on the entire territory of the country and has its seat in Skopje. It decides on cases including elections and appointment of executive civil servants; acts of state authorities, the Government, and public officials; disputes arising from agreements where one of the parties is a state authority; appeals of acts of state administrative bodies and other state bodies; and conflicts of jurisdiction between state authorities, municipality, and public officials. *Id.* arts. 25, 34.

The **Supreme Court** of the Republic of Macedonia has jurisdiction on the entire territory of the Republic and is located in Skopje. Its jurisdiction includes appeals against the decision of second instance courts; deciding in the second instance against decisions of its own panels and of the Administrative Court; deciding on extraordinary legal remedies; deciding on conflicts of jurisdiction; and deciding on violations of the right to trial within a reasonable time. *Id.* art. 35.

The **Constitutional Court**, which is independent of the judicial branch and is made up of nine judges elected to nine-year terms by the Assembly, decides on the conformity of laws, agreements, and other regulations with the Constitution; protects the rights of individuals; decides on conflicts of jurisdiction among the legislative, executive, and judicial branches, among state bodies, and among units of local self-government; decides on the constitutionality of political parties and citizens’ associations; and decides on other constitutional issues. **Constitution of Macedonia** arts. 109, 110.

### Structure of the Legal Profession

The legal profession in Macedonia includes the following categories of professionals:

**Advocates** must possess a university degree in law, complete a traineeship pass the juridical exam, and take the advocates oath prior to being registered in the Registry of Advocates. Their profession is independent and autonomous as provided for by the Macedonian Constitution, and advocates are competent to provide legal advice and represent clients in proceedings before the courts and state bodies. Advocates are organized under the Macedonian Chamber of Advocates [hereinafter MCA], and advocates, associate advocates and trainee advocates are regulated by the Law on Advocacy as well as the Statute of the MCA and the MCA’s Ethics Code.

**Associate Advocates** have taken the juridical exam, completed a traineeship, and completed all other requirements to become an advocate except paying fees and registering in the Register of Advocates.

**Trainee** advocates are law graduates who provide legal assistance and carry out legal work under the supervision of an advocate or other legal professional. Traineeships have a duration of one year if completed with a judge, prosecutor, or licensed advocate, or two years if completed with a government agency or with in-house counsel at a company. After completing a traineeship, trainees
may take the juridical exam and, upon passing, become registered as an advocate. Like advocates, trainees must be registered by the MCA and are organized as part of the MCA.

**Lawyers** are law graduates who have not met the requirements to become an advocate and are not members of the MCA. They may work as in-house counsel, with administrative bodies, with civil society organizations [hereinafter CSOs], or with the government.

**Notaries** perform an autonomous, independent public service. They may draw up legal documents and records of legal matters and handle undisputed matters regarding legal documents connected to the notary’s work. Notaries are appointed by the Ministry of Justice and must have a degree in law, have at least two years’ experience as a legal practitioner, and pass the notary exam. **NOTARY PUBLIC LAW OF THE REPUBLIC OF MACEDONIA (entered into force Oct. 1, 1997).**

The **Public Prosecutor’s Office**, created by article 5 of the Constitution, is an autonomous state body that carries out legal measures against persons who have committed criminal and other offenses. Basic Public Prosecutors carry out cases before the basic courts, while Higher Public Prosecutors bring cases before the Appellate Courts. The Public Prosecutor of the Republic of Macedonia brings cases before the Supreme Court. **LAW ON THE PUBLIC PROSECUTOR’S OFFICE OF THE REPUBLIC OF MACEDONIA** art. 19 (adopted June 9, 2004).

**Status of Criminal Law Reforms**

Since 2004, the Macedonian criminal justice system has undergone reform, changing from a mixed criminal procedure with inquisitorial elements to a more adversarial system, where the parties, rather than the court, take leading role in the investigation and trial. The main purpose of the reform is to increase equality of arms.

The new **CODE OF CRIMINAL PROCEDURE** was adopted on November 18, 2010, and entered into force on December 1, 2013. The new Code, inter alia, expands the role of the public prosecutor in pretrial proceedings and gives prosecutors control over police in the investigation; introduces new procedures for evidence, putting the burden of proof in the hands of the parties; and gives the defense the right to take an active part in the investigation. It also gives the parties the right to cross-examine witnesses, introduces plea bargaining, increases prosecutors’ discretion to defer prosecution, sets procedural deadlines, and streamlines and simplifies the judicial process.

**Serbia**

**Government Structure**

The Republic of Serbia is a parliamentary democracy organized in accordance with principle of separation of powers. **CONSTITUTION OF THE REPUBLIC OF SERBIA**, arts. 1, 4 (adopted Nov. 8, 2006) [hereinafter **SERBIAN CONSTITUTION**]. Relations between three branches of government—legislative, executive, and judicial—is based on checks and balances. Id. art. 4.

The **National Assembly** holds constitutional and legislative power. Id. art. 98. It is a supreme representative body and consists of 250 deputies with four-year mandates, chosen in direct elections by a secret ballot. Id. art. 100. Its competences include adopting and amending the Constitution, enacting laws and other general acts, supervising the work of security agencies, adopting the budget, granting amnesties for criminal offenses, and approving international treaties.
See id. art. 99(1). Furthermore, among other electoral rights, the National Assembly elects and dissolves the Government and has a significant role in appointing and removing Constitutional Court judges, court presidents, judges, public prosecutors, and their deputies. Id. art. 99(2).

The President represents the state. Id. arts. 111 and 112. The president is elected in a direct election by secret ballot, for a term of five years. Id. arts. 114 and 116. He nominates the Prime Minister and other state officials to the National Assembly, grants amnesties, presents recognition awards, appoints ambassadors, and commands the army, among other duties. In the legislative area, the competence of the President is to promulgate laws by decree. The President may return a proposed law to the National Assembly for further consideration. If the National Assembly decides to vote again on a law which has been returned for reconsideration by the President of the Republic, the law can be adopted by the majority vote from the total number of deputies. Id. art 113.

The Government, vested with executive power, has jurisdiction over setting and pursuing policies, implementing the laws, adopting bylaws and other general acts for the purpose of implementing laws, proposing laws to the National Assembly, and providing opinions on other proposals. It is responsible for directing and coordinating the work of public administrative bodies. Id. arts. 122, 123. It consists of the Prime Minister, one or more deputy prime ministers, and other ministers. Id. art. 125. The Government mandate is tied to the mandate of the National Assembly that elected it. Id. art. 128. Currently the Serbian Government has 18 different ministries, and for the purposes of this assessment the most relevant is the Ministry of Justice and Public Administration. See LAW ON MINISTRIES art. 2 (adopted July 26, 2012, as amended August 29, 2013) [hereinafter LAW ON MINISTRIES]. Its purview includes work on criminal and misdemeanor legislation, the bar exam, advocates and other legal professions, notaries and judicial office holders, the enforcement of criminal sanctions, amnesties and pardons, extraditions, and witness protection programs, and it represents the Republic of Serbia before the European Court of Human Rights. Id. art. 10.

Judicial power in Serbia belongs to the courts of general and special jurisdiction which are further elaborated below. SERBIAN CONSTITUTION art. 143. The High Judicial Council [hereinafter HJC] is positioned by the Constitution as an independent and autonomous body and guardian of the independence of the courts and judges. Id. art. 153. The HJC has jurisdiction to appoint judges for permanent tenure and to dismiss judges. It proposes to the National Assembly candidates for first election to the position of judge, the President of the Supreme Court of Cassation, and presidents of courts. Id. art. 154. Seven out of the 11 HJC members are judges, and one out of the remaining four members must be an advocate. Id. art. 153. The Constitution protects judicial independence by guaranteeing that judges are independent in performing their function, are non-transferable, and have immunity. Id. arts. 149, 150, 151.

The Public Prosecutor’s Office is also regulated by the Constitution, and it is defined as an independent state authority responsible for prosecuting offenders who commit criminal and other punishable acts and taking all necessary measures for the protection of constitution and legislation. Id. art. 156. The autonomy of the prosecutorial organization is guarded by the State Prosecutorial Council, which has similar composition and competences in prosecutorial organization as the HJC does regarding the organization of courts. Id. arts. 164 and 165. The prosecutorial organization consists of the Republic, Appellate, Higher, Basic, and Special Jurisdiction prosecutors’ offices. See LAW ON SEATS AND TERRITORIAL JURISDICTION OF COURTS AND PUBLIC PROSECUTOR OFFICES arts. 9–11 (adopted Nov. 20, 2013) [hereinafter LAW ON COURT SEATS].

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Court Structure

Courts in Serbia are divided between courts of general and special jurisdiction. The court system has been reorganized twice in recent years, first in 2010 and most recently with amendments to the Law on Court Organization in November, 2013. Although the most recent organization is very new, interviewees reported that the criteria for determining the number and location of courts was not transparent, and there were concerns that case files and data may be lost or misassigned in the case management system during the transfer process. A new National Judicial Reform Strategy was also adopted for the period of 2013–2018, with the goals of enhancing the independence of the judicial system, enhancing impartiality and quality of justice, and improving the competence, accountability, and efficiency of the judiciary.

The courts of special jurisdiction act in certain areas of law that require particular expertise or have some other specific characteristics demanding special procedure or conditions. The Administrative Court has jurisdiction over administrative law disputes. The Appellate Commercial Court and 16 first instance Commercial Courts hear commercial law cases and disputes between enterprises. The Appellate Misdemeanor Court and 44 first instance Misdemeanor Courts have jurisdiction over misdemeanor proceedings. See LAW ON COURT SEATS arts. 2, 5; LAW ON COURT ORGANIZATION arts. 25, 26, 27, 28 and 29 (adopted Dec. 22, 2008, last amended Nov. 20, 2013) [hereinafter LAW ON COURT ORGANIZATION].

The courts in the territory of Kosovo that are still under dispute and are one of the main points of negotiation between the governments of Serbia and Kosovo will be regulated by a lex specialis. LAW ON COURT ORGANIZATION art. 12. Until then, higher, basic, and misdemeanor courts, as well as higher and basic prosecutor’s offices, in Kosovska Mitrovica will continue operating. Id. art. 17. Furthermore, until a lex specialis is adopted, some courts in the territory of Serbia will continue hearing cases that were transferred to their jurisdiction from former Serbian municipal and district courts in Kosovo. Id. art. 17.

As of Jan. 1, 2014, Courts of General Jurisdiction consist of the Supreme Court of Cassation, four appellate courts, 25 higher courts, and 66 basic courts. LAW ON COURT SEATS arts. 3, 4, and 6. These courts are in charge for adjudicating a wide range of criminal and civil cases.

Jurisdiction over criminal proceedings, which are the most relevant for the purpose of this assessment, belongs to the courts of general jurisdiction and is shared between its four levels. However, the pre-investigation and investigation stage of the proceedings is led by the public prosecutors and courts have very narrow jurisdiction in these stages, mainly limited to deciding on appeals against public prosecutor’s decisions. See CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF SERBIA arts. 280–312 (adopted Sept. 26, 2011, last amended May 22, 2013) [hereinafter SERBIAN CRIMINAL PROCEDURE CODE]. When the investigation is completed, the public prosecutor files the indictment with the competent basic or higher court. Id. arts. 331 and 333.

The Basic Courts adjudicate in the first instance criminal cases for offenses punishable, as the principal penalty, by a fine or term of imprisonment up to ten years unless some of these offenses fall under the jurisdiction of another court. LAW ON COURT ORGANIZATION art. 22. They also decide on requests to suspend a security measure or the legal consequences of a conviction for criminal offenses within their jurisdiction. Id.

The Higher Courts are courts of first instance for the most serious criminal offenses, but also act as second instance courts in some cases prescribed by law. In the first instance, they adjudicate criminal cases in connection with criminal offenses punishable by term of imprisonment of more
than ten years as the principal penalty. *Id.* art. 23. Higher courts also act as first instance courts for criminal offenses that are placed under exclusive higher courts’ jurisdiction because of their social danger rather than prescribed sanction. This long list of serious criminal offenses includes crimes against the Republic of Serbia, trafficking, money laundering, and accepting bribes. *See id.* art. 23(2). They also have jurisdiction over juvenile criminal proceedings and petitions to suspend security measures or the legal consequences of a conviction for criminal offenses under their jurisdiction, and decide on requests for rehabilitation and prohibition of distribution of press and dissemination of information through the media. *Id.* art. 23. As courts of second instance, the higher courts decide on appeals against basic courts decisions on imposing measures to secure the presence of defendants. *Id.* As of January 1, 2014, higher courts also decide on appeals against basic court decisions in cases related to criminal offenses punishable by fine or imprisonment of less than five years. *Id.*


The **Appellate Courts** decide on appeals against higher courts’ decisions and decisions of the basic courts in criminal proceedings that do not fall under the jurisdiction of the higher court. [*Law on Court Organization*] art. 24.

The **Supreme Court of Cassation** is the highest court in the country, with its seat in Belgrade. Its primary responsibilities are issuing decisions on extraordinary legal remedies and ensuring consistency in establishing the legal practice among the courts. *Id.* arts 30-32. In criminal proceedings, the Cassation Court’s primary responsibility is entertaining formal Requests for Protection of Legality, an extraordinary legal remedy against final decisions of courts or public prosecutors. *Serbian Criminal Procedure Code* arts. 482 and 486.

The **Constitutional Court**, which is not part of the judicial branch, sits in Belgrade and has 15 judges, out of whom five are appointed by the National Assembly, five by the President and five by the general session of the Supreme Court of Cassation. *Serbian Constitution* art. 172. It is a court of limited jurisdiction which, among other competences, has exclusive jurisdiction over claims of constitutionality or legality of general acts. *Id.* art. 167. Also, a constitutional appeal may be lodged against individual acts or actions performed by state bodies or organizations that violated human and minority rights guaranteed by the Constitution, if all other legal remedies for their protection have already been exhausted or when there is no other legal remedy envisaged to protect one’s rights. *Id.* art. 170.

**Structure of the Legal Profession**

The legal profession in Serbia is divided into several categories of practitioners:

**Advocates** are authorized to represent clients in any proceedings before any court or state body. Advocates have an exclusive right to represent defendants in criminal proceedings. They are law graduates who, among other conditions, passed the juridical exam and advocate exam. [*Law on Advocacy of the Republic of Serbia*] art. 6 (*adopted* May 5, 2011; *entered into force* May 17, 2011,
Membership in the Chamber of Advocates is mandatory for advocates, as the right to practice law is obtained only after registering in the Chamber's Registry of Advocates. \textit{Id.} art. 5. As of February 2014, there are 8,037 registered advocates in the country.

**Trainees** are law graduates completing a mandated traineeship prior to taking the bar exam and registering as an advocate. Traineeships in a law office, court, or prosecutors office last two years, while traineeships with a company or other organization last four years. Trainees do substantive legal work, and may replace their supervising advocate in criminal proceedings involving an offense punishable by less than five years' imprisonment. \textit{Serbian Criminal Procedure Code} art. 73; \textit{Law on Advocacy} arts. 22, 54. As of February 2014, there are approximately 3,000 registered trainees.

**Lawyers** are law graduates and most commonly work as in-house counsels in companies or administrative bodies. They are not registered advocates or members of the Chamber of Advocates, and do not appear in court except under limited circumstances representing their employer.

**Notaries public** will start operating as of September 1, 2014, and will primarily be responsible for authentication of documents. \textit{See Law on Notaries Public} arts. 182 and 4 (adopted May 5, 2011, last amended Feb. 27, 2013). Aside from the general requirements, in order to qualify to be a notary public a lawyer must pass a bar exam, notary exam, and have at least five years of working experience after passing the bar exam. \textit{Id.} art. 25. A professional chamber will be constituted when at least one hundred qualified notaries are appointed. \textit{See id.} arts. 119 and 179.

**Bailiffs** (enforcement agents) are a new legal profession introduced in recently with only a few hundred current practitioners. Bailiffs are responsible for collections based on enforceable court decisions. \textit{See Law on Enforcement} art. 4 (\textit{adopted} May 5, 2011, \textit{last amended} Nov. 7, 2013 by Constitutional Court decision 109/13). They are not civil servants but they exercise certain public authorities delegated to them by law. \textit{Id.} art. 312. Aside from general requirements, in order to qualify for this profession a lawyer must pass the bailiffs’ exam and have at least two years of working experience on enforcement of judgments or three years in other legal work. \textit{Id.} art. 313. The Minister of Justice appoints bailiffs from a list of qualified candidates. \textit{Id.} art. 316. Bailiffs have a professional Chamber, which is responsible for adopting a Statute and Ethics Code, protecting the dignity of the profession, organizing continuing education, keeping a back-up directory (the main directory is in the MOJ), and representing the interests of bailiffs. Membership is mandatory. \textit{Id.} art. 338 and 339.

Aside from these categories Serbia has nearly 3,100 judges and 800 public prosecutors and deputy public prosecutors. Aside from a law degree and passing the bar exam, these two professions require a certain number of years of experience before being appointed by the relevant state bodies. \textit{See Law on Judges} arts. 43 and 44 (\textit{adopted} December 22, 2008, \textit{last amended} Dec. 6, 2013 by Constitutional Court decision 108/13) and \textit{Law on Public Prosecutors Offices} arts. 76 and 77 (\textit{adopted} December 22, 2008, \textit{last amended} Dec. 6, 2013, by Constitutional Court decision 108/13). Graduation from the Judicial Academy’s two-year program specifically designed for future judges and prosecutors is considered an advantage for appointment. \textit{See Law on Judicial Academy} art. 40 (\textit{adopted} December 11, 2009). Both judges and prosecutors have their respective professional associations with voluntary membership.

**Civil society organizations** (CSOs) in Serbia do not represent defendants before the courts, since only defense advocates are entitled to represent a defendant in criminal proceedings. However, some CSOs closely cooperate with defense advocates who are representing defendants pro bono,
thereby providing free legal aid. In addition, CSOs often advocate for reform in criminal legislation and practices by organizing round tables and public debates.

**Status of Criminal Law Reforms**

Efforts to amend the Criminal Procedure Code have been ongoing for almost a decade, with several unsuccessful attempts to replace the 2001 Criminal Procedural Code. Several criminal procedure codes, although enacted, never entered into force, such as the one adopted in 2006. The new Criminal Procedure Code was implemented in stages: in the Special Departments for War Crimes and Organized Crime as of January 15, 2012, and in all other courts starting October 1, 2013. Finally, the new Criminal Procedure Code brought a number of changes, the largest being prosecutor-led instead of court-driven investigation and adversarial instead of inquisitorial main hearings. The system, although envisioned to resemble adversarial systems of common law countries, have kept some elements of non-adversarial proceedings by allowing courts to propose new evidence and seek further clarifications during proceedings. The new Criminal Procedure Code and the adopted solutions were questioned and openly criticized by some academics and legal professionals, but the main *ratio legis* was the undisputed need to make the system more efficient and introduce clearer delineation between roles of different procedural actors, especially courts and public prosecutors. One of the most pronounced consequences of the criminal procedure reform was the changed role of the parties, which now take a more active role during proceedings, conduct investigations, collect evidence, and cross-examine witnesses. On the other hand, by leaving aside the material truth principle, which obliged judges to determine the truth and consequently collect all the necessary evidences, judges will have to embrace a new role of passive referee and let parties furnish all or most of the evidence.

In addition to the procedural reforms, the Criminal Code, which lists criminal offenses and their respective sanctions, was also amended several times over the past four years. *See Criminal Code (adopted Sep. 29, 2005, last amended Nov. 26, 2013).* Following these changes, there was a shift in material and territorial jurisdiction of courts and prosecutors’ offices, which became effective on January 1, 2014. *See Law on Court Organization and Law on Court Seats.* Additionally, a draft Law on Free Legal Aid, which calls for major changes to the mechanism of legal protection for indigent defendants, was presented in late 2013 and is expected to be adopted in 2014. All of these reforms have had a foundational impact on criminal law system in Serbia, and it is yet to be seen what the final outcome of the reform efforts will be.
I. The Practice of Criminal Defense Law

Factor 1: Education and Qualification

Lawyers should have appropriate education and training, including regarding professional ethics, human rights and fundamental freedoms, and both theoretical knowledge and practical skills.

International Standards

Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training designed to promote knowledge and understanding of the role and the skills required in practicing as a lawyer, and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law. Legal education shall be open to all persons with requisite qualifications and no one shall be denied the opportunity to pursue legal education by reason of race, color, sex, religion, political or other opinion, national or social origin, property, birth, status or physical disability. Governments, professional associations of lawyers, and educational institutions should take special measures to provide opportunities for candidates from groups whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions, or languages or have been the victims of past discrimination, to enter the legal profession.

Professional associations of lawyers shall work to ensure that there is continuous improvement to the quality of preparation provided to would-be lawyers, as appropriate to the practices and qualification requirements of their respective jurisdictions; that such training incorporates both practical and theoretical knowledge and provides the necessary level of legal knowledge and skill-sets necessary to provide useful legal services to the public; that such training gives special emphasis to ethical considerations and issues; and that such training is available and affordable to future lawyers.

Analysis

Albania

To become an advocate in Albania, one must be an Albanian citizen, possess higher education in law, have completed an initial training program for potential advocates in accordance with the statutes and regulations of the National Chamber of Advocates (NCA), have completed a one-year traineeship, and have passed the bar exam. Trainees or candidate advocates must complete a one-

4 IBA Standards on Independence, Standards 2 and 3.
5 UN Basic Principles, Principle 11.
year traineeship under the supervision of a licensed advocate. ALBANIA LAW ON ADVOCACY ch. V, art. 25(b). At the end of the one-year term, the supervising advocate is required to provide the candidate with a document certifying the candidate’s traineeship. ALBANIA ETHICS CODE ch. IV, art. 44. The supervising advocate is obliged to “share his experience with [the trainee] and to allow [the trainee] to participate in educational programs.” Id. art. IV, art. 44. Some interviewees stated that the traineeship program is not well-administered and there are cases of trainees being provided necessary documentation without having worked for the required year. Although envisioned as a way to provide candidates with much-needed practical experience, it is not clear that the current traineeship program provides that type of experience in all cases.

In addition to having completed the traineeship, one must have “moral and civic integrity to protect human rights and fundamental freedoms, as well as meet the requirements of ethics to practice law.” ALBANIA LAW ON ADVOCACY ch. V, art. 25(a). One must also demonstrate two negative conditions: that one has not been convicted for “offenses committed intentionally” under the Ethics Code and that one is not participating in activities that are inconsistent with the Ethics Code. Id. art. 25, (d), (dh). After meeting these requirements, a potential advocate must register with tax authorities and become a member of the Bar Association and obtain permission to practice law. Id. art. 25, (e), (ë).

Albania has five public law faculties and 24 private law faculties. The public law faculty at the University of Tirana is the most well-respected; the quality of the legal education at the other private law faculties varies greatly. Interviewees stated that the current legal education system does not adequately prepare students to practice law; the instruction is completely theoretical and provides few or no opportunities for students to practice legal skills. Most, if not all, classes are conducted in a lecture style, with no input from or interaction with students. A notable exception, the University of Tirana, with assistance from USAID through the Justice Sector Strengthening Project (JuST) program, has made improvements in the operations and facilities of the law faculty, and created a new clinical program for students who will eventually offer legal assistance to clients under the supervision of the clinical director. For the students who study at the private law faculties, though, the quality of education provides them with little or no opportunity to gain more than theoretical knowledge of the law before graduation.

Tuition at the University is about $320 per year for the Bachelor’s program and $600 for the two-year Master’s program. There are two opportunities for students to study for free at the University. First, the NCA supports two to three exceptional students per year to study at the University. Second, as a public university, the government allows the University to provide free tuition for those students who are children of past political prisoners.

With the goal of increasing the professionalism of advocates practicing in Albania and controlling the number of advocates entering the profession, the NCA established a School of Advocates in 2012. The School of Advocates structure is based on the well-respected model of the School of Magistrates, which provides initial and continuing professional education for judges and prosecutors. The School for Advocates began classes for its first group of 250 potential advocates in November 2013 and is open to students with a university degree (either students who have graduated under the previous degree system with four years of undergraduate education or those who have graduated under the new system with five total years) who plan to be advocates. To be admitted, all applicants must take a placement exam and pay half of the 1,000 Euro tuition per year. For now, the NCA plans to contribute the other 500 Euro for the students’ tuition. In the future, the School will be mandatory for all potential advocates to receive their licenses, but at this time, potential advocates are not required to attend the School.
Students study two days a week at the School, studying topics such as civil procedure, criminal procedure, public administration law, professional matters (legal writing, drafting briefs, ethics, client interviewing, case preparation, etc.) The goal of the School is to conduct courses on topics the students have had already studied during their university education, but with an emphasis on practice. The students have an opportunity to work as assistant advocates in traineeships during the other three days of the week.

The bar exam is administered two times every year in May and November. The exam tests students' knowledge of nine legal areas: Constitutional Law, Civil and Commercial, Civil Procedure, Criminal Law, Criminal Procedure, Criminal Justice Proceedings, Administrative Law, Family Law, Labor Law, and Advocacy. The Bar Examination is held by a Committee of the NCA, made up of five individuals: three appointed by the NCA, one appointed by the Ministry of Justice, and one member appointed from the academic staff of the School of Magistrates. ALBANIA LAW ON ADVOCACY ch. 5, art. 26 (1).

Interviewees expressed that the requirements to become an advocate in Albania are not sufficiently rigorous, and that lax entry barriers to the profession have created a surfeit of advocates; the current number of advocates per capita is around 50. The ease with which candidates can become advocates also contributes to the sense that advocates are not prepared to practice law when they become licensed and are not adequately professional in their work. The new School of Advocates is a positive step toward preparing a new class of advocates who will be better educated and will enter the profession more competent, and the School director is energetic and eager to share experiences and learn from other similar enterprises.

Bosnia and Herzegovina

Would-be advocates in BiH must have graduated in law from a law faculty in Bosnia-Herzegovina (or, if graduated prior to May 22, 1992, a law faculty in the Socialist Federal Republic of Yugoslavia), or possess a law degree from another country validated by the competent ministry in the RS or FBiH. They also must pass the general bar exam in Bosnia-Herzegovina (or the SFR Yugoslavia), or have passed a bar exam in another state that is recognized as equivalent by the competent ministry of the RS or FBiH. Candidates must also complete a two-year traineeship working on legal matters at a law firm, a court, a prosecutor’s office, administrative bodies, or government bodies, and pass an exam covering the Law on the Legal Profession, the Statute of the Bar, the Code of Ethics, and other documents of the Chamber of Advocates. RS LAW ON THE LEGAL PROFESSION art. 32; FBiH LAW ON THE LEGAL PROFESSION art. 18. Candidates may complete the traineeship prior to taking the bar exam, or may take the bar exam first.

There are eight public and ten private universities with law faculties in the BiH: Public:

1. Law Faculty, University of Sarajevo,
2. Law Faculty, University of East Sarajevo,
3. Law Faculty, University of Banja Luka,
4. Law Faculty, University Dzemal Bijedic, Mostar,
5. Law Faculty, University of Mostar,
6. Law Faculty, University of Tuzla,
7. Law Faculty, University of Zenica, and
8. Law Faculty, University of Bihac.
Private:
1. Law Faculty, University Slobomir P, Doboj,
2. Law Faculty, Paneuropean University Aperion, Banja Luka,
3. Law Faculty, University for Business Engineering and Management, Banja Luka,
4. Law Faculty, University for Business Studies, Banja Luka,
5. Law Faculty, University of Vitez,
6. Law Faculty, University of Travnik,
7. Law Faculty, The American University in Bosnia and Herzegovina, Tuzla,
8. Law Faculty, University Sinergija, Bijeljina,
9. Faculty of International Relations and Diplomacy, University Herzegovina, Mostar, and
10. Law Faculty, International University of Travnik.

In addition, there are two private law faculties, both located in Brcko District, that are reportedly facing closure due to low quality of education.

Interviewees indicated that legal education in Bosnia is generally theoretical and focused on the foundations and philosophy of law, and law graduates generally do not possess practical skills. Interviewees believed that the public universities offer a better standard of education. Practical skills are learned during the two-year traineeship that law graduates must complete in order to be eligible for entry in the Registry of Advocates.

Trainee advocates are citizens of BiH who have graduated in law and established employment in a law firm, law office, or joint law office under the supervision of an advocate who is registered in the Registry of Advocates of the relevant entity and has been practicing law for at least five years. RS LAW ON THE LEGAL PROFESSION arts. 61, 62; FBiH LAW ON THE LEGAL PROFESSION arts. 50, 51. Trainees are registered in a Registry of Legal Trainees and are subject to the same ethical and professional responsibility requirements as advocates. RS LAW ON THE LEGAL PROFESSION art. 65; FBiH LAW ON THE LEGAL PROFESSION art. 52. Upon completion of two years of work as a trainee, the trainee is eligible to take the advocate exam; the trainee must pass the exam within two years of becoming eligible and must register as an advocate within two years of passing the exam. RS LAW ON THE LEGAL PROFESSION art. 75; FBiH LAW ON THE LEGAL PROFESSION art. 53. Trainees may replace their supervising advocate in the representation of a client, if the client agrees. RS LAW ON THE LEGAL PROFESSION art. 36; FBiH LAW ON THE LEGAL PROFESSION art. 21.

Interviewees generally believed that the traineeship adequately prepares advocates to practice law, but emphasized that there is a dearth of available traineeships for law graduates. Young advocates interviewed by the assessment team indicated that, unless one has friends or family members practicing law, it is difficult to find a position in a law office because there is generally not enough work for advocates in BiH due to the poor economic situation. Trainees who work in a prosecutor’s, judge’s, or government office may become advocates, but they are generally less well-prepared to practice law than trainees who worked in an advocate’s office, and these positions are competitive among law graduates who wish to build a career as a prosecutor or in the judiciary or government.

**Kosovo**

There are three public universities offering legal education in Kosovo: the University of Pristina, the University of Prizren and the University of Pristina in Mitrovica Law Faculty. The University of Pristina in Mitrovica operates under Serbian law, and is overseen by the Ministry of Education of Serbia. This University is not accredited under Kosovo law, but it is anticipated that negotiations between Kosovo and Serbia eventually will result in the University of Pristina in Mitrovica being
integrated into the Kosovo educational system. Seven private universities exist in Kosovo, offering varying degrees of quality of legal education. The University of Pristina Law Faculty has been the beneficiary of much international assistance for the past decade and now has a mock trial courtroom, a law faculty career center and other resources available to make the law faculty more responsive to the needs of the students. In addition, the University of Pristina Law Faculty offers legal clinics at the Bachelor’s and Master’s levels in topics such as criminal law, administrative law and constitutional law. Despite these improvements, some interviewees expressed the opinion that this assistance has not changed the fundamental challenges within the education system at the University, and that students still encounter non-interactive teaching methodology, large class sizes, inability to interact with professors except through the professors’ lectures in-class, and a general inability to gain practical experience in the law before their graduation. Interviewees stated that the legal market does not support the number of students who graduate from law faculties each year and wish to become advocates.

A law trainee can be registered with the KCA if he meets several requirements, including being a citizen of Kosovo, having a diploma from a law faculty, being eligible for work, and not employed in another capacity. The trainee must also have an employment contract with the advocate or law firm with which he is interning. KOSOVO LAW ON ADVOCACY, ch. IV, art. 23 (1) (1.8). The length of the traineeship is one year. Id. ch. IV, art. 1-2.

The KCA established in 2008 an Advocates Training Center, which provides CLE opportunities to advocates, and also training for candidates who wish to prepare for the bar exam. Funded through the KCA, the Center is renting space in a private office building but has plans to obtain its own building in the future. The Training Center has a Board that chooses training topics in one of three ways: through a needs analysis conducted with advocates through email or mail, through expert suggestions and through analysis of changes in laws that require advocates to educate themselves about the changes. The Training Center receives feedback and uses the information to draft an annual program outline and schedule for quarterly trainings. This Training Center is the counterpoint for the existing Kosovo Judicial Institute, which trains judges and prosecutors on a regular basis and has a well-respected program for the continuing education and professional development for judges and prosecutors.

By law, the Ministry of Justice administers the Bar Examination every three months or four times a year. KOSOVO LAW ON BAR EXAMINATION ch. IV, art. 12 (3). In practice, though, there are often significant delays in conducting the exam. For example, in one recent year, the exam was given only twice, and before that, no exam happened for three years. The Bar Exam contains written and oral parts; the written portion covers exercises about criminal substantive and procedural law, family law, law of succession, contracts and torts. The oral portion of the exam covers civil substantive and procedural law, family law, law of succession, contracts and torts, commercial law, criminal substantive and procedural law, labor and administrative law and constitutional law. Id. ch. II, art. 7 (1-3). If a candidate passes the written portion of the exam, he proceeds to the oral examination. The Law on Bar Examination states that the candidate can declare in which official language he wants to take the test. Id. ch. IV, art. 10 (2). The exam has been organized in Serbian.

The MOJ selects a group of experts who have passed the bar exam and have at least 12 years of justice-system experience to form a Commission, which administers the oral portion of the exam. Id. ch. IV, art. 14 (1-4). Commission appointees serve two-year terms with the possibility of reappointment. Id. ch. II, art. 4 (2) (3)]
As stated by several interviewees, there is a current initiative from the Ministry of Justice to create an Academy of Justice that would serve as a training school for candidate judges, prosecutors and defense advocates in one eight-month program. Although the concept has support in the MOJ because the Academy of Justice would fulfill the MOJ’s long-term objective for rule of law in Kosovo and would model similar European institutions, there is much resistance to this idea, as well. First, the KCA does not want to force private and independent advocates to participate in a state-run training program. This would compromise the independence of the profession, and the ability of the KCA to serve the needs of its members. Moreover, the KCA has invested substantial effort into establishing the Advocates Training Center, sustainable and funded through member dues and responsive to the training needs of advocates. Second, one interviewee stated that the creation of the Academy would seem to acknowledge and accept the fact that the university law faculties do not provide sufficient legal training to candidates, and that in addition to the law faculty training, one must also participate in a mandatory Academy program to make up for the deficiencies of the legal education system in the universities.

**Macedonia**

In order to qualify to be an advocate in Macedonia, one must be a Macedonian citizen, possess a university degree in law, complete a one-year traineeship, and pass the juridical exam. Law on Advocacy of the Republic of Macedonia arts. 12, 26 (adopted July 31, 2002, last amended Sept. 12, 2012) [hereinafter Macedonian Law on Advocacy]; Law on the Juridical Exam art. 5 (adopted Jan. 21, 2010, entered into force Feb. 2, 2010); see also Website of the Macedonian Chamber of Advocates, Membership, at http://www.mla.org.mk/en. Law graduates who are citizens of Macedonia may enroll in the Register of Trainee Advocates. A trainee should provide legal assistance and carry out legal work under the supervision of an advocate. After completing the traineeship, the candidate may take the juridical exam and, upon passing, may work as an associate advocate (associate advocates are advocates who have passed the juridical exam and met all other requirements but have not yet paid the fees to register as an advocate) or become registered as an advocate. Macedonian Law on Advocacy arts. 25–29.

There are six universities with law faculties in Macedonia: Justinian I (public), Tetovo State University (public), Southeast European University (public/private), American College Skopje (private), FON University (private), and MIT University Skopje (private). Advocates interviewed by the assessment team expressed a number of concerns about legal education and qualification. Many interviewees noted that law faculties teach exclusively theory and jurisprudence and law students do not receive practical training such as clinical education or moot court; although law graduates are well grounded in legal philosophy and the foundations of the profession, they possess none of the practical skills required to practice law. Additionally, interviewees reported that several private law faculties have opened that, unlike state universities, do not provide a high standard of education. Furthermore, interviewees agreed that the number of advocates in Macedonia exceeds the amount of work available for advocates and the number of law graduates exceeds the number of positions available for traineeships. As a result, many law graduates are unable to secure a paid traineeship position unless they are able to train in the office of a family member or family friend. Additionally, some interviewees reported that it is common for law graduates to have a traineeship on paper only, with the supervising advocate signing paperwork to certify the traineeship without actually giving the trainee any substantive legal work. Some trainees do secretarial work, while some interviewees reported having heard of trainees who did not do any work at all but were still certified as having completed their traineeship. This may be a particular problem with trainees who cannot afford to support themselves and thus must find a second job to cover their living expenses during the course of an unpaid traineeship.
Some interviewees also reported that the juridical exam required of would-be advocates, which is the same exam taken by would-be prosecutors, judges, notaries, and enforcement agents, does not adequately test the range of knowledge and skills required of advocates. The test includes both oral and written components and focuses on theoretical knowledge. See Ministry of Justice website, Juridical Exam requirements at [http://www.pravda.gov.mk/documents/programa_april2010.pdf](http://www.pravda.gov.mk/documents/programa_april2010.pdf). Interviewees reported that the Chamber of Advocates had attempted to implement an additional bar exam specifically for advocates, but that the exam requirement was rejected by the courts because the Chamber did not have the legal authority to implement such an exam.

Younger advocates interviewed by the assessment team uniformly reported that they did not believe that they personally were well prepared to practice law after completing all of the requirements to enroll as an advocate.

**Serbia**

As with other countries in the region, in order to become an advocate in Serbia, one must be a citizen of Serbia who has earned a law degree, completed a traineeship, and passed both the juridical exam and the advocate exam. [SERBIAN LAW ON ADVOCACY art. 6(1–3), art. 54.; STATUTE OF THE SERBIAN CHAMBER OF ADVOCATES art. 133 (adopted Nov. 12, 2011) [hereinafter SCA STATUTE]. In order to become a trainee, one must be a Serbian citizen; hold a degree in law from a Serbian university or a foreign degree in law recognized under Serbian university regulations; be healthy and possess full legal capacity; lack a criminal record that would make the candidate unworthy to practice law; and must not hold other work or already be eligible to take the juridical exam. [SERBIAN LAW ON ADVOCACY art. 54(1–8); SCA STATUTE art. 182(1–8). The would-be trainee must also enter into an employment contract with an advocate (who may be a solo practitioner or member of a law partnership) who is based in the same bar jurisdiction where the trainee will be working, has at least three years’ of experience, and agrees to supervise the training, work, and professional development of the trainee. [SERBIAN LAW ON ADVOCACY art. 54(9); SCA STATUTE art. 182(9). Upon meeting these requirements and taking an oath, the trainee’s name is entered into the Directory of Law Trainees and he or she may begin the traineeship. [SERBIAN LAW ON ADVOCACY arts. 53, 55–56; SCA STATUTE arts. 181, 183–185. The traineeship may be paid or voluntary, and must comply with the training requirements established by the SCA. [SERBIAN LAW ON ADVOCACY art. 59, 62. Trainees may replace their supervising advocate in the representation of a client, except where not allowed by law. Id. art. 22; SERBIAN CRIMINAL PROCEDURE CODE art. 73 (specifying that an advocate may be replaced by his or her trainee in criminal proceedings only if the offense the defendant is charged with is punishable by a term of imprisonment less than five years).

After completing the traineeship, which lasts two to four years depending on where the trainee is working, the trainee is eligible to take the juridical exam; if the trainee does not pass the juridical exam within two years of becoming eligible to take it, the traineeship must be terminated. [SERBIAN LAW ON ADVOCACY art. 61; LAW ON THE JURIDICAL EXAMINATION art. 2 (adopted Apr. 16, 1997, entered into force Jan. 1, 1998; traineeships in a law office, court, or prosecutors office must last two years, while traineeships with a company or other organization must last four years). The traineeship may continue for up to one year after the trainee has passed the juridical exam. Id. After passing the juridical exam, the candidate is eligible to take the advocate exam, which he or she must pass before becoming eligible to register as an advocate. [SERBIAN LAW ON ADVOCACY art. 87; SCA STATUTE art. 288. The advocate exam tests the candidate’s knowledge of the Legal Profession Act, the Code of Professional Ethics of Advocates, the SCA Statute, advocates’ fee structure, and international regulations concerning the legal profession. SCA STATUTE art. 288.
There are five public universities with law faculties in Serbia, located in Belgrade, Novi Sad, Nis, Kragujevac, and Novi Pazar (a sixth, the Pristina law faculty, which currently has its seat in Mitrovica, is part of Serbia’s state university system but is located within the territory of Kosovo). Additionally, there are several private universities with law faculties, the most prestigious of which is the law faculty of the Union University of Belgrade. Interviewees generally believed that the education offered by law faculties is challenging, particularly at public universities, and some interviewees reported that many students who begin studies in law fail to graduate. Many interviewees noted that university education is primarily theoretical, and that law graduates are unprepared for the day-to-day practice of law; interviewees noted that while some students have the opportunity to participate in activities such as moot court, employers are primarily concerned with students’ grades in academic courses, creating a disincentive for students to participate in non-academic educational activities. Advocates interviewed by the assessment team who had employed a trainee generally indicated that their trainees were well-qualified and reported that the trainees performed substantive legal work, particularly in the second year of their traineeship.

**Comparative Highlights**

In all five countries, interviewees indicated that law school does not adequately prepare graduates to work as advocates. Legal education is considered overly theoretical, and graduates lack practical training and skills. In particular, interviewees stated that private law faculties provide low-quality education and that students at private law faculties often are treated as customers paying for a degree, rather than as students who must meet high standards to obtain the degree. The traineeships required in all five countries are aimed at developing practical skills, but in practice, some interviewees reported that trainees do less legal work than secretarial or administrative work. In Macedonia and Bosnia, interviewees stated that there are not enough trainee positions available for all law graduates. Interviewees in all five countries also indicated that the bar or juridical exams do not test the full range of knowledge and skills that advocates should possess. Also in all five countries, interviewees indicated that members of ethnic minorities and marginalized groups are generally not well represented in the legal profession (see Factor 2), and interviewees believed that this was largely due to barriers preventing these groups from obtaining the education required to enter the profession.

**For Consideration**

- How can the legal profession in the five countries support improvements in legal education?
- How can the legal profession help students and trainees develop practical skills?
- What regional initiatives could be developed to improve legal education and traineeships?
- What can the legal profession do to help members of ethnic minorities and marginalized groups access the education and training needed to become an advocate?
Factor 2: Licensing and Professional Development

A high standard of legal training and ethics should be a prerequisite to entry into the profession of lawyer. Programs of continuing legal education should strengthen legal skills and increase awareness of ethical and human rights issues.

International Standards

Every person having the necessary qualifications in law shall be entitled to become a lawyer and to continue in practice without discrimination. All necessary measures should be taken to ensure a high standard of legal training and morality as a prerequisite for entry into the profession. Decisions concerning the authorization to practice law or to enter the profession of lawyer should be taken by an independent body. Such decisions should be subject to review by an independent and impartial judicial authority. Governments, professional associations of lawyers, and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on grounds of race, color, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status.

Programs of continuing education should seek to strengthen legal skills, increase awareness of ethical and human rights issues, and train lawyers to respect, protect, and promote the rights and interests of their clients and support the proper administration of justice, and shall have regard to the social responsibilities of the lawyer, including co-operation in providing legal services to the needy and the promotion and defense of legal rights of economic, social, cultural, civil, or political nature, especially rights of such nature in the process of development.

Analysis

Albania

The NCA and the Ministry of Justice register all advocates who meet the requirements for licensing. ALBANIA LAW ON ADVOCACY ch. VI, art. 34 (1); see Factor 1 above. After they are licensed, lawyers must pay annual dues of $130 to the NCA. Albanian law also provides for foreign lawyers to practice in Albania if they pass the bar exam in the Albanian language, meet the same other requirements as Albanian citizens and receive permission to practice law from the NCA. Id., ch. VII, art. 36.

An advocate has an ethical obligation to “maintain his competence through continuing education.” ALBANIA ETHICS CODE ch. I, art. 9. According to the Law on Advocacy, advocates must participate in the “ongoing training program, organized by the National [Chambers of Advocates].” ALBANIA LAW ON ADVOCACY ch. II, art. 16/1 (1). This training program by law should “update[e] advocates with specific professional knowledge, theoretical and practical.” Id. ch. II, art. 16/1 (2).

7 IBA Standards on Independence, Standard 1.
9 CoE Recommendations, Principle I(2).
10 UN Basic Principles, Principle 10; see also CoE Recommendations, Principle II(1). A requirement that a lawyer be a citizen of the country concerned shall not be considered discriminatory.
11 CoE Recommendations, Principle II(3).
Until recently, there were few opportunities for advocates to participate in continuing legal education (CLE) opportunities. In 2011, though, USAID (through the JuST program) and the NCA signed a cooperation agreement to establish a CLE program in Albania. As of late 2013, the regional bar chambers in Durres, Fier, and Vlora were conducting a pilot program with USAID support to provide free CLE opportunities to advocates. By regulation, the NCA now requires advocates to earn 30 credits of CLE per year; however, this requirement is not enforced. Interviewees noted that the only CLE opportunities they knew of were conducted by international donors and organizations, such as USAID and OSCE; however, the NCA is actually cooperating with USAID on conducting CLE courses, and funds a portion of the CLE that is jointly conducted by USAID and the NCA. Most advocates who are committed to their professional development seek out opportunities on their own to attend conferences or obtain materials that will assist them in their practice. As described below, one advocate formed a Penal Advocates Association in an attempt to meet the needs for professional education of the criminal advocate community. The NCA has prepared an action plan that outlines the transition plan for transferring the provision of CLE to the School of Advocates, for both advocates and assistant advocates.

By law, advocates should have insurance to “ensure responsibility” to third parties with regard to his work. ALBANIA LAW ON ADVOCACY, art. 9 (11). To date, though, very few if any advocates have such insurance. In 2014, the NCA plans to enact a mandatory professional insurance program for advocates that will cover malpractice causes of action.

Bosnia and Herzegovina

The right to practice law is acquired by registering in the Register of Advocates of the relevant Chamber of Advocates. RS LAW ON THE LEGAL PROFESSION art. 30; FBIH LAW ON THE LEGAL PROFESSION art. 19. In order to be registered in the Register of Advocates, one must be a citizen of Bosnia-Herzegovina; possess a valid law degree; pass the bar exam; have at least two years’ experience working on legal matters at a law firm, a court, a prosecutor’s office, administrative bodies, or government bodies; not to have been convicted of crimes against the state and state security or for crimes against humanity, international law, official or other duties, or for criminal acts committed for gain, self-interest, or other base motives, unless five years have elapsed from the completion of the served sentence or from the time of a pardon; must not be employed in other professions; demonstrate satisfactory knowledge to the Board of Examinations of the Law on the Legal Profession, the Statute of the Bar, the Code of Ethics, and other documents of the Chamber of Advocates; and demonstrate fitness to practice law. RS LAW ON THE LEGAL PROFESSION art. 32; FBIH LAW ON THE LEGAL PROFESSION art. 18. Advocates must also possess professional liability insurance. RS LAW ON THE LEGAL PROFESSION art. 47; FBIH LAW ON THE LEGAL PROFESSION art. 30. No one meeting the requirements for registration may be denied entry in the Register of Advocates due to national, ethnic, religious, or political background or sex. RS LAW ON THE LEGAL PROFESSION art. 31; FBIH LAW ON THE LEGAL PROFESSION art. 19. Applications for registration are submitted to the competent body of the relevant Chamber of Advocates; applicants denied registration may appeal a final decision denying registration to the administrative courts of the relevant entity. RS LAW ON THE LEGAL PROFESSION art. 33; FBIH LAW ON THE LEGAL PROFESSION art. 19. Representatives of the FBIH Chamber of Advocates indicated that persons registering as an advocate who are coming from another profession, as opposed to persons who have just completed their traineeship, must pay a registration fee; advocates reported that this fee is EUR 2,000 (BAM 3,911.98). Once registered, advocates pay monthly dues of EUR 50 (BAM 97.78) to the relevant Chamber of Advocates; advocates from the FBIH generally indicated that they were unsure what the Chamber does with the funds raised from member dues and did not believe the Chamber provided enough benefits for advocates to justify the dues.
Any advocate registered in either the FBiH Register or the RS Register of Advocates is able to represent and defend natural and legal persons before the courts, governmental bodies and all other organizations in the FBiH and the RS. RS LAW ON THE LEGAL PROFESSION art. 29; FBIH LAW ON THE LEGAL PROFESSION art. 7. Foreign advocates may be permitted to practice law in BiH, pursuant to the existence of reciprocity with the foreign advocate's state, and foreign advocates are permitted to provide legal advice regarding the law of the state in which the advocate is licensed. Id.

The Chambers of Advocates have primary responsibility for the professional training and development of advocates. RS LAW ON THE LEGAL PROFESSION art. 9(6); FBIH LAW ON THE LEGAL PROFESSION art. 11(6). The FBIH Chamber organizes some voluntary training sessions but primarily encourages advocates to attend government- and court-organized seminars on changes in law, including a monthly seminar organized by the Court of BiH on criminal law. The RS Chamber, at its annual conference, includes discussion of legal issues, and also encourages participation in regional conferences. Representatives of both bars indicated that they would support the creation of mandatory continuing legal education. The Criminal Defense Support Section [hereinafter OKO] of the BiH State Court Special Department for War Crimes requires all advocates defending persons charged with war crimes in the State Court who have less than seven years’ experience and/or have never defended a war crimes case to complete a special one-day training course; approximately 250 advocates are certified by OKO to defend war crimes cases. Additionally, a number of nongovernmental organizations have cooperated with the Chambers of Advocates and government bodies to provide training for advocates and other legal professionals, although there are fewer trainings offered now than there were at the time of the adoption of the adversarial criminal procedure system in 2003.

**Kosovo**

To become an advocate in Kosovo, one must be a citizen of the Republic of Kosovo; have obtained a diploma of law from a faculty in Kosovo or a diploma from a foreign law faculty that is recognized in accordance with laws regulating the higher education in the Republic of Kosovo; be fully capable to work; have passed the bar exam; have no other outside employment; not be under criminal proceedings or not to be tried for criminal offense for which it has been foreseen a sentence with imprisonment up to one year that would make the candidate indecent to practice bar; enjoy high esteem in performing bar in compliance with the Code; have a suitable office for the performance of bar and required technical conditions in compliance to KCA’s sub-legal acts; have at least one year has passed from the decision to reject the registration application at the KCA; have completed the exam of Advocates Code of Ethics pursuant to the regulation adopted from the KCA. KOSOVO LAW ON ADVOCACY art. 10 (foreign lawyers may practice in Kosovo courts in certain circumstances; see id art. 9.). As of 2014, advocates must pay 300 Euro per year to be licensed by the KCA, and are required to pay an additional 50 Euro per year for the Chamber to provide continuing legal education classes (CLE). KCA REGULATION ON MANDATORY CONTINUOUS LEGAL EDUCATION art. 14.

According to recent figures provided by the KCA, despite the 40% participation of women in the recent traineeship programs, only 12% of advocates are women. When asked about this gap between relatively high numbers of women trainees and low numbers of advocates, interviewees generally linked the gap to the culture of Kosovo, which does not make it easy for women to stay in the legal profession. For example, one interviewee stated that would-be clients of women advocates would prefer to have an older man than a woman represent them in court because judges, prosecutors or other parties are more apt to respect the older man more than a woman. In addition, judges and prosecutors have secure jobs with regular hours; these conditions are attractive to women, who may require a more stable and regular work schedule to manage their many family
responsibilities. The assessors also heard that the work schedule of a defense advocate has the potential (at least) to be more attractive to women precisely because of its flexibility and lack of set hours. By law, an advocate must have a suitable office for carrying out the performance of his or her work; some women do not have the means to make an initial investment required to rent sufficient office space. Others mentioned that women were less apt to feel comfortable standing up to judges and prosecutors, while male advocates are culturally encouraged to take on this adversarial role in and outside of the courtroom. Some mentioned that economic considerations often force women to leave the profession to be married.

There are significant efforts to bring more women into the profession. In cooperation with the United Nations Development Programme, in 2011 the KCA participated in a one-year traineeship program for 100 trainees, 40 of which were women to improve the training opportunities available to those who were candidates for positions within the justice system. UNDP Support to Judicial Education, January 2012, page 5. In 2013, according to USAID, 42% of the participants were women. Overall, according to the KCA, 1,000 total trainees have gone through the Chamber traineeship program, and all have been placed with government employers or work as advocates. KCA’s Gender and Minorities Commission has developed a strategic plan to encourage women law students and KCA members, and has planned for monthly networking meetings, an annual women’s conference and outreach to women in the regions. KCA also expressed a desire to establish a loan program to encourage women to stay in the legal profession, but to date, the KCA has not been able to find a donor for this program. USAID and the U.S. Department of Justice/Office of Overseas Prosecutorial Development and Training (OPDAT) have partnered with judges and prosecutors, respectively, to establish a Women Judges and Prosecutors Forum to advocate on women’s behalf to the Kosovo Judicial Council and the Kosovo Prosecutorial Council. There is some possibility that the Forum could include women advocates in the future, but it is still a nascent organization and organizers want to strengthen it before adding in the additional element of having and representing women advocates.

Because of the ongoing war crimes trials in Kosovo, there is a small but active community of foreign lawyers who represent or assist in war crimes cases. Foreign lawyers may practice in Kosovo with the completion of certain conditions, including confirming that they are licensed to practice in their home jurisdiction and completing certain requirements from the KCA regulations. By law, lawyers from the European Union and the United States may practice in Kosovo. Kosovó Law on Advocacy ch. VIII, art. 40 (4). There appears to be a discrepancy between what the regulations on foreign lawyers require and what foreign lawyers hear from the KCA administration itself. Interviewees expressed that the existing KCA regulations on foreign lawyers’ practice in Kosovo do not match what they are told by the KCA. For example, one regulation states that foreign lawyers must pay a 5,000 Euro fee to the KCA for each case in which they wish to appear; however, in at least one case, a foreign lawyer wishing to appear to defend a client before the war crimes court paid well in excess of this fee. This discrepancy may be attributed to the fact that the KCA was in the process of amending its own regulations in late 2013, but the discrepancy between the regulation and the practice demonstrated a lack of transparency.

The KCA maintains an Advocates Register that contains advocates’ names and KCA identification numbers. The KCA register also contains information regarding law firms, joint law firms, and law trainees. All records within the Advocates Register are by law public documents (Kosovó Law on Advocacy ch. IX, art. 45) and are published on the KCA website.

Kosovo advocates have a system of three-tiered mandatory CLE requirements that depend on their experience level and age. Advocates who have practiced for less than three years must obtain 15
Advocates with more than three years of practice, must obtain ten credit hours and advocates who are older than 70 years of age must obtain five hours of CLE credit. KCA Regulation on CLE art. 4. The last category includes about 10-15% of the advocates in Kosovo.

Recognizing that it would benefit advocates to receive specialized training and professional development opportunities, the KCA has just begun implementing a plan for future specialization within the legal profession. The Chamber recently drafted regulations for the specialization program, which will begin in 2014 with three programs in commercial law, civil law and criminal law. Eventually, the KCA hopes to implement programs for ten specializations. These specializations will increase the ability of advocates to attract clients by adding a specialty in a specific field to their titles.

The KCA has struggled to provide enough CLE credits for its advocates in the past but that condition is improving. The international donor community, directly or indirectly, had provided most CLE opportunities, but with the current fee structure for advocates that requires 50 Euros to be paid for CLE, the KCA is better able to engage its own experts to create original training materials for courses and provided 60 courses in 2013. The KCA, through USAID’s Kosovo Legal Profession Program, has recently certified 20 trainers to teach CLE; another round of training will be completed in January 2014 to increase the numbers of certified trainers available to provide CLE. In addition, the KCA has plans to implement a distance-learning program in 2014 that will permit advocates to access CLE courses at their convenience.

The KCA has been very successful at obtaining high numbers of compliance with the CLE requirements in 2013. In 2011, requirements became mandatory; however until recent years, compliance was low. In 2012, the KCA began administering fines of 300 Euro for advocates who did not meet the requirements. Most advocates complied when warned about the fines, but one hundred advocates actually received the fine. The fines seemed to communicate the importance and seriousness with which the KCA viewed CLE requirements in a way that previous warnings had not, and compliance is up to 70% (or 92% depending on different information from sources) as of the end of 2012.

The KCA has a Women and Minorities Commission within its governing body, but this Commission has struggled to establish an active presence in the advocate community. Currently, the KCA is working with two experts from the United States to improve the engagement on women’s issues within the KCA and to improve the resources available to the Commission. See Factor 1 for further discussion of these efforts.

In addition to the Kosovar advocates licensed by the Chamber, there are also Serbian, Bosnian and Turkish advocates practicing in Kosovo. The KCA has recently secured funds and hired translators to translate website content, KCA documents and requests into Serbian and English. Moreover, the KCA occasionally holds a meeting with non-Kosovar lawyers to discuss current policies and areas for improvement in engaging minority advocates. According to the KCA, there are no obstacles to these minority advocates being integrated into the KCA; however until recently, there has been little or no effort to accomplish this integration. Currently, the KCA Assembly has four delegates out of 85 from the Serb minority and is now looking for other opportunities to include minority advocates in additional KCA bodies. Currently, Serb members of the KCA are licensed in both Kosovo and Serbia but practice and live in Kosovo.
Macedonia

Macedonian citizens who have graduated in law, completed the required two-year traineeship, and passed the juridical exam may become licensed as advocates. Macedonian Law on Advocacy arts. 12, 26. After meeting these requirements, a would-be advocate must request to enroll in the Register of Advocates. A body of the Macedonian Chamber of Advocates [hereinafter MCA] determines whether the candidate has met the requirements and, if so, enrolls him or her on the Register and issues a license to practice. Id. art. 10(1–2), 13(1). Prior to being issued a license to practice, the candidate must swear an oath to carry out the legal profession conscientiously by adherence to the Constitution, the laws, the Statute of the Bar and the Code of Ethics of the Legal Profession, and to act in a way that will advance the reputation of the legal profession as a public service. Id. art. 11. Advocates must also possess professional liability insurance in a minimum amount of EUR 10,000 (EUR 50,000 for law firms). Statute of the Macedonian Chamber of Advocates art. 76(1) (adopted May 28, 2006, last amended May 18, 2013) [hereinafter MCA Statute]. The candidate must pay a one-time fee of EUR 1,000 (MKD 62,163.40) and annual dues of MKD 500 or EUR 10. Website of the Macedonian Chamber of Advocates, Membership; see also Macedonian Law on Advocacy art. 15(2). If enrollment in the Register is denied, the candidate may appeal to an MCA appellate body; if the appeal is denied a final decision is entered within 15 days, and the final decision may be appealed by bringing an administrative dispute. Macedonian Law on Advocacy art. 13(2–3). Foreign lawyers may carry out their profession in Macedonia only if their country provides reciprocity. Id. art. 14.

According to interviewees, the MCA’s review is limited to ensuring that candidates have met the formal requirements for enrollment in the Register, all candidates who have met the requirements in the Register are enrolled. Although candidates are required to accept the MCA’s Code of Ethics, no training or educational programs are offered to ensure their familiarity with the code. Interviewees did not believe that any bias or discrimination exists, and stated that although they believed that members of ethnic groups other than Albanians and Macedonians are not well represented in the bar, this is due to social barriers preventing these groups from meeting the educational requirements to become an advocate, not due to bias on the part of the legal profession.

The MCA Code of Ethics does oblige advocates to “to continually improve their expert and general knowledge” by conducting research, reading literature, following current events, and participating in professional associations and activities. Macedonian Chamber of Advocates Code of Ethics for Advocates, Associate Advocates, and Trainee Advocates art. 22 (adopted May 25, 2007) [hereinafter MCA Code of Ethics]. However, there is no requirement that advocates complete continuing legal education [hereinafter CLE], and interviewees reported that the MCA co-sponsors trainings with other organizations but does not independently offer CLE. Many Macedonian advocates participated in trainings co-sponsored by ABA ROLI and the MCA on trial skills, in preparation for the December 1, 2013, entry into force of the new Criminal Procedure Code, but interviewees reported that opportunities for CLE or training are scarce. Advocates unanimously reported that they would like to participate in CLE or skills training, and noted that prosecutors and judges receive continuous training via the Judicial Academy while there are no such opportunities for advocates.

Interviewees were not aware of any discrimination against advocates or would-be advocates with respect to entry into or continued practice of the legal profession, and did not believe that any discrimination exists. However, some interviewees noted that the two-year traineeship, which is often unpaid, may be difficult for would-be advocates from economically disadvantaged backgrounds to complete.
Serbia

The right to practice law is acquired by registering in the Directory of Advocates and taking the advocates’ oath. **SERBIAN LAW ON ADVOCACY** art. 5; **SCA STATUTE** art. 132. When applying to register in the Directory of Advocates, candidates must demonstrate that they hold a law degree earned in Serbia or a recognized law degree from another country; have passed the juridical and advocate exams (applicants who were judges or public prosecutors for at least 12 years do not have to take the advocates exam); are citizens of Serbia; are in good health and able to work; are not employed in another field; do not have any felony convictions that would make the applicant unworthy to practice law (as determined at the discretion of the SCA); are not registered in other independent professions or holding a position on a board of directors of a legal entity or bank, government representative, or subject to a non-compete clause preventing the applicant from practicing law; are fit to practice law (as determined at the discretion of the SCA); have an appropriate workspace; and demonstrate that at least three years have elapsed since any previous denial of registration in the Directory of Advocates. **SERBIAN LAW ON ADVOCACY** art. 7; **SCA STATUTE** art. 133. Foreign nationals licensed to practice law in their home country may also be registered as advocates under certain restrictions. Foreign nationals registered in Register A are restricted to providing oral and written legal advice and opinion related to the application of the laws of their home country or international law (**SCA STATUTE** art. 164; see also **SERBIAN LAW ON ADVOCACY** arts. 6, 14), while foreign nationals registered in Register B may practice law in Serbia only after completing a three-year period practicing under the supervision of a Serbian advocate. **SCA STATUTE** art. 172, 173; see also **SERBIAN LAW ON ADVOCACY** arts. 6, 14.

The decision to admit a candidate to the bar is made by the local Chamber of Advocates in accordance with the guidelines set forth in the Legal Profession Act and SCA Statute. **SERBIAN LAW ON ADVOCACY** art. 8. If a candidate is rejected, the local Chamber must notify the SCA and the other local chambers. *Id.* If the candidate is admitted, the candidate must pay the required fees and take the advocates’ oath within 30 days and is then registered in the Directory of Advocates and issued an identification card. *Id.* arts. 9, 10. Advocates must possess professional liability insurance, which may be purchased individually or as a collective insurance contract with the SCA. **SCA STATUTE** arts. 138, 139, 155, 244, 273, 275. Advocates who move from the territory of one local Chamber to another must request removal from their old chamber’s register and register with the new local chamber within 15 days. **SERBIAN LAW ON ADVOCACY** art. 13. Interviewees reported that there is no bias or discrimination and that anyone who meets the formal requirements to become an advocate will be registered, but some interviewees noted that women are not well represented in the profession; they believed that this women law graduates are more likely to become judges, noting that this may be in part because judges have more stable schedules but also that judges are generally considered to occupy a lower social status and have a lower income than successful advocates.

Advocates pay a one-time registration fee of EUR 500 (payable in RSD) if they are registering after completing an traineeship in an advocate’s office, and EUR 5,000 if they are registering after working in another profession (e.g., in the court system or with a CSO). (It should be noted that in February 2014, the Constitutional Court decided that the fees set by the SCA are unconstitutional, but it remains to be seen what steps the SCA will take to comply with the Constitutional Court’s decision.) Monthly membership fees are set by the local Chamber and vary from RSD 1,000 to 2,600 (EUR 8.59–22.33) per month.

Advocates interviewed by the assessment team reported a lack of opportunities for professional development. Although the SCA Statute creates an Advocates Academy, see arts. 281–287,
interviewees reported that there is no required continuing legal education, and they did not regularly participate in educational or professional development opportunities offered by the bar. Advocates’ primary focus was developing the skills needed under the new Criminal Procedure Code, and many advocates have participated in skills trainings offered by the United States Department of Justice and Partners Serbia/ABA ROLI, in cooperation with the SCA. However, some advocates stated that the trainings offered were inadequate because the skills taught in the trainings, such as direct and cross examination, could not realistically be used in Serbian courts. Several interviewees emphasized that judges did not allow them to employ what they perceived as American-style cross examination techniques, and some interviewees noted that testimony is entered into the record by the judge, who repeats the testimony to be entered, thus disrupting the flow of witness examinations. Some interviewees were also skeptical about learning to negotiate plea bargains, indicating that they lacked trust in prosecutors and that prosecutors were not prepared to offer sentences reduced from what a defendant would likely receive if convicted at trial. Even interviewees who were satisfied with the trainings they had received on the new criminal procedure were skeptical that they would be able to implement the skills they’d learned, because they believed that prosecutors were unprepared to operate under the new system.

**Comparative Highlights**

Although the Laws on Advocacy, Bar Statutes, and/or Codes of Ethics in all five countries encourage advocates to pursue continuing education and professional development, CLE is required only in Albania and Kosovo, and only in Kosovo is this requirement actually put into practice, while in Bosnia a training course is required for advocates representing clients in war crimes cases in the State Court. Kosovo is the only country with a functioning training center for advocates, and plans to develop training centers are underway in Albania and Serbia. In Macedonia and Serbia, where new Criminal Procedure Codes went into effect in late 2013, advocates have been receiving voluntary skills trainings sponsored by foreign donors, NGOs, and the Chambers of Advocates, although many advocates still felt unprepared to practice in the new adversarial system. Advocates in Macedonia and Serbia indicated that the fee for registering as an advocate was too high, while in Kosovo advocates believed the annual dues were too high. Advocates in all five countries are required to possess professional liability insurance, although it is unclear to what extent these requirements are enforced. Although no interviewees reported discrimination or bias in licensing, interviewees in Serbia and Kosovo identified low participation of women and interviewees in all countries identified low participation of members of ethnic minorities and marginalized groups in the profession, but Kosovo was unique in having initiatives aimed at bringing more women into the profession.

**For Consideration**

Should advocates in all countries be required to complete CLE? How can sustainable, locally led CLE programs be created and implemented?

Should the registration fee and dues structure of the Chambers of Advocates in the five countries be reviewed? How could the Chambers provide better benefits for their members?

What regional initiatives could be developed to assist advocates in learning to practice law in the adversarial system?

How can the legal profession increase participation by women and minorities?
Factor 3: Professional Independence

Lawyers must be able to counsel and represent their clients free of outside influence from any source, including conflicts of interest.

**International Standards**

Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgment without any restrictions, influences, pressures, or undue interference from any quarter or for any reason.\(^\text{13}\) Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel and to consult with their clients freely both within their own country and abroad; and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.\(^\text{14}\) Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.\(^\text{15}\) Lawyers should enjoy freedom of belief, expression, movement, association, and assembly, and the right to take part in public discussions concerning the law and the administration of justice and suggest legislative reforms. Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards.\(^\text{16}\)

The independence of lawyers in dealing with persons deprived of their liberty shall be guaranteed so as to ensure that they have free, fair, and confidential legal assistance, including the lawyer’s right of access to such persons. Safeguards shall be built to avoid any possible suggestion of collusion, arrangement, or dependence between the lawyer who acts for them and the authorities.\(^\text{17}\)

Independence also requires that a lawyer act for a client in the absence of improper conflicting self-interest, undue external influences, or any concern which may interfere with a client’s best interest or the lawyer’s professional judgment. The fact that lawyers are paid by a third party must not affect their independence and professional judgment in rendering their services to the client.\(^\text{18}\) Lawyers engaged in legal service programs and organizations financed wholly or in part from public funds shall enjoy full guarantees of their professional independence.\(^\text{19}\)

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\(^\text{13}\) CoE Recommendations, Preamble.  
\(^\text{14}\) UN Basic Principles, Principle 16.  
\(^\text{15}\) UN Basic Principles, Principle 22.  
\(^\text{16}\) CoE Recommendations, Principle I(3) and (4).  
\(^\text{17}\) IBA Standards for Independence, Standard 13.  
\(^\text{19}\) IBA Standards for Independence, Standard 16.
Analysis

Albania

The Albanian Criminal Procedure Code protects defense advocates against certain actions by the prosecution or government. For example, the law prohibits searching the office of defense advocates unless they or those that share an office with them are defendants in their own criminal proceedings. ALBANIA CRIMINAL PROCEDURE CODE ch. V, art.52 (1(a)). If police wish to search the office of a defense advocate, the Criminal Procedure Code provides that the relevant authority notifies the NCA so that an NCA member could be present during the search. Id. ch. V, art. 52 (2). The Code also protects the communications of defense advocates, prohibiting eavesdropping on defense advocate or conversations or inspecting the mail between a defense advocate and his client. Id. ch. V, art. 52 (4, 5).

An underlying theme to most interviews in Albania was the corruption that exists in society in general, but especially within the justice system. One interviewee told the assessor that advocates sometimes charge their clients a “success fee” – money that the advocate will use in attempts to bribe either a judge or prosecutor to reach a favorable outcome. This success fee is in addition to other fees for legal services. If neither the judge nor the prosecutor in the case will take the money, the fee is returned to the client. If the fee is accepted, the client may not know which party—the judge or prosecutor—accepted the success fee, but he will have obtained the outcome he paid for. One advocate who has practiced criminal law for many years on serious criminal cases stated that it is not possible to win cases on legal or factual issues, and went so far to say that some advocates have never won a case on the merits. Another stated that he had sometimes won on the merits of cases, but only in very “small” cases. In almost all interviewees’ views, defense advocates often win clients by extolling the extent of their personal networks, implying or promising that their connections with judges and prosecutors will obtain a better result for the defendant. Interestingly, this better result may not be a declaration of innocence, but could also be simply a faster trial, or even a lower sentence or fewer charges.

In criminal cases, the inequality of arms can prevent a defense advocate from adequately representing his client. Interviewees stated that some judges often copy and paste the prosecutor’s brief into the judicial decision, often not adding any judicial analysis or properly discussing the defense. In many cases, the legal reasoning is weak and judges do not adequately connect the law with the facts of the instant case. Judges treat prosecutors with preferential treatment, and in many proceedings, prosecutors take better seating in the courtroom or judicial office, often sitting next to the judge while the defense advocate and his client sit apart. One interviewee worked for several years as an advocate but decided to become a prosecutor, in part because he felt that advocates were not well-respected by judges, prosecutors or the general public.

Bosnia and Herzegovina

The practice of law in Bosnia-Herzegovina is an independent professional activity. RS LAW ON THE LEGAL PROFESSION art. 2; FBiH LAW ON THE LEGAL PROFESSION art. 2. The independence of the profession is realized by advocates’ independent practice of providing legal assistance; parties’ right to freely choose their advocate; the organization of advocates into an independent, self-governing Chamber of Advocates with mandatory membership; the Statute of the Chambers of Advocates; the Advocates’ Code of Ethics; the bar’s authority to determine the right to practice law, or temporarily or permanently revoke the right to practice law; and the bar’s cooperation with
other Chambers within the BiH and with foreign and international bar associations, institutions, and organizations. *Id.*

Advocates must be independent in their work, except to the extent necessary for the functioning of law firms and joint legal practices. Advocates are not allowed to perform activities that are incompatible with the independence and reputation of the legal profession. RS LAW ON THE LEGAL PROFESSION arts. 3–5; FBiH LAW ON THE LEGAL PROFESSION arts. 3, 4, 6. Advocates have the right and duty to undertake all actions that they believe to be in the interest of their clients, as long as these actions are within the framework of the law and the limits of the authorization given by the client. RS LAW ON THE LEGAL PROFESSION art. 5; FBiH LAW ON THE LEGAL PROFESSION art. 6. Advocates are required to keep confidential information entrusted to them by clients in the course of representation, except where confidentiality is waived by the client either explicitly or implicitly. RS LAW ON THE LEGAL PROFESSION art. 44; FBiH LAW ON THE LEGAL PROFESSION art. 5.

All advocates having their main office in the territory of the FBiH are obliged to be members of the FBiH Chamber of Advocates, while advocates having their main office in the territory of RS are obliged to be a member of the RS Chamber of Advocates. RS LAW ON THE LEGAL PROFESSION art. 7; FBiH LAW ON THE LEGAL PROFESSION art. 9. Both Chambers are established by law as independent, self-governing organizations and are responsible for ensuring the professional autonomy of advocates. RS LAW ON THE LEGAL PROFESSION art. 9; FBiH LAW ON THE LEGAL PROFESSION arts. 9, 11. Advocates in BiH generally have solo legal practices, although some interviewees said they had joined a family member's law office as a trainee and continued working there after becoming an advocate. Few advocates specialize in a single area of law, in part because they would not be able to maintain enough clients to support their practice if they didn't take both civil and criminal cases.

Interviewees indicated that the professional independence of advocates is respected in practice, as is the autonomous functioning of the Chambers of Advocates. No interviewees reported a pattern of undue pressure or attempts at influence from any actor. Some advocates interviewed by the assessment team reported a lack of respect for the confidentiality of advocate/client communications by state authorities and prosecutors, which is discussed further in Factor 6.

**Kosovo**

Advocates in Kosovo have traditionally worked as solo practitioners. In 2001, the first advocates began working together in the same office, one handling criminal cases and one handling civil cases, but none were registered as law firms. This arrangement seems to be common today and there are only four law firms registered as firms with KCA. There are two groups of advocates who are registered with KCA as “joint offices,” an organization structure defined in the Law on Advocacy. Some of these groups of advocates are registered as law firms with the KCA. KOSOVO LAW ON ADVOCACY ch. VI, art. 29.

Some advocates stated that there were no regulatory impediments to forming firms; however the small legal market in Kosovo hinders the creation of larger firms because they are more expensive to run. Advocates acting as solo practitioners have fewer and smaller expenses and are therefore better poised to be financially successful. Other advocates expressed that the fees required to register as a law firm were prohibitively high (1,500 Euro) initially, and in addition, each advocate has to pay his or her own KCA member dues and prevented some advocates from forming firms that might serve their clients more effectively and with greater expertise. Increased ability for advocates to form firms could lead to increased capacity for those firms to host law trainees, or to contribute to the continued training for advocate candidates. Some foreign law firms operate as law
firms in Kosovo, but are registered as “consulting firms” providing legal services, which violates the Law on Advocacy because they are not registered with KCA as law firms.

Advocates are obligated to keep confidential all data, evidence and information given to them during their representation of their clients, regardless of the passage of time. Id. ch. III, art. 12 (1)(1.2); ch. III, art. 17 (2). The advocate is also responsible for the employees in his or her office to maintain confidentiality. Id. KOSOVO LAW ON ADVOCACY, ch. III, art. 17 (1).

By law, advocates are prohibited from advertising (KOSOVO ETHICS CODE art. 94), but some advocates circumvent this regulation by offering their services as “legal experts” to television stations. During their statements to the television stations, they mention their own law practices and receive, in effect, free advertising. Others obtain work by spending time in and around prisons or police stations, or encouraging police and prosecutors to call them if a defendant requires counsel.

By law, advocates should have access to their clients at all stages of criminal proceedings; however, advocates indicated to the assessment team that if a defendant is held in detention, it can be difficult to obtain access to the client to speak.

Advocates are required to have professional liability insurance but this requirement is not enforced at the current time. KOSOVO LAW ON ADVOCACY, ch. VI, art. 35 (1). The KCA is working on regulations and mechanisms through which advocates could receive such insurance, but has not yet issued guidance regarding this requirement.

**Macedonia**

In Macedonia, the profession of advocacy is an autonomous and independent public service that secures and provides legal assistance and performs public authorizations. MACEDONIAN LAW ON ADVOCACY art. 2(1). The autonomy and independence of the profession is maintained through advocates’ free and independent practice of law, clients’ freedom to choose their advocate, the organization of advocates in an independently funded professional association, the autonomy of the MCA, the MCA’s ability to enroll and remove advocates from the Register of Advocates, and upholding the MCA Code of Ethics. Id. art. 5. Advocates are free, independent, and autonomous in their practice and, within the framework of the law and the acts of the MCA, autonomously decide how to best represent the rights and interests of their clients. Id. art. 15(1).

Advocates must carry out their duties independently and without influence from any third party, their own personal interests, or the interests of a third party. MCA Code of Ethics, General Provisions art. 1. Advocates are also forbidden from entering into certain professions that are considered incompatible with advocacy, are prohibited from undertaking any activities that oppose a client’s interests, and are required to act in the client’s best interests and put the client’s interests before any other. Id. General Provisions arts. 4, 6; sec. 1 (Relation to Clients), art. 6. A majority of advocates in Macedonia are solo practitioners who practice multiple areas of law, and law firms or partnerships are not common.

Advocates interviewed by the assessment team gave a mixed assessment of their professional independence. Advocates reported that the profession in general is independent, and that the MCA is autonomous in practice and is not influenced by any outside interests. However, many advocates believed that the independence of individual advocate is not respected in practice. Some advocates reported that they have been essentially prevented from seeing a client detained at a police station because the police have not informed the arrestee of his or her right to counsel, although they are
required to be informed prior to any interrogation. **Criminal Procedure Code of the Republic of Macedonia** arts. 69(2), 71(2) (*adopted Nov. 18, 2010, entered into force Dec. 1, 2014*) [hereinafter **Macedonian Criminal Proc. Code**]. Some interviewees also believed that some advocates appointed ex officio to represent defendants unable to afford an advocate are not independent; these interviewees noted that judges select the appointed counsel from a list of advocates willing to take on ex officio appointments, but that rather than selecting counsel at random or in alphabetical order, some judges often hand pick their own preferred counsel. Some interviewees believed that judges select advocates who are unlikely to represent their clients zealously or “cause problems” that would make the case more complicated.

Advocates interviewed by the assessment team did not report any harassment, intimidation, violation of confidentiality, or pressure related to their practice of law from government actors or any other party, although they expressed serious concerns about new tax requirements requiring advocates to have a cash register that must be used to take payment in cash. Advocates were concerned that, in the event that tax authorities visit their office to audit their tax payments, the tax authorities would be able to review confidential client files in order to ascertain the amount paid by clients and the tax owed. However, the Law on the Bar does state that advocates’ offices may only be searched on a matter specified in a search warrant issued by a competent judge in a criminal proceeding; the search must be carried out in the presence of the advocate and an MCA representative and the officials carrying out the search may not have access to any other written materials, acts, files, and archives beyond those specified in the warrant. **Macedonian Law on Advocacy** art. 21. It remains to be seen if this will be respected by tax authorities in practice. Another area of concern for Macedonian advocates is a reported Government requirement that advocates report suspected fraud or financial misconduct by their clients, which would violate attorney-client confidentiality. It also remains to be seen if this requirement will be enforced, and no advocate could be detained for violating this requirement without prior authorization of the MCA. *Id.*

**Serbia**

The legal profession in Serbia is established as an independent, autonomous activity that consists of providing legal assistance to physical and legal persons. **Serbian Law on Advocacy** art. 2. The autonomy and independence of the profession is maintained through the independent work of legal professionals; the right of clients to freely choose their advocate; the organization of advocates within the SCA and the local chambers, which are autonomous and independent organizations; the adoption of the SCA Statute and bar regulations; and the profession’s self-regulation and autonomous decisions on admission to the bar and termination of the right to practice law. *Id.*

The SCA Code of Ethics also requires advocates to act independently and autonomously. Advocates must base their representation of clients on the effective law, jurisprudence, practice, and international legal standards, in accordance with their beliefs or interpretations. **Code of Professional Ethics of Advocates** rule 4.1 (*adopted Feb. 11, 2012*) [hereinafter **SCA Code of Ethics**]. Advocates must take appropriate legal measures to prevent and have punished anyone who uses duress, threat, force, or any illegal form of pressure in order to influence the advocate’s representation of his or her client, or anyone who subjects the advocate to sanctions or the threat of sanctions for representation conducted in accordance with rule 4.1. *Id.* rule 4.2. The only permissible deviation from the principle of independence is to the extent necessary for the work of a joint legal practice. *Id.* rule 4.3. Advocates must autonomously make decisions on the acceptance, manner, and termination of representation, as well as on the operation of their practice; the only permissible deviation from the principle of autonomy is for the operation of a joint legal practice. *Id.*
rule 5.1–5.3. The Code of Ethics, as well as the SCA Statute and the Legal Profession Act, also require advocates to maintain the confidentiality of information provided by the client to the advocate, emphasizing that confidentiality is an indispensable precondition of an independent and autonomous legal profession. Id. rule 9; see also SCA STATUTE art. 266, SERBIAN LAW ON ADVOCACY art. 20. Advocates are further prohibited from holding any profession or job that is contrary to the independence of the legal profession, or from registering in any other independent profession. SERBIAN LAW ON ADVOCACY art. 21.

Interviewees reported that the independence and autonomy of the legal profession is respected in practice. The independence of the profession was a major priority of interviewees and was paramount to their definition of what it means to be an advocate; however, some interviewees believed that the definition of professional independence was taken too far when it was used as a justification for opposing the creation of a national legal aid system. Several interviewees, including representatives of the Chamber of Advocates, opposed the creation of a state-funded legal aid system on the grounds that legal aid advocates would be incapable of working independently since they would draw their salary from the state, citing the legacy of the dictatorship and preceding Communist era.

Although there are more law firms and partnerships in Serbia than in other countries in the region, a majority of Serbian advocates are solo practitioners who practice multiple areas of law. Many interviewees believed that advocates would benefit from specializing, but most advocates interviewed said that they would not be able to earn a living by practicing only one area of law.

**Comparative Highlights**

There is a varying level of professional independence in the five countries. In general, interviewees believed that both the Chambers of Advocates and profession as a whole are independent and autonomous, but the independence of individual advocates varies. Serbian, Bosnian, Macedonian, and Kosovar advocates believed that their independence, autonomy, and duties to clients are generally respected by judges and prosecutors. In Albania, corruption is a major impediment to advocates’ independence, and advocates reported paying or being solicited to pay bribes and being pressured by judges or prosecutors to represent their clients in a certain way. In Macedonia, advocates had serious concerns about new government requirements that appear to allow tax investigators access to advocates’ client files and require advocates to report on wrongdoing by their clients. In all countries, advocates reported that they are sometimes prevented from seeing their clients or that their clients are not informed of the right to see their advocate at the police station (see also Factor 5).

**For Consideration**

How can advocates promote respect for the independence and autonomy of advocates within their own countries, and support their colleagues in other countries whose independence is threatened or infringed upon by government actors?

How can the legal profession fight undue influence on advocates and corruption within and from outside the profession?

How can advocates foster good professional relationships and respect for the role of advocates among judges, prosecutors, police, and advocates?

Would increased specialization and formation of law firms and partnerships benefit the legal profession?
Factor 4: Ethics, Discipline, and Immunity

*Ethical standards should be drawn up and discipline enforced by professional associations of lawyers. Lawyers should enjoy immunity for statements made in good faith in their professional capacity.*

**International Standards**

Lawyers shall at all times maintain the honor and dignity of their profession as essential agents of the administration of justice, and shall at all times maintain the highest standards of honesty, integrity and fairness towards clients, the court, colleagues, and all those with whom the lawyer comes into professional contact.

Professional associations of lawyers should draw up professional standards and codes of conduct and should ensure that, in defending the legitimate interests and rights of their clients, lawyers have a duty to act independently, diligently, and fairly. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal, or other legal or administrative authority.

**Analysis**

**Albania**

The Attorney Ethics Code establishes the rules of professional conduct for advocates, based on the Constitution of the Republic of Albania, ratified international agreements, laws of Albania and the custom and tradition of the legal profession in Albania ("Norms of the Ethics Code," Attorney Ethics Code, adopted November 12, 2005). According to the Albania Ethics Code, "the advocate's role lays on him a variety of legal and moral obligations towards 1) the client, 2) the Court and other authorities before whom the advocate defends the client's case or acts in his/her behalf, 3) the Chamber of Advocates in general and each fellow member of it in particular, and 4) the Public, for whom the existence of a free, independent and self-governing profession is an essential means of safeguarding human rights in [the] face of the power of the state and other interests in society."


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20 UN Basic Principles, Principle 12.
24 UN Basic Principles, Principle 20; see also IBA Standards on Independence, Standard 11.
The Ethics Code’s provisions cover an advocate’s independence, (including a requirement that advocates display in their offices their licenses, the list of minimum payment fees for legal services, and the Albanian and Chamber of Advocates flags on their desks, see ALBANIA ETHICS CODE art. 4), relations with clients (Id. ch. II, art. 15-29), relations with the court (Id. ch. III, art. 30-34), relations between advocates (Id. ch. IV, art. 35-48), and relations with the public (Id. ch. V, art. 49-54). The Code includes a provision for disciplinary proceedings, to be initiated if an advocate does not “apply” the Ethics Code. Id. ch. V, art. 54.

The disciplinary system in Albania consists of a Committee within the NCA. The Committee was formally established in the spring of 2013 and as of December 2013, had judged 25 cases. Eighty total cases have been launched; most of those 80 have arisen from the case of Dritan Dajti, accused of multiple offenses connected with the shooting of four police officers in 2009. In the Dajti case, each defendant has his own advocate, many of whom have used delaying techniques to prevent the trial from proceeding. Some advocates have received threats from other defendants or their families, and have withdrawn from their representation as a consequence of the threats, causing significant delays as the defendant or the court finds another advocate to represent him. In addition, the recent Gerdec case has also become emblematic of the lack of professionalism among advocates; in that multi-defendant case, defense advocates colluded to delay proceedings by taking turns not appearing in court, requiring the court to postpone proceedings. From interviews, it seems that both MOJ pressure and the fallout from the Dajti and Gerdec cases have driven the increased demand for stronger discipline in the advocate community. Interviewees connected to the criminal justice system in various ways repeatedly mentioned this and these two cases as extreme examples of the type of unprofessionalism that exists among advocates, and of how the criminal justice system is abused and does not serve the interests of justice.

The Disciplinary Committee consists of six members of the NCA, one member from the Ministry of Justice, one member of the High Council of Justice and one member from civil society or academia. ALBANIA LAW ON ADVOCACY art. 42(1). The Committee accepts complaints from clients, non-client victims of misconduct, judges, prosecutors, the NCA, another advocate, the Minister of Justice, tax authorities and any other state authority through either an in-person meeting or by mail. Id. art. 39. One interviewee stated that most, if not all, complaints at this time come from judges, not clients. Once a complaint is filed, the Committee informs the advocate and sets a date for a hearing. The advocate may have another advocate represent him or he may appear pro se. A Commissioner assists the Committee by gathering information, preparing the case, and analyzing the complaint. The penalties of the Committee range from a warning to suspension of an advocate’s license. Appeals from the Committee’s decisions go to a new administrative court. Of the complaints from clients, the Committee hears complaints about advocates’ relationships with clients and the advocates’ work in court. The Committee at this time does not make public its proceedings or decisions; advocates have expressed concerns over their privacy and these concerns have prevented the Committee from exploring the possibility of publishing its cases. As of late 2013, the Committee had suspended licenses for three advocates because they were accused of crimes of corruption.

The disciplinary system within the NCA is in a time of transition. Some interviewees expressed a belief that historically, the NCA believed that disciplining advocates was not within its mandate. Recently, though, the NCA has begun an overhaul of the disciplinary mechanisms; some interviewees attributed the recent action to the fact that the Ministry of Justice exerted pressure on the Chamber to enforce discipline within the advocate community or else lose the ability to self-govern. The Committee’s work is relatively new and so many in the public and even in the criminal justice community did not show a deep understanding of how the system works and what the
possible outcomes might be for cases. Moreover, very frequently, interviewees reminded the assessors that the legal profession is quite young in Albania and that like all institutions that govern or serve advocates, the NCA and its internal bodies are only eight years old.

At the current time, the disciplinary system within the Chamber has well-defined rules that provide opportunities for complaints and sanctions for advocates who violate NCA or ethical rules, but until recently, there has been little follow-through in enforcing the rules. After the long history of the government control over the legal profession, the advocate community has been reluctant to ask Chamber members to submit themselves to discipline or to give the Chamber power over them. Some interviewees told the assessment team that the recent emphasis on discipline may have stemmed from judges, who working through the Ministry of Justice, expressed their dissatisfaction with the professionalism of advocates to the Chamber. The Chamber was thus pressured into improving the disciplinary system or having the Ministry take over control.

Although advocates do not possess immunity, the law prohibits searching the office of defense advocates unless they or those that share an office with them are defendants in their own criminal proceedings and requires that the search be carried out in the presence of a representative of the NCA. *Albania Criminal Procedure Code* ch. V, art. 52 (1(a)), (2).

**Bosnia and Herzegovina**

Both Chambers of Advocates are required by law to adopt a Code of Ethics for Advocates. *RS Law on the Legal Profession* art. 2; *FBiH Law on the Legal Profession* art. 2. The *Advocates Ethics Code of the Chamber of Advocates of the Republika Srpska* (adopted Nov. 27, 2003) [hereinafter RS Ethics Code] sets forth standards for the moral character of advocates, requiring advocates to preserve honor, moral character, independence, and expertise; respect the truth and the law as well as the independence of the profession; to reject any attempt to influence the advocate’s independent activities and to inform the Chamber of Advocates of any attempted influence; not to engage in any activities other than the practice of law; to continually seek professional development; to assist in training trainee advocates; to provide legal assistance to persons who cannot afford to pay for service or to clients assigned to the advocate by an authorized body of the Chamber or of other organizations (e.g., to serve as court-appointed counsel); and prohibits advocates from soliciting new clients or recommendations to clients or from presenting the fact that the advocate held a public office prior to becoming an advocate as an advantage in relation to other advocates. *Id.* art. 2.

The RS Ethics Code also covers the attorney/client relationship, as well as the relationship between advocates and the courts, other advocates, and trainees, and requires the protection of client confidentiality. *Id.* arts. 3–7.

The *Advocates Ethics Code of the Chamber of Advocates of the FBiH* (adopted Dec. 14, 2002) [hereinafter FBiH Ethics Code] has similar requirements to the RS Ethics Code. It likewise begins with requirements for the moral fitness of advocates, requiring that advocates work independently, conscientiously, and competently; be free from any influence, external pressure, or conflict of interest; requiring that the advocate report attempts at influence to the competent body of the Chamber of Advocates; to continuously improve professional development by reviewing literature, participating in professional conferences, and other activities; to act in the best interest of clients and place client interests above the interests of the advocate or any other party; and to assist other advocates, in particular by providing assistance in the training of trainees. *FBiH Ethics Code* Rule I.

The FBiH Ethics Code also covers the attorney/client relationship, as well as the relationship between advocates and the courts, other advocates, and trainees, and requires the protection of client confidentiality. *Id.* rules II–VII.
Both the RS and BiH Chambers employ similar disciplinary schemes. Advocates and trainee advocates, as well as law firms and joint legal offices, may be subject to disciplinary sanctions for failure to conscientiously carry out the practice of law or violations of the Codes of Ethics. See RS LAW ON THE LEGAL PROFESSION art. 78; FBiH LAW ON THE LEGAL PROFESSION art. 56; RS Ethics Code art. 1; FBiH Ethics Code rule I(9). Disciplinary actions are carried out by the competent bodies of the relevant Chamber of Advocates, specifically, by a Disciplinary Prosecutor and Disciplinary Court, which are appointed by the Assembly of the Chamber of Advocates. A complaint may be filed by anyone with the Disciplinary Prosecutor (in the FBiH the complaint is filed with the Disciplinary Prosecutor of the local branch of the Chamber); the Disciplinary Prosecutor must review the complaint and, upon finding that it reveals a prima facia case that an advocate has committed a disciplinary violation, must forward the complaint to the Disciplinary Court. The advocate against whom the complaint has been made has the right to be notified of the allegations and evidence supporting the complaint; the right to a fair hearing; the right to appear at any hearing and defend him or herself with legal counsel; and the right to appeal an adverse finding to a competent court. FBiH LAW ON THE LEGAL PROFESSION art. 57; see also RS LAW ON THE LEGAL PROFESSION art. 79.

Sanctions for a minor violation may include a private warning, a public warning, and/or a fine not to exceed 2,000KM (USD 1,407) for advocates or 1,000KM (USD 703) for trainees. For a major violation, sanctions may include a fine not to exceed 10,000KM (USD 7,033) for advocates or 5,000KM (USD 3,517) for trainees, a suspension of the right to practice law or perform the activities of a trainee advocate for a period of six months to five years; and/or removal from the Register of Advocates or Trainee Advocates during the period of suspension of the right to practice law or perform the activities of a trainee advocate. RS LAW ON THE LEGAL PROFESSION art. 81; FBiH LAW ON THE LEGAL PROFESSION art. 59. In determining the sanction, the disciplinary court should consider the severity of the offense and its consequences; the advocate or trainee’s degree of responsibility; the circumstances under which the offense was committed; the previous work and behavior of the offender; and any other circumstances that may affect the decision on the severity and type of sanction. RS LAW ON THE LEGAL PROFESSION art. 79; FBiH LAW ON THE LEGAL PROFESSION art. 57. Removal from the Register should be used only in cases where a serious disciplinary offense is found and the severity of the offense makes it clear that the offender is unsuitable to continue practicing law or performing the activities of an trainee. Id.

In practice, interviewees believed that the Codes of Ethics and related disciplinary procedures are not adequately enforced. Interviewees were unaware of any situation in which an advocate had been disciplined for any action other than failure to pay bar membership dues, and the Chambers of Advocates were unable to provide specific cases of disciplinary complaints that had been considered or adjudicated by the Disciplinary Courts.

The laws specifically provide advocates with the right to undertake all lawful actions in the interest of their client. RS LAW ON THE LEGAL PROFESSION art. 5; FBiH LAW ON THE LEGAL PROFESSION art. 6. Advocates may not be held civilly or criminally liable for statements made in the course of providing legal representation before a court of law or other body. RS LAW ON THE LEGAL PROFESSION art. 41; FBiH LAW ON THE LEGAL PROFESSION art. 26. Courts must inform the Chamber of Advocates without delay if an advocate or trainee advocate is arrested or detained. RS LAW ON THE LEGAL PROFESSION art. 42; FBiH LAW ON THE LEGAL PROFESSION art. 27.

Kosovo

The Chamber of Advocates’ Professional Advocates Code of Ethics “determines rules and principles of conduct” for advocates in their practice of law. KOSOVO CODE OF ETHICS ch. I, art. 1. Under the Code,
Advocates “should gain [their] client’s trust, the trust of judicial bodies and other entities” before which he or she appears. *Id.* art. 7. The Code outlines how advocates should act with regard to their relations with their clients (*Id.* ch. III), with the Chamber of Advocates (*Id.* ch. V), with courts, administrative bodies and state authorities (*Id.* ch. VI), with opposing counsel (*Id.* ch.VIII), with other advocates (*Id.* ch. IX), and with other legal practitioners, such as legal jurists preparing to become advocates (*Id.* ch. X).

By law, advocates in Kosovo are “obliged to provide legal aid in a professional, conscientious and dignified manner in light with the present law, Statute and Code.” *Kosovo Law on Advocacy* ch. III, art. 12 (1) 1.1. The KCA is empowered with the right to discipline advocates by imposing various sanctions, ranging from a warning to permanent removal from the register of advocates. *Id.* ch. XI, art. 51 (1) (1.5-2.3).

The KCA maintains a Disciplinary Committee to enforce the disciplinary regulations. The Committee has five members who sit in three-member panels and take complaints from judges, prosecutors and members of the general public. Complaint procedures are published on the KCA website and the U.S. State Department program “Justice and the People” is working with KCA to ensure transparency of the complaint process and the results. As of late 2013, the Committee had hired a disciplinary prosecutor to gather evidence, investigate, bring cases against advocates and provide information to the Committee. This person will be an independent actor, but paid by the KCA. Appeals from the Disciplinary Committee are taken to a competent court. *Law on the Bar* ch. XI, art. 55. The Disciplinary Committee has had a total of 93 cases in 2013.

The KCA has resisted making disciplinary actions public; the advocate community is small and members do not want to violate privacy rights by publishing such actions against one another. But in its 2012 annual report, the KCA published disciplinary data for the first time and in a recent example, the KCA removed an advocate’s license because he had been convicted of a crime, and sent a notice to all courts in Kosovo informing the courts of the removal. This action did a great deal to show judges that the KCA can discipline its members and enforce its own rules and regulations.

The current KCA leadership is generally respected for enforcing the regulations and requirements of the KCA. As detailed below, mandatory CLE requirements were not enforced until very recently and the imposition of fines has sharply increased the compliance with regulations. This is a culture change that has taken time to enact but has potential to truly improve the quality of defense advocacy in Kosovo.

By law, advocates are protected from detention for criminal offenses related to the performance of their legal services to clients without a competent court’s decision (*Kosovo Law on Advocacy* ch. VI, art. 33 (1)), and their offices are protected from searches by police except in cases where a competent court has approved the search. If the office is to be searched, an appointee from the KCA has the right to be present during the search. *Id.* ch. VI, art. 33 (3–4).

**Macedonia**

The MCA has established a Code of Ethics which all advocates must agree to prior to being enrolled in the Register of Advocates. The Code of Ethics covers a broad array of topics, setting standards related to the independence, integrity, and reliability of advocates; prohibition of advertising; outside employment; the advocate/client relationship; relationship with the courts and administrative bodies; relationship with other advocates and the Chamber of Advocates;
confidentiality; continuing education and moral fitness; relationship with trainee advocates; and advocates’ offices.

The Law on the Bar sets forth accountability measures for advocates who do not professionally and conscientiously discharge their legal practice and uphold the reputation of the legal profession. **MACEDONIAN LAW ON ADVOCACY** art. 30(1). Nonperformance or obviously negligent performance of legal assistance or certification of public documents; failure to undertake actions to protect a client’s interests and rights; and breach of confidentiality are considered especially serious infringements. *Id.* art. 30(2). The MCA is responsible for determining violations of professional duties and failure to uphold the reputation of the legal profession. *Id.* art. 30(3); 34(3). Attorneys found in violation may face an official warning, a fine equal to ten times the cost of annual MCA dues, and a temporary suspension from practice for up to one year. *Id.* art. 31(1). An advocate may appeal the disciplinary measure to a body of the MCA, and if the appeal is denied, the advocate may appeal the final decision by bringing an administrative dispute. *Id.* art. 32.

Advocates can lose the right to practice law under certain conditions established in the Law on the Bar, including renouncing the right to practice law, losing Macedonian citizenship, losing the ability to work as an advocate, upon conviction of a crime carrying a sentence of at least six months imprisonment; failure to pay membership fees, or denial of a license to practice law. **MACEDONIAN LAW ON ADVOCACY** art. 23(1–7). The MCA Assembly appoints a Disciplinary Prosecutor, Disciplinary Tribunal, and Appeals Tribunal. **MCA STATUTE** art. 19. The disciplinary prosecutor, who has three deputy prosecutors, may initiate disciplinary charges against members suspected of committing disciplinary violations. *Id.* art. 26. The Disciplinary Tribunal, which consists of three members, adjudicates disciplinary cases filed against members of the MCA according to procedures set forth in the Law on Advocacy. *Id.* art. 27. Decisions of the Disciplinary Tribunal may be appealed to the five-member Appeals Tribunal. *Id.* art. 29. A final decision by the MCA may be appealed by bringing an administrative dispute. **MACEDONIAN LAW ON ADVOCACY** art. 23(4).

Interviewees reported that in practice, disciplinary measures are rarely if ever taken against advocates. Several judges reported having made a complaint to the MCA, but did not receive a response and were unaware if any measures had been taken against the advocate.

Advocates do not have broad immunity for actions taken in the course of their practice of law, but they cannot be held accountable for opinions given when providing legal assistance or certifying public documents. Advocates also cannot be detained or imprisoned for criminal acts committed in the course of their practice of law without prior consent from the MCA. **MACEDONIAN LAW ON ADVOCACY** art. 21(1–4). Interviewees reported that these legal requirements are respected in practice and that the MCA protects the rights and interests of its members facing criminal charges.

**Serbia**

The SCA has established a Code of Ethics, which advocates and trainee advocates agree to uphold when they take their oath and which is covered on the advocate exam. The Code of Ethics is quite extensive and covers standards for independence, autonomy, professionalism, conscientiousness, integrity, confidentiality, moral fitness, activities incompatible with the practice of law, professional responsibility, as well as setting forth an array of requirements for professional ethics related to professional secrets, prohibition of advertising, competition, prohibition on acquiring clients dishonestly, public appearances, representation of clients, the structure of law offices, fees, and professional relationships with other advocates, the Chamber of Advocates, and state authorities. The Code of Ethics applies to advocates, trainee advocates, and foreign nationals practicing law
within the territory of Serbia, and requires that Serbians practicing law abroad also observe the international rules of professional ethics and the ethical rules of the country in which the Serbian advocate is practicing law. SCA CODE OF ETHICS rules 2.2, 2.5. Any violation of the code constitutes grounds for disciplinary responsibility, and ignorance of the code is not an excuse. Id. arts. 2.3, 2.5.

The SCA and the local Chambers of Advocates have the authority to initiate and conduct disciplinary proceedings against advocates and trainee advocates, determine their disciplinary responsibility, and impose disciplinary sanctions. SERBIAN LAW ON ADVOCACY art. 65(7); see also SCA CODE OF ETHICS rule 2.6. The SCA has two disciplinary bodies: the disciplinary prosecutor and the disciplinary tribunal. SCA STATUTE art. 40; SERBIAN LAW ON ADVOCACY art. 76. Both bodies are elected by the SCA Assembly to four-year terms, and carry out their duties independently of other bodies of the SCA. SCA STATUTE art. 40. The SCA disciplinary prosecutor has six deputies, and each of the local Chambers of Advocates also has a disciplinary prosecutor (who may have deputies pursuant to the local Chamber’s statute), who is subordinate to the SCA disciplinary prosecutor. Id. arts. 41, 42. The SCA Disciplinary Court is made up of a court president, deputy, and 16 judges, and hears cases before three-judge panels. Id. art. 44. Disciplinary proceedings may be initiated by the disciplinary prosecutor based on a complaint by an interested party, on the proposal of the Chamber of Advocates, or ex officio. SERBIAN LAW ON ADVOCACY art. 76. Cases are heard in the first instance before the disciplinary court of the local Chamber of Advocates, and the SCA Disciplinary Court acts as a second instance. SCA STATUTE arts. 44, 45. If found guilty of a minor disciplinary violation, an advocate may face a warning or a fine of no less than 10 times or more than 30 times the minimum tariff; for a serious violation, an advocate may face a fine of no less than 30 or more than 60 times the minimum tariff, or temporary (minimum six months) or permanent loss of the right to practice law. SERBIAN LAW ON ADVOCACY art. 77. Disciplinary measures are expunged from an advocate’s record after one year for a warning or fine, or after double the amount of time that an advocate was suspended from the practice of law. Id. art. 80.

Despite the detailed structure for disciplinary bodies set up by the SCA Statute, interviewees were generally unaware of how often or whether disciplinary proceedings are initiated against advocates. Judges reported that they had rarely, if ever, reported an advocate to the local Chamber, but generally expressed a lack of confidence that the Chamber would appropriately deal with disciplinary violations if they did report an advocate. Advocates interviewed by the assessment team were generally of the opinion that most disciplinary reports were made by disgruntled former clients. Representatives of the SCA reported that the Code of Ethics is enforced and that a majority of advocates comply with the Code, and noted that about 1/3 of the questions on the advocate exam deal with professional ethics.

Advocates do not have immunity for actions taken in their professional capacity, but they may not be arrested for offenses committed in connection with the practice of law except by the decision of a competent court. SERBIAN LAW ON ADVOCACY art. 35. Law offices may be searched only on the order of a court for precisely specified documents, papers, or articles, and only in the presence of an advocate appointed by the President of the local Chamber of Advocates. Nothing gathered in a search of a law office may be used as evidence against a client of that advocate. Additionally, the court must immediately inform the Chamber of Advocates upon the arrest or initiation of proceedings against an advocate. Id.

**Comparative Highlights**

All five countries have ethics codes and a structure for adjudicating disciplinary complaints, interviewees reported that disciplinary standards are rarely, if ever, enforced. Kosovo has recently
become a leader in enforcement of disciplinary standards; the KCA has been praised for adjudicating disciplinary complaints and enforcing sanctions, including by notifying courts when an advocate had been suspended from practice. In the other countries, interviewees stated that disciplinary matters are considered private and are not reported or tracked by the Chambers. Advocates generally do not receive training on ethical norms, except in Kosovo where this is part of the required CLE. Although advocates do not possess broad immunity, advocates have varying degrees of protection from searches of their office or from detention; in general, searches must be carried out in the presence of a representative from the Chamber of Advocates, and advocates may not be detained without notifying the Chamber.

**For Consideration**

Is it important to strengthen enforcement of ethical norms? How can advocates from countries with strong enforcement assist their colleagues in countries with weak enforcement?

How can the legal profession support greater transparency regarding the application of disciplinary measures?

Does the professional immunity of advocates need to be strengthened, and if so, how can the legal profession promote reform?
II. The Duties of Lawyers and the Rights of Clients

Factor 5: The Lawyer/Client Relationship

Lawyers should act in the best interests of their clients, within the limits of professional ethics and the interests of justice.

International Standards

A lawyer shall treat client interests as paramount, so long as the clients’ interests do not conflict with the lawyer’s duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.25 The duties of lawyers towards their clients shall include advising clients as to their legal rights and obligations, the working of the legal system, and the likely outcome and consequences of the case, including cost; endeavoring to resolve a case amicably; taking legal action to promote, respect, and enforce the rights and interests of their clients; avoiding conflicts of interest; and not taking up more work than they can reasonably manage.26 A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, in accordance with internal laws, regulations, and professional standards; any violation of confidentiality without the client’s consent should be subject to appropriate sanctions.27

Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.28 No court or administrative authority shall refuse to recognize the right of a lawyer qualified in that jurisdiction to appear before it for his client.29 A lawyer should not withdraw from representation of a client except for good cause or upon reasonable notice to the client, and must minimize any potential harm to the client’s interests.30

Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.31

Analysis

Albania

The Albania Law on Advocacy and the Ethics Code both describe the duties that define the relationship advocates have with their clients. The Law on Advocacy outlines the duty a advocate has “to defend with loyalty the rights and interests of the persons that are defended or represented by him, showing the care of a reasonable professional, according [to] the “Advocates Code of Ethic[s]”...” ALBANIA LAW ON ADVOCACY, art. 9 (1). The Law also describes the duties of confidentiality an advocate owes his client as well as the conflict-of-interest principles that would prevent an advocate from representing a particular client. The Law on Advocacy defines the rights an advocate has to meet his client, “in a private manner and without time limit....The competent organs have the

25 IBA Principles on Conduct, Principle 5.
26 UN Basic Principles, Principle 13 ; CoE Recommendations, Principle III(3).
27 IBA Principles on Conduct, Principle 4; CoE Recommendations, Principle III(2).
30 IBA Commentary on Principles on Conduct, Explanatory Note 7.2.
31 IBA Principles on Conduct, Principle 10.
right to supervise the meeting…but in any case, it is forbidden to hear the conversation between
[the advocate and the client].” *Id.* art. 7(1). The “advocate should provide that no conflict of interest
[exists] between him and the person he defends or represents.” *Id.* art. 9 (2). Moreover, the Law
provides that an advocate “cannot be asked as a witness for the person, to whom he performed
legal services and aid, as well as for circumstances that he learned during the exercise of the
advocate’s profession.” *Id.* art. 9 (4).

With regard to remuneration, the Law on Advocacy states that a advocate may obtain payment
through various mechanisms. First, he may have an agreement with the client *Id.* art. 11 (1)(a),
second, he may be reimbursed by the court or prosecutor when he is appointed ex officio and paid
according to the fee structure set by the MOJ and the Governing Council of the NCA *Id.* art. 11 (1)(b),
and third, the payment may be “by law.” *Id.* art. 11 (1)(c). Legal aid fees are determined by the MOJ
and NCA, with input from the Ministry of Finance. *Id.* art. 11 (3). The Law on Advocacy states that an
advocate shall not require the person he represents to pay him a percentage during the trial, and if
agreed to with the client, may only accept payment if the case (or issue that was the basis for the
representation) is successful. *Id.* art. 12(1-2). In addition, the law provides that an advocate has the
right to ask for remuneration for work performed in the event that a client terminates an advocate’s
representation. *Id.* art. 14.

The Ethics Code describes in several places the duties advocates owe to their clients, among them
the duty to “act in accordance with…the legitimate interests of the client or otherwise render him
professional services based upon his own judgment.” ALBANIAN ETHICS CODE, art. 2. The fundamental
principle of the code is that the advocate “must always act in the best interests of his client.” *Id.* art.
15. The Code describes confidentiality as a “right, obligation and safeguard for the advocate” that
has no expiration. *Id.* art. 14.

Interviewees expressed that in some cases, advocates do not pay the appropriate amount of
attention to clients’ cases and present pro forma defenses that do not demonstrate an adequate
understanding of the facts and legal issues of the case. The assessment team heard from many
interviewees that some advocates use delaying tactics in proceedings that result in damage to the
client’s interests, although some of these delays are due to legitimate reasons, such as lack of notice
of the dates and times of hearings, and prior commitments in other cases. As noted in other areas of
this report, advocates expressed that they are unable to have adequate access to their clients to
conduct interviews. The vast majority of defendants are held in pre-trial detention so advocates
must get permission from the police to visit their clients in the detention facilities. This permission
is not consistently given and when visits do happen, they are often closely observed by the police,
despite existing laws protecting the communications of advocates and clients.

Advocates reported that they felt free to take on or reject a client, and some stated that the courts
let advocates resign from cases very easily, despite the legal requirement that the advocate must
have a reasonable cause for resigning, such as lack of knowledge in a specific legal area or a client
who asks the advocate to act in an illegal or dishonest manner. See ALBANIAN ETHICS CODE art. 29 (1)
(a, c). Some interviewees reported that prosecutors may pressure a defendant or his family to let
the prosecutor choose the defense advocate or to retain a poor advocate, who will collaborate, or at
least not interfere, with the prosecutor’s actions in the case. In exchange for selecting an advocate
of the prosecutor’s choosing, the prosecutor will offer the defendant a reduced sentence. If the
defendant refuses, the prosecutor in some cases may try to exclude the defense advocate from
proceedings, and will ensure that the advocate does not have prior notice of hearings in the case.
Bosnia and Herzegovina

The relationship between advocates and their clients is governed by the Codes of Ethics of the Chambers of Advocates as well as by the Laws on the Legal Profession. A party has the right to freely choose an advocate who is licensed to practice law in the FBiH or RS. RS LAW ON THE LEGAL PROFESSION art. 6; FBiH LAW ON THE LEGAL PROFESSION art. 7. Advocates are forbidden from advertising. FBiH Code of Ethics Rule XIV; RS Code of Ethics art. 9.

Advocates may freely decide whether to accept a request to advise, represent, or defend a potential client, and are obliged to refuse representation if the advocate or an advocate employed in the same office or law firm has represented the opposing party in the same or any related matter; if the advocate or any other member or employee of the advocate’s office or firm was an trainee with the advocate representing the opposing party; if the advocate or any other member or employee of his office or firm acted as a judge, prosecutor, or official of the Ministry of Internal Affairs or an administrative body on the same or any related matter; if the advocate or any other member or employee of the advocate’s office or law firm has dealt with the same legal matter in any other professional manner; if the advocate or any other member or employee of the advocate’s office or firm has an interest in the case that may conflict with the client’s interest; or if required to do so by the law or acts of the Chamber of Advocates. RS LAW ON THE LEGAL PROFESSION art. 37; FBiH LAW ON THE LEGAL PROFESSION art. 22. In all cases except where the advocate or a member or employee of the advocate’s office or firm has a conflict of interests, the advocate may represent the client if the client authorizes the advocate to represent him or her after having been fully informed of all the relevant circumstances. Id. In cases where an advocate is appointed by the court or a state body, the advocate may refuse to represent the client only in situations permitted by the law authorizing the appointment of the advocate. Id. Advocates are also obliged to cancel their representation of a client upon becoming aware of any circumstance that would have obliged the advocate to refuse to represent the client. The advocate must continue providing legal assistance to the client for 30 days or until the client has retained a new representative, whichever happens first. RS LAW ON THE LEGAL PROFESSION art. 38; FBiH LAW ON THE LEGAL PROFESSION art. 23. See also FBiH Code of Ethics Rule II; RS Code of Ethics Section III. The FBiH Code of Ethics specifically prohibits advocates from refusing to defend a criminal case due to the personality of the defendant, the nature of the alleged crime, irrefutable evidence of the defendant’s guilt, or public opinion about the case. FBiH Code of Ethics rule III(1).

The Codes of Ethics set forth guidelines for advocates’ relations with their clients. Advocates’ paramount duty is loyalty to their clients, and advocates must advise and represent the client promptly, conscientiously and diligently, without generating any unnecessary costs or causing unnecessary delay. FBiH Code of Ethics Rule II(1), (9); see also RS Code of Ethics art. 3. Advocates are also required to protect the confidentiality of information entrusted to the advocate by a client in the course of representation (RS Code of Ethics art. 6; FBiH Code of Ethics Rule VII), may not use client’s funds except in accordance with the client’s instructins, and must keep separate accounting records for client’s funds. RS LAW ON THE LEGAL PROFESSION art. 46; FBiH LAW ON THE LEGAL PROFESSION art. 32.

Advocates’ tariffs are set by the relevant Chamber of Advocates, and are approved by the Ministry of Justice. RS LAW ON THE LEGAL PROFESSION art. 48; FBiH LAW ON THE LEGAL PROFESSION art. 31. The advocate should advise the client of the approximate cost of representation and should warn the client if the anticipated cost of representation exceeds the amount the client stands to gain from the litigation. RS Code of Ethics art. 10; FBiH Code of Ethics Rule XIII.
In general, interviewees did not have any concerns about the advocate/client relationship. However, interviewees noted that the right of a party to freely choose his or her advocate applies also to indigent defendants entitled to advocates paid for by the courts, and noted that indigent defendants generally select one of several well-known advocates; interviewees believed that this practice leads to increased costs of representation, because indigent defendants do not use the legal aid advocates whose services would be provided at no additional cost to the courts. However, interviewees accepted this as part of a crucial right to select one's own representative, and most interviewees did not propose restricting the right of indigent defendants to freely choose their own representative.

Some interviewees also noted that the fee structure provides an incentive for advocates to file superfluous motions or delay proceedings, as advocates are paid the same amount for filing a motion or appearing in court regardless of the complexity of the motion or reason for the appearance. However, advocates themselves believed that the fee structure is fair and noted that while it may be abused by a small number of advocates, most advocates carry out their duties diligently and do not unduly file motions or delay proceedings.

Kosovo

The Kosovo Ethics Code, Law on Advocacy and Criminal Procedure Code establish the duties and relationships advocates owe their clients. The Ethics Code provides information about how advocates must treat their clients’ information, stating that an advocate is obligated to treat the client’s information confidentially, keeping all information with which the advocate becomes familiar during the course of representation confidential. KOSOVO ETHICS CODE art. 14-15. Advocates should refuse to represent a client if the advocate does not have the expertise to represent the client competently or has a conflict of interest. Id. art. 22-23. Advocates are also free to refuse to provide legal services if the client “is not ready to fulfill obligations toward the advocate...” (Id. art. 19) but should not refuse criminal defense because the defense will be difficult, because of the existence of damaging evidence, because the client has confessed, or because of the severity of the offense or public opinion. Id. art. 29. Withdraw from a case is permitted, but the advocate must make a written request to the court and continue representing the client until the client finds another advocate, or for 30 days if the client still has not found a replacement advocate. Id. art. 25.

Kosovo advocates are required to provide legal aid in a professional, conscientious and dignified manner in line with current law, statutes and codes. KOSOVO LAW ON ADVOCACY, ch. III, art. 12 (1) (1.1). Advocates are permitted to have oral agreements with clients, but most advocates conduct their agreements via written contracts with clients. Clients can revoke the agreement to work with an advocate. Id. ch. III, art. 20 (1).

Under the criminal procedure code, a “defendant may engage another defense counsel on his or her own instead of the appointed defense counsel. In this case, the appointed defense counsel shall be dismissed.” KOSOVO CRIMINAL PROCEDURE CODE ch. 5, art.59 (1). “Appointed defense counsel may seek to be dismissed only for good cause.” Id. ch. 5, art. 59 (2). In addition, the court may, at the request of or with permission of the defendant, dismiss an advocate who is not performing adequately. The court shall then appoint an independent defense counsel of experience and competence commensurate with the nature of the criminal offense. The court shall also inform the KCA about the dismissal of the advocate. Id. ch. 5, art. 59 (4). One advocate stated that in a case of an advocate being dismissed, the advocate is permitted to keep the client’s file until the client has paid back fees.
The advocate has the ability to withdraw from a case, but that withdraw is not effective until the defendant has obtained new counsel. *Id.* ch. 5, art. 60 (1), (3). One advocate stated that he had recently withdrawn in a case where the client harassed him at all hours of the day and night to obtain information on his case. The advocate withdrew from the case easily.

**Macedonia**

The responsibilities of advocates with respect to their clients are set forth in the Law on the Bar and the MCA Code of Ethics. The Law on the Bar requires advocates to provide legal assistance conscientiously and professionally in accordance with the law, the Code of Ethics and other acts of the MCA, and to preserve the confidentiality of information disclosed to them by clients. *Law on the Bar* art. 17(1). Advocates are required at all times to act in their clients’ best interests. *MBA Code of Ethics, General Provisions* art. 6. Advocates may refuse to provide legal assistance or certify public documents only with justification, for example, if the advocate’s caseload is too high, if the case is very unlikely to succeed, if the potential client cannot pay, if the potential client is “irresponsible”, or for other reasons. In criminal cases, advocates should refuse to provide legal assistance only in exceptional purposes, such as when the advocate is ill, if the accused had previously retained the advocate but failed to pay, or other reasons. In no circumstance should the accused be left without representation. *Id.* sec. 2, art. 1. Additionally, if the client is poor, his or her inability to pay should not affect the advocate’s decision to provide legal assistance or certify public documents. *Id.*; see also sec. 2 art. 8. Once an advocate agrees to accept a client, he or she must establish a relationship of confidence with the client and may only withdraw representation for the same reasons stated above only if the advocate discovered these reasons after accepting the case. The advocate is obliged to continue representing the client for either 30 days or until the client finds a new legal representative, whichever happens first. *Id.* sec. 2, art. 2. Advocates may not represent clients who are co-litigants or co-accused if they have contradictory interests; if contradictory interests arise after the advocate has begun representation, the advocate must withdraw from representing one of the clients. *Id.* sec. 2, art. 3. Advocates also must not agree to represent the party opposing their client in the same case, or undertake activities that are contrary to the client’s interests. *Id.* sec. 2, art. 6. When working on bilateral legal documents such as contracts, the advocate must protect the interests of both parties, regardless of which client originally sought the advocate’s assistance and is paying the advocate’s fee. If a dispute arises between the parties to the contract, the advocate who prepared the contract may not represent either of them. *Id.* sec. 2, art. 4; see also *Law on the Bar* art. 17(4).

Advocates representing a client should obtain as much detailed information and evidence as possible from their client, and conduct their own research on the case. Advocates must also advise the client honestly about the expected outcome of the case from a factual and legal point of view. *Code of Ethics* sec. 2, art. 7. Advocates must also inform the client, if possible, of the cost of legal representation. *Id.* sec. 2, art. 8. Advocates are obliged to represent and defend their clients zealously, but must avoid submitting unnecessary briefs or motions. Advocates should consolidate all of the evidence and facts into a small number of briefs. *Id.* sec. 2, art. 5. Advocates should not be identified with their clients but rather only as a representative or defender of the client. *Id.*

Advocates should not accept such a high caseload that they find themselves unable to conscientiously and thoroughly handle the cases. *Id.* sec. 2, art. 9. Advocates should also maintain a professional relationship with the opposing party and should not have contact with the opposing party without the knowledge of their client and the opposing party’s counsel, and should inform the client of any preexisting relationship with the opposing party prior to agreeing to represent the client. *Id.* sec. 2, art. 10. Advocates may not provide legal assistance when the advocate or another
advocate from the same law firm has provided legal assistance to the opposing party in the same case, or when the advocate previously worked on the case as a judge, public prosecutor, or other public official. LAW ON THE BAR art. 17(3).

In general, interviewees did not have any concerns about the advocate/client relationship and reported that the standards set forth in the Code of Ethics are generally met in practice. However, some interviewees believed that some advocates file unnecessary motions in order to collect fees; advocates are paid a fee for each motion or appearance, regardless of the complexity of the motion. Additionally, interviewees reported that it is rare for advocates to provide pro bono legal services, despite being encouraged by the Code of Ethics to represent indigent people without remuneration. Many advocates do sign up to be appointed ex officio to represent indigent defendants, for which they are paid half the usual fees, but interviewees expressed concern that many court-appointed advocates are young advocates taking appointed cases in order to build up their legal practice and do not possess the requisite experience to provide effective representation for their clients.

**Serbia**

The SCA Code of Ethics extensively sets forth advocates’ duties with respect to their clients. Advocates may agree to represent a client when their representation is requested by the client himself, a person authorized by him, or assigned to the advocate by a competent authority. SCA CODE OF ETHICS rule 21.1. Advocates may freely decide whether to represent the client, but must have a valid reason for refusing to represent someone. Id. rules 21.2–21.3. Advocates may not consider the gender, race, national background, language, political or other views, origin, social status, economic situation, or political party of a potential client when deciding whether to represent him or her. Id. rule 21.4. The Code of Ethics sets forth a non-exhaustive list of valid reasons for refusal of representation, including an excessive workload, the potential client’s inability to pay, a potential client’s conditioning payment on a favorable outcome, if the advocate believes the potential client is motivated by malice, if the potential client’s requests are contrary to the client’s own interests, if the potential client is rude or mistrustful of the advocate, or if the advocate assesses that the case is unlikely to succeed. Id. rule 22.1. In criminal cases, an advocate may not refuse representation based on the personal traits of the accused, the nature of the alleged offense, the defense strategy, public indignation caused by the alleged offense, or the behavior of the alleged victim. Id. rule 22.2. The Code of Ethics also specifies a number of situations where an advocate should or must refuse to represent a professional client, primarily in situations where the advocate may have a conflict of interest, lacks knowledge of the area of law, or believes his or her representation of the client would lead to a violation of law. Id. rules 22.3, 22.4. See also SERBIAN LAW ON ADVOCACY arts. 18, 19.

Generally a client should personally present the case to the advocate and sign the power of attorney retaining the advocate, except when this is not possible or practical and the authenticity of the signed power of attorney can be confirmed by the advocate. SCA CODE OF ETHICS rules 23.1, 23.2. Upon agreeing to represent the client, the advocate should advise the client of the need to present the advocate with all facts and evidence; of the confidentiality of information provided by the client to the advocate; of the advocate’s assessment of the case and the relevant legal procedure; of the manner of calculating fees and approximate total cost of representation; and of the advocate’s duty to present to relevant public authorities certain records entrusted to him or her by the client as required by law. Id. rule 24.2. Advocates are obliged to treat clients politely and responsibly; approach all cases with equal conscientiousness and expertise; advise the client of the possibility and suitability of an amicable resolution to the case; represent the client without undue delay; inform the client of all significant developments or changes in the advocate’s opinion of the legal
and factual issues of the case; and avoid incurring unnecessary expenses and prolonging proceedings by preparing superfluous motions or creating undue delays. *Id.* art. 24.3. Advocates may withdraw from representation of a client if there exist valid reasons to withdraw, i.e. for any of the reasons considered valid for refusing representation under rule 22 except that an advocate may not withdraw if he or she has accumulated an excessive caseload by subsequently accepting additional cases. *Id.* rules 26.1–26.3. The advocate must ensure that withdrawal of representation is not done in a manner or at a moment that would cause harm to the client, and must undertake any measures necessary to prevent or eliminate consequences detrimental to the client until the client has retained another representative or the period of time prescribed by the relevant law for taking procedural actions upon cancelation of representation has expired. *Id.* rules 26.5, 26.6.

In general, interviewees did not have any concerns about the advocate/client relationship, and reported that the standards set forth in the Code of Ethics are followed in practice. Some advocates believed that they were not allowed to refuse to represent a potential client, but although the Code of Ethics does require a valid reason for refusing representation, unless an advocate refuses to represent a client for a reason specified as invalid it is unlikely he or she would face any ramifications; many advocates noted that a client would not want to be represented by an advocate who did not want to represent him. Some interviewees had concerns about the quality of representation provided to defendants whose advocate was appointed ex officio by the court; they noted that advocates are paid 50% of the usual fee for court-appointed cases and that the courts have a huge backlog of debt owed to advocates who had represented clients ex officio, which would naturally affect advocate’s ability to provide the same quality of representation they could provide to a client with the financial resources to pay the advocate.

**Comparative Highlights**

Most advocates interviewed by the assessment team were aware of their responsibilities toward their clients, and did not have concerns about the advocate/client relationship as regards private clients. Advocates are generally free to choose their clients, although they must have a valid reason for declining to take a case. Advocates in all countries are prohibited from advertising, but most did not believe that this made it difficult to find clients. However, in every country some interviewees reported that advocates abuse the fee schedule by which advocates have a set minimum fee for different types of actions; for example, interviewees reported that some advocates will file superfluous motions or poorly written motions because they receive a set fee for filing a motion and the fee is the same regardless of whether the motion is complex and well-reasoned, or brief and unnecessary. In Albania and Kosovo, interviewees reported that it is too easy for advocates to withdraw from a case and leave their clients without representation; in other countries, advocates may withdraw for a valid reason but must continue representing their client for a period of time or until the client finds new representation. In cases where advocates are appointed ex officio, advocates from all countries reported that their fees are not paid on time, in full, or at all, and that is a serious problem that prevents advocates from agreeing to take these cases or causes advocates to fail to diligently represent their clients.

**For Consideration**

How can the fee schedule be restructured so that fees adequately compensate advocates for their work, without being subject to abuse?

How can the legal profession support reform to the system for appointing counsel to indigent defendants to ensure that defendants receive zealous counsel and advocates are adequately compensated?
Factor 6: Protecting the Rights of the Accused

**Lawyers must advise clients as to their legal rights and obligations and take legal action to promote, respect, and enforce the rights and interests of their clients. Lawyers must have access to their clients and to such facilities and privileges as are necessary to effectively fulfill their professional responsibilities.**

### International Standards

All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. The right to counsel encompasses three guarantees: (1) the right to be informed of the right to counsel promptly after arrest; (2) the right to choose one's counsel or, where the interests of justice or indigent status of the accused so require, to elect to have free legal counsel appointed by the state; and (3) the right to defend oneself. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offense; all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention. Whenever a state does appoint counsel free of charge for a detainee, the appointed lawyer must be able to provide "effective" legal assistance, and as such, must be "of experience and competence commensurate with the nature of the offense.”

All arrested, detained, or imprisoned persons shall be provided with adequate opportunities, time, and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception, or censorship and in full confidentiality and outside earshot of law enforcement or detention facility officials. Lawyers should have access to their clients, including to persons deprived of liberty, to enable them to counsel in private and to represent their clients according to established professional standards.

Lawyers shall have such facilities and privileges as are necessary to fulfill their professional responsibilities effectively, including confidentiality of the lawyer-client relationship, protection of the lawyer's files and documents from seizure or inspection, and protection from interception of the lawyer's electronic communications; the right to travel and to consult with their clients freely both within their own country and abroad; and the right freely to seek, to receive, and, subject to the rules of their profession, to impart information and ideas relating to their professional work.

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33 See ICCPR Article 14(3)(d); ECHR article 6(3)(c); United Nations Body of Principles for the Protection of All Persons under Any Form of Detention, Principle 17, available at http://www.un.org/documents/ga/res/43/a43r173.htm [hereinafter UN Principles for the Protection of Persons under Detention]. Both the ICCPR article 14(3)(d) and the ECHR article 6(3)(c) require legal assistance free of charge where the “interests of justice” so require and also specify that a person charged with a criminal offense has a right to defend him- or herself.

34 UN Basic Principles, Principle 5.

35 UN Basic Principles, Principle 6.
Analysis

Albania

By law, a person who has been arrested or is in detention has the right to contact an advocate. ALBANIA CRIMINAL PROCEDURE CODE art. 53 (1). Defendants who are less than 18 years old or suffer from physical or mental impairment are required to have an advocate defend them. Id. art. 49 (2). Advocates who represent defendants who have insufficient means to pay legal expenses will be paid by the state. Id. art. 49 (7). Defense advocates have the right to communicate freely and confidentially with their clients, to have prior notice of any investigation (questioning) “conducted in the presence of the defendant and to participate” in the investigation, to interview the defendant, witnesses and experts and to have access to all materials when the investigation phase of the case is complete. Id. art. 50 (2). Individuals have varying protections at different stages of the case, but during the investigation phase, records of the actions performed by the prosecutor and judicial police are filed with the prosecution office secretariat; the defense advocate has the right to examine the documentation and make copies. Id. art. 309. Except in special cases, the defense advocate of a person under investigation generally has the right to attend searches related to the person being investigated. Id. art. 302. art. 179 (2).

Although the Albanian criminal justice system includes some adversarial elements that empower defense advocates, in many ways, the ability of defense advocates to represent their clients is inadequate. One advocate expressed that he is able to see his clients when they are in prison, but was often prevented from seeing his clients who had been arrested and were still detained in a police station. Although by law, defense advocates should have access to their clients “at every stage,” (Id. ch. 50, art. 2; ALBANIA LAW ON ADVOCACY ch. VII and ch. VIII) in fact, detention facilities do

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36 UN Basic Principles, Principle 8; see also UN Principles for the Protection of Persons under Detention, Principle 18.
37 CoE Recommendations, Principle 5.
39 UN Basic Principles, Principle 13; CoE Recommendations, Principle 3(a) and (c).
40 UN Basic Principles, Principle 14.
41 See generally ECHR, arts. 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to a fair trial), 7 (no punishment without law); ICCPR arts. 6, 9, 10, 14, 15; UN Principles for the Protection of Persons under Detention.
not allow advocates to visit on weekends at all, and on weekdays, only between the hours of 9:00 a.m. and 2:00 p.m. One advocate stated that he is not allowed to visit a client in pre-trial detention without permission from the police. Although by law defense advocates should be able to meet alone with their clients and without being observed, a criminal defense advocate stated that police consistently observe and eavesdrop on conversations between advocates and clients. Even in the courtroom, the defendant is sometimes in a different room from the defense advocate, and can only communicate to his advocate through bars, without a private space to discuss the case. One interviewee described the closeness with which judges and prosecutors interact, explaining that some judges accept whatever the prosecutor alleges as true, without regard to the evidence or arguments presented by the defense.

The Albanian Criminal Procedure Code does not include provisions for plea bargaining, but there does exist a “Speedy Trial” provision, in which the defendant can receive a one-third reduced sentence if he agrees not to admit new evidence. See ALBANIA CRIMINAL PROCEDURE CODE ch. IV, art. 403-406. Under this provision, the defendant agrees not to present any evidence and the court makes a decision based solely on the file presented by the prosecution. More informally, defense advocates expressed that in some cases, prosecutors faced with a high-quality defense advocate will pressure the defendant or the defendant’s family to replace the defense advocate with one of the prosecutor’s choosing; in exchange for this, the prosecutor offers the defendant a shorter sentence.

Another issue that concerned advocates was the lack of timely information from courts about scheduling. The courts do not consistently and timely provide information about dates and times of hearings to advocates; in some cases this lack of information causes the defense advocates to miss an appearance in court when their presence is required. In such situations, courts sometimes move forward with the proceeding getting a last-minute ex officio advocate to appear for the defendant. This ex officio advocate, though, has no connection to the case or the defendant and often his appearance serves as a formality that allows the proceeding to continue without the competent defense advocate. Some interviewees attributed judges’ and prosecutors’ complaints of advocates delaying proceedings or not appearing to instances when the dates and times of hearings were not made public or communicated to advocates.

Others stated that advocates do know about the timing for proceedings, and yet choose not to appear for a variety of reasons, including that they were attending to a better-paying client, or wanted to use their failure to appear as grounds to delay the case. One interviewee stated that the summons mechanisms for parties are not effective, which results in parties and their advocates not knowing that they are required to appear in court on a certain day and time. Although in compliance with EU regulations, which require that each home has a unique street address and number, the Ministry of Interior, which “owns” address information, refuses to share the information with courts so court clerks often have no way of knowing how to reach a party through the mail. One interviewee reported that in Tirana, 40% of the summons issued by the court clerks were sent with incorrect addresses.

**Bosnia and Herzegovina**

The rights of persons suspected or accused of crimes in Bosnia and Herzegovina are protected by the Constitution and laws of the state, the two entities, and the Brcko District, as well as by international law. The rights and freedoms set forth in the European Convention of Human Rights apply directly to all citizens of Bosnia and Herzegovina and have priority over all other law. BiH SERBIAN CONSTITUTION art. II(2). There are four Criminal Procedure Codes in effect in BiH: the CRIMINAL PROCEDURE CODE OF BOSNIA AND HERZEGOVINA (entered into force March 1, 2003); the
Criminal Procedure Code of the Federation of Bosnia and Herzegovina (entered into force Aug. 1, 2003); the Criminal Procedure Code of the Republika Srpska (entered into force July 1, 2003); and the Law on Criminal Procedure of the Brcko District of Bosnia and Herzegovina (entered into force July 1, 2003). The four codes are substantially similar, and provide the same protections for defendants’ rights, which may be summarized as follows: A person deprived of liberty has the right to be immediately informed in a language he understands of the reasons for his detention, instructed that he is not required to make a statement or respond to questions, informed of the right to defense counsel of his own choice and the right to have a family member, consular officer (in the case of a foreign citizen), or other person of his choosing informed of his deprivation of liberty. A person deprived of liberty must be appointed a defense advocate upon his request if he is unable to afford one. A person suspected or accused of a crime, at his first interrogation, must be informed of the offense he is suspected of or charged with and the grounds for suspicion and that any statement he makes may be used as evidence; must be given the opportunity to make a statement regarding the facts and evidence against him and to present facts and evidence in his favor; and may not be required to present a defense or answer questions posed to him. The suspect or accused has a right to present his own defense or to be defended by an advocate of his choice. If the suspect or accused does not have counsel, counsel will be appointed for him in cases specified by law. The suspect or accused must be given sufficient time to prepare a defense. See BiH Crim. Proc. Code arts. 5–7; FBiH Crim. Proc. Code arts. 5–7; RS Crim. Proc. Code arts. 5–7; BD Crim. Proc. Code arts. 5–7.

A suspect or accused is entitled to defense counsel at all stages of criminal proceedings. A defense counsel is mandatory in certain specified cases, including from the moment of first questioning if the suspect is mute or deaf or is suspected of a criminal offense for which a penalty of long-term imprisonment may be imposed; during proceedings to decide on a proposal to order pretrial detention or throughout all proceedings if the suspect or accused is in custody; or after an indictment has been brought for a criminal offense carrying a sentence of 10 years or more. See BiH Crim. Proc. Code arts. 39, 45; FBiH Crim. Proc. Code arts. 53, 59; RS Crim. Proc. Code arts. 47, 53; BD Crim. Proc. Code arts. 39, 45. If the suspect or accused in the case of mandatory defense does not retain an advocate or have one retained for him by a representative or family member, the preliminary proceeding judge, hearing judge, trial judge, or presiding judge must appoint counsel; the suspect or accused will have the right to counsel until the verdict becomes final and, if a sentence of long-term imprisonment is imposed, for appeal proceedings. Id. The court must also appoint counsel if the court finds it necessary in the interests of justice, due to the complexity of the case, the mental condition of the suspect or accused, or other circumstances. The suspect or accused will be asked to select an advocate from a list of advocates presented to him; if the suspect or accused does not select his own advocate, the court will appoint the advocate according to the order of the list of advocates. Id.

Suspects or accused who are unable to pay the expenses of a defense are entitled to have defense counsel appointed at their request when conditions are not present for a compulsory defense counsel, if the proceedings involve an offense for which a sentence of three or more years may be imposed or if the interests of justice so require regardless of the potential sentence. The suspect or accused may make the request at any stage during criminal proceedings, and the preliminary proceeding judge, preliminary hearing judge, trial judge, or presiding judge must establish the suspect/accused’s financial situation and issue a decision on the request. If the request is granted, the court should appoint a defense advocate chosen by the suspect or accused from the list of available advocates. See BiH Crim. Proc. Code art. 46; FBiH Crim. Proc. Code art. 60; RS Crim. Proc. Code art. 54; BD Crim. Proc. Code art. 46.
Defense counsel has the right to inspect the file and any evidence in favor of the defendant during the investigation, unless disclosure of the file or evidence would endanger the purpose of the investigation. After the indictment is issued, the suspect, accused, or defense counsel has the right to inspect all files and evidence. The judge, panel of judges, or the prosecutor must submit all new evidence, information, or facts that could serve as evidence at the trial to the defense. The defense counsel, suspect, or accused has the right to make copies of all files or documents after the indictment has been issued. See BiH CRIM. PROC. CODE art. 47; FBIH CRIM. PROC. CODE art. 61; RS CRIM. PROC. CODE art. 55; BD CRIM. PROC. CODE art. 47.

If a suspect or accused is in custody, he is immediately entitled to communicate with his counsel orally or in writing. A conversation between the suspect/accused and counsel may be visually observed but may not be otherwise monitored or overheard. The defense counsel has the right and duty to take all necessary steps to establish facts and collect evidence in favor of the suspect or accused, as well as to protect his rights. See BiH CRIM. PROC. CODE art. 48, 50; FBIH CRIM. PROC. CODE art. 62, 64; RS CRIM. PROC. CODE art. 56, 58; BD CRIM. PROC. CODE art. 48, 50.

Interviewees reported that their main concerns regarding the rights of defendants had to do with equality of arms and the right to access evidence against them. Advocates interviewed by the assessment team reported that in practice, prosecutors do not give them access to the case file or to evidence prior to the issuance of an indictment. Additionally, advocates reported that in cases before the State Court of BiH, a report on the indictment and evidence is given to them on a CD-ROM at the time of the hearing, but advocates are not allowed to bring their laptops to court, so they are unable to review the report on which they are supposed to base their arguments.

Several interviewees involved in defending war crimes cases before the State Court of BiH reported that the use of evidence declared to be secret pursuant to the Law on Secret Data is a serious problem for defendants. Only the prosecution and court is permitted to see this evidence, and interviewees reported that even in cases where the court has ordered state authorities to allow defense counsel to access archives of relevant evidence, the state has refused to allow the advocates access to the evidence. Advocates believed this constitutes a clear violation of Bosnian law as well as ECHR article 6, because it is impossible to present a defense without seeing the evidence against the defendant. Advocates emphasized that the evidence they are prevented from seeing may include exculpatory evidence. Cases have been filed to the ECtHR on this issue, but none have yet been decided.

Advocates interviewed by the assessment team also reported that prosecutors and state authorities do not always respect the confidentiality of client communications, particularly when the defendant is deprived of liberty. One interviewee informed the assessment team of a case where her client was tied to his bed while the detention center guards searched for and took away documents relevant to his case. Interviewees also reported that prosecutors have tried to present as evidence documents or records that were clearly marked as confidential communications between the advocate and the defendant.

Kosovo

Kosovo’s 2013 Criminal Procedure Code provides that a suspect and defendant have the right to be assisted by defense counsel at all stages of criminal proceedings. Kosovo Criminal Procedure Code, ch. V, art. 53 (1). By nearly all accounts, the current laws provide adequate protections for defendants in criminal proceedings. By nearly all accounts, the current laws (at least as written) provide adequate protections for defendants in each stage of criminal proceedings that did not exist
in previous iterations of the Code. For example, at the investigation phase of the case, the new Criminal Procedure Code provides that the defendant can apply to the prosecutor and the court to collect evidence; abilities that the defendant did not have prior to 2013. *Id.* art. 216 (1). As the case proceeds, the prosecutor and the judge must provide the defendant with information about the case against him. After the indictment, if he or she has not already done so, the prosecutor “shall” provide the defendant with essential information that would be vital to defense advocates developing the defense case, including: records of statements or confessions by the defendant, names of witnesses who may testify for the state and any prior statements made by those witnesses, identification information for any people whom the state knows to have admissible and exculpatory evidence and any records of statements by those people, physical or mental examinations results, and a summary of tangible evidence obtained in the investigation. *Id.* art. 244 (1.1-1.6). After the indictment, the judge at the initial hearing will provide the defendant with copies of the indictment, will ensure that the defendant has defense counsel and understands the charges in the indictment and will allow him to plead guilty or not guilty. *Id.* art. 246. After the indictment is filed, the prosecutor “shall” provide the defense with any new materials within ten days of receiving the new materials. *Id.* art. 244 (3).

Prior Codes in Kosovo gave the judge the responsibility to appoint an expert witness at trial but did not permit defendants to challenge the qualifications or bias of the expert. Under the new code, the defendant can question the expert witness and have access to the evidence presented by the expert witness. *Id.* art. 137 (2).

The Criminal Procedure Code contemplates a criminal justice system founded on equality of arms; however, criminal defense advocates expressed that in practice they do not have the same access to evidence and other information as prosecutors do. Often, the defense advocate sees the case only after the investigation and indictment have been completed even though the criminal procedure code states that a defendant is entitled to counsel at every stage of the criminal proceedings. The investigative phase of a proceeding can take up to two years and in practice, advocates are sometimes prevented from representing their clients during that time. Often, the government allows a defense advocate to be present only if the defendant is being actively questioned by the prosecutor, but not at any other times during the investigation.

Advocates expressed that institutions often provide evidence and information to the prosecution that they would not provide to defense advocates, and that judges place more weight on the prosecution’s evidence than on the evidence presented by the defense. This closeness between prosecutors and judges extends to their physical presence; advocates stated that prosecutors are often present with judges in the judges’ offices before proceedings begin. They even enter the courtroom together in some cases, leading to a sense that the defense advocate is outside of the process and has no equal seat at the table. In one example, a judge told the assessors that because of a lack of courtrooms, he had to hold proceedings in his office. The prosecutor took a seat near the judge and had close access to a desk or table from which to speak. The defense counsel had no table and was perched on a chair without equal footing in the office. In that case, the defense counsel refused to conduct his argument because he had an unequal position within the room. The judge reported the advocate to the Chamber of Advocates for misconduct.

The new criminal procedure code outlines procedures for plea bargaining (see generally, *Kosovo Criminal Procedure Code* ch. XIV, art. 233); however, very few justice-sector actors use the mechanism to decrease the demands on courts. Advocates expressed interest in plea bargaining and a desire that more colleagues within the justice system took advantage of plea bargaining as a way to increase the efficiency of the courts. Some prosecutors are engaging in the process and most
justice-sector personnel have received significant training from U.S. donors and have participated in study tours to better understand the process. But some interviewees expressed that prosecutors are hesitant to engage in true plea bargaining and often offer a sentence comparable to the sentence the defendant could expect without engaging in plea bargaining. For example, if a defendant accepts a plea offer during the investigation stage, the Criminal Procedure Code recommends a sentence of up to 80% of the minimum sentence for the charged offense. If the case goes to trial but the defendant accepts a plea offer during the trial stage, the Criminal Procedure Code recommends a sentence of up to 90% of the minimum. In fact, though, advocates reported that the prosecution offered the defendant 18 months in prison, when the potential sentence for the offense was only four or five months under the current law. Cases such as this one lead to defendants and their advocates avoiding engaging with prosecutors on plea bargaining cases.

**Macedonia**

The rights of persons suspected or accused of crimes in Macedonia are protected by the Criminal Procedure Code as well as by international instruments to which Macedonia is a party, including the ECHR and ICCPR. Persons who have been asked to appear for questioning or who have been deprived of liberty have the right to be informed of the reasons for their invitation or detention, any suspicion or charges against them, and of their rights, and may not be asked to give a statement until they have been advised of the right to remain silent, the right to consult a advocate in privacy, and the right to have counsel present during questioning. **Macedonian Crim. Proc. Code** art. 69(1–2). Persons deprived of liberty also have the right to inform a member of their family or, in the case of foreign citizens, a diplomatic or consular representative of their country of citizenship that they have been detained. Necessary medical assistance must be provided upon request or as needed to a person who has been deprived of liberty. *Id.* art. 69(3). Persons deprived of liberty must be brought before a court within 24 hours from the moment the person was detained, and the court must determine whether the detention is lawful. *Id.* art. 69(4).

Defendants have the right to be informed of the crimes they are accused of and any evidence against them, to have adequate time and resources to prepare a defense, and to have access to the case file and any inculpatory or exculpatory evidence, as well as to consult with defense counsel of the defendant’s choosing (*id.* art. 70(1)); to be present at their trial and to defend themselves or be defended by counsel of the defendant’s choosing, or if the defendant is indigent, to have defense counsel appointed free of charge when it is in the interests of justice (*id.* art. 70(2)); to freely present their defense (*id.* art. 70(3)); not to testify against themselves or be coerced into pleading guilty (*id.* art. 70(4)); to present facts and evidence in support of their case and to speak about the facts and evidence against them (*id.* art. 70(5)); to examine the prosecution’s witnesses either personally or through counsel and ensure the presence and examination of defense witnesses (*id.* art. 70(6)); and to consult with defense counsel, with the limitation that the defendant may not discuss responses to particular questions (*id.* art. 70(7)).

The right to defense counsel is effective throughout the duration of criminal proceedings. *Id.* art. 71(1). Counsel may be chosen by the defendant or, with the defendant’s consent, by his or her legal representative, spouse, or relative. *Id.* art. 71(3). Only a licensed advocate may act as counsel for the defendant. *Id.* art. 71(4). The Criminal Procedure Code requires that in cases where the defendant faces a prison sentence of 10 years or more, defense counsel be an advocate with at least five years’ experience following passage of the bar exam.

Defense counsel is compulsory in certain cases. If the defendant is mute, deaf, or otherwise incapable of defending him- or herself or if he or she is facing a sentence of life imprisonment, the
accused must have defense counsel and may not represent him- or herself. *Id.* art. 74(1). If the defendant has been detained, the defendant must have defense counsel during the period of detention. *Id.* art. 74(2). Defense counsel is also compulsory if an indictment is raised for a crime carrying a sentence of 10 years or more of imprisonment (*Id.* art. 74(3)); during the process of negotiating a plea bargain (*Id.* art. 74(4)); and when the defendant is tried in absentia (*Id.* art. 74(5)). If the defendant does not provide counsel, the Court President must appoint counsel ex officio for the duration of the criminal process until the case has reached a final verdict. *Id.* art. 74(6). If conditions for compulsory defense are not met, counsel may be appointed for an indigent defendant upon the defendant’s motion if the court deems that the defendant cannot afford counsel, and counsel is required in the interests of justice and due to the severity of the crime and the complexity of the case. *Id.* art. 75(1). In the motion, the defendant can select a preferred advocate from the list of defense counsels willing to be appointed. *Id.* Once the trial judge has granted the defendant’s motion, counsel is appointed by the Court President. The defense’s expenses are covered by the State Budget of the Republic of Macedonia. *Id.* art. 75(2–3).

Interviewees offered a mixed assessment of the protection of defendant’s rights in practice. Several interviewees stated that defendants get the defense they can afford, meaning that defendants who cannot afford counsel will receive a lesser standard of representation than defendants who retain a private advocate. Interviewees reported that the majority of all persons accused of a crime are unable to pay an advocate and have counsel appointed ex officio. Because counsel is appointed by the courts and must be requested via a motion, indigent defendants generally do not have access to counsel until their first court appearance, meaning that they may be arrested, questioned, and detained for 24 hours without counsel. Interviewees generally agreed that court-appointed advocates did their best to represent their clients, but reported that the courts often significantly reduce the advocates’ fees and only pay the fees at the conclusion of the case; therefore, court-appointed advocates do not always have the resources to provide a high level of representation to their indigent clients. Additionally, as mentioned above, interviewees believed that many young advocates take ex officio appointments in order to build up their legal practice, and they may lack the necessary skills to provide effective representation; other interviewees believed that judges are more likely to appoint advocates who will not complicate the case with zealous representation of their client.

Interviewees generally did not report obstacles to representing their clients once they have been charged. However, several interviewees mentioned incidents where the police did not inform their client of the right to counsel or allow him to contact counsel prior to being questioned. Advocates generally reported that they have access to the case file and all relevant evidence and are able to communicate confidentially with detained clients.

**Serbia**

The rights of persons accused of crimes are protected by the Constitution and laws of the Republic of Serbia, as well as by international instruments to which Serbia is a party, including the ECHR and ICCPR. The new Criminal Procedure Code, which entered into force for a majority of courts on October 1, 2013 (it became effective for the special courts handling war crimes and organized crime cases in 2012), enumerates the rights and duties of a defendant or arrestee as well as the rights and duties of defense counsel. **Criminal Procedure Code of the Republic of Serbia** arts. 68–73 (*adopted Sept. 26, 2011, entered into force Oct. 1, 2013*) [hereinafter Serbian Crim. Proc. Code].

A person who has been arrested or charged is entitled, among other things, to be informed promptly, and before being interrogated, of the charges against him, and that everything he says
may be used as evidence; to say nothing, to refrain from answering a question, to present his defense freely, and to admit or not admit culpability; to demand a medical examination by a physician of his choosing; to have counsel present at his interrogation; to appear before a court in the shortest possible time and, if he was arrested without a court decision or without having been interrogated, be brought before a court within 48 hours or released from custody; be tried in an impartial and fair manner and in a reasonable time; to sufficient time and opportunity to prepare a defense; to examine documents in the case file and items serving as evidence; to gather evidence for his defense; to present facts and evidence in his favor, question prosecution witnesses, and demand that defense witnesses be questioned in his presence. Id. arts. 68, 69. In addition, torture, inhumane treatment, and coercion are both prohibited and punishable. Id. art. 9.

Defense counsel is entitled to conduct a confidential conversation with his client before his first interrogation; read the criminal complaint, crime scene report, and any expert witness findings or opinion prior to his client’s interrogation; examine case file documents and objects serving as evidence once an order to conduct an investigation has been issued or an indictment has been filed, or before his client is interrogated; to have confidential conversations and engage in unimpeded correspondence with a client who is in custody; and to perform on behalf of his client all actions to which the client is entitled. Id. art. 71.

Defense counsel is required to submit the power of attorney without delay to the authority conducting the proceedings, provide the defendant assistance in a professional, conscientious, and timely manner; refrain from abusing process in order to delay the proceedings; advise the defendant of the consequences of waiving rights, and, if the advocate withdraws from representing the defendant, continue providing legal assistance for 30 days from the date of withdrawal unless the defendant selects new counsel before 30 days has elapsed. Id. art. 72. If a defendant who has been appointed counsel refuses counsel and elects to conduct his own defense, the court appointed counsel is required to remain informed of the content of evidentiary actions and the course of the trial, provide explanation and advice to the defendant orally or in writing, attend procedural actions and closing arguments unless the defendant explicitly opposes it, and file any legal remedy or procedural action requested by or consented to by the defendant. Id.

In certain situations, the defendant is obliged to have defense counsel. Such situations include from the moment of first interrogation to the final conclusion of proceedings if the defendant is mute, deaf, blind, or otherwise incapable of conducting his own defense; from the moment of first interrogation to the final conclusion of proceedings if the proceedings concern an offense punishable by a term of imprisonment of eight years or more; from the moment of deprivation of liberty if the suspect or defendant is deprived of liberty or prohibited from leaving his or her home; if the defendant is being tried in absentia or has been removed from the courtroom for disturbing the proceedings; if proceedings for ordering compulsory psychiatric treatment are being conducted; or from the beginning of plea negotiation proceedings. Id. art. 74.

A defendant is entitled to court appointed counsel in several cases. If the defendant is obliged to have defense counsel or if the defendant does not agree on counsel with his co-defendants and does not select his own counsel, the public prosecutor or the president of the court before which the proceedings are being conducted will appoint counsel from a list of advocates provided by the local Chamber of Advocates. Id. art. 76. Court appointed defense counsel must provide justification if they wish to recuse themselves from taking the case. Id. In addition, indigent persons who cannot
afford to pay defense counsel must be appointed counsel upon request if the criminal proceedings are being conducted in connection with an offense punishable by a term of imprisonment of three years or more, or if reasons of fairness so demand. *Id.* art. 77. The preliminary proceedings judge, president of the trial panel, or individual judge must rule on the defendant’s request for counsel, and counsel is appointed by the president of the court before which the proceedings are being conducted from the list of advocates provided by the local Chamber. The cost of the defense is borne by the court’s budget. *Id.*

In practice, interviewees indicated that the rights of suspects and defendants who can afford to retain counsel are respected. Advocates did not report being prevented from communicating with their clients, and stated that they are generally notified of a client’s arrest before his first interrogation. Advocates had some concerns about equality of arms under the new Criminal Procedure Code, particularly with relation to the investigation, which is to be carried out by the prosecution under the new Code. Article 301 of the Code allows the suspect and his counsel to collect evidence and other materials for the benefit of the defense, but the defense has no authority to compel a witness or person in possession of evidence to talk to or cooperate with the defense. If the defense believes that a certain action must be taken to gather evidence, the defense must request that the public prosecutor undertake the action; the prosecutor has eight days to consider the request, and if the prosecutor rejects or does not decide on the proposal, the defense may submit the proposal to the judge, who also has eight days to issue a decision. If the judge grants the proposal, he will order the public prosecutor to undertake the evidentiary action. *Id.* art. 302. Many advocates interviewed by the assessment team were not confident that prosecutors would give serious consideration to defense requests to gather evidence, or that prosecutors would diligently undertake evidentiary actions ordered by the court on the defense’s behalf. Advocates believed that this would be particularly detrimental to indigent defendants who either do not have counsel or have court-appointed counsel being paid for by the court; these defendants would have no funds to gather their own evidence and would be entirely reliant on the prosecution to gather evidence on their behalf.

**Comparative Highlights**

Advocates in all five countries expressed some concern about the protection of the rights of a person accused of a crime. In all countries, some advocates reported that they had been denied access to a client being questioned or detained in a police station, and that police did not always inform people under arrest of their right to counsel. Advocates also had concerns about their ability to access the case file and to review all evidence, including both inculpatory and exculpatory evidence. This was of particular concern in Macedonia and Serbia where the new Criminal Procedure Codes give prosecutors significantly more control over the investigation than they had under the previous system, although in both countries the Codes are so new that it remains to be seen if their concerns will be realized. Interviewees in those countries were especially concerned about the rights of

**For Consideration**

How can the legal profession support knowledge of and respect for the rights of persons accused of crimes, especially the right to counsel, to review all evidence, and to present evidence?

Are reforms needed to criminal procedure to give defense more power to conduct investigations and gather evidence?

Do plea bargaining and speedy trial procedures adequately respect the rights of defendants?

How can the legal profession ensure that indigent defendants receive an effective defense?
indigent defendants, who will be entirely reliant on the prosecutor to gather evidence since they will not be able to afford to conduct their own investigation, especially since defendants are not guaranteed a right to counsel if they are facing sentences of less than roughly eight years. In Albania, which is unique among the five countries in not having introduced the adversarial system, the defense does not have the right to conduct its own investigation. Albanian interviewees also indicated that prosecutors have been known to pressure defendants to retain an advocate who will agree to a speedy trial, which requires the defendant to stipulate to the prosecution's evidence. Some interviewees also noted that the provisions for mandatory defense counsel in certain cases appear to violate article 6 of the ECHR, which give defendants the right to represent themselves. On the other hand, in Bosnia defendants have an absolute right to select their own advocate from the list of advocates willing to be appointed ex officio, rather than having ex officio counsel appointed through a randomized system or through the legal aid agencies, which interviewees considered to be a liberal interpretation of article 6 but also reportedly costs the courts much more money than it would cost to appoint counsel through the legal aid agencies.

**Factor 7: Promoting Access to Justice**

*Lawyers must make their services available to all sectors of society so that no one may be denied justice. Professional associations of lawyers should work to ensure the delivery of legal assistance and advice to persons who cannot afford a lawyer.*

### International Standards

Realizing access to justice means empowering citizens to use justice institutions and empowering institutions to provide fair solutions to citizens’ problems.42

All necessary measures should be taken to ensure that all persons have effective access to legal services provided by independent lawyers.43 Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, color, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons.44

It is a necessary corollary of the concept of an independent bar that its members shall make their services available to all sectors of society so that no one may be denied justice.45 A form of state funded legal aid must be regarded as a human right to enable individuals to seek and receive legal advice and to assert and protect their rights under law in criminal and civil proceedings.

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42 AMERICAN BAR ASSOCIATION RULE OF LAW INITIATIVE, THE ACCESS TO JUSTICE TRAINING MANUAL: A GUIDE TO ANALYZING ACCESS TO JUSTICE FOR CIVIL SOCIETY ORGANIZATIONS 4 (2010); see, e.g. ICCPR art. 2(3): “Each State Party to the present Covenant undertakes [...] to ensure that any person whose rights or freedoms [...] are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; [...] that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; [...] and that the competent authorities shall enforce such remedies when granted.”

43 CoE Recommendations, Principle IV(1).

44 UN Basic Principles, Principles 2, 3, 4; see also CoE Recommendations, Principle IV(3).
Bar associations should encourage the setting up of legal aid systems where none exists, and all lawyers should participate in or otherwise support legal aid systems. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources. Governments and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers. Lawyers should be encouraged to provide legal services to persons in an economically weak position. Lawyers, law firms, bar associations, and other organizations employing lawyers, whether non-profit or for profit, are strongly encouraged to develop or improve specific pro bono policies and programs, to create the conditions and incentives so that pro bono work is encouraged, valued and rewarded, and to pursue or provide continuing legal education in this field, as pro bono legal service is closely linked to the corporate social responsibility of the legal profession. Lawyers’ duties toward their clients should not be affected by the fact that their fees are paid wholly or in part from public funds, and lawyers providing legal services paid wholly or in part from public funds shall enjoy full guarantees of professional independence.

Analysis

Albania

Albania’s Legal Aid Commission (LAC), charged with providing legal aid in civil and criminal cases, was established in 2011. The Commission has struggled with finding adequate funding and by most accounts, does not function. Legal aid is provided to some extent by legal aid CSOs, who rely on international donors for support to continue their work. One interviewee who has tried to cooperate with the LAC stated that there is no public office for interested persons to visit and the administrators of the Commission do not adequately communicate with the NCA or CSOs providing legal aid. When the interviewee needs to get information from the LAC, he must persuade a guard in the lobby of the Ministry of Justice building to deliver a message. The LAC seems to have the capacity to provide funds to CSOs to provide free legal aid, but the funds are very small and the LAC does not seem to have a systematic mechanism for disbursing such funds. One interviewee told the assessment team that in 2012, a CSO took on 1,500 cases using international donor funds; funds from the LAC provided enough money to take on only 17 cases. According to one interviewee, the LAC itself took only about 27 cases in 2012. One CSO expressed that donor funding to support CSO-provided legal aid has decreased since the creation of the LAC, in anticipation of the LAC bearing responsibility for ensuring access to legal services. Very few private (non-CSO) advocates provide pro bono criminal defense assistance and the NCA does not actively foster a culture of pro bono service at this time.

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45 IBA Standards on Independence, Standard 15.
47 UN Basic Principles, Principles 2, 3, 4; see also CoE Recommendations, Principle IV(3).
48 CoE Recommendations, Principle IV(2).
50 CoE Recommendations, Principle IV(4); IBA Standards on Independence, Standard 16.
Under the Law on Legal Aid, the provision of services from an ex officio advocate should be managed by the LAC (ALBANIA LAW ON LEGAL AID art. 20), but as it stands, the prosecutor and judge appoint ex officio advocates at different stages in the proceedings. Advocates who wish to appear ex officio in criminal cases are placed on a list that the NCA regional chamber leadership provides to judges in each region on a monthly basis. If a judge knows that a defendant meets the requirements for ex officio representation, he chooses an advocate from the list, finds out if the advocate is available, appoints the advocate and then sends a notice to the regional chamber of advocates.

Ex officio advocates are paid very little (one interviewee stated that the current rates for ex officio representation were based on rates established in 1996), which some say affects the motivation levels and therefore quality of the criminal defense offered to clients. In one example, an interviewee stated that as an ex officio advocate, he had earned around 50 Euro for one month of work. Interviewees stated that the quality of the ex officio advocates is very low; they often present a “formal” defense, appearing only when necessary and not engaging in a real consultation with or representation of the client. As one interviewee reminded the assessment team, this type of representation violates art. 6 of the European Convention on Human Rights; there is no effective defense if the defense advocate shirks his duty to his client.

There is little public information available to indigent persons about legal aid available. This is especially true among the Roma communities, which are often excluded from public information campaigns, but are most in need of legal aid services. Routine legal forms are not available for free in courts or on website, making it more difficult for indigent persons to get adequate information about what their rights are within the justice system.

Filing fees in courts are very high for civil cases; for example, to register a birth, one must pay 9,000 lek (approximately $900) and to register a divorce, one must pay 12,000 lek (approximately $1,200). These fees make it very difficult for indigent persons to pursue court actions in civil cases. In addition to filing fees, most civil case files must include evidence and documentation, which all must be notarized. These notaries fees add on to the costs of the actions.

**Bosnia and Herzegovina**

The FBiH Ethics Code requires advocates to provide free legal assistance to socially vulnerable persons, which must be provided as carefully and conscientiously as assistance to paying clients, and to represent socially vulnerable persons if requested to do so by the competent body of the Chamber of Advocates. FBiH Ethics Code rule XI. Likewise, the RS Ethics Code requires advocates to provide legal assistance for clients who are not in a position to pay for services or to clients who are appointed according to a decision of the Chamber of Advocates. RS Ethics Code rule II(2). In practice, this ethical requirement is fulfilled only through the Chambers’ cooperation in providing a list of available advocates willing to be appointed by the courts to represent indigent defendants. Interviewees indicated that a large number of advocates appear on the lists, and believed that a majority of criminal defendants in ordinary cases (i.e. not organized crime or war crimes cases) are unable to afford counsel and have an advocate appointed for them by the court. Although it appeared to be common knowledge that a small group of advocates are known for their representation of criminal defendants and are the most frequently selected by indigent defendants, in general, interviewees believed that the system for appointing counsel to indigent defendants is adequate. Several interviewees noted that the advocates who are frequently selected to represent indigent defendants take so many cases that they earn an income substantially above the average for an advocate in Bosnia.
Interviewees reported that the Chambers of Advocates opposed the creation of a legal aid system and opposed allowing lawyers working for legal aid agencies to appear in court, on the basis that this would take away work from registered advocates. However, the United Nations Development Program (UNDP) has supported the creation of a free legal aid system, and laws on free legal aid have been passed in the RS, Brcko District, and eight of the ten cantons of the FBiH. See UNDP, Access to Justice, Supporting the Rule of Law and Transitional Justice, at http://www.id.undp.org/content/bosnia_and_herzegovina/en/home/operations/projects/crisis_prevention_and_recovery/access_to_justice.html. The legal aid systems have different structures and are at different levels of functioning, and many interviewees maintained that the system would be greatly improved by unifying the legal aid system, creating it in state law, and ensuring consistent functioning throughout the country.

The free legal aid agencies in the RS and FBiH primarily provide legal aid in civil matters, although interviewees reported that in some cantons of the FBiH, legal aid lawyers are included on the list of advocates willing to be appointed to represent indigent defendants. However, because the legal aid system is not well known, defendants generally select private advocates rather than legal aid lawyers. Interviewees reported that in Brcko District, the Office for Legal Aid is part of the judiciary and is well-funded, and legal aid lawyers serve as counsel in about half of criminal cases.

Kosovo

Under the Criminal Procedure Code, “if the defendant has insufficient means to pay for legal assistance and for this reason cannot engage a defense counsel, an independent defense counsel having the experience and competence commensurate with the nature of the offense shall be appointed for the defendant on his or her request and paid from budgetary resources if required by the interests of justice.” KOSOVO CRIMINAL PROCEDURE CODE ch. 1, art. 11 (4). The Constitution of Kosovo provides a higher standard for providing representation than the criminal procedure code. The Constitution envisions that anyone accused of a crime would have legal representation; however, the Criminal Procedure Code provides that in the interests of justice, anyone accused of a crime with a potential sentence of eight years or more, or showing other conditions requiring mandatory defense counsel, is entitled to free legal representation. Id. ch. V, art. 57, subsections 1–2.

The KCA can regulate pro bono legal aid, and encourages advocates to devote 20% of their time to providing pro bono legal services. Under the Code of Ethics, advocates have a duty to offer free legal services to “beneficiaries of the legal system, but this is rarely met by most advocates. KOSOVO CODE OF ETHICS, ch. XI, art. 70. In addition, the Code of Ethics obligates advocates not to refuse a client without a reason, such as the possibility of receiving low pay for the work. The KCA provides free legal services in public places on Law Day, celebrated annually in May or June. At least one advocate interviewee expressed the opinion that as a private, non-government citizen, he should not be forced to give his services away for free, and thus, should not be required to provide any pro bono assistance. This interviewee viewed the provision of legal aid to indigent person as a responsibility of the state, not of private citizen advocates. This idea demonstrates the view that in some ways, advocates are perceived as entrepreneurs, and not officers of the court, called to higher standards of professionalism and advocacy.

By law, in a case of mandatory defense, if the defendant does not engage a defense counsel and no one engages a defense counsel for the defendant, the pretrial judge or other competent judge shall appoint ex officio a defense counsel at public expense. If a defense counsel is appointed ex officio after the indictment has been brought, the defendant shall be informed of this at the same time as
the indictment is served. Kosovo Criminal Procedure Code ch. V, art. 5 (2). The qualification of a client’s case for “mandatory defense” includes conditions such as physical or mental impairment of the defendant, the possible sentence or the engagement in plea bargaining. Id. ch. 5, art. 57 (1).

In addition, even if the conditions for mandatory defense are not met but the proceedings are being conducted for a criminal offense punishable by imprisonment of eight years or more years, or in the interest of justice, independently from the punishment foreseen, a defense counsel is appointed to the suspect or defendant upon his or her request, if he or she is financially unable to pay the cost of his or her defense. Id. ch. 5, art. 58 (1).

The ex officio system in Kosovo is not ideal. The KCA provides a list of ex officio advocates to the courts, although provision of legal services through this mechanism has been inconsistent. One advocate called the current ex officio system a “disease without treatment.” There seem to be two major challenges for the system: the quality of the advocates and their availability. The KCA has instituted a centralized list for all ex officio advocates in Kosovo and as designed, when one needs an advocate, one calls a centralized hotline and a regional coordinator assigns an advocate from the centralized list.

Advocates expressed that in practice, the system works in a way that it falls to the the responsibility of the judge and prosecutor to obtain a good advocate for a defendant so that the defendant has adequate representation. Although it is not in line with regulations and accepted practice, some judges and prosecutors select advocates who will only do the bare minimum and will not challenge the judge or prosecutor in any way. Underqualified and unmotivated advocates leave ample room for violations of defendants’ rights in the current system. In some regions, advocates hoping for ex officio cases would spend time at the court; in hopes that a judge in need of an advocate to proceed with a hearing would open the door, look into the hallway, and ask any advocate present to attend. In other regions, too few advocates have agreed to be on the ex officio list to meet the existing needs. For example, one interviewee stated that recently in Prizren, there were 70 active, licensed advocates and only three ex officio advocates. This resulted in 1,000 cases for only three advocates. According to other information, there are 560 advocates in Kosovo; 396 are on the centralized ex officio list. In such a situation, police would call the three advocates only to be told that they were all busy or unavailable at the needed time. But recently, the KCA initiated a pilot program in Prizren and is now using the same model Kosovo-wide that establishes a kind of hotline through which police, prosecutors and judges can call a central KCA employee, who then contacts licensed advocates in the area (but not necessarily on the ex officio list) to provide legal services. This system has had a marked improvement on the ability of court personnel to secure an advocate for a person in need in a timely way, perhaps because advocates are more likely to agree to appear ex officio if they receive a direct call, than if they are required to place themselves on a list for use sometime in the future.

In addition, the KCA is working on a mechanism to divide the ex officio list into different experience areas; one interviewee stated that there is no way to tell from the list if an advocate is experienced in civil or criminal law, or both. There is also no way to determine if an advocate has the necessary experience to appear before different courts.

Payment for ex officio services is difficult to obtain and contributes to the problem of availability. One advocate stated that he took on representation ex officio and tried to obtain payment for his services three times with no success. After that, he decided not to pursue such cases again.
Kosovo supports a Legal Aid Commission, which is tasked with providing free legal assistance to indigent persons in criminal, administrative and civil matters. The Commission runs five legal aid District Bureaus, where citizens can go to access legal services. These offices are in Pristina, Prizren, Peja, Mitrovica and Gjilan. Civil society organizations have stepped in to provide some legal aid in criminal cases, but mostly in civil or administrative proceedings. Kosovo has a Legal Aid Commission that is tasked with managing the provision of legal aid to indigent persons. In addition, eleven municipalities in Kosovo have legal aid offices and there is a mobile legal aid clinic that reaches citizens in need who live outside the served areas. [Kosovo 2013 Progress Report, 12].

In Kosovo, the new criminal procedure code provides many new rights for victims, who have the status of a party in criminal proceedings. The prosecutor’s office houses the office of victims’ advocates, who from 2000 until 2013, were tasked with representing victims of domestic abuse cases, and assistance in trafficking cases. From 2013 on, these advocates are required to represent victims in other cases as well, and will be an important way for the justice system to provide improved access to justice for victims. With the new responsibilities, though, victim’s advocates, judges, prosecutors and defense advocates need to have a better understanding of each party’s rights and roles within the proceedings. As it stands, judges often do not understand the role of the victim advocate, and sometimes refer victims to defense advocates to represent the victim’s interest. In fact, the two roles are very different and require different training and knowledge.

**Macedonia**

There are no state-organized legal aid agencies providing assistance in criminal cases in Macedonia. The Law on Free Legal Aid specifically excludes criminal defense from the areas in which free legal aid is provided, although free legal aid may be provided for victims of crime. LAW ON FREE LEGAL AID OF THE REPUBLIC OF MACEDONIA arts. 7, 8 (adopted Dec. 29, 2009, entered into force Feb. 7, 2010). Although the MCA Code of Ethics encourages advocates to provide legal services free of charge to indigent persons, in practice, interviewees reported that advocates only rarely do so.

Interviewees gave several explanations for the general lack of pro bono assistance. First, interviewees pointed out that indigent defendants do receive legal assistance free of charge from court-appointed advocates. Interviewees further explained that advocacy is not generally a highly profitable profession, and that advocates cannot afford to take on cases free of charge because they must dedicate their time to paying clients in order to earn a living. Some interviewees also mentioned that advocates perceive themselves as private entrepreneurs, not officers of the court, and do not believe they have a professional responsibility to promote access to justice.

Interviewees from civil society organizations and human rights groups disagreed that the system of appointing counsel ex officio is sufficient to meet the needs of indigent defendants. They emphasized that socially marginalized groups, in particular the Roma population, are unaware of their rights, lack confidence in legal authorities, and are often treated unfairly in comparison with the majority population, facing unsubstantiated charges, a presumption of guilt, and overly harsh sentences. Although the system of appointing counsel ex officio does ensure that every defendant has counsel at least on paper, the MCA has not carried out any educational campaigns or programs to ensure that marginalized groups know their rights and are able to assert them. Several interviewees from civil society organizations mentioned that individual advocates do contact them to volunteer their time or provide pro bono services, but this is due to individual initiative, not any encouragement on the part of the MCA.
Serbia

There are no state-organized legal aid agencies currently operating in Serbia. As discussed in Factor 6 above, indigent defendants are entitled to a court-appointed advocate paid for by the court budget in situations where defense counsel is obligatory, where the proceedings concern an offense carrying a sentence of three or more years, or for reasons of fairness. Crim. Proc. Code art. 77. The Chambers of Advocates cooperates in ensuring that indigent defendants are provided with counsel by providing the courts a list of advocates who are willing to be appointed. However, interviewees indicated that advocates appointed and paid by the courts are generally paid 50 percent of their usual fee and that the courts owe a significant debt, which some interviewees estimated to be in the tens of millions of dollars, to advocates who had represented indigent defendants. Many interviewees believed that judges and prosecutors are hesitant to appoint counsel for indigent except in cases where it is required by law, primarily where the defendant is facing a sentence of eight years or more and is deprived of liberty. Interviewees also noted that defendants who cannot afford counsel are permitted to request counsel be appointed if they are facing a sentence of three years or more, but that they must make this request to a judge, and therefore effectively do not have a right to counsel at the time of their arrest or interrogation.

A draft Law on Legal Aid is currently being considered that would create a legal aid system for both criminal and civil cases, although the proposed system is reportedly extremely limited and would only provide free legal assistance for persons who qualify for social welfare assistance. Some groups favoring the creation of a legal aid system believe the procedure for obtaining legal aid proposed in the draft law is too complex, especially for indigent and marginalized persons, and would hinder their ability to access legal services. The SCA has opposed the legal aid system as described in the draft law, taking the position that advocates drawing a salary from the state budget would not be independent, although the draft law defines legal aid lawyers as law graduates who have passed the bar exam working in the legal aid service established by local government, rather than as advocates. Several interviewees, including interviewees who held positions within the local Chambers of Advocates, privately indicated that they believe the root of the SCA’s opposition is the financial interests of advocates who might lose business to legal aid lawyers, rather than concern for the independence of legal aid lawyers. These interviewees noted that legal aid lawyers would not be considered advocates or be eligible to join the SCA, and the services they provide would compete with the services currently provided by advocates. Many interviewees were critical of the Chamber of Advocates and of the legal profession as a whole for failing to advocate for the rights of persons accused of crimes who cannot afford counsel.

A number of civil society organizations are active in providing legal assistance to marginalized and indigent communities in Serbia, although generally these groups are more active in providing civil, rather than criminal, legal assistance. Some advocates working for civil society organizations stated that the SCA opposed allowing CSOs to provide legal aid, but they noted that advocates working for CSOs are able to provide specialized representation focusing on one area of law, unlike private advocates who represent clients in a variety of areas. CSO representatives interviewed by the assessment team noted that they are dependent on donor funding, and that only a legal aid system fully funded by the state would ensure consistent representation for indigent people in Serbia.
Comparative Highlights

Interviewees in all five countries identified serious challenges in ensuring access to justice for all citizens. Interviewees nearly uniformly reported that free legal aid for criminal cases, to the extent it even exists, does not work well; the only jurisdiction that reported a well-functioning legal aid system for defendants was Brcko District in BiH. In Macedonia and Serbia, the Chambers of Advocates oppose the creation of a legal aid system, although many advocates indicated that they, as individuals, support it. However, interviewees also reported that the Chambers of Advocates do little to support access to justice, although the ethics codes generally suggest that advocates should provide free legal assistance. Interviewees generally stated that advocates see themselves as entrepreneurs and do not feel a duty to provide representation for the poor. The main contribution of the Chambers of Advocates is maintaining a list of advocates willing to be appointed ex officio, but interviewees nearly universally believed the ex officio systems are dysfunctional and do not ensure diligent and zealous representation for indigent defendants (see Factors 5 and 6 above). CSOs are active in providing legal assistance in civil cases and for victims of crimes, but are less active in the criminal defense sphere.

For Consideration

What should the role of the legal profession be in promoting access to justice? What duties should advocates have to assist the poor and marginalized?

If the bar opposes the creation of a legal aid system, what alternatives can it propose to ensure access to justice for all?

How can the legal profession work with CSOs and other professionals to increase access to justice in their country and throughout the region?

How can existing ethics norms encouraging advocates to provide free legal aid be strengthened and enforced?
III. Relationships with Non-Governmental Criminal Justice Actors

Factor 8: Professional Associations of Lawyers

*Professional associations of lawyers should be self-governing and represent the interests of lawyers, promote continuing legal education and training, and protect lawyers’ professional integrity.*

**International Standards**

Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training, and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.\(^{51}\) This shall be without prejudice to their right to form or join in addition other professional associations of lawyers and jurists.\(^{52}\)

Professional lawyers associations should ensure the independence of the legal profession by promoting and upholding the cause of justice; maintaining the honor, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession and protecting the intellectual and economic independence of the lawyer from his or her client; defending the role of lawyers in society and preserving the independence of the profession; protecting and defending the dignity and independence of the judiciary; promoting free and equal access of the public to the system of justice, including the provision of legal aid and advice; promoting the right of everyone to a prompt, fair and public hearing before a competent, independent, and impartial tribunal and in accordance with proper and fair procedures in all matters; promoting and supporting law reform, and commenting upon and promoting public discussion on the substance, interpretation, and application of existing and proposed legislation; promoting a high standard of legal education as a prerequisite for entry into the profession and the continuing education of lawyers; ensuring that there is free access to the profession for all persons having the requisite professional competence, without discrimination of any kind; promoting the welfare of members of the profession and the rendering of assistance to members of their families in appropriate cases; and affiliating with and participating in the activities of international organizations of lawyers.\(^{53}\)

Professional associations of lawyers should take any necessary actions, including defending lawyers’ interests with the appropriate body, in the event of the arrest or detention of a lawyer; proceedings calling into question the integrity of a lawyer; any search of a lawyer’s person or property; any seizure of documents or materials in a lawyers’ possession; and publication of press reports which require action on behalf of lawyers.\(^{54}\)

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\(^{51}\) UN Basic Principles, Principles 24, 25; CoE Recommendations, Principle 5, 1–3.

\(^{52}\) IBA Standards for Independence of the Legal Profession, Standard 17.

\(^{53}\) IBA Standards for Independence of the Legal Profession, Standard 18; *see also* CoE Recommendations, Principle V(4).

\(^{54}\) CoE Recommendations, Principle V(5); *see also* IBA Standards for Independence of the Legal Profession, Standard 20.
Analysis

Albania

Compared to other countries in the region, Albania's legal profession and its governing body are rather young. Although the National Chamber of Advocates was established in May 1990, between 1990 and 2000, the Chamber conducted no activities. One interviewee explained this inactivity by saying that by the early 1990s, there were no advocates in Albania who remembered a time when the legal profession existed, and so there was no tradition or history of advocate activity to draw upon. After having prohibited the private practice of law in 1967, Albania re-established the profession of advocate only in 1990. According to interviewees, as of late 2013 there were approximately 6,800 advocates licensed to practice law in Albania; of these, approximately 1,500 are actually practicing law.

Since 2000, the NCA has begun collecting dues, and has established a code of ethics, issued identification cards and certificates of licenses to advocates, established a CLE and advocate training program, and begun administering the bar exam. After an initial period of assistance from USAID, it now publishes and distributes a bar journal to members with its own resources. There are 13 regional chambers in Albania; each follows the structure of the national Chamber, with a Leading Committee, Chairman, Secretary, etc. The head of each regional chamber is a member of the General Council of the NCA, which approves the statute of the NCA, approves the Ethics Code, defines the criteria by which candidates enter the legal profession, and otherwise coordinates the activities of the NCA. ALBANIA LAW ON ADVOCACY art. 19 (2) (a-g). Under the NCA statute, the General Council should meet once a year, but in practice, it often meets four times a year. During the meetings, the General Council discusses issues like ethics, the School for Advocates and insurance. The Governing Council forms the operational arm of the NCA, calling the General Council of the NCA, preparing the NCA statute and ethics codes and tracking the implementation of the decisions of the NCA’s General Council. Id. art. 20 (2-3).

NCA bodies are considered independent, but the Disciplinary Committee of the NCA includes members from the Ministry of Justice and the High Council of Justice. Id., ch. 42, art. 1. The attendance of those individuals to the Committee is a good faith effort for the NCA to foster open communication and transparency among justice-sector institutions. The NCA maintains good relationships with the Ministry of Justice, the High Council of Judges, the Supreme Court, and the Constitutional Court, and has worked with the School of Magistrates on the development of the new School of Advocates. It is also an observer member of the Council of Bars and Law Societies of Europe [hereinafter CCBE].

Although the NCA seems to be in the process of improving the services it provides to members, at the time of this assessment, interviewees who were NCA members expressed frustration at the lack of services offered them for the dues paid. Members often stated that they paid their yearly dues and received no information or publications from the NCA in exchange. Of particular concern to many members of the profession was the lack of training of young advocates and bar membership services.

Although there are no legal specialties recognized within the NCA, one advocate established four years ago the Penal Bar Association (or Criminal Advocates Association), an organization of approximately 500 members, who cooperate to conduct seminars and conferences on criminal law issues. Members pay approximately $30 per year to receive training opportunities from foreign experts. The organization conducts occasional roundtables on issues related to criminal law.
Bosnia and Herzegovina

All advocates registered to practice law in Bosnia and Herzegovina must be a member of one of the two entity Chambers of Advocates. The Chamber of Advocates of the Republika Srpska, an independent, self-governing organization with mandatory membership for advocates whose offices are based in the territory of Republika Srpska, is headquartered in Banja Luka. The RS Chamber of Advocates has approximately 500 advocate members and 250 trainees, of which 100 have already passed the bar exam and 150 are completing their traineeship prior to taking the exam. The Chamber of Advocates is represented by its president, and its bodies include the Assembly, the Executive Board, Fora of Advocates, the Disciplinary Court, the Disciplinary Prosecutor, and the Commission for Control of the Financial and Operational Activities, as well as other bodies if created by the statute of the Chamber of Advocates. RS LAW ON THE LEGAL PROFESSION arts. 7, 8, 13.

The members of the RS Chamber of Advocates are arranged geographically into Fora of Advocates, which elect delegates to the Assembly, with one delegate for every five advocates in the forum, plus one trainee delegated by the Association of Law Trainees. Id. arts. 14, 20, 21. The Assembly is responsible for the general operations of the Chamber of Advocates, including adopting the general acts of the Chamber, electing and dismissing other bodies, adopting financial plans and reports, making proposals for the tariff, cooperating with other bar associations, and other issues. Id. art. 15.

The RS Executive Board consists of 11 members including the President of the Chamber and the Presidents of each Forum of Advocates, with the remaining members elected by the Assembly. Id. art. 19. It is responsible for determining the system for and keeping the Registers of Advocates, Trainees, Joint Attorney Offices, and Law firms; registering and removing persons from those registers; determining the rights, obligations, and professional responsibilities of advocates and trainees; executing the Chamber's financial plan; setting dues for membership in the Chamber; organizing the work of the Secretariat of the Chamber; electing and appointing the Editor and Chief and Editorial Board of the bar magazine; and other functions. Id. art. 18.

The Chamber of Advocates of the FBiH has approximately 900 members and is organized in five branches:

1. Sarajevo (including Sarajevo Canton and Bosansko-Podrinjski Canton),
2. Mostar (including Hercegovacko-Neretvanski Canton, West-Herzegovina Canton, and Canton 10),
3. Tuzla (including Tuzla Canton and Posavski Canton),
4. Zenica (including Zenicko-Dobojski Canton and Central-Bosnia Canton), and
5. Bihac (including Unsko-Sanski Canton).

FBiH LAW ON THE LEGAL PROFESSION art. 10. Advocates must register with the branch where their office is located, and by registering with the branch become a member of the Chamber of Advocates of the FBiH. Id.

The FBiH Chamber of Advocates has six bodies, including an Assembly,Administrative Board, President and Vice-President, Supervisory Board, Disciplinary Court and Disciplinary Prosecutor, and Board of Examination. The mandate of the bodies is four years, and the President and Vice-President may not serve two consecutive terms in the same office. Id. art. 12. Each branch has the same bodies. Id. art. 15. The Assembly meets annually unless an extraordinary session is required, and its delegates are elected by the branches at a rate of one delegate for every ten members of the branch, plus one delegate elected by the Association of Law Trainees. Id. art. 13.
The two entity Chambers of Advocates have similar mandates. Their mandates include representing the interests of advocates; developing and improving the practice of law; ensuring the professional autonomy of advocates; determining who may practice law or work as an trainee advocate; determining disciplinary liability for violations of professional conduct rules; protecting the rights and interests of advocates, joint advocate offices, law firms, and trainees; organizing and providing professional training for advocates; supervising the training of trainees; cooperating with legislative, judicial, and executive authorities throughout Bosnia-Herzegovina; mediating disputes between advocates and their clients; cooperating with state and international organizations, institutions, and associations; and cooperating with other Chambers of Advocates and foreign or international bar associations. RS LAW ON THE LEGAL PROFESSION art. 9; FBiH LAW ON THE LEGAL PROFESSION art. 11. BiH is also an observer member of the CCBE.

Interviewees generally offered a mixed assessment of the Chambers. Interviewees believed that the Chambers do represent the interests of advocates, but also indicated that the Chambers primarily focus on the economic and financial interests of advocates, perhaps to the exclusion of the overall interests of justice. Advocates indicated that the Chambers do not provide many professional development opportunities and were generally unsure what their membership dues are used for; advocates from the RS mentioned that they were aware of that the RS Chamber maintains a fund to assist advocates in financial need. Some interviewees believed that the profession would benefit from the creation of a national bar that would unify advocates from the two entities and simplify the legal profession.

Kosovo

The KCA has existed since 1973 and recorded activities since the 1940s, but has been most active in providing support and advocacy for the profession since 2001. In that year, KCA members participated in a USAID-funded study trip, which provided the leadership with excellent guidance and advice about the reorganization of the KCA bodies. Since 2001, U.S. and international donors and the KCA have contributed to significant improvements to the KCA operations.

The KCA is made up of a General Conference as an advisory body that includes approximately 600 licensed members, the Assembly, which is an 85-person body that includes representatives from regional branches, the President, who presides over the Assembly, the Executive Board, which includes representatives from each regional bar, the President, the vice president and of the KCA and a member of academia, the Supervisory Board, disciplinary bodies and other bodies.

From several interviewees, it seems that the current President of the KCA has made several important improvements in the administration and operation of the KCA, improving its support to the legal profession and its respect among members. In particular, his actions in implementing a fine system for non-compliance with CLE requirements earned him respect from those who understood the difficulty in forcing punitive actions on colleagues in a small advocate community.

There are seven regional bar chambers (branches) in Fereizaj, Gjakova, Gjilan, Mitrovica, Peja, Pristina, and Prizren; the president of each regional bar is a member of the KCA Executive Board. Regional presidents work on a volunteer basis and receive payment only for their attendance at KCA Executive Board meetings. Until 2013, UNDP supported the regional branches of the KCA, but since UNDP’s support ended, some regional offices have closed, including those in Gjakova, Mitrovica and Prizren. When the Peja office closed, the head of the branch organized the advocates in the region to maintain operations, collecting 50 Euros from each advocate to pay the salary of an administrative support staff member to run the operations of the branch. The municipal
government of Peja contributed the office space for free. The branch president estimates that 70% of advocates gave money to support the continued operations, and altogether, he collected more than 3,500 Euro. The regional branches organize CLE (supported by KCA and/or international donors), work with police, prosecutors and judges to communicate issues and solutions, and communicate KCA policies and decisions to members. The regional branches also serve as an intake center for disciplinary complaints against advocates.

The regional branches also participate in bench and bar conferences that are held about four times every year in each region and are administered by KCA. During these conferences, which take place during a two-hour lunch meeting, the President of the local court, three judges, KCA regional president, three prosecutors, and the Public Prosecutor all meet to discuss current issues and make recommendations for improvements in policies or implementation of rules within the court system. Recommendations are published in the KCA magazine and the annual report. Examples of past topics are the quality of ex officio advocates, and how to improve adequate judicial notice before hearings take place. Most recently, the conference focused on the new criminal procedure code changes and new court structures in place. In addition to the KCA, there is a voluntary association, the Serbian Association of Kosovar Lawyers, that represents the interests of Serbian advocates practicing in Kosovo. Reportedly, there has been discussion of including the Serbian Association of Kosovar Lawyers within the KCA structure.

The KCA has been an observing member in the CCBE since 2011, and has taken part in several meetings and exchanges through this organization although it cannot obtain full member status in CCBE without being a member of the Council of Europe. In those meetings, each country’s chamber presents on its activities. The KCA attendees have made contacts through the CCBE with chambers from Albania, Croatia, Macedonia, and Serbia. The KCA is also a member of the International Bar Association [hereinafter IBA].

**Macedonia**

The Law on the Bar establishes that advocates are organized under the Chamber of Advocates, which has the status of a legal entity. M A C E D O N I A N   L A W   O N   A D V O C A C Y arts. 1, 3. The MCA is autonomous and independent, and is responsible for licensing advocates, associate advocates, and trainees; registering law firms; determining accountability and sanctions for violations of ethical norms; setting fees for advocates’ services; adopting acts and the Code of Ethics; and ensuring the professional training and advancement of associate advocates and trainees. Id. art. 34(2). The MCA also collaborates with the bars of other countries and international legal organizations. Id. art. 34(4). The MCA is financed by member dues, registration fees, donations, and fees for the rental of space owned by the MCA. There are approximately 2,500 advocates registered by the MCA.

The MCA’s leadership includes the President, who is elected by the Assembly for a term of four years with the possibility of reelection, and also serves as the President of the Managing Board; the Executive Director, who is appointed by the Managing Board; the Assembly, which comprises all of the members of the MCA; the Managing Board, which serves as the executive body of the Assembly and whose members are elected by the Assembly to four-year terms; and the Supervisory Board, which is elected by the Assembly, oversees the MCA’s finances, and reports to the Managing Board. Among other activities, the Assembly establishes and may amend the statute of the MCA; determines the scope of work of the MCA and its bodies; creates an annual report and plan of action on the activities and goals of the MCA as well as an annual financial report; determines the number of members of the Managing Board and elects its members as well as electing the President and
Supervisory Board; and elects the MCA’s representatives to other associations or organizations. The MCA is an observer member of the CCBE, and a member of the IBA.

Advocates had mixed opinions of the MCA. Advocates did believe that the MCA represents the interests of the profession, giving as an example of the MCA’s efforts to defeat a proposed law to require advocates to pay a tax for each document certified with the advocate’s seal. They also believed that the MCA protects the interests of advocates accused of crimes as provided for in the Law on the Bar. See Factor 4 above. However, many advocates emphasized that the MCA does not provide continuing legal education or training and does not effectively and transparently hold advocates responsible for disciplinary violations. Other interviewees, including judges and prosecutors, agreed that advocates would benefit from increased CLE and training opportunities and believed that the MCA should increase enforcement of ethical norms.

In addition to the MCA, there is a voluntary Young Advocates Association. The Young Advocates Association’s strategic priorities include improving the position of young advocates; promoting and protecting human rights and the rule of law; representing the interests of young advocates including education and networking; promoting legal protection of stateless persons, refugees, and asylum seekers; promoting access to justice and improvement of the Law on Legal Aid; preventing discrimination and unequal treatment; and monitoring the implementation of laws related to human rights and to the judiciary. Macedonian Young Advocates Association Website, General Information, available at http://www.myla.org.mk/index.php/en/.

Serbia

The Serbian Chamber of Advocates (SCA) and its subsidiary chambers are autonomous and independent professional organizations established by the Legal Profession Act and the SCA Statute. SERBIAN LAW ON ADVOCACY art. 63. The SCA serves as the umbrella organization covering the entire territory of Serbia; there are 8,056 registered advocates and approximately 3,000 trainees. The SCA includes local Chambers of Advocates in:

1. Vojvodina (1,788 registered advocates);
2. Belgrade (3,716 registered advocates and 1,949 trainees);
3. Zajecar (133 registered advocates);
4. Kragujevac (376 registered advocates);
5. Nis (775 registered advocates);
6. Pozarevac (256 registered advocates);
7. Cacak (661 registered advocates);
8. Sabac (351 registered advocates); and
9. Kosovo and Metohija, with an office in Kosovska Mitrovica (in Kosovo; number of registered advocates not available).

Id. art. 64; SCA STATUTE art. 12; number of registered advocates provided by the SCA on Feb. 15, 2014. Each local Chamber has its own statute and organizational structure. SCA STATUTE art. 12.

The SCA’s mandate includes determining the registration of advocates, foreign national advocates, trainees, law partnerships, and joint law offices; initiating and conducting disciplinary proceedings against advocates and issuing sanctions; representing the interests of advocates before the state and other agencies and organizations; promoting international cooperation in the legal profession; representing advocates before domestic and international professional associations and organizations; organizing and conducting ongoing training for advocates, trainees, law graduates, and law office employees; issuing publications to inform advocates and the public on issues of interest and on professional development; organizing the provision of free legal aid; issuing
opinions on draft laws and other proposals; ensuring conditions for the proper and lawful exercise of the legal profession; ensuring professional ethics, discipline, and responsibility; making proposals for the improvement of the legal profession and legal system; and performing other tasks of importance to the legal profession. **Serbian Law on Advocacy** art. 66; see also **SCA Statute** art. 8.

The SCA’s bodies include the Assembly, the highest body of the SCA, which is made up of the representatives elected to four-year terms by the assemblies of each local Chamber at a rate of one representative for every 50 advocates who are members of that Chamber with the limitation that no single chamber’s representatives may make up more than 49% of the Assembly; the President and Vice-President, the latter of which is elected by the Assembly to a four-year term and then begins a four-year term as President upon the expiration of his or her term as Vice-President; the Managing Board, which has 23 members including 21 delegated by the local Chambers and the President and Vice-President of the SCA; a Supervisory Board, which has one member from each local Chamber and is elected by the SCA Assembly; the Disciplinary Prosecutor and Disciplinary Court; the Council of the SCA, made up of current and past presidents, vice-presidents, disciplinary prosecutors, disciplinary court presidents, secretaries of the managing board, presidents of the local chambers’ councils, and members elected by the Assembly; and the Conference of Advocates, a forum for all advocates to express their opinions on the work of the SCA. **See SCA Statute** arts. 15–51. The SCA is an associate member of the CCBE.

Interviewees had a generally positive view of the SCA and the local Chambers. They believed that the SCA looks out for the interests of advocates, and believed that the SCA acts independent of any special interests or government control. The primary criticisms of the SCA, as discussed in other sections of this report, primarily came from non-advocates and had to do with a perceived lack of disciplinary proceedings, or lack of transparency around disciplinary proceedings, against advocates and a lack of support for access to justice for indigent and marginalized communities in Serbia.

**Comparative Highlights**

The activities of the Chambers of Advocates in each of the five countries vary. The KCA has been active in creating CLE opportunities and enforcing the CLE requirements and has been praised for its recent enforcement of disciplinary sanctions. In the other countries, the Chambers of Advocates are also active in providing CLE; in Macedonia and Serbia, the Chambers have worked with NGOs to provide training on skills needed under the new Criminal Procedure Codes. In Bosnia, the RS Chamber provides professional development at its annual conference, while the FBiH Chamber organizes some training opportunities and actively encourages advocates to attend government- and court-sponsored trainings. In Albania, the NCA is working to create a training institute for advocates, funded in part by NCA members’ dues. Interviewees in Macedonia and Serbia indicated that the Chambers advocate zealously and often successfully for the financial interests of

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**For Consideration**

In what areas do the Chambers in each country meet advocates’ needs, and where are areas of improvement? How can each Chamber of Advocates help their counterparts in other countries improve in those areas?

Should the Chambers of Advocates take a more active role in advocating for cross-border legal issues affecting advocates?

Would greater transparency and reporting in financial matters and in discipline increase advocates’ support of and confidence in the Chambers of Advocates?
their members. However, interviewees also presented criticisms of the Chambers in their respective countries. In the FBiH and Albania, interviewees reported that they believed their monthly dues were too high when compared to the benefits the Chambers provide to advocates. In BiH, some interviewees suggested that the legal profession would benefit from the creation of a national Chamber. Interviewees did not believe that the Chambers in different countries work together on issues of common interest to advocates throughout the region. Interviewees were also concerned with the lack of transparency concerning professional discipline.

**Factor 9: Civil Society**

*Lawyers and their professional associations can benefit from working closely with justice-sector civil society organizations both to advocate for common causes and in the delivery of legal services.*

### International Standards

The term civil society refers to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Justice-sector civil society organizations around the world work to promote human rights, access to justice, rule of law, and advocate for legal reform. Professional associations of lawyers, whether voluntary associations or formally established licensing and regulating bodies such as a Chamber of Advocates, are themselves civil society organizations, and can also benefit from working closely with other civil society organizations to promote and uphold the cause of justice, ensure access to justice and the delivery of legal aid and advice, and advocate for legal reform and human rights on a national and international level.

Lawyers can benefit from close cooperation with civil society organizations both generally and in individual cases. In many countries, justice-sector civil society organizations monitor trials, produce reports on the justice sector, provide training for lawyers on a wide range of legal issues, and offer expert testimony. Lawyers can also provide vital legal services for civil society organizations and their members, particularly in places where groups or individuals who advocate for unpopular causes may be the target of harassment or prosecution. Lawyers have the right to join or form local, national, or international organizations and attend their meetings, without suffering professional restrictions by reason of their membership or activity in a lawful organization.

### Analysis

**Albania**

There are several civil society organizations that are actively engaged in criminal justice work in Albania. International donors have assisted CSOs in developing capacity in issues such as legal aid,

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56 See CoE Recommendations, Principle 5(4) for related standards for bar associations; see also IBA Pro Bono Declaration paragraphs 8, 9 for discussion of how professional associations of lawyers can work with other non-governmental organizations.
57 UN Basic Principles, Principle 23.
court monitoring, strategic litigation and advocacy campaigns since Albania became open to
ternational cooperation in the early 1990s.

Several interviewees expressed that the justice system has many challenges and the government
cannot be expected to tackle each issue with its existing resources and expertise. Civil society has
an opportunity to make a real difference and to take on issues that government is ill-equipped to
address, such as public education and commentary on laws. CSOs could make an important
contribution to the awareness both of challenges but also of solutions implemented by the
government.

At this time, there does not appear to be a robust exchange of information or cooperation among
the NCA and CSOs. One interviewee stated that the NCA would benefit from increased cooperation
with CSOs but lacked the human resources to engage in a strategic way with civil society. Civil
society organizations in Albania have developed relevant skills that would enable them to provide
valuable recommendations to justice-sector personnel or to help the NCA educate the general
public about the place of advocates in Albanian society. As noted below, media in Albania is not a
trusted source of information about the operations of the justice system; civil society has a unique
opportunity to help bridge the gap between advocates and the general public by fulfilling a role
media does not.

**Bosnia and Herzegovina**

There are many justice-sector CSOs operating in Bosnia and Herzegovina, but interviewees
indicated civil society is not particularly active in the area of criminal justice. The Justice Network, a
network of 64 CSOs working in the justice sector that was created with funding from USAID,
includes the primary CSOs active in the justice sector in BiH. These groups are active in judicial
reform, trial monitoring, producing shadow human rights reports, and advocating for the creation
of a legal aid system. More so than any other country visited by the assessment team, interviewees
affiliated with CSOs in Bosnia expressed a lack of connection with the legal profession. Many
interviewees expressed frustration with the Chambers of Advocates’ failure to support the creation
of a robust legal aid system, but even more so expressed frustration with the lack of individual
advocates who dedicated themselves to providing legal services to the poor and socially
marginalized. Interviewees affiliated with CSOs indicated that advocates see themselves as
entrepreneurs, not as officers of the court or public servants, and did not see many areas for CSOs
to work with advocates on criminal justice reform.

**Kosovo**

Kosovo civil society has tended to chase donor funds since the 1999, engaging in a wide variety of
programs that responded to donor priorities, but not necessarily the existing expertise or priorities
for the justice sector community. Recently, though, there are a few CSOs that have succeeded to
focusing on rule of law issues and developing their own capacity to conduct justice sector work in
needed areas.

There are several CSOs directly engaged in rule of law programming, including the Advocacy
Training Resource Center, which is active in training and monitoring on rule of law issues, the
Center for Legal Aid and Regional Development [hereinafter CLARD], which provides legal aid and
advocacy to vulnerable populations, the Kosovo Institute for Policy Research and Development,
Kosovo Law Center, which serves as a publishing center for laws in Kosovo and the Kosovo Law
Institute, which has engaged on rule of law issues in a variety of ways, including through advocacy
and report-writing. The Balkan Investigative Reporting Network [hereinafter BIRN] has conducted a great deal of trial monitoring and has made recommendations to justice stakeholders based on its observations.

The KCA does not often seek out cooperation with civil society, most likely due to lack of resources, but there are numerous ways in which they could cooperate, including on public education about specific issues and helping the public better understand the role of advocates in the justice system. For example, one interviewee described a successful KCA documentary about an advocate that was broadcast on television to explain to the public the role of an advocate acting in a pro bono capacity. In addition, the KCA recently signed a memorandum of understanding with CLARD to help disseminate information about the KCA disciplinary system to members of the public.

**Macedonia**

A number of justice-sector civil society organizations [hereinafter CSOs] are active in Macedonia. The establishment of civil society organizations, as well as the work of foreign non-governmental organizations, is regulated by the **Law on Associations of Citizens and Foundations** (adopted Apr. 15, 2010, **entered into force** Apr. 24, 2010). There are no restrictions on advocates’ joining or working with CSOs, but CSOs reported that they have little to no cooperation with advocates or with the MCA other than advocates employed by CSOs who work to provide legal advice, primarily in civil cases or for victims of crime.

One area in which CSOs are active is bringing cases before the ECtHR. Interviewees reported that advocates generally have little knowledge of international law or ECtHR judgments, even though treaties and ECHR judgments constitute legal authority in Macedonia. Many interviewees believed that advocates would benefit from CLE on the ECHR and other international instruments to which Macedonia is a party. This was considered an area in which advocates would benefit from increased cooperation with CSOs.

**Serbia**

Serbia has a large number of justice-sector civil society organizations. The establishment and operation of CSOs, as well as of foreign non-governmental organizations operating in Serbia, is governed by the **Law on Associations** (adopted July 8, 2009, **entered into force** Oct. 22, 2009). While there are no restrictions on advocates’ ability to join or be affiliated with CSOs, so long as the CSO’s work is not contrary to advocates’ professional ethics, advocates are only allowed to be employed in law firms. **Serbian Law on Advocacy** art. 21. Although interviewees reported that the SCA initially opposed allowing CSOs to provide legal aid, there are now many advocates working with CSOs to provide legal aid to indigent and marginalized persons in both domestic and international fora.

As discussed in factor 7, a number of CSOs are active in providing legal assistance in Serbia, although generally these groups are more active in providing civil, rather than criminal, legal assistance. Interviewees indicated that several CSOs are active in conducting trial monitoring, and there are several CSOs taking cases to European and international judicial bodies, particularly the European Court of Human Rights, involving persons who were illegally detained or mistreated while in detention. Some CSOs also provide training for advocates, although these focus primarily on working with victims of crime rather than defendants.
Comparative Highlights

Although all five countries have CSOs working in the justice sector, the focus of their criminal justice work is primarily trial monitoring and advocacy for victims. CSOs also are active in the international sphere, bringing cases to the ECtHR and UN human rights mechanisms. There is little cooperation between advocates or the Chambers of Advocates and CSOs.

For Consideration

How could increased collaboration with CSOs benefit the legal profession? What opportunities exist for collaboration in each country and at the regional level?

In what areas would CSOs like the support of the legal profession? What do CSOs think the priorities of advocates and the legal profession should be with respect to criminal justice reform?

Factor 10: The Media and General Public

Lawyers and their professional associations should promote civic education on the rule of law, independence of the judiciary and legal profession, and civil and human rights. Lawyers should conduct themselves professionally when dealing with the public and media, and must adhere to professional ethics at all times.

International Standards

It is a responsibility of the legal profession and state bodies to educate the members of the public about the principles of the rule of law and the importance of the independence of the judiciary and of the legal profession, and to inform them about their rights and duties and the relevant and available remedies. Lawyers have an obligation to be professional with clients, other parties and counsel, the courts, court personnel, and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution.

As a general principle, the public and media shall have access to trials, but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. In dealing with the media and public, lawyers must adhere to professional ethics, including acting in the best interests of the client, keeping confidential the information received from and advice given to clients, and maintaining the highest standards of honesty, integrity, and fairness.

Lawyers should not be identified by the authorities or by the public with their client or their client’s cause, no matter how popular or unpopular it may be. Professional associations of lawyers should take necessary actions on behalf of lawyers when press reports are published which may adversely affect lawyers’ interests.

58 IBA Standards for Independence of the Legal Profession, Standard 5.
59 IBA Commentary on Principles on Conduct, 2.2.
60 ECHR art. 6(1); ICCPR art. 14(1).
61 IBA Commentary on Principles on Conduct 4.2, 3.2, 2.2.
**Analysis**

**Albania**

By law, media are permitted access to courts, unless the hearings are considered closed and confidential, as in the case for juvenile cases or when it is necessary to protect the identity of a witness. ALBANIA CRIMINAL PROCEDURE CODE ch. , art. 339, 340. In practice, television cameras are permitted in trial courts but only with advance permission of the court; they are not permitted at the appellate courts or in the Supreme Court.

The Ethics Code for advocates outlines the type of publicity that advocates can engage in, and describes the means and content of the publicity, including advertising. ALBANIA ETHICS CODE ch. V, art. 50. Among other prohibitions, advocates cannot make false or misleading statements, make comparisons with other lawyers, and identify clients without their consent. *Id.* ch. V, art. 50.

The relationship between most media and justice-sector personnel is strained. One interviewee stated that the media are “killing judges every day” through their lack of regard for research and fact-checking and the propensity to report only sensationalist events or opinions. In one recent case, a journalist opined that a Supreme Court justice should resign regardless of guilt because the mention of his name in connection with a corruption case was enough to make him unworthy of being a judge. One journalist expressed an opinion that many of her colleagues issue the news too quickly and do not take time to confirm facts. In her opinion, there has been a regression in the quality of journalism recently. There are 26 daily newspapers and 80 television channels in Albania and the commonly expressed opinion was that each powerful family owns his or her own news outlet; journalists who conduct objective reporting that may interfere with the family have been threatened by the news outlet owners so there is little motivation to conduct independent and objective reporting.

In spite of the current challenges, there are recent improvements to the media environment. In 2013, through the JuST project, USAID helped to establish the Association of Journalists for Justice, which works with journalists to increase credible reporting and to support investigative journalism. Through the Association, journalists can advocate for free speech and provide resources for one another for investigative reporting. The Association’s website also provides a forum for reporters to publish their pieces and allows a space for the public to comment and provide leads for journalists. The goals of the Association include supporting, improving and promoting the principles of transparency, fairness and accountability of public bodies and to investigate and expose corruption that violates human rights and fundamental freedoms. *See* Act Establishing the Association of Journalists for Justice, art. 1 (a-q), *available at* [www.investigim.al/themelimi/](http://www.investigim.al/themelimi/).

A respected investigative journalism organization in the region, the Balkan Investigative Reporting Network, has recently established a presence in Albania, and is currently drafting a strategic plan to outline its goals for the next few years. Although the mission has yet to take a defined shape, the Network has been an important driver in media reform in the region and has the potential to help improve the interaction between the criminal justice system and the media and the perception of the justice system in the general public.

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63 CoE Recommendations, Principle V*5); *see also* IBA Standards for Independence of the Legal Profession, Standard 20.
Bosnia and Herzegovina

Trials are generally open to the public and may only be attended by adults. The court may exclude the public from all or part of the trial on the motion of any party or ex officio, for reasons of national security; to preserve a national, military, official, or important business secret; to protect public order; to preserve morality in a democratic society; to protect the personal and intimate life of the accused or injured party; or to protect the interests of a minor or witness. See BiH CRIM. PROC. CODE arts. 234, 235; FBIH CRIM. PROC. CODE arts. 249, 250; RS CRIM. PROC. CODE arts. 242, 243; BD CRIM. PROC. CODE arts. 234, 235.

In practice, members of the media interviewed by the assessment team reported some difficulties in reporting on criminal cases. Although trials are public and the media is able to attend, indictments and decisions, which may be released to the media by the court’s press office, contain only the defendant’s initials rather than his full name. This makes it difficult for the media to conduct their own investigation or reporting prior to the beginning of the trial. On the other hand, advocates were generally pleased that courts protect the identity of the accused, especially prior to the issuance of an indictment. Members of the media believed that the provisions allowing the court to exclude the public from all or part of a hearing are not abused, and that they may actually be underused.

Interviewees reported that the legal profession does not take an active role in educating the members of the public about their rights or other legal issues. Several interviewees suggested that advocates should take a more active role, particularly in promoting access to justice for poor and marginalized groups.

Kosovo

In any criminal justice system, the portrayal from the media influences the way that the public views the system and how much trust they demonstrate toward the justice system. To facilitate a more open and fair perception of the court system, the criminal procedure code permits media in the courtroom unless the trial judge limits the recording of proceedings in a “reasoned written decision.” Kosovo CRIMINAL PROCEDURE CODE ch. XIX, art. 301. The Code envisions trials that are open and public, but the court can exclude the public to maintain order in the court or for specific reasons under Articles 294 and 295, such as the protecting official secrets, maintaining the confidentiality of information which would be jeopardized by a public hearing, protecting the personal or family life of the accused, the injured party or of other participants in the proceedings; protecting the interests of children; or protecting injured parties, cooperative witnesses and witnesses. Id. ch. XIX, art. 294, 295.

Kosovo courts are in the process of placing public information officers in each court to handle both inquiries from media about court case proceedings but also to take requests for information from parties themselves and their families about dates and schedules for cases that concern them personally. Some interviewees stated that until recently, both media and the public had no way of receiving or seeking out information about court proceedings apart from directly calling the judge. Although ex parte communications are prohibited (Id. art. 375) this lack of public information outlets led to constant ex parte communications. Moreover, before the advent of these public information officers, judges and prosecutors sometimes relied on media contacts to communicate with the public about specific cases.
Most journalists in Kosovo do not have a university degree in journalism, although some private universities offer a journalism degree. The Balkan Investigative Reporting Network provides training in journalism for its members, who learn how to fact-check and how to engage in intensive research. BIRN produces a weekly investigative program Life in Kosovo on television about general social topics, such as elections and public procurement as well as a monthly publication, Justice in Kosovo, about BIRN’s trial monitoring activities, that is distributed to every court in Kosovo. BIRN’s substantial reporting on justice sector issues has improved the relationship between BIRN and the courts, but may have done little for the courts’ relationships with media outside the BIRN organization. In many other cases, journalists rely on their personal relationships with judges or prosecutors to get the information they want.

Interviewees from several different professions indicated that the media contributed to an unfairly dire view of the general public toward the justice system. Incidents of alleged corruption overtake all other information about the justice system and lead to a general view that the entire system is corrupt. There is little motivation to report accurately and completely about a case when sensationalist journalism earns more short-term attention from the public.

With assistance from international donors, there are also efforts to help the general public engage with the justice system. The Justice and the People Campaign is a program that connects citizens with civil society to promote reform in the justice system. The Campaign focuses its efforts on three methods for improving reform: public education and advocacy, provision of legal aid through free clinics and strategic litigation.

**Macedonia**

Although there has been an increasing crackdown on freedom of the press in Macedonia (see, e.g. Freedom House, Freedom of the Press 2013—Macedonia, available at http://www.freedomhouse.org/report/freedom-press/2013/macedonia, members of the media reporting on criminal cases reported that they generally have access to court proceedings. Court proceedings are by default public, but may be closed to the public by an ex officio decision of the trial court or upon a motion of the parties or the victim when necessary to protect a state, military, official, or an important business secret; to preserve public order; protect the privacy of a defendant, witness, or injured party; to protect the safety of a witness or victim; and/or to protect the interests of a juvenile. Macedonian Crim. Proc. Code arts. 5, 354. Interviewees reported that although not specifically provided by law, proceedings are closed when a protected witness (i.e. a witness whose identity is concealed) testifies.

Advocates reported having generally good relations with members of the media, while the latter noted that advocates could better use the media to promote the interests of justice or general public knowledge of the legal system. Advocates and other interviewees noted that the legal profession is generally not highly respected in Macedonia, and that the general public has a low opinion of advocates. Many interviewees also emphasized that the legal profession does little to nothing to increase its reputation by promoting civic education, access to justice, and public knowledge about the role of an independent legal profession in protecting citizens’ rights.

**Serbia**

Trials in Serbia are public and open to all persons over age 16. Serbian Crim. Proc. Code art. 362. The court may exclude the public from all or part of a trial ex officio or upon the motion of a party if
it is necessary to protect national security, public order and morality, the interests of minors, the private lives of the parties, or other justified interests of a democratic society. *Id.* art. 363.

In practice, interviewees, including members of the media, believed that the media have access to trials and are able to report freely, although the media are primarily interested in high-profile cases. Interviewees reported that most reporting on criminal cases is tabloid-style journalism aimed at selling papers, and that some reporting can violate the presumption of innocence or create bias against the defendant. Members of the media cannot be prosecuted for their reporting, although they can face a civil suit for slander or libel. Interviewees indicated that advocates generally have a good relationship with members of the media and are willing to talk to the press within the bounds of professional ethics. However, interviewees also reported that the legal profession does not engage in promoting civic education and public knowledge about the role of the legal profession.

**Comparative Highlights**

In all five countries, the media are generally allowed access to courts and hearings. Ethical codes cover interaction with the media, and advocates generally abide by these standards. Except in Kosovo, where the KCA is active in annual Law Day events and public education campaigns, the Chambers of Advocates are not active in educating the public about their rights and the role of an independent legal profession. Interviewees reported that the public perception of advocates is generally poor.

**For Consideration**

Do the media report adequately on legal issues, and if not, how can the legal profession support improvement?

Why is it important for the legal profession to promote civic education? How can the profession become more active in educating the public about their rights and the role of an independent legal profession?

How can the legal profession engage with the public through the media?
List of Acronyms

ABA ROLI  American Bar Association Rule of Law Initiative
ALL  Albanian Lek (EUR 1.00 = ALL 142.75)\(^{64}\)
BAM  Bosnian Mark (EUR 1.00 = BAM 1.96)
BD  Brcko District (district within BiH)
BiH  Bosnia and Herzegovina
BIRN  Balkan Investigative Reporting Network
BRRLN  Balkans Regional Rule of Law Network
CCBE  Council of Bars and Law Societies of Europe
COA  Chamber of Advocates
COE  Council of Europe
CLARD  Center for Legal Aid and Regional Development
CLE  Continuing Legal Education
CSO  Civil Society Organization
ECHR  European Convention on Human Rights and Fundamental Freedoms
ECtHR  European Court of Human Rights
EU  European Union
EULEX  European Union Rule of Law Mission in Kosovo
EUR  Euro (also used as Kosovo’s currency)
FBiH  Federation of Bosnia and Herzegovina (entity within BiH)
HJC  High Judicial Council (Serbia)
HJPC  High Judicial and Prosecutorial Council (BiH, FBiH, and RS)
IBA  International Bar Association
ICCPR  International Covenant on Civil and Political Rights
ICO  International Civil Office
IDP  Internally Displaced Person
INL  U.S. Department of State/Bureau for International Narcotics and Law Enforcement
JuST  Albania Justice Sector Strengthening Project
KCA  Kosovo Chamber of Advocates
KJC  Kosovo Judicial Council
KJI  Kosovo Judicial Institute
KLA  Kosovo Liberation Army
KPC  Kosovo Prosecutorial Council
LAC  Legal Aid Commission
MCA  Macedonian Chamber of Advocates
MKD  Macedonian Dinar (EUR 1.00 = MKD 62.16)
MOJ  Ministry of Justice
NATO  North Atlantic Treaty Organization
NCA  National Chamber of Advocates (Albania)
NGO  Non-Governmental Organization
OHR  Office of the High Representative (BiH)
OPDAT  U.S. Department of Justice Office of Overseas Prosecutorial Development and Training
OSCE  Organisation for Security and Cooperation in Europe
RS  Republika Srpska (entity within BiH)

\(^{64}\) All currency conversions are based on the rate provided at www.oanda.com for February 28, 2014.
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>RSD</td>
<td>Serbian Dinar (EUR 1.00 = RSD 116.41)</td>
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<td>SCA</td>
<td>Serbian Chamber of Advocates</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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Appendix: Suggested Areas of Discussion on the Development of a Regional Rule of Law Network

The broadly-stated vision of the Balkans Regional Rule of Law Network is to support the development of a strong, independent, and effective defense bar in this region. In order to comprehensively understand the issues facing advocates, Chambers of Advocates and civil society organizations in the region and best inform the activities of the Network, an assessment was made in each of the five countries that was guided by this question “What does a strong, independent, and effective criminal defense bar look like, and how could a regional network of defense advocates help achieve this?”

During the assessment interviews, common regional themes emerged as areas where the defense bar could be strengthened. These themes have been organized into seven possible areas where a regional approach would be beneficial. Although criminal justice is a focus of the project, the issues involving the defense bar necessarily involve issues that affect advocates generally so the areas identified are broader than criminal law (for example, legal education and bar capacity). To structure the work of the Network, ABA ROLI suggests creating five working groups to focus on specific issues. The discussion points that follow are presented as a starting point for the dialogue among the members regarding what areas the Network, through its working groups, should choose to focus its efforts.

In addition to outlining possible areas for Task Force work, a bulleted set of suggested approaches has been included to stimulate discussion about how Network working groups could craft solutions to these problems.

1. **Training and Continuing Legal Education**

Throughout the region, training was consistently identified as an area where advocates are underserved. It was generally acknowledged by virtually all interviewees, that while judges and prosecutors have permanent academies that provide regular training opportunities, advocates lack such institutional support. Two general training/education issues emerged from the assessment: 1. permanent and ongoing opportunities for Continuing Legal Education for Advocates and 2. preparation and training of newly-licensed advocates for the practice of law.

- **Continuing Legal Education:** Most countries lack a clear and enforced minimum continuing legal education requirement as well as a way of providing, in a consistent and sustainable way, continuing legal education for advocates. While international donors have provided some training opportunities for advocates, most countries lack a formal, institution to deliver training. Two countries (Albania and Kosovo) in the region have recently created permanent schools or training centers for advocates and they may be able to share their experience regarding funding and creating such centers.

A working group could be formed to assist chambers of advocates to develop CLE models and sustainable permanent training models for their members, including researching CLE models from other jurisdictions (European and American models) to determine best practices for providing (and funding) continuing legal education and managing a cohesive and reasonable CLE requirement. Subject to member interest, COAs could allocate a portion of member dues for training and develop a schedule of regularly offered trainings. Domestic resources could be utilized by incorporating the capacity of local CSOs to provide trainings.
within a continuing legal education program. Regional training models could be developed (online or via teleconference) where common training needs exist.

Regional experience with CLE could be drawn upon as follows:

- Retain an expert to assess best practices within and outside the region regarding setting requirements for CLE, providing adequate training opportunities to meet requirements (including funding and sustainability), and effectively regulating compliance – including discipline.

- The Kosovo Training Center could share information with other similar advocate schools in the region about its experience regarding funding and staffing the center. (Kosovo currently charges 50 euros annually to its members to fund CLE and offered 60 courses in 2013, is working with outside donors to certify trainers and is developing a distance-learning program.) Kosovo could also share its experience with CLE, as it registered a 70% compliance rate in 2013.

- The Albanian School of Advocates leadership or faculty could share its experience organizing and funding the SOA as well as benefit from learning from other more-established schools for advocates.

- OKO in BiH could share information on its work as a training, resource center for defense advocates defending war crimes cases in Bosnia.

- Host Training of Trainers sessions to develop the capacity of trainers in each of the five countries to provide CLE. Such sessions would include how to develop subject matter curriculum, create agendas and teaching methodologies for training adults.

• Preparation of Young Advocates: Legal education in most countries in the region was described as fairly theoretical and not effective in preparing new advocates with practical skills necessary for the profession. Moreover, few training opportunities exist for newly-licensed advocates once they leave law school. Many traineeship programs were described as ineffectual or superficial in terms of exposing young advocates to the practice of law.

The same working group could address best practices in terms of preparing new advocates for practice through training programs, traineeships and other practical and experiential training.

- Albania could share the program for new advocates it is developing within its new School of Advocates.

- Serbia could share details of its successful traineeship program.

- Chambers of Advocates could collaborate with Young Advocates Associations to address needs of new advocates, via training, networking and traineeships. COAs could also work with law faculty to develop programs for senior law students that incorporate practical skills trainings. For example, members of the chamber could supervise legal clinics, lead trial skills training courses or offer traineeship opportunities to students.
COAs could push for a special bar exam that tests advocate candidates on issues germane to advocacy such as ethics, advocate codes of conduct, and attorney-client relationships.

2. Chamber of Advocates (COA) Outreach

During interviews, advocates identified issues they face interacting with justice sector actors and negative perception problems the profession faces by the public. Both issues could be addressed by Chambers of Advocates through outreach campaigns. Chambers of Advocates are in a unique position to facilitate relationships with other professional associations within the justice sector to address common problems. Chambers of Advocates could also, in collaboration with CSOs, work to educate the public through outreach campaigns on the vital role that advocates play in the justice system.

- **Cultivate Relationships with other Justice-Sector Actors** (Courts, MOJ, Prosecutors, and Legislatures): Advocates complained about relationships with other actors in the justice system and a perception that COAs don’t actively address such issues. A working group could share experience and develop strategies as follows:

  - Developing relationships with other professional organizations to address issues experienced by advocates. Some examples of issues that may be resolved through professional collaboration include:
    - Preferential treatment of prosecutors over defense advocates (at least perception of such) by judges. COAs could organize discussions with Judges’ Associations to address the problem.
    - Failure to properly compensate ex officio advocates and appointment of ex officio advocates. COAs could work with MOJ representatives or other funding bodies to address issues of adequacy of budgeting and process for selecting appointed counsel.
    - Defense discovery and investigation, COAs could meet with Head Prosecutors and/or Prosecutor Associations to discuss issues involving defense access to discovery and timely response by prosecutors to defense investigative requests.
    - Access to defendants in custody. COAs could organize meetings or roundtables to address rules regarding access, evaluate police procedures regarding detention and custody.
    - Bench and Bar conferences in Kosovo (operated by PILPG) could provide a useful model for Chambers to encourage better professional relationships among advocates, police, prosecutors and judges

  - Discuss ways to become more directly involved in government reforms, for example, lobbying for legislative changes affecting advocates or incorporating advocate input in process of judicial selection. A possible regional model for the Network on effective lobbying is the Bulgarian Institute for Legal Initiatives, an NGO composed of advocates that has done work in the area of Bar Development, legislative procedures and advocacy campaigns. (BILI also recently created a successful model for civic monitoring of the appointment of judges to make judicial selection more transparent and accountable). Macedonia’s Bar Association successfully lobbied to change a law that would have required advocates to pay a stamp tax. The MBA could share its experience regarding this successful lobbying effort.
• **Public Education/Outreach:** Many interviewees felt that the public does not view advocates or COAs favorably and that the profession is not held in high esteem. COAs could develop education and outreach programs to explain the vital role advocates play as well as publicize their own role in ensuring ethical standards of advocates and responding to citizen complaints.

  o Kosovo could share its experience creating a film about an advocate as possible model for public outreach on important role advocates play in the justice system.

  o Network members should explore ways in which the media could positively contribute to the general public perception of advocates and the criminal justice system.

  o Develop “Know Your Rights” campaigns regarding fundamental civil rights, availability of legal aid for possible use throughout the region.

3. **Chambers of Advocates’ Capacity**

   This broad topic encompasses ways in which Chambers of Advocates can strengthen their own capacity and better serve their member’s needs. Advocates believe that COAs are independent and protect member's interests economically, but also expressed the belief that COAs could better and more expansively serve members’ other needs.

• **Determine Member Needs/Develop COA Programming:** a working group could assess best practices on how to determine member needs and priorities and organize COA programs (including funding sources) to ensure membership feels heard and served by the bar.

  o An expert could be retained to develop a survey or other mechanism to elicit information from COA members regarding member needs and helpful services COAs could provide. Alternatively roundtables of advocates could be organized to elicit ideas for expanding bar services.

  o A study trip for COA Representatives could be organized to learn about programs and structure of other bar associations – including funding sources for programs.

  o Kosovo could share its experience organizing regular meetings of its membership to share information and address issues.

• **Specialization/Minority Representation within the Chamber:** there was a general consensus that legal communities across the region would benefit from the specialization of advocates. Although the legal markets in each country may limit the amount of specialization possible, COAs could take a leading role in supporting and cultivating legal specialization. Further, COAs could address issues faced by minority groups and/or women by creating a forum for such groups.

  o Network members could benefit from sharing experiences about how informal, voluntary specialty bar associations fulfill the needs of certain sections within the advocate community for example, the Criminal Law Association of Albania and/or the Young Advocates Associations in the varying countries.
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- Kosovo could share its nascent program for specialization within the Bar - beginning in 2014 with three programs in commercial law, civil law and criminal law. Eventually, the KCA hopes to implement programs for ten specializations.

- Kosovo could also share its experience addressing participation of ethnic Serbs and women advocates and trying to encourage and facilitate their entry and success in the profession.

- **Compensation**: Getting paid fairly and timely for advocate work was an issue throughout the region. Although this was particularly acute in the ex officio sphere, advocates in the private sector also complained of not being paid for certain types of work (e.g. in Macedonia advocates are expected to advise clients for free).

  - A working group could study and/or retain an expert to study compensation issues and make recommendations for COAs across the region on: setting tariff schedules to properly reflect advocate work to include case preparation and settlement and discourage superfluous work (i.e. frivolous motions or appearances), other ways to be compensated by clients (i.e. contingency fees).

- **Discipline**: There was a general acknowledgement that disciplinary systems across the region are lax. In order to maintain the integrity and professional standing of the profession, it is critical that the public feel confident that advocates members are held to a high standard and that ethical violations are sanctioned by COAs in a transparent and fair way.

  - Network members could closely examine the disciplinary systems that work well and share best practices regarding public records of disciplinary proceedings or decisions, investigation of proceedings and the nature and effectiveness of disciplinary sentences.

  - Kosovo could share its recent efforts in strengthening its disciplinary system as a possible model.

  - As part of a public awareness campaign (see Public Outreach above) the public could be educated on advocate complaint procedures and the important role COAs plays in upholding discipline standards.

4. **Criminal Law Reform**

A primary goal of this network is to improve the criminal defense bar’s ability to defend clients and protect fundamental human rights, particularly under the new adversarial legal systems introduced throughout most of the region. A working group devoted to criminal law issues could share best practices on Criminal Procedure Code reform and implementation and develop projects that enable advocates throughout the region to learn from one another and share and exchange ideas in the area of criminal justice.

- **Criminal Procedure Code reform and implementation**: Four of the five countries (all but Albania) in the region have adopted more adversarial criminal procedure codes and many interviewees discussed the problems and challenges implementing and adapting to new procedures under reformed criminal procedure codes. Though the adversarial system provides more opportunities for the defense to present a case, it also increases an
advocate’s responsibility to protect his or her client’s rights. Moreover, the reforms in many countries are imperfect and have created issues in implementation. A working group could address issues that have arisen under these new codes and share experiences, innovative solutions and best practices.

- Retain an expert to perform a comparative analysis of Criminal Procedure Code reform in each country with the focus on identifying the best practices in each country with an eye toward reform in other countries.

- Organize roundtables where participants could also share success stories in implementation and ways that advocates have used the new codes to advance client rights and win cases. Advocates in countries with the most experience with Criminal Procedure Code reform, like Bosnia, could share their experiences in implementation. Other possible areas for roundtable discussion include: discovery/access to case files, police abuses including access to in-custody clients, case investigation, plea bargaining, use of experts, and ability to present the defense case at trial.

- Initiate a Network Strategic Litigation Center where strategic cases involving common issues (access to in-custody clients, access to discovery) across the region could be litigated to the ECtHR in order to clarify and improve the law regarding defendant’s fundamental human rights.

**Training:** While criminal statutory schemes differ through the region, there are common criminal law topics that cross boundaries that could be the bases for common skills training exercises for the region. Regional trainings could be developed in the areas of basic trial skills, case analysis, investigation and witness preparation, use of experts, advanced cross examination, and forensics. Online materials and trainings could be developed to be shared throughout the Network.

**Online Criminal Law Forum for Network Members:** A website or online forum could be developed to enable criminal law practitioners in the region to share information and exchange ideas on criminal law issues (articles on substantive topics, training materials, lists of experts).

**ECHR/ECtHR:** All five countries are signatories to the ECHR. A forum could be created where advocates in member countries can access training materials, court resources (how to apply to the court), and a database of translated cases and summaries of key cases issued by the court on important issues in criminal law. Trainings—including online and remote—could be developed and offered throughout the Network on ECtHR case law, how to use it, how to make applications to the court, and other relevant topics. CSOs from member countries that have experience training on ECHR and litigating before the court could provide expertise in developing such trainings on a regional level. The Network could sponsor a Strategic Litigation Project open to all member countries to identify and take cases to ECtHR regarding failures in Criminal Procedure Codes adopted in the region (see above.)
5. **Representation of Indigent Defendants**

Free criminal defense is provided for by law in each country to accused persons unable to afford counsel who are charged with certain classes of crime. Advocates reported problems with prompt and fair payment by the government in ex officio cases which affected the willingness of advocates to accept appointment. There were also concerns about the quality of representation in ex officio cases. One of the problems identified by many interviewees was the system of appointing defense counsel. Creating a system that both matches an advocate’s experience with the complexity of the case and provides for neutral selection of advocates would address any perceived issues of selection bias and incompetence.

- **Appointment of Ex Officio Defense**: share best practices on how to craft a system that provides for fair appointment of qualified advocates to competently represent indigent criminal defendants who are compensated timely and appropriately for their work. Kosovo could share its experience developing a Bar sponsored hotline for appointment of counsel in ex officio cases (Prizren). OKO in Bosnia could also serve as a model for both appointment and support (resources and training) to ex officio advocates who are handling criminal cases.

- **Prompt, Fair Payment for Ex Officio Defense**: While this issue certainly presents challenges in terms of finding ready solutions, a working group could identify countries in the region where payment for ex officio defense is timely and fairly made and assess why these systems are more successful and what lessons can be learned and assimilated in the region. The working group could develop a strategy to lobby government for proper budgeting and allocation of resources for ex officio defense.

- **Alternatives to Ex Officio Representation**: Although the Chambers of Advocates in some countries have opposed the creation of a free legal aid system, they have not put forth suggestions for workable alternatives. In other countries, free legal aid systems have met with varying degrees of success. The working group could consider alternative systems for ensuring representation for indigent defendants, as well as ways to improve proposed or existing legal aid systems.

6. **Legal Aid in Civil Matters**

In general, most citizens cannot afford a advocate for civil law issues and while some NGOs provide assistance in certain areas or for certain groups, legal aid in the civil context remains problematic. A working group could look at ways to improve access to justice for citizens needing assistance in the civil sphere.

- Serbia could be a possible model for how advocates work with CSOs to provide legal aid, litigate cases before ECtHR, and conduct trainings for advocates.

- Include pro bono requirement for practicing advocates which could satisfy part of the CLE requirement.

- Identify and work with NGOs within each country who are providing legal aid already to support and coordinate with their efforts.
• Establish a task force that works with courts, law faculties to address provision of legal aid to poor, indigent populations.

7. Liaison Efforts with Justice Sector CSOs, NGOs, and Media

Throughout the region, there is very little collaboration between civil society and the Chambers of Advocates. While the interests of the two groups are not completely identical, there are potential synergies in the areas of legal aid, public awareness campaigns and training that could be better exploited. As discussed above, CSOs could provide training to advocates on their areas of expertise (ECHR, minority representation, strategic litigation). COAs and their members could provide pro bono assistance to civil society organizations providing legal aid to citizens. CSOs and COAs could work together on public awareness campaigns regarding citizen rights and the important public service that advocates and COAs fulfill. While relations between defense advocates and journalists were generally positive, media could be better used to educate the public on the role of the defense bar.

• Network members should share strategies for involving civil society in chamber activities or other initiatives that would bridge gaps between the legal profession and the general public.

• Kosovo's Justice and People Campaign is a possible model for civil society work in justice sector. They work in the areas of public education and advocacy, provision of legal aid through free clinics and strategic litigation.

• COA could organize trainings for journalists on effective fair reporting on trials including explaining basic criminal procedure, presumption of issues and fundamental rights of defendants and witnesses in the process.