JUDICIAL REFORM INDEX
FOR
Kosovo

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VOLUME II
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Introduction

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

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

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

Assessing Reform Efforts

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

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

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his “judicial effectiveness score,” Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, Judicial Protection of the Constitution in Latin America, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).
The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated...the independence of some countries’ courts, placing such dependent courts as Brazil’s ahead of Costa Rica’s, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, supra, at 615.

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

ABA/CEELI’s Methodology

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

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

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

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of that statement to that country’s judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of “positive” for that statement. However, if the
statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Cf. Cohen, *The Chinese Communist Party and Judicial Independence*: 1949–59, 82 HAV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

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

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

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

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

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

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

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

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Assessment Team

The Kosovo JRI 2004 Analysis assessment team was led by Beth C. Miller with substantial assistance and support from Pristina staff members Jehona Hyseni, Jetish Jashari, and Aurora Balaj. The team received strong support from other members of ABA/CEELI staff in Pristina, including Kosovo Country Director John Porter and Liaison Jack Dougherty. ABA/CEELI Washington staff members Program Manager Julie Broome, Program Associate Melissa Zelikoff and Legal Analyst Olga Ruda served as editors and prepared the report for publication. The conclusions and analyses are based on interviews conducted in Kosovo during September 2004 and relevant documents that were reviewed at that time. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.
Kosovo Background

Legal Context

Kosovo was an administrative region of Yugoslavia for most of the twentieth century, either as part of “South Serbia” within Royalist Yugoslavia between the two World Wars, or as a province of Serbia within the Socialist Federal Republic of Yugoslavia (SFRY) that was created in 1944. Throughout this period the region of Kosovo had an ethnic Albanian majority. Since 1989, when Serbian President Slobodan Milosevic took control of the “autonomous province,” the over 80 percent ethnic Albanian majority had been living under martial law. War broke out in Serbian-controlled Kosovo in 1997-1998, as the Kosovo Liberation Army (KLA) began a political and military struggle for an autonomous Kosovo while the Serbian army and paramilitary police responded by trying to crush the KLA’s separatist movement. Following a period of bitter local conflict in 1998, and periods of international negotiations, NATO began an air war against Yugoslavia in March 1999. After a 78-day war, the Yugoslav forces withdrew from Kosovo.

Since the cessation of major hostilities in June 1999, Kosovo has been administered by an international civil administration and military security presence as authorized by the United Nations Security Council Resolution 1244 (June 10, 1999) [hereinafter Resolution 1244], as a UN Protectorate. The Special Representative of the UN Secretary General (SRSG) heads the international civil administration, the United Nations Mission in Kosovo (UNMIK). Three cooperating international organizations now operate the four pillars of the UNMIK structure: Pillar I “Police and Justice” (UN); Pillar II “Civil Administration” (UN); Pillar III “Democratization and Institution Building” (Organization for Security and Co-operation in Europe (OSCE)); and Pillar IV “Economic Reconstruction” (European Union (EU)). UNMIK is charged with administering Kosovo pursuant to Resolution 1244 and UNMIK Regulation No. 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo (May 15, 2001) [hereinafter Constitutional Framework]. UNMIK will continue to possess certain powers, such as the functions of policing, defense, foreign affairs, and certain justice matters, until the status of Kosovo is resolved.

The international security presence, NATO Kosovo Force (KFOR), operates within a unified military control and command structure separate from UNMIK. KFOR’s mandate is to establish a durable cessation of hostilities, provide a safe environment for all people in Kosovo, and facilitate the safe return of displaced persons and refugees. KFOR troops and its international personnel are not subject to the authority of UNMIK, but like UNMIK personnel, enjoy immunity from the Kosovo justice system.

The law applicable in Kosovo is comprised of UNMIK regulations (including the Constitutional Framework) and subsidiary instruments, Kosovo Assembly laws, and the law in force in Kosovo on March 24, 1989 – the last day on which Kosovo held autonomous status within the SFRY. The latter body of law includes the federal provisions of the former SFRY, Kosovo’s former provincial law, as well as some provisions of the law of the former Socialist Republic of Serbia. Law promulgated in Kosovo after March 24, 1989 may be applied only if it addresses a subject matter or situation not covered by the prior law and is nondiscriminatory. UNMIK regulations and subsidiary instruments take precedence over any conflicting prior laws. In addition, the Constitutional Framework incorporates by reference and makes directly applicable in Kosovo several international human rights instruments, including Universal Declaration on Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms (with protocols), International Covenant on Civil and Political Rights (with protocols), Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, European Charter for Regional or Minority Languages, and Council of Europe Framework Convention for the Protection of National Minorities.
UNMIK has gradually handed over many of its powers to local bodies. In early 2001, in agreement with local political leaders, UNMIK formed twenty central administrative departments, qua ministries, which were jointly led by national and international co-heads. Local elections in October 2000 led to the establishment of thirty municipal assemblies throughout Kosovo. The Constitutional Framework and subsidiary legislation provided for Kosovo-led Provisional Institutions of Self-Government (PISGs), including an Assembly, Prime Minister, and President of Kosovo, as well as nine central government ministries. The 120-member Assembly was elected in November 2001, and the Kosovo government was formed in March 2002. After the 2004 elections to the Assembly, UNMIK transferred responsibilities for three additional ministries. The UNMIK Government Rule of Law Working Group assists in executing the transfer of powers from UNMIK to Kosovo institutions, as part of the Kosovo Standards Implementation Plan.

Notwithstanding the hand-over of authorities to local actors, the SRSG has retained broad powers and enjoys ultimate legislative and executive authority to ensure that Resolution 1244 is fully implemented. In particular, the SRSG has retained executive functions in the areas of law enforcement and justice. The Constitutional Framework transferred only a limited number of powers in the field of judicial affairs to the PISGs, such as participation in judicial appointments and training, organization of judicial qualification examinations, organization and maintenance of the courts, provision of material resources to the judiciary, and appointment, training, discipline and dismissal of court support personnel. With no ministry of justice among the twelve Kosovo-led ministries, the tasks of a traditional justice ministry are divided between the internationally-run UNMIK Pillar I Department of Justice (DOJ), a successor of the UNMIK Department of Judicial Affairs and the jointly-run Administrative Department of Justice; and the Kosovo-led Department of Judicial Administration (DJA) under the Ministry of Public Services (MPS). While the DJA plays the executive role in administering the local judicial system, the DOJ remains responsible for strategic policy and substantive legal decisions. The DOJ’s mandate to build a multi-ethnic, independent, impartial and competent judiciary leaves it in charge of designing and directing an effective and efficient court system, integrating ethnic minorities into the judiciary, and investigating allegations of judicial misconduct. In addition, the Kosovo Judicial and Prosecutorial Council (KJPC), a SRSG-appointed independent entity consisting of local and international members, serves as an advisory body on matters related to judicial appointment, removal, and discipline.

UNMIK and KFOR also established the Justice Sector Experts’ Consultative Group (JSECG), which provides “a forum for consultation between UNMIK and key stakeholders on the development of a modern and responsive justice sector that will be sustainable after the withdrawal of the international community.” See JUSTICE SECTOR EXPERT CONSULTATIVE GROUP TERMS OF REFERENCE. Members are designated in the Terms of Reference and include many local and international organizations in the legal field, such as the Kosovo Chamber of Advocates, the Kosovo Judges Association, and Pristina Law Faculty among others. The Group meets regularly to provide input on timely issues regarding the transition process.

History of the Judiciary

Kosovo shares the legal tradition of the former SFRY, including the strong influence left behind from being part of the Austro-Hungarian Empire. Under the 1974 SFRY Constitution, Kosovo enjoyed the status of an “autonomous province” within the Socialist Republic of Serbia and, as such, enjoyed substantial sovereign rights. While both the 1974 Constitution of the Socialist Autonomous Province of Kosovo and the SFRY Constitution include the autonomous province of Kosovo as a constituent part of the Socialist Republic of Serbia, many in Kosovo question, and contest, the legitimacy of the 1945 annexation of Kosovo by the SFRY.

As an autonomous province in the SFRY, Kosovo had an Assembly, a court system, a Supreme Court, and a Constitutional Court. It shared federal criminal and civil procedure codes with the rest of the SFRY, but had its own criminal code (augmented by federal and some Serbian
criminal provisions). As common in other socialist systems, executive branch and party influence in the judiciary were common.

In 1989, Kosovo’s autonomy was severely restricted as Serbia assumed power over the police, courts, and civil defense, as well as economic, social and educational policy. Virtually all Kosovo Albanian judges and prosecutors were dismissed from their positions. While some began work as private lawyers, many were forced completely out of the legal profession. In 1992, Serbian authorities ceased administering the jurisprudence examination\(^1\) in Kosovo, thus further restricting the access of ethnic Albanians to the legal profession. Due to the efforts of UNMIK, OSCE, and several international NGOs, the jurisprudence examination resumed in Kosovo on December 14, 2001, and is administered every three months.

Following the end of the war in June 1999, court facilities were dilapidated and in a state of severe disrepair. Many who had served in the judiciary during the previous ten years had fled the province. Those legal professionals remaining in Kosovo lacked recent judicial experience, and many had not worked within the legal profession for a decade. Moreover, the experience from the prior socialist system served as poor preparation for work in the new democracy. Few had direct knowledge of modern democratic and international human rights legal standards.

**Structure of the Courts**

Kosovo’s regular court system is composed of twenty-five municipal courts, five district courts, a Commercial District Court, and the Supreme Court. The minor offenses court system includes twenty-five municipal courts of minor offenses and the High Court for Minor Offenses. As of October 2004, the judiciary employed 313 judges, including 14 judges serving on the Supreme Court, five judges on the High Court for Minor Offenses, 46 judges on the district courts, nine judges on the Commercial District Court, 139 judges on the municipal courts, and 100 judges on the minor offenses courts.

**Municipal courts** operate in each of Kosovo’s municipalities and serve as courts of first instance for criminal offenses punishable with sentences of up to five-year imprisonment, for property and labor disputes, inheritance matters, and other civil matters.

**District courts**, which are located in each of Kosovo’s five regional capitals (Pristina, Gjilan, Peja, Prizren, and Mitrovica), hear appeals from the decisions of the municipal courts. They also serve as courts of first instance for criminal offenses punishable by prison sentences of more than five years, major property disputes, intellectual property rights disputes, and other enumerated matters. The **Commercial District Court** in Pristina has Kosovo-wide first instance jurisdiction over disputes between two private business entities, bankruptcy proceedings, and certain commercial criminal offenses.

The **Supreme Court of Kosovo** is the highest body in the regular court system. It operates as a third instance jurisdiction in a limited number of criminal cases, hears direct appeals from cases originating in the district courts, and serves as a court of first instance in some matters, such as administrative disputes. A Special Chamber of the Supreme Court was established to resolve challenges to privatization decisions of the Kosovo Trust Agency (KTA). A Special Chamber of the Supreme Court to address conflicts between laws passed by the Assembly and the Constitutional Framework is provided for in the Constitutional Framework, but has yet to be established. The Supreme Court is also charged with ensuring uniform application of the law by all courts and may give instructions to lower courts.

\(^1\) The jurisprudence examination may also be referred to as the bar examination, the judicial/bar examination, or the judicial examination. For the purpose of consistency, this JRI will refer to the examination as the “jurisprudence examination.”
Minor offenses courts located within each municipality have jurisdiction in cases where the offense is punishable by a fine or imprisonment of no longer than 60 days. Decisions appealed from minor offenses courts are taken to the High Court of Minor Offenses, which has territorial jurisdiction covering all of Kosovo.

Lay judges serve alongside professional judges on three- and five-judge panels in the municipal courts and the district courts. As of October 2004, there were 543 lay judges appointed to Kosovo courts, including 178 judges in the district courts and 365 judges in the municipal courts. Lay judges will also serve on three-judge panels of the Economic Panel of the Supreme Court, but have yet to be named. Lay judges have no special legal training and have equal votes to those of professional judges.

International judges are appointed by UNMIK to district courts throughout Kosovo and to the Supreme Court. As of October 2004, there were 15 international judges assigned to Kosovo courts, including two judges serving on the Special Chamber of the Supreme Court on KTA Related Matters. The international judges work exclusively on sensitive criminal cases where circumstances suggest a substantial risk of miscarriage of justice, such as those involving war crimes or inter-ethnic or political violence.

The violent riots that occurred throughout Kosovo on March 17-19, 2004 have led to a resurgence of the parallel courts. These courts, run by ethnic Serbians and supported by the Serbian government, continue to operate in Serbian enclaves in Kosovo without UNMIK authorization. Moreover, some cases within the territorial jurisdiction of Kosovo involving Kosovo Serbs are heard in courts in Serbia proper.

Conditions of Service

Qualifications

To be appointed as a professional judge in Kosovo, a candidate must: (1) have a university degree in law; (2) have passed the examination for candidates to the judiciary (jurisprudence examination); (3) have high moral integrity; (4) not have been actively engaged in discriminatory practices; and (5) not have a criminal record. To sit for the jurisprudence examination, one must graduate from law school and complete a one-year apprenticeship in a court, a prosecutor’s or an attorney’s office, or a two-year apprenticeship in other offices. In addition, applicants must have the following prior work experience in the field of law: three years to sit on the High Court of Minor Offenses or a municipal court; seven years to sit on a district court; and four years to sit on the Commercial District Court. Applicants for judgeships in the minor offenses courts are not required to have additional legal experience (other than the experience required to sit for the jurisprudence examination). The law does not specify the experience required for appointment as a judge of the Supreme Court.

To serve as a lay judge, one must: (1) be at least 25 years old; (2) have high moral integrity; and (3) not have a criminal record. In addition, if the lay judge will serve in juvenile cases, the candidate must have professional qualifications and/or experience involving juveniles.

International judges must have: (1) a university degree in law; (2) five years service as a judge or prosecutor in their own country; (3) high moral integrity; and (4) not have a criminal record.

Appointment and Tenure

The KJPC recommends professional and lay judges for appointment by the SRSG. The SRSG makes final appointments from lists of candidates proposed by the KJPC and endorsed by the Assembly. Initially, terms of appointment were very short (three, six and nine months). In December 2001, all judicial appointments were extended through the end of the UNMIK’s mandate in Kosovo. Thus, because UNMIK’s own tenure is undefined, judges have a guaranteed
tenure for an uncertain period of time. Sitting judges may be removed from office only for
disciplinary misconduct. Judicial tenure is also subject to the mandatory retirement provisions,
currently set at 65 years of age.

International judges are selected through the UNMIK staff recruiting process without KJPC
involvement. They are appointed by the SRSG for six-month renewable terms.

Training

After the 1989 usurpation of Kosovo’s autonomy, most, if not all, ethnic Albanians either withdrew
or were forced from the Pristina Law Faculty. Instead, they participated in a shadow educational
system run by ethnic Albanian professors and legal professionals in their homes. The home-
based system of legal education was substandard at best, and it is widely acknowledged that this
generation received an inadequate legal education under the trying circumstances of the period.
While ethnic Albanians have now returned to the Pristina Law Faculty, ethnic Serbians (largely
confined to areas of northern Kosovo and to KFOR-protected enclaves elsewhere) are unable to
attend the Pristina Law Faculty due to a lack of security and language barriers. Ethnic Serbians
wishing to complete or commence legal education in their own language attend the Serbian
university operating in Northern Mitrovica (which teaches a curriculum from Belgrade), the
university in Belgrade, or perhaps in other former republics of the SFRY. While significant
improvements at the Pristina Law Faculty have occurred under the UNMIK administration, there
is a universal agreement that additional reforms are sorely needed.

Since September 1999, the Kosovo Judicial Institute (KJI), an OSCE-administered entity funded
by the Kosovo Consolidated Budget, as well as the Council of Europe, ABA/CEELI and other
partners have provided numerous training programs for judges. The training has covered a
variety of topics ranging from criminal law and procedure to enforcement of judgments, judicial
ethics, and international human rights standards. While the seminars are generally well-attended
and appreciated, they are not mandatory for sitting judges. However, KJI does hold mandatory
brief induction courses for newly appointed professional judges and international judges.

A draft law currently under consideration by the Assembly, if passed, would modify these
requirements and establish a mandatory program of pre-appointment training at the KJI. Under
the draft law, those interested in becoming a judge would first need to pass the jurisprudence
examination. After that, candidates would apply to the KJI training program by submitting to a
written entrance examination. Those admitted would receive ten months of classroom training at
the KJI and two months of hands-on training in the courts. The KJPC would then recommend KJI
graduates to the SRSG for appointment as judges.
Kosovo JRI 2004 Analysis

The Kosovo JRI 2004 Analysis shows that minimal improvements in judicial reform have been made since 2002. As factor correlations demonstrate, fundamental progress is proceeding slowly, with a substantial range of factors requiring further attention. While the factor correlations may provide a sense of the relative gravity of certain issues, ABA/CEELI stresses that these factor correlations and conclusions in the Kosovo JRI 2004 possess their greatest utility when viewed in conjunction with the underlying analyses and compared to the Kosovo JRI 2002. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

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

Factor 1: Judicial Qualification and Preparation

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tbody>
<tr>
<td>Professional judges are required to have university-level legal education, serve an apprenticeship as a “praktikant”, pass a jurisprudence examination and demonstrate moral fitness, but they are not required to have practiced law before tribunals prior to appointment. A law has been drafted that requires future judicial candidates to undergo additional training after the jurisprudence examination. Lay judges are not required to have any particular training or background.</td>
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</table>

Analysis/Background:

Prior to appointment, all professional judges must have completed formal university-level legal education, a one-year practical training program as a “praktikant,” and, except for minor offenses court judges, passed the jurisprudence examination. See UNMIK REGULATION NO. 2001/8, ON ESTABLISHMENT OF THE KOSOVO JUDICIAL AND PROSECUTORIAL COUNCIL § 6.1 [hereinafter REGULATION ON THE KJPC]. As a precondition to register for the jurisprudence examination, a law graduate must complete one year as a praktikant in the office of a lawyer, prosecutor or judge. See LAW ON THE JURISPRUDENCE EXAMINATION art. 2 (O.G. SAP KOS. 10/77). A two-year apprenticeship as a praktikant is required for those law graduates performing law-related work in other offices. Id.

In addition to service as a praktikant, future judges (other than minor offenses courts judges) are required to have relevant work experience in the field of law, but the experience need not include actual practice before tribunals. Three years of legal experience are required for appointment to the High Court of Minor Offenses or municipal courts, seven years for candidates to the district courts, and four years for candidates to the Commercial District Court. See REGULATION ON THE KJPC § 6.2. The requisite experience to serve on the Supreme Court is not specified, although the judges serving on the Supreme Court’s Special Chamber on Kosovo Trust Agency Related Matters must have “professional experience in the areas of private, commercial or corporate law.” ADMINISTRATIVE DIRECTION NO. 2003/13, Implementing UNMIK Regulation No. 2002/13 ON THE ESTABLISHMENT OF A SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS § 3 [hereinafter ADMINISTRATIVE DIRECTION ON SPECIAL CHAMBER ON KTA MATTERS]. Although most judges appointed under the UNMIK administration have previously served within the judiciary, a few have never worked in a court or prosecutor’s office. Most respondents felt that the law should be amended to specify such legal work. Respondents also complained that the requirement of prior legal experience is not always adhered to. One respondent cited an example of a candidate who was selected to become a district court judge directly following his praktikant experience.

Many of the old problems referenced in the Kosovo JRI 2002 with respect to the poor quality of legal education at the Pristina Law Faculty, such as outdated teaching methods and subjective grading, still persist. Practical legal education, including legal reasoning, legal writing, and witness interrogation, combined with modern teaching methods would significantly improve the current system. Overall, reform efforts initiated earlier by the Kosovo Law Centre (a local NGO) and the Ministry of Education have not been fruitful. Nevertheless, new initiatives led by various
organizations, including establishment of a legal clinic and development of a legal resource center, are underway at the Law Faculty.

The Kosovo Judicial Institute (KJI) holds a mandatory brief induction course for newly appointed judges, and a separate course for newly appointed international judges. The induction course for Kosovar judges typically lasts four to five days and includes training on the Constitutional Framework, UNMIK regulations, substantive and procedural criminal and civil law, international human rights standards, the Code of Ethics and Professional Conduct for Judges, and the role of the Kosovo Judicial and Prosecutorial Council (KJPC) and the Judicial Inspection Unit of the Department of Justice in judicial administration. Participants also receive briefing materials, which include UNMIK regulations, copies of Provisional Criminal and Criminal Procedure Codes and other applicable criminal laws, international human rights texts, and key documents on housing and property rights. See generally KOSOVO JUDICIAL INSTITUTE ANNUAL REPORTS: 1999-2004 (Sept. 2004). No other pre-appointment training is required.

According to the Draft Law "On Establishing the Kosovo Judicial Institute" [hereinafter Draft KJI Law], eligible candidates who have passed the jurisprudence examination would sit for an additional competitive written examination. Successful applicants will be selected for KJI’s Initial Legal Education Program (ILEP) to receive ten months of training at the KJI, followed by two months of practical training in the courts. After completion of the program, the KJI would provide a final evaluation of each candidate to the KJPC for consideration. Successful completion of this program would become a part of the judicial admission process.

The European Agency for Reconstruction (EAR), together with the Kosovo Law Center and other local partners, are assisting the KJI by developing sample curricula and providing professional development. The curricula are for the jurisprudence examination review course, ILEP training, special training for promoted judges, and basic training for lay judges. Because UNMIK has deemed the content of these judicial trainings to be part of the judicial admission process, responsibility is bifurcated with KJPC as the final arbiter over the EAR-produced sample curricula. In developing the curricula, EAR has been confronted with the odd situation of proceeding in accordance with the Draft KJI Law, which may change pending passage by the Kosovo Assembly. The EAR has met with some additional difficulties in that the KJI top positions of National Co-Director and National Program Coordinator have been vacant for more than one year (although the latter position has been filled recently). Most respondents attributed the persistent vacancies to low salaries.

Although the Draft KJI Law envisions a specialized basic training for newly appointed lay judges, no particular training or experience is currently required, except for those lay judges working on juvenile cases. The latter must have “professional qualifications and/or experience involving juveniles” prior to appointment. See REGULATION ON THE KJPC § 6.3.

International judges are required to satisfy the respective educational requirements of their home countries and must have a minimum of five years judicial experience before serving as international judges in Kosovo. See UNMIK REGULATION NO. 2000/6, as amended, ON THE APPOINTMENT AND REMOVAL FROM OFFICE OF INTERNATIONAL JUDGES AND INTERNATIONAL PROSECUTORS § 2 [hereinafter REGULATION ON THE APPOINTMENT AND REMOVAL OF INTERNATIONAL JUDGES]. With the exception of a cursory induction course, international judges do not undergo training on the legal system in Kosovo before assuming their positions. Respondents identified the lack of training as a significant weakness and mentioned that some decisions by international judges have been overturned by the Kosovo Supreme Court. Respondents also noted that few among the international judiciary seek guidance from local judges.
Factor 2: Selection/Appointment Process

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

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<th>Conclusion</th>
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<tr>
<td>Professional judges are appointed primarily on the basis of objective criteria, and additional criteria are included in the Draft Law “On Establishing the Kosovo Judicial Institute.”</td>
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Analysis/Background:

In general, judges are appointed based on objective criteria. The Regulation on the KJPC requires a judge to have graduated from a law school and to possess appropriate moral qualities (including not having engaged in discriminatory practices or having a criminal record). See REGULATION ON THE KJPC § 6.1. For the municipal, district, commercial, and minor offenses courts, judges also are required to have passed the jurisprudence examination. Id. The Draft KJI Law discussed in Factor 1 will increase the number of objective criteria for judicial appointments by introducing an additional examination and mandatory pre-appointment training programs. There is no financial or property disclosure requirement.

The authority to appoint judges in Kosovo rests with the Special Representative of the UN Secretary General (SRSG), who selects the candidates from the list proposed by the Kosovo Judicial and Prosecutorial Council (KJPC) and endorsed by the Kosovo Assembly. See UNMIK REGULATION NO. 2001/9, ON A CONSTITUTIONAL FRAMEWORK FOR PROVISIONAL SELF-GOVERNMENT IN KOSOVO § 9.4.8 [hereinafter CONST. FRAMEWORK]. KJPC was established to replace the Kosovar Advisory Judicial Commission, which was disbanded due to the perception that some of its appointments were based on political considerations.

After announcing vacancies in the judiciary, the KJPC prepares a complete list of applicants and submits it to court presidents for comment. The latter may submit their written comments as to whether the applicants meet the criteria for judicial appointment within eight business days. See KJPC Decision No. 1/2003, On the Recruitment Issues § 2. KJPC also submits the list of applicants to the Kosovo Judges Association. See generally KJPC Decision No. 8/2003, On Sending a List of Applicants to the Kosovo Judges Association/Kosovo Prosecutorial Association for Comments. The KJPC then reviews applications, and its members conduct short interviews of the applicants who meet the minimum criteria. In conducting the interviews, interview committees “must evaluate the professional and personal qualities of candidates impartially and fairly, respecting their goal of enhancing the development of an independent multi-ethnic judiciary in Kosovo.” INTERNAL RULES OF PROCEDURE OF THE KOSOVO JUDICIAL AND PROSECUTORIAL COUNCIL art. 37. In making its determinations, the KJPC is to be “guided by UNMIK’s goal to establish a professional, independent, impartial and multi-ethnic judiciary.” REGULATION ON THE KJPC § 5.2. The KJPC submits the list of short-listed candidates to the SRSG for forwarding to the Assembly for comment. The Assembly is required to provide its opinion within ten days. Although it may seek additional clarification from the KJPC, it cannot alter the names. After receiving the Assembly endorsement, the SRSG makes the final appointment decision. Those candidates who are not selected for judicial positions are placed on a temporary reserve list maintained by the KJPC. See KJPC Decision No. 1/2004, On the Reserve List of Candidates for Positions of Judges and Prosecutors.

According to some respondents, the SRSG and the Assembly have struggled over judicial appointments. In this regard, one of the roles for KJPC is to ensure that the process of Assembly
endorsement is not unreasonably delayed and, as a last resort measure, to advise the SRSG to appoint short-listed candidates without the endorsement “in case of inordinate delay or unjustified non-endorsement.” See Nataliya Shkryada, KJPC: Enhancing the Development of an Independent Judiciary, in Focus Kosovo (Aug. 2004).

Most respondents acknowledged the KJPC as a partial success, in that it has filled most vacancies. However, they criticized the KJPC selection process for its lack of transparency. The most significant concern was that the hiring process is unduly slow, causing vacancies to remain unfilled sometimes for more than a year. This delay, in turn, increases the backlog of unresolved cases within the courts. Several interviewees proposed that there be a rolling application process so that vacancies can be filled more quickly. In addition, many respondents noted that the KJPC does not always consult court presidents during the selection process, and even when it does, it often does not heed the given comments. Nonetheless, members of the KJPC state they make every effort to consult with all court presidents prior to appointment. One respondent recommended that KJPC should consult court presidents from the beginning of the process to suggest candidates for appointment. Some also complained that a number of unsuccessful candidates did not receive a letter explaining exactly why they were not selected. Finally, some respondents stated that the KJPC denigrates the Assembly’s authority by appointing candidates opposed by the Assembly.

The basic procedure for selecting lay judges is the same as for professional judges. Selection criteria include having reached the age of 25 and possessing appropriate moral qualities. See Regulation on the KJPC § 6.3. In addition to accepting individual applications for lay judge positions in response to vacancy announcements, KJPC may also “accept recommendations from municipal authorities, or judicial authorities and other bodies within the legal profession, regarding persons considered suitable to be interviewed as lay judges.” Id. § 5.1.

International judges are selected through a competitive selection process, without KJPC involvement. The positions are advertised by means of vacancy announcements. Interviews are conducted over the telephone. Some respondents stated that the salary and benefits offered to international judges limit the pool of qualified applicants willing to come to Kosovo.

**Factor 3: Continuing Legal Education**

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

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<th>Conclusion</th>
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<tr>
<td>Continuing legal education courses are offered without cost to judges on a voluntary basis, but overall the courses are not well coordinated. While judges are consulted regarding subject matter, greater cooperation between foreign and Kosovar experts would raise the relevance of the courses. A new law mandating continuing legal education is envisioned for the near future.</td>
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**Analysis/Background:**

Continuing legal education courses, although available to judges free of charge, are not mandatory. The primary provider of continuing judicial trainings is the Kosovo Judicial Institute (KJI). At present, KJI is provisionally administered by the Organization for Security and Cooperation in Europe (OSCE), although OSCE is no longer the primary funder. KJI receives the bulk of its funding from the Kosovo Consolidated Budget (KCB) and other donors such as the
European Agency for Reconstruction (EAR). OSCE provides funding only for three international positions and will further reduce its current support level to fund two international positions in 2005.

The Draft Law “On Establishing the Kosovo Judicial Institute” [hereinafter Draft KJI Law] will transform KJI into a school for magistrates, an independent professional body with the status of legal entity, funded from the KCB and working in close cooperation with the Kosovo Judicial and Prosecutorial Council (KJPC). Under the law as drafted, KJI’s role would be limited to organizing courses and assessing the performance on the preparatory jurisprudence examination and the courses. This role is subject to change pending final review of the legislation, although major changes are not anticipated. An UNMIK regulation will be drafted giving KJPC the ultimate responsibility for the content of the training and evaluation procedures.

Unlike in 2002, KJI’s status will be regulated by a Kosovo Assembly law rather than an UNMIK regulation. Although the drafters, UNMIK Pillars I and III in consultation with the KJPC, have submitted the Draft KJI Law to the Office of the Prime Minister (OPM) in February 2004, and the OPM’s working group reviewed it in April 2004, it still has not become legislation. However, its passage has acquired a renewed urgency from the Kosovo Standards Implementation Plan (KSIP), which proclaims the transformation of KJI as a rule of law priority and sets a deadline of mid-2004 for KJI to become a school for magistrates. Due to delays in the drafting process, this deadline was not met. The Draft KJI Law is currently undergoing revisions, and the Assembly will not review the legislation until it convenes next in December 2004. Accordingly, the projected passage date is not sooner than early 2005. In December 2003, UNMIK promulgated an Administrative Direction No. 2003/31 to authorize KJI’s further activities until the Assembly adopts the new law.

Although the Draft KJI Law does not mandate continuing legal education for the judiciary, a subsequent law may address this separately. Nevertheless, the Draft KJI Law does mandate a specialized course for promoted judges and prosecutors. EAR in conjunction with KJPC is developing the curriculum for this course.

KJI continues to offer a variety of educational programs and opportunities for judges. In particular, through its Continuous Legal Education Program (CLEP), KJI has offered regular and ad-hoc courses on issues as diverse as juvenile justice, domestic violence, property rights, execution of judgments, criminal punishments, trafficking and organized crime, police and judicial cooperation, judicial ethics, international humanitarian law, and international law on extradition. See KOSOVO JUDICIAL INSTITUTE ANNUAL REPORTS: 1999-2004, at 2 and 11 (Sept. 2004). KJI has also hosted workshops on novel and unfamiliar legal topics arising from the new Provisional Criminal and Criminal Procedure Codes. In addition, since 2002, KJI has cooperated with USAID and the International Development Law Organization to present a Professional Skills Training Program (PSTP). The program instructs the judges on necessary professional skills related to court proceedings and trials, such as decision making, drafting, witness interrogation, and case management. Respondents stated that future training programs should include an even greater emphasis on practical skills and the new Codes. Further, in order to broaden its outreach and encourage greater participation, KJI is conducting additional regional trainings throughout Kosovo. Finally, KJI continues to sponsor several study visits and internships abroad.

Respondents identified the lack of coordination among training organizations as a significant obstacle to the formation of a coherent judicial training program. A plethora of organizations offer judicial trainings free of charge. Although KJI holds monthly coordination meetings open to any

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2 Incidentally, the term “magistrate” is difficult for Kosovars of every ethnic persuasion to understand because the term is not used in either Albanian or Serbian language.

3 In fact, KSIP mandates the establishment of a “full program of compulsory continuing professional education for judges” by March 2005.
training organizations, these meetings seem to have had little effect on the overall coordination. As a result, some trainings overlap in content or in scheduling.

In an effort to increase the relevance of trainings to the needs of the judiciary, many respondents suggested that KJI should include more local knowledge in designing, organizing, and presenting trainings. Although KJI seeks input from participant evaluations, various reports and other sources, as well as consults with court presidents in selecting topics for trainings, respondents believed that there is insufficient utilization of local trainers, particularly when an external donor is involved. The KJI disputes this finding. External donors may pursue an agenda exclusive of the situation in Kosovo. Many international trainers are “experts” in the broadest sense, with little understanding of either the Kosovo legal system or the specific problems faced by Kosovar judges. In theory, the two most senior KJI local positions, National Co-Director and National Program Coordinator, would provide “local knowledge” through their involvement in training design, but these posts have been vacant for more than one year (the latter position has been filled recently). Although the positions have existed since the creation of KJI, they became vacant upon KJI’s graduation from an OSCE-funded institution to an independent entity funded by the Kosovo government. At that time, several employees, including the two abovementioned posts, departed due to radically decreased salaries.

For minority judges, additional complications exist. As supported by KJI attendance records, logistical difficulties often hinder their participation in seminars and trainings. Another barrier to attendance is substandard translation into Serbian, which limits the educational value for the minority judges. Respondents explained that translations are often done first from Albanian into English and only then into Serbian, diluting the final translation. However, KJI has commented that simultaneous translation from Serbian to Albanian, and vice versa, is now provided.

**Factor 4: Minority and Gender Representation**

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

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<th>Conclusion</th>
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<tr>
<td>Although representation of ethnic and religious minorities among judicial candidates and judges has increased, the numbers are not yet representative of the respective populations in Kosovo. Women are generally underrepresented.</td>
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**Analysis/Background:**

Since 2002, the representation of ethnic and religious minorities among judicial candidates and judges has improved, yet the overall numbers remain just under the estimated percentages of respective minorities in Kosovo’s population. In the UNMIK/Former Republic of Yugoslavia Common Document signed between the Special Representative of the UN Secretary General (SRSG) and the Serbian government in November 2001, UNMIK agreed to the creation of a multi-ethnic judiciary. This commitment is further bolstered by the Constitutional Framework, which requires the Kosovo judiciary to reflect the diversity of Kosovo. See _CONST. FRAMEWORK § 9.4.7; see also REGULATION ON THE KJPC § 5.2._ Although Kosovo has a wealth of disparate minorities, Serbians comprise the largest minority, estimated at 7% of the total population of Kosovo. The share of other minorities, including Bosniaks, Turks, Roma, Gorani, Ashkali, and Egyptians, is estimated at 5% of the total population. As of October 2004, the judiciary included

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4 Previously, KJI also experienced difficulties with the continuity of international staff seconded by OSCE, as they are offered only 6 month contracts with the option of renewal.
16 Serbians and 16 representatives of other minorities out of a total of 313 serving judges (i.e., approximately 5% each of the total number of judges). See UNMIK Department of Justice Weekly Report: Week of 12-18 October 2004.

The Judicial Integration Section of the UNMIK Department of Justice strives to increase the numbers of minority judges within the judiciary. A primary obstacle to recruitment of minority judges is concern for security. Few minorities apply for the positions due to the prohibitive security and financial costs, such as fear of reprisal, logistical constraints of security escorts, a sense of disenfranchisement from the UN system, and the expenses of return. Not unexpectedly, minority judges working for UNMIK serve primarily in areas inhabited by minorities.

Another barrier to recruitment of ethnic minorities is the existence of parallel courts. Parallel courts, financed and supported by Belgrade, are located both within the Serbian enclaves in Kosovo and in Serbia proper. Although decisions of the parallel courts are not recognized by UNMIK, it largely has tolerated the existence of these courts. However, in July 2002, UNMIK's Deputy SRSG for Police and Justice and the Serbian Minister of Justice signed a Joint Declaration to integrate the parallel courts with the UNMIK judicial system. The agreement specifies that Serbian judges working for UNMIK courts will be paid by UNMIK but can continue to receive their pension benefits from Serbia. In January 2003, UNMIK municipal and minor offenses courts were established in the Serbian enclaves of Leposavic and Zubin Potok (Mitrovica region). During the period of January-July 2003, the parallel courts in these municipalities stopped functioning but resumed in August. Ironically, the parallel court in Leposavic is located in the UNMIK municipal building. Similarly, in Zubin Potok, the municipality owns the building which houses the parallel court. One respondent stated that in Zubin Potok, the parallel court "acts like a Serbian Embassy," and is authorized by the Serbian government to issue various official documents, regardless of the inevitable fact that UNMIK does not recognize the documents. People from small villages are the real victims in this political battle because they are less aware of the consequences of using the parallel courts (i.e., that their documents are invalid in Kosovo). On a more hopeful note, respondents did observe that the number of Kosovar Serbs coming to the UNMIK courts is gradually increasing.

Some Serbian respondents who have joined the UNMIK system expressed serious doubts about their decision and were experiencing a sense of abandonment by the international administration after being "lured" into it. For Serbian judges, the financial and societal disadvantages of working with UNMIK courts weigh heavily. Serbian judges working for UNMIK courts receive lower salaries than their counterparts in parallel courts. Societally, Serbian judges and their families undergo tremendous pressure from their communities, who may view them as traitors. In one instance, a mayor of a municipality in a Serbian enclave denounced the UNMIK court as working against the municipality, after the court reprimanded him for implementing Serbian legislation inapplicable in Kosovo. In another instance, a predominantly Serbian municipality destroyed a fence constructed by the UNMIK court. According to some respondents, these problems arise from the dual loyalties of municipal administrators in Serbian enclaves, who typically receive salaries from both UNMIK and Serbia. Reportedly, at least one mayor utilizes two professional titles and two official stamps, one for UNMIK and one for Serbia. As a result, respondents believe that the international administration tacitly accepts the situation.

There was a gender split among respondents as to whether women were adequately represented within the judiciary. Male respondents tended to assert that women were adequately represented; one of them even included women employed as secretaries in his tally of women in the judiciary. Female respondents asserted that women were underrepresented. Although the applicable law does not discriminate against women, some respondents insisted that men have a hiring advantage by virtue of gender.

The new Law on Gender Equality in Kosovo provides that legislative, executive and judicial bodies should reflect the gender representation at the “level of their representation in the general population of Kosovo,” explaining that equal gender representation means that “the participation
of the particular gender in the … bodies … is 40%”. See KOSOVO ASSEMBLY LAW NO. 2004/2, ON GENDER EQUALITY IN KOSOVO §§ 3.1-3.2 (promulgated by UNMIK Regulation No. 2004/18). The Law also provides for an Office for Gender Equality to enforce these targets. Id. § 5. As of October 2004, there were 83 female judges out of a total of 313 serving judges (i.e., 26.5% of the total number of judges). See UNMIK Department of Justice Weekly Report: Week of 12-18 October 2004. Prior to the war, respondents noted that considerably more women worked as judges. The distribution of women throughout the various courts could also be improved. While some courts have several female judges, others have none.

Likewise, minorities and women are underrepresented at higher-level positions within the judiciary. There are only one minority judge and three female judges among the 14 judges on the Kosovo Supreme Court. Among the 46 district court judges, ten are women, four are Serbians and four are representatives of other ethnic minorities. While the gender representation is more or less balanced on the High Court of Minor Offenses (3 men and 2 women), all five judges are ethnic Albanians. See UNMIK Department of Justice Weekly Report: Week of 12-18 October 2004.

Finally, according to respondents, minorities and women are similarly underrepresented among the ranks of lay judges. For instance, among the 169 new lay judges appointed in October 2004, 22 are Serbians (13%) and 9 are representatives of other ethnic minorities (5.3%). See UNMIK Press Release No. 1238, SRSG Swears in 169 Lay Judges for Kosovo Courts (Oct. 6, 2004). More comprehensive statistics were not available.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
</tr>
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</table>

No judicial organ exists with the authority to review the constitutionality of UNMIK regulations or Kosovo Assembly legislation. A Special Chamber of the Supreme Court to review the compatibility of Assembly legislation with the Constitutional Framework and with international human rights standards is long overdue.

Analysis/Background:

Very little has changed since the Kosovo JRI 2002 regarding the judiciary’s power of legislative review. As previously, neither the international nor the national judiciary in Kosovo has authority to review the constitutionality or legality of Kosovo Assembly legislation or UNMIK regulations. Additionally, there is no mechanism to guarantee unified interpretation of the law.

The Constitutional Framework provides for a Special Chamber of the Supreme Court on Constitutional Framework Matters [hereinafter Special Chamber on Constitutional Framework]. See CONST. FRAMEWORK § 9.4.11. The Special Chamber on Constitutional Framework is authorized to determine “whether any law adopted by the Assembly is incompatible with the instrumentalities of the international legal instruments specified in Chapter 3 on Human Rights.” Id. The President of Kosovo, any member of the Presidency of the Assembly, any Assembly Committee, no fewer than five members of the Assembly, or the Government may bring such a challenge. Id. An individual does not have standing to initiate a constitutional
challenge. The Special Chamber on Constitutional Framework also is granted jurisdiction over disputes between and among Provisional Institutions of Self-Government (PISGs); over acts of PISGs that infringe on the independence of independent bodies (e.g., the Ombudsperson, the Kosovo Judicial and Prosecutorial Council, the Central Election Commission, etc.); and to determine whether an act by an official within the executive or legislative branches of the PISGs constitutes an official act covered by immunity. \textit{Id.}

As of October 2004, the Special Chamber on Constitutional Framework is yet to be established, although the Assembly has begun to work on relevant legislation. Because the Constitutional Framework does not prescribe the structure or procedure of the Special Chamber, the Supreme Court has requested guidance from the Office of Legal Advisor (OLA) of the Special Representative of the UN Secretary General as to this issue, and discussions are ongoing. At the same time, the lack of a Special Chamber on Constitutional Framework to resolve conflict of law issues was identified by judges as a growing problem within the justice system. The Supreme Court often receives cases requiring constitutional interpretation but has limited powers in this regard. In particular, respondents noted that the new Provisional Criminal and Criminal Procedure Codes have several inconsistencies, contradictions and omissions. Some respondents stated that there have been discussions with UNMIK regarding constitutional and legislative interpretation, but this “makes both sides look stupid and is not the role of UNMIK or other parties besides the courts.”

At present, only the OLA has the authority to review and interpret UNMIK regulations and subsidiary instruments, including the Constitutional Framework. Often this work is handed to the Legal Policy Unit of the Department of Justice. According to Section 2 of the UNMIK Regulation No. 1999/24, ON THE LAW APPLICABLE IN KOSOVO, judges can ask for clarification of the law from the OLA but there have been only a few such requests.

Factor 6: Judicial Oversight of Administrative Practice

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

\begin{tabular}{|l|l|l|}
\hline
\textbf{Conclusion} & \textbf{Correlation: Negative} & \textbf{Trend: ↔} \\
\hline
The judiciary has the power to review administrative acts of local government but not acts of the international administration. & & \\
\hline
\end{tabular}

Analysis/Background:

The Constitutional Framework states that administrative decisions of the executive branch of Kosovo’s Provisional Institutions of Self-Government (PISGs) may be challenged in the courts after exhausting all available administrative remedies. \textit{See Const. Framework § 9.4.2.} The courts have jurisdiction to review administrative decisions and to annul or declare such administrative decisions invalid. \textit{See generally Law on Administrative Lawsuits (O.G.S.F.R.Y. 4/77)} [hereinafter \textit{Law on Admin. Lawsuits}]; \textit{Law on General Administrative Procedure (O.G.S.F.R.Y. 585/86)}. Citizens must exhaust two rounds of administrative review before filing an “administrative lawsuit” seeking judicial relief. \textit{See Law on Admin. Lawsuits art. 7.} The Administrative Panel of the Supreme Court “decides on the legality of a final administrative enactment in an administrative contest.” \textit{Law on Regular Courts} art. 30(5) (O.G. SAP KOS. 21/78, as amended by O.G. SAP KOS. 49/79, 44/82, 44/84, 18/87, 14/88, and 2/89) [hereinafter \textit{Law on Regular Courts}]. Administrative actions that violate constitutional freedoms and rights are to be heard by three-judge panels of the district courts. \textit{Id.} art. 29(8); \textit{see also Law on Admin.}
The judiciary has the power to compel administrative bodies to act where a legal duty exists. See LAW ON ADMIN. LAWSUITS arts. 42, 62-65.

A judge specialized in administrative law previously served on the Supreme Court's Administrative Panel. However, no replacement has been found following his recent death. Administrative cases on review are now decided by the Supreme Court judges specializing in civil law. Some respondents complained that the absence of an administrative law specialist has led to a backlog of administrative cases in the Supreme Court.

The Supreme Court has recently exercised jurisdiction to review an administrative act, the decision of the University of Pristina Rectorate to appoint as Rector a candidate opposed by the Ministry of Education. The University of Pristina Rectorate declared that the appointment was lawful and without irregularities. However, the Ministry of Education stated that the appointment was invalid and should be void. When the University authorities would not accept the candidate recommended by the Ministry of Education, the Ministry filed a complaint with the Kosovo Supreme Court for resolution. The dispute was still pending at the time of publication of this JRI.

A limited judicial remedy is provided for in the burgeoning legal area of privatization of socially owned companies by the Kosovo Trust Agency (KTA). In 2002, a new panel within the Supreme Court, the Special Chamber on Kosovo Trust Agency Related Matters [hereinafter Special Chamber on KTA Matters], was established to review decisions of the KTA. See generally UNMIK REGULATION NO. 2002/13, ON THE ESTABLISHMENT OF A SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON KOSOVO TRUST AGENCY RELATED MATTERS [hereinafter REGULATION ON SPECIAL CHAMBER ON KTA MATTERS]. Even though the privatization process was suspended temporarily from November 2003 to June 2004, the Special Chamber on KTA Matters continued to function and registered 95 claims as of June 2004 (although its caseload is now expected to increase). See UNMIK, Pillar I "Police and Justice": Presentation Paper at 16 (June 2004). The Special Chamber on KTA Matters operates as both the first and the last instance court consisting of a 5-judge panel (three internationals and two Kosovars). Although it is described as being under the auspices of the Supreme Court, the Special Chamber on KTA Matters has a separate budget and registry of cases. See ADMINISTRATIVE DIRECTION ON SPECIAL CHAMBER ON KTA MATTERS § 5.1. While the Special Chamber on KTA Matters has the right to refer any specific claim within its jurisdiction to another court in Kosovo (see REGULATION ON SPECIAL CHAMBER ON KTA MATTERS § 4.2), the limited first instance review may not provide adequate due process guarantees. Overall, however, the work of the Special Chamber on KTA Matters has been praised.

Judicial review of administrative actions by the international administration is not permitted. Applicable law asserts the immunity of UNMIK, stating that "UNMIK, its property, funds and assets shall be immune from any legal process." UNMIK REGULATION NO. 2000/47, ON THE STATUS, PRIVILEGES AND IMMUNITIES OF KFOR AND UNMIK AND THEIR PERSONNEL IN KOSOVO § 3.1 [hereinafter REGULATION ON THE IMMUNITY OF KFOR AND UNMIK]. An identical provision is included with respect to KFOR. Id. § 2.1. The majority of respondents assumed that UNMIK’s and KFOR’s immunity precluded bringing lawsuits to challenge administrative acts issued by these entities.

Although UNMIK and KFOR are exempt from liability, SRSG and commanders of KFOR contributing nations may waive the immunity where it "would impede the course of justice and can be waived without prejudice to the interest of UNMIK [or KFOR]." Id. § 6. Further, UNMIK has established a Claims Commission which, pursuant to the Regulation on Immunity of KFOR and UNMIK, exists to settle “third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to ... UNMIK.” Id. § 7. UNMIK has waived immunity only rarely and in the gravest criminal cases. Similarly, pursuant to the Regulation on Immunity of KFOR and UNMIK, KFOR also has established a Claims Commission to handle claims for compensation. The KFOR Headquarters, as well as each of the thirty-nine troop contributing nations, has a claims officer. The approximately ten monthly claims relate mostly to
traffic incidents and injuries. While there is no designated appellate body, a review by a representative of the KFOR Headquarters and of a KFOR contributing nation is available within 30 days of the Commission’s decision. Public awareness regarding the availability of these remedies could be improved. Many respondents were unaware of the procedures for pursuing claims through the Commissions. Those who knew of the procedures expressed serious doubts concerning the Commissions’, noting that they often underestimate claim values and that claimants have little bargaining power. A few respondents were completely uninformed that UNMIK, in fact, had waived the immunity of its employees in a few cases.

Factor 7: Judicial Jurisdiction over Civil Liberties

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
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In general, the judiciary has jurisdiction over human rights cases except where the actions of KFOR or UNMIK are at issue. However, the judiciary still lacks a working knowledge of applicable international human rights standards.

Analysis/Background:

Judicial bodies have jurisdiction to review cases of alleged human rights violations, except where the case concerns the actions of KFOR or UNMIK. Both entities are shielded by criminal and civil immunity. See generally REGULATION ON THE IMMUNITY OF KFOR AND UNMIK.

The Constitutional Framework incorporates by reference and makes directly applicable in Kosovo the rights and freedoms enunciated in a number of international and European human rights conventions. See generally CONSTITUTIONAL FRAMEWORK §§ 3.2-3.3. However, it is still the case that many Kosovar judges do not rely upon international human rights instruments in making their rulings. Despite having participated in numerous trainings and seminars on human rights issues, judges seem to lack a working knowledge of how the standards apply in particular cases. Prior trainings have not provided sufficient instruction on the practical application of international human rights standards. In particular, judges do not understand how the case law of the European Court of Human Rights (ECHR) applies within Kosovo courts. Attorneys are reluctant to present arguments based on international human rights documents because judges frequently reject such arguments. Moreover, the lack of access to the ECHR is a disincentive for Kosovo courts to apply its law.

In addition to the Constitutional Framework, a new Anti-Discrimination Law providing judicial remedies for human rights violations was passed by the Kosovo Assembly in February 2004 and promulgated by UNMIK Regulation No. 2004/32 in August 2004. It grants the courts jurisdiction over any claims of discrimination, provided that the claimant has first exhausted all avenues of appeal before administrative bodies. See ANTI-DISCRIMINATION LAW art. 7. If a court establishes that an act of discrimination occurred, it may impose sanctions, including compensation for pecuniary and non-pecuniary damages and a fine ranging from 500 Euros to 10,000 Euros, as well as mandating that the respondent undertake measures to prevent further discrimination. Id. art. 9. However, the new law has been criticized for broadly providing jurisdiction over discrimination cases to all courts. Some respondents recommended that, due to complexity of such cases, the law should be amended to have one specialized court handling them.

In January 2005, the Parliamentary Assembly of the Council of Europe adopted a Resolution and a Recommendation on “Protection of Human Rights in Kosovo,” in which it recommended that
UNMIK and KFOR, in cooperation with the Council of Europe, establish a Human Rights Court for Kosovo with jurisdiction over alleged violations of the rights guaranteed by the European Convention on Human Rights and its protocols. UNMIK is taking this recommendation under consideration.

In criminal pretrial proceedings, pretrial judges have exclusive jurisdiction to "make decisions on action and measures ... which limit the human rights and basic freedoms of a person." PROVISIONAL CRIMINAL PROCEDURE CODE art. 9(3) (promulgated by UNMIK Regulation No. 2003/26) [hereinafter PCPC]. Specifically, while the police may detain or arrest a suspect, only courts may decide on the legality of such detention, arrest, or other form of deprivation of liberty. Id. arts. 13(2), 211. Detained persons must be brought before a judge within 72 hours of detention so that the judge may rule on pretrial detention (or detention on remand). Id. arts. 14(2), 212. One problematic area relates to deficiencies in drafting judicial decisions on detention on remand, and the implications this may have for the right to liberty. The majority of orders issued by Kosovo judges fail to include an explanation of grounds for detention. See OSCE Mission in Kosovo, Review of the Criminal Justice System (April 2003-October 2004): Crime, Detention, and Punishment at 16-17 (Dec. 2004) [hereinafter OSCE, Review of Crime, Detention, and Punishment]. Moreover, it has been observed that appellate courts, including the Supreme Court of Kosovo, frequently fail to justify their decisions upholding the initial detention orders. Instead, "it is common in practice for the appellate courts to merely 'rubber-stamp' the appealed decision and to reiterate stereotype phrases." Id. at 24. Such practice may contribute to the issuance of unjustified detention decisions, leading ultimately to a breach of the right to liberty. Id. at 27. The Provisional Criminal Procedure Code attempts to address these problems by minimizing the use of detention on remand and introducing a number of alternative measures to ensure the appearance of criminal defendant at the proceedings, including, inter alia, bail and house detention. See PCPC art. 268. As provided by the Code, courts may order detention on remand in specified limited circumstances, and only if all of the alternative measures would be insufficient. Id. art. 281. The law requires that detention orders issued by court explain all material facts and legal grounds necessitating the detention. Id. art. 283(1). At this point, however, little has changed in the courts' practice as discussed above.

Reportedly, the courts also lack adequate knowledge on how to address habeas corpus petitions to determine the lawfulness of detention on remand, which may be submitted at any time during the pretrial proceedings or the main trial. See PCPC art. 286. Although there have been very few cases where habeas corpus petitions were used, those few instances illustrate the courts' failure to examine the petition either due to ignorance of the law or for some other reasons. See OSCE, Review of Crime, Detention, and Punishment at 29.

Another area of concern is the lack of judicial review for extra-judicial detentions ordered by KFOR and UNMIK. Extra-judicial detentions by the SRSG are based on his authority under UN Security Council Resolution 1244. Similarly, per Resolution 1244, all KFOR detentions are authorized not for the purpose of law enforcement but rather as an exceptional tool for ensuring a secure and safe environment. KFOR involvement is triggered when criminality crosses administrative or territorial borders or when situation arises that the Kosovo Police Service (KPS) and UNMIK are unable to control. KFOR itself provides for a modicum of internal review to protect the rights of the detained. The International Committee for the Red Cross is provided access to detainees within 24 hours; then the detainee is allowed contact with an attorney and family. After 72 hours, a panel decides if further detention is necessary. A detainee can be held indefinitely but an internal review of the detention is conducted every 30 days.

Nevertheless, while the actions of KFOR and UNMIK remain outside the purview of the judiciary, extra-judicial detentions are utilized much more sparingly than in the past. The last instance of KFOR detentions occurred on April 23, 2004, when 23 persons were detained for their involvement in the March riots. Most of these individuals were held for less than one week, at which point they were released or transferred to the KPS. Prior to that, KFOR had no detentions over the previous several months. Similarly, executive detentions ordered by the Special
Representative of the UN Secretary General (SRSG) were previously a problem but appear to have become a thing of the past. Although nothing prevents the SRSG from doing so, there have been no executive detention orders since 2001.

The lack of judicial remedy raises increasing concerns in civil cases. The Ombudsperson is raising this issue with respect to the recent dismissal of several Kosovar employees from the UNMIK Railways. None of the dismissed received a letter explaining the basis of their dismissal, and UNMIK’s immunity precludes the former employees from contesting their dismissals before a tribunal.

Factor 8: System of Appellate Review

_Judicial decisions may be reversed only through the judicial appellate process._

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
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<tbody>
<tr>
<td>While judicial decisions are reversed only through the judicial appellate process, the remote possibility of extra-judicial detentions effectively overruling a final determination of the judiciary remains.</td>
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Analysis/Background:

The law guarantees a party or its legal representative the right to appeal any judgment issued by a court at first instance. See PCPC art. 398; CODE OF CIVIL PROCEDURE art. 348 (O.G.S.F.R.Y. 4/77, as amended by O.G.S.F.R.Y. 36/80 and 69/82) [hereinafter CCP]. In certain instances, there is also an appeal of right against a criminal judgment of a court of second instance. See PCPC art. 430.

The law grants general first instance jurisdiction over most cases to the municipal courts. These courts are authorized to try all criminal offenses where the maximum punishment is set as a fine or imprisonment of up to five years, unless the law designates the district court as the trial level jurisdiction for a specific offense. See LAW ON REGULAR COURTS art. 26; PCPC art. 21(1). Municipal courts are also authorized to try most civil cases, including property disputes, labor disputes, alimony and child custody cases, lease and rent disputes, disputes involving housing relations, and inheritance matters. See LAW ON REGULAR COURTS art. 26. Municipal courts typically sit in panels, composed in most instances of one professional and two lay judges; however, less serious criminal offenses (where the maximum possible penalty is defined as a fine or imprisonment of up to three years) and certain civil disputes are tried by a single professional judge. See PCPC art. 22; CCP art. 43.

All appeals from municipal court decisions are reviewed by the district courts. See LAW ON REGULAR COURTS art. 29; PCPC art. 23(2). In addition, district courts are competent to conduct first-instance trials in criminal cases where the maximum punishment exceeds five years of imprisonment, as well as in certain civil matters, such as paternity suits or intellectual property rights disputes. See LAW ON REGULAR COURTS art. 29; PCPC art. 23(1). District courts adjudicate all cases in panels of varied composition, depending on the type of proceedings (first-instance trial or appellate). See PCPC art. 24; CCP art. 44.

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5 Under pressure from the Ombudsperson, the SRSG also established the Executive Detention Review Commission to review executive orders of extra-judicial detention. See generally UNMIK REGULATION NO. 2001/18, ON THE ESTABLISHMENT OF A DETENTION REVIEW COMMISSION FOR EXTRA-JUDICIAL DETENTIONS BASED ON EXECUTIVE ORDERS. The Commission ended its mandate in November 2001.
The highest appellate jurisdiction in Kosovo rests with the Supreme Court. It decides on appeals against decisions of the district courts and the Commercial District Court⁶ rendered at first instance. See LAW ON REGULAR COURTS art. 31; PCPC art. 25(1). It also exercises limited third-instance appellate jurisdiction, for example where a district court has imposed a sentence of long-term imprisonment (or affirmed such a sentence issued by a municipal court) or if a district court overturned the acquittal verdict of a municipal court and rendered a conviction judgment in its place. See PCPC art. 430. Depending on the type of jurisdiction exercised by the Supreme Court in a given case, it conducts hearings in panels of three to five professional judges. Id. art. 26; CCP art. 45.

Minor offenses courts have first-instance jurisdiction with respect to offenses where the punishment is defined as imprisonment of up to 60 days. All cases are tried by a single judge. High Court for Minor Offenses, which sits in panels of three judges, exercises exclusive and final appellate jurisdiction.

In practice since the Kosovo JRI 2002, judicial decisions have been reversed only through the judicial appellate process. A significant portion of municipal courts’ decisions are appealed to the district courts. In 2002, approximately 28% of all civil judgments and 35% of all criminal judgments rendered by municipal courts were appealed to district courts. Similarly, a large number of decisions in criminal cases issued by district courts at first instance are appealed to the Supreme Court (38% in 2002), as is the bulk of Commercial District Court’s decisions (62% in 2002). By contrast, only a negligible portion of civil judgments rendered by district courts at first instance are appealed to the Supreme Court (approximately 2% in 2002), and few decisions of minor offenses courts are appealed to the High Court for Minor Offenses (less than 2% in 2002). See Council of Europe & United States Department of Justice, Kosovo Judicial System: Assessment and Proposed Options (2003-2004) at 29-31 [hereinafter COE/DOJ, Kosovo Judicial System Assessment]. Appellate proceedings comprise approximately 30% of the district courts’ total caseload. At the Supreme Court, appeals against criminal, civil, and commercial judgments issued by the district courts at first instance account, respectively, for 18.4%, 2.4%, and 8.3% of the total caseload, while third-instance criminal appeals comprise less than 1% of the total caseload. Id. at 30-31.

At the same time, the possibility still remains that KFOR and UNMIK may exercise their authority to order extra-judicial detention, effectively overruling a final determination of the judiciary. See Factor 7 above for additional details regarding the extrajudicial detention orders. However, the Special Representative of the UN Secretary General has not issued executive detention orders overriding the decision of the judiciary to release a criminal suspect from pretrial detention since 2001, while KFOR detentions have never overturned a judicial determination. The restrained behavior of KFOR and UNMIK in the past year, particularly in response to the March riots, suggests that these entities are interpreting their powers more narrowly.

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⁶ Commercial District Court is the first-instance court for all disputes between two private business entities, as well as for bankruptcy proceedings and certain commercial criminal offenses. See LAW ON REGULAR COURTS art. 30.
Factor 9: Contempt/Subpoena/Enforcement

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

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<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
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<tbody>
<tr>
<td>The judiciary has adequate subpoena and contempt powers, but enforcement powers need to be strengthened. The lack of enforcement of civil judgments has become a serious problem.</td>
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Analysis/Background:

The judiciary in Kosovo has subpoena, contempt and enforcement powers. Thus, the presiding judge has the authority to control proceedings and sanction parties, witnesses and others within the courtroom. A witness who fails to appear may be compelled to appear and may be fined. See PCPC art. 167; CCP art. 248; Administrative Direction on Special Chamber on KTA Matters § 38.7. Unlike previously, the new Provisional Criminal Procedure Code allows imprisonment of a witness who appears but fails to testify, in addition to a fine. See PCPC art. 167. The possibility of imprisonment of a witness who fails to testify upon appearance is also provided for in the old Code of Civil Procedure. See art. 248. Expert witnesses who fail to appear may be compelled to do so, in certain circumstances, and may be fined. See PCPC art. 177; CCP art. 255. Intentionally delaying the proceedings is also punishable by a fine. See PCPC art. 146. The court may also order that a party to proceedings or any third party produce a document in its possession within a specified time. See CCP art. 233; Administrative Direction on Special Chamber on KTA Matters § 43.4. Finally, the court is authorized to issue a default judgment, if a civil respondent fails to appear at a hearing, to deny allegations of the complaint, or to submit a defense to the claim. See CCP art. 332; Administrative Direction on Special Chamber on KTA Matters § 49.

The presiding judge is also under obligation to ensure order in the courtroom during the proceedings. See PCPC art. 335; CCP art. 317. If the parties, defense counsel, witnesses or others disrupt proceedings, the presiding judge can issue a warning, remove the violator from the courtroom, or issue a fine of up to 1,000 Euros, although sanctions against the accused in criminal proceedings are limited to warning or removal. See PCPC art. 336; CCP art. 318; Administrative Direction on Special Chamber on KTA Matters §§ 33.3-33.4. The judge may deny defense counsel the right to represent a client if defense counsel persists in disrupting the decorum. See PCPC art. 336. Sanctions against defense counsel or the prosecutor are reported to the Kosovo Chamber of Advocates or the supervising prosecutor, respectively. Id.; CCP art. 318.

Despite these powers, the failure of the accused, defense attorneys, witnesses and even prosecutors to attend proceedings frequently results in delays in criminal cases. It is estimated that about 30% of trials are adjourned due to this reason, and in the vast majority of these cases, it is the accused who consistently fail to appear. See OSCE Mission in Kosovo, Review of the Criminal Justice System: The Administration of Justice in the Municipal Courts at 14 (March 2004) [hereinafter OSCE, Review of the Municipal Courts]. Respondents also attributed delays to problems with delivery of summonses, failure of prisoner transport and assignment of prosecutors to regional capitals rather than to specific municipal courts.

In many municipalities, courts have successfully relied on the Kosovo Police Service (KPS) to compel witness attendance and to deliver summonses. Nevertheless, a few respondents stated that police only formally pursue violators and that police efforts are neither sincere nor thorough. Some municipalities reported that summons delivery to ethnic enclaves had ceased to be a problem, and reliance on police for delivery was no longer necessary. However, other
municipalities, particularly Northern Mitrovica, present a more complicated scenario due to security concerns and increased ethnic tensions following the March riots. A problem of witnesses or the accused failing to appear in court still persists. Respondents explained that security concerns often prevent delivery into Serbian enclaves, and that the postal service will decline responsibility for delivery to enclaves. Consequently, courts in Northern Mitrovica must rely on the UN Police to locate witnesses and deliver summonses. This usually prolongs the procedure because the UN Police are unfamiliar with the terrain and the people. In certain instances, the person being summoned has misled the police officer by saying that he himself has died. Another problem with delivery of summonses is locating correct addresses due to altered post-war street names. See OSCE, Review of the Municipal Courts at 15. If the UN Police are unable to complete delivery, the court president may request assistance from the KPS through the Kosovo Supreme Court.

If the accused commits a criminal offense at the main trial, such as slander or perjury, sanctions are not issued immediately but in a separate proceeding with a different judge. The court may be adjourned to try the offense immediately or the judge may wait until after the main trial. See PCPC arts. 85, 338. According to respondents, courts hesitate to issue such sanctions because it is a burdensome process. Nevertheless, respondents stated that most people behave respectfully in the courtroom. One respondent estimated that he had observed only two such violations during a five-year period.

The Provisional Criminal Procedure Code provides guidelines on the execution of penal sanctions. See generally PCPC arts. 135-41. In particular, if a fine cannot be collected by other means, the Code defers to Article 39 of the Provisional Criminal Code, which sets forth various alternatives for payment of the fine, such as paying the fine in installments, community service work, or imprisonment of one day for each 15 Euros of the fine, not exceeding a period of six months. Id. art. 136. More detailed provisions for the execution of criminal sanctions are to “be set forth in separate legislation.” Id. art. 135. Although a draft UNMIK Regulation on Execution of Penal Sanctions has been prepared and is awaiting promulgation, the old Yugoslav Law on Execution of Penal Sanctions remains applicable until then.7

Enforcement of civil judgments remains a major problem. Since 2002, the backlog of unexecuted civil judgments has grown into an imminent crisis. The primary jurisdiction over execution of civil and criminal judgments lies with the municipal courts, although the Commercial District Court has a limited exclusive jurisdiction over executions between two privately owned enterprises. The bulk of execution cases are filed with the municipal courts,8 averaging about 18% of their total caseload, although some judges claimed that execution cases take up to 50% of their caseload. See Violaine Autheman, Angana Shah & Keith Henderson, International Foundation for Election Systems, The Execution of Civil Judgments in Kosovo at 7 (National Center for State Court, Justice System Reform Activity in Kosovo, Sept. 2004) [hereinafter NCSC/IFES, Execution of Civil Judgments]; see also OSCE, Review of the Municipal Courts at Annex 3 Tables 4-5.

<table>
<thead>
<tr>
<th>EXECUTION CASELOAD OF KOSOVO MUNICIPAL COURTS</th>
<th>2002*</th>
<th>2003</th>
<th>Q1-2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of cases pending</td>
<td>35,005</td>
<td>46,964</td>
<td>42,844</td>
</tr>
<tr>
<td>Backlog: number of cases pending from previous years</td>
<td>13,135</td>
<td>30,896</td>
<td>39,304</td>
</tr>
</tbody>
</table>

7 In addition, the Kosovo Assembly Law on Execution of Penal Sanctions was promulgated by UNMIK in November 2004 and will become effective in February 2005.
8 Commercial District Court has received only 550 execution cases since 1999, and 197 are currently pending due to debtors’ objections. See Violaine Autheman, Angana Shah & Keith Henderson, International Foundation for Election Systems, The Execution of Civil Judgments in Kosovo at 33 (National Center for State Court, Justice System Reform Activity in Kosovo, Sept. 2004).
As the above table illustrates, despite the twofold increase in the total number of execution cases disposed of in 2003, the courts are completing only a small portion of pending execution cases annually. At the same time, some courts appear to be more efficient in resolving execution cases. For example, about 20% of unsolved cases were pending in Pristina Municipal Court and less than 5% were pending in each Mitrovica and Gjilan Municipal Court at the end of 2003. See NCSC/IFES, *Execution of Civil Judgments* at 15, 22. In addition, while the LEP provides for various mechanisms to order the seizure of monetary assets, it does not set the procedure to execute such orders in practice. For example, it is unclear from the LEP whether the banks are obligated to comply with execution orders to disclose bank account information or to freeze funds on the account, because the law imposes such duty only on the now-nonexistent Public Bookkeeping Service. See *LEP* art. 266(4). Similarly, there is no legal procedure for garnishment of a debtor’s wages by an employer, which in theory is allowed by LEP. *Id.* art. 119.

In addition to gaps in the legal framework, respondents identified other impediments to execution of civil judgments that were echoed in the NCSC/IFES study. First, courts lack sufficient personnel to handle the excessive backlog. In 2003, the Department of Judicial Administration (DJA) added one execution clerk per court at the suggestion of OSCE. Prior to 2003, many courts did not have a specialized execution officer. Further, a major portion of the execution cases are utility bill collection cases referred by electricity, telephone and water companies, estimated to comprise 60% to 80% of the courts’ execution caseload. See NCSC/IFES, *Execution of Civil Judgments* at 8. Reportedly, the execution process for such cases is relatively easy, suggesting that utility companies might be using the courts as their private collection services rather than a last resort remedy. The NCSC/IFES study recommended that utility companies assume responsibility for these cases to ease the burden on the courts, or that the companies send several of their employees to each court to serve as specialized utility case execution clerks. *Id.* at 38. In order to enforce the remaining judgments, courts need more vehicles to enable the execution officers to travel throughout Kosovo. At present, creditors often have to assist the courts by providing their own transportation. *Id.* at 40. Another barrier to execution of judgments is the limited exchange of information and cooperation among the courts, employers, banks and debtors. In this regard, while the banks are slowly starting to implement informal cooperation mechanisms with the courts in order to comply with execution orders against bank accounts, there is no such cooperation on the part of the debtors’ employers. *Id.* at 18, 24.

Some respondents believe that certain risks may play an unexpected role in hindering the enforcement of judgments. For example, judges are often reluctant to enforce certain measures, such as stopping illegal construction, due to perceived or real dangers from powerful people or

<table>
<thead>
<tr>
<th>Number of cases filed</th>
<th>21,870</th>
<th>16,068</th>
<th>data n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases completed</td>
<td>3,750</td>
<td>7,660</td>
<td>data n/a</td>
</tr>
<tr>
<td>Efficiency: ratio of completed cases to total cases pending</td>
<td>10.7</td>
<td>16.3</td>
<td>data n/a</td>
</tr>
<tr>
<td>Efficiency: ratio of completed cases to cases filed</td>
<td>17.1</td>
<td>47.7</td>
<td>data n/a</td>
</tr>
</tbody>
</table>

* Numbers include execution of both civil and criminal judgments.

forces involved. As one respondent explained, “It is enough for a judge to have imagination; you do not need to send him a letter.”

The collection of court fees continues to be a problem because there is no regulation establishing uniform court fees throughout Kosovo. Instead, most regions have established independent fee schedules, yet the ad hoc manner of regulation and collection lacks transparency and has potential for abuse. DJA and the NCSC are currently assisting the Department of Justice with drafting a Uniform Fee Schedule.

III. Financial Resources

Factor 10: Budgetary Input

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

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<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
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<tbody>
<tr>
<td>The judiciary has limited input into the budgetary process and no direct control over the allocated funds.</td>
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</table>

Analysis/Background:

The judiciary has extremely limited input into determining its budgetary allocation and has no control over its expenditures after the funds are allocated. Several respondents viewed their effective exclusion from the budgetary process as tantamount to improper executive control over the judiciary.

There are two separate budgets for the judiciary, one prepared for the UNMIK Department of Justice (DOJ) and another for the Department of Judicial Administration (DJA). The DOJ budget is a reserved power of the Special Representative of the UN Secretary General (SRSG) and is prepared by UNMIK without consultation with the judiciary. It includes salaries of international judges, DOJ employees, and a number of DJA employees. The DJA budget is prepared by the DOJ. First, the Financial Division of the DJA maps the needs of the judiciary in conjunction with court presidents and court administrators. The plan is then sent to the DOJ which can modify the amount requested. After that, the DOJ forwards the request to the Ministry of Finance, which either approves or reduces the requested amount.

In 2004, the total amount budgeted for Kosovo’s courts was 17.3 million Euros, or approximately 2.1% of the total budget for 2004. According to Kosovo Judicial and Prosecutorial Council representatives interviewed, a proposal was made to cut the courts’ budget by 1 million Euros for 2005.

Generally, the DJA budget covers the expenses associated with the local judiciary. It consists of three main components: salaries, purchase of goods and services, and capital investments. Under the powers transferred to the Provisional Institutions of Self-Government (PISGs) per Constitutional Framework and subsequent documents, the DJA is responsible for the implementation of the budget for local judicial administration. Nevertheless, UNMIK still retains a modicum of control over budget administration within the DJA. Although the Kosovar head of the DJA oversees the administration of the budget, the expenditures must be authorized by the DJA.
Financial Officer, an international employee. The proffered reason for maintaining this threshold of international oversight is concern over political influences in budgetary decisions.

In practice, many respondents stated that there is little substantive consultation with judges regarding the creation or administration of the budget, although the DJA did consult each court president and court administrator to explain the newly drafted budget for 2005. For example, the courts claim that the budget should include more funding to create additional court staff positions. Many judges also commented on inefficiency in the administration of the budget, which resulted in extended waiting periods for supplies, as all funding requests from the courts now must be processed directly by the DJA. Payment to lay judges, court-appointed defense counsel, and court experts has also been notoriously slow and, in some cases, never received, resulting in substantial problems with processing cases (for instance, experts may refuse to submit their reports until they are paid). Some experts have refused to continue working for courts due to lack of payment. In response, the DJA has taken steps to streamline the process, so that payments are now transferred more promptly.

Another problem is lack of a uniform court fee schedule. Some regions have taken the initiative to establish regional fee standards; otherwise, fees vary throughout Kosovo. There is significant disparity in fee levels between the courts. The minimum filing fees range between 5 and 25 Euros. See NCSC/IFES, Execution of Civil Judgments at 40. Currently, the National Center for State Courts is working with DJA to develop a Uniform Fee Schedule. At present, the judiciary does not retain any of the fees; all fees collected are remitted to the UNMIK treasury.

One of the criticisms of the current budget structure is the duality in governance of the courts. The DOJ develops judicial policy while the DJA bears responsibility for administering this policy as it affects the local judiciary. In practice, this division of labor has encountered a division of will, in which the administering hand is not always in line with the policy arm. For example, the court administrators and other administrative staff are accountable to DJA, but the court president, de jure the highest authority, is accountable to DOJ. As DJA is led by a particular political party, the DJA-employed staff are considered by many to be “political hires”, dependent on political will. When the political party’s interests have differed from the DOJ policies, clashes have ensued.

Another concern is lack of coordination between donors and the Kosovo Consolidated Budget (KCB) drafters. Because donors generally do not consult with the drafters, projects may not be sustainable after donor funds are depleted.

Kosovo’s new PISGs will eventually be handed responsibility for budget preparation and administration. The future transition of DOJ competencies to the PISGs, including budget responsibilities, is currently under discussion. In whatever form the handover finally takes place, KCB drafters will need to undergo training on the drafting of judicial budgets.

**Factor 11: Adequacy of Judicial Salaries**

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

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<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Judicial salaries are extremely low and not sufficient to attract or retain qualified judges or to support their families. The low salaries lead to poor morale and open the door to corruption.</td>
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Analysis/Background:

Judicial salaries in Kosovo remain low and insufficient to enable judges to support their families without having recourse to other sources of income. Salaries have not been increased since 2002, when a 5% increase was authorized. In 2004, monthly salaries of judges at different levels of the judiciary ranged between 420 Euros for minor offenses courts judges and 666 Euros for the President of the Supreme Court. In particular, the municipal court judges receive 471 Euros per month, while at the district court level, the judicial salary is 549 Euros per month, and the Supreme Court judges are paid 627 Euros per month. Court presidents at each level receive a slightly higher salary. Actual take-home pay is lower due to income tax and pension deductions. Currently, the Kosovo Assembly is drafting legislation to increase the pay scale for civil servants, which would improve the salaries of judges.

Although judicial salaries are nominally commensurate with (or even exceed) those of civil servants of similar status, the judges argue that in fact other civil servants potentially have much higher salaries because they can engage in additional paid work. By contrast, judges are prohibited by the Judicial Code of Ethics from receiving compensation in addition to their salary, except for a small amount for lectures if approved by the Kosovo Judicial and Prosecutorial Council. Judges receive no benefits in addition to salary.

A recent report on the Kosovo judiciary, completed by the Council of Europe and the U.S. Office of Pristina, compared the salaries of judges and other categories of government employees, as well as of senior government leaders within different branches. It concluded that while judicial salaries are significantly higher than the salaries of "most other categories of government officials and employees[,]" there are "dramatic differences in salary levels for senior government leaders." See COE/DOJ, Kosovo Judicial System Assessment at 258. Thus, the salary of the President of the Kosovo Supreme Court amounts to 45% of the salary of the President of the Kosovo Assembly. The report interpreted this disparity to imply "a fundamental difference in how the legislative and judicial powers are evaluated relative to their respective roles in Kosovo and a fundamental subordination of judicial branch status to legislative branch status." Id. at 258-259. The report further concluded that while judges may be able to support their families on the current salary levels, they are unable to accumulate any savings to fund their unexpected expenses or future retirement. Id. at 89.

Almost every respondent mentioned the issue of judicial salaries as a significant problem that contributes to lasting vacancies in the judiciary. Although most of the judicial vacancies have been filled, retaining judges remains an ongoing problem. Frequently, judges leave the bench to work as private attorneys or for international organizations, where the compensation is typically much higher.

Respondents commented that low salaries not only influence the retention of judges but also the morale of those who remain in the judiciary. Judges are less efficient and produce lower quality work product as a result of their low salaries. Although respondents did not think that corruption was a major factor within the judiciary, they did mention that higher salaries reduce the ability to see bribe opportunities. As one respondent said, "Low salaries invite the bribe." Another concern was that the low salaries create an impression among citizens that judges have a comparatively low worth and status within the government.

Low salaries also impact the recruitment and retention of Serbian Kosovar judges. Serbian Kosovar judges have a much greater incentive to work for the parallel courts or in Serbia proper, because the Serbian government pays a higher salary than UNMIK.
Factor 12: Judicial Buildings

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

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<th>Conclusion</th>
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The judicial buildings are conveniently located and easy to find. However, the conditions and lack of space inside the buildings make the environment inadequate.

Analysis/Background:

Generally, judicial buildings are conveniently located and easy to find. Although accessibility to UNMIK courts for minorities has been a recurring issue, UNMIK has attempted to rectify the problem by placing courts in Serbian enclaves of Leposavic, Zubin Potok and, most recently, Gracanica.

Additionally, in January 2003, the Judicial Integration Service of the Department of Justice (DOJ) established the Court Liaison Office (CLO) in Gracanica (Pristina region) in order to facilitate access to courts for minority community members. The CLO provides advice on access to courts and general support during the court proceedings, free shuttle service to Pristina courts, assistance in filing documents with the courts and locating old claims in the court archives, and serves as a liaison between Gracanica residents and the Pristina courts. During its first year of operations, the CLO received a total of 1,656 requests for assistance, both from minorities residing in Kosovo and from Serbia proper. Owing largely to a significant demand for CLO services, DOJ opened additional offices in the enclaves of Novo Brdo (Gjilan region) and Gorazdevac (Peja region), and is considering expanding this model to other enclaves. Although CLO services became limited in the aftermath of the March riots, it nevertheless continues to assist minorities by delivering claims to the courts and requesting documents on behalf of parties. However, CLO shuttle service operates only in urgent cases and is currently at a minimum level. Due to security concerns, UN Police must accompany CLO staff in all their travels.

For Albanians living in predominantly Serbian areas, the same issues of security and access pertain. In this regard, Zubin Potok provides transportation to the court for Albanians from nearby villages.

Respondents strongly criticized the working environment inside the courthouses. With few exceptions, respondents expressed dissatisfaction with the working conditions. They identified the poor environment as a cause of diminished respect towards the judiciary, which has a negative impact on the morale of judges.

Lack of space was rated by respondents as a major issue. Most of the court buildings do not have a sufficient number of courtrooms. For example, the court building in Mitrovica, which houses the municipal, the district, and the minor offenses court, must somehow accommodate the almost daily trials conducted by fifteen judges within three available courtrooms. The Pristina Municipal Court has only one formal courtroom, and the court building in Prizren, shared by the municipal and the district court, also has only one courtroom. See COE/DOJ, Kosovo Judicial System Assessment at 138. As a result, many judges conduct trials and other proceedings in their chambers. Those are generally small and do not have sufficient seating for the parties, lay judges, the media, and the public. Because of the limited space, maintaining separation between the parties and lay judges is difficult. In other courts, judges often must use the courtrooms in shifts or face delays in scheduling the trials, while the Rahovac Municipal Court was forced to move its archives to another facility to create an additional courtroom. Id. at 89, 138, 198.
some locations, judges also have to work in the same building with prosecutors, although none of the respondents found this to be a problem; rather some noted that it facilitated the work.

Only one of the courts observed, Dragash Municipal Court, had a separate room for attorney-client conferences. In some courts, attorneys meet with clients in hallways or in police offices. In others, judges leave their offices to accommodate attorney-client meetings.

Finally, some respondents complained that many court buildings require repairs and improved maintenance. One respondent remarked that building conditions are so bad that office equipment and electrical wiring have sustained significant damage from a leaking roof. A new building has been promised but construction has not yet begun.

**Factor 13: Judicial Security**

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

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<th>Conclusion</th>
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Although the Department of Judicial Administration, with few exceptions, has been able to ensure the security of court buildings, sufficient resources are not allocated to protect the physical security of judges and prosecutors from threats or violence.

**Analysis/Background:**

Most respondents were satisfied with security in court buildings but did not feel personally secure outside of the courthouses. Building security is under the auspices of Department of Judicial Administration, which has largely ensured that facilities are well-secured and that ingress and egress are controlled during and after regular business hours. Increased security is arranged when high-profile and sensitive cases involving international judges are heard.

The court building in Northern Mitrovica is the major exception to the satisfactory security situation. Due to security concerns, the court closes at 3 p.m. and reopens the following morning. Ironically, the building is not guarded during closed hours “due to security reasons.” As explained by respondents, “It is too dangerous for the security guards.” The court president requested that the police patrol the area but the police refused. In January 2004, the courthouse was partially burned, and some equipment stolen, due to the lack of security measures.

In August 2002, the court building in Viti municipality was also attacked. As in Mitrovica, the building at that time was not protected by security guards. Subsequently, guards and outside lights have been added.

Physical security of judges remains a significant concern. For example, during a recent trial of former Kosovo Liberation Army leaders, there were protests in the street. Judges interviewed described “not feeling very comfortable being in the streets and facing a mass of people” during the protests. Practically every region has had problems with threats and violence against judges. Even in those few locales where violence has not occurred, judges remarked that the level of security is not adequate. In some places, such as Prizren, judges have experienced multiple problems, ranging from property crimes against them to severe beatings. Although the overall view of Kosovo Police Service performance in such cases seems to be favorable, the responsiveness of the police in pursuing such cases of threats and violence against judges was not always viewed as adequate. Some respondents felt that there should be a special unit to oversee such cases. Some court presidents have called on the police to escort threatened
judges to their homes after work. However, some judges work in a different region from where they live and must travel long distances without protection. Many respondents thought that the situation could be improved by increasing the number of plain-clothes police officers serving as escorts. Respondents also mentioned a perceived danger from pressure exerted by parties and legal entities to resolve cases quickly.

In 2001, judges were permitted to carry guns for a six-month period, but UNMIK did not renew the weapons licenses upon expiration. Most respondents working within the judiciary felt that the judges should be allowed to carry guns to protect themselves. Although most admitted that it is "not in the nature of judges to be armed," they nevertheless felt that carrying arms would intimidate potential attackers. In support of this, many noted that the judges are now handling more dangerous cases, such as trafficking and organized crime. Furthermore, property cases have become very sensitive, and the high stakes in those cases exacerbate the risks to judges from parties concerned. After the war, many people whose houses had been burned or otherwise destroyed had illegally occupied vacant apartments. The resolution of these issues has become tremendously charged as the parties involved may have no other place to live and may feel that they are being wronged twice over. In other cases, parties have illegally occupied commercial property and have significant sums at stake in a favorable resolution of their case. Parties in such cases may directly threaten the judge or pressure him/her with a barrage of phone calls or letters. To complicate matters even further, judges often find themselves in peculiar conflict of interest situations when presiding over property cases. For example, one judge whose house was burned during the war was living in an apartment that did not belong to him while, at the same time, adjudicating cases involving similar facts.

Respondents have a keen awareness that a minority of international judges have security provided by the Close Protection Unit (CPU) while Kosovar judges do not. However, many Kosovar judges found this acceptable because they did not want to appear superior to the populace. On the other hand, they also acknowledged that local judges have greater constraints in their decision-making because they must live within, and are part of, the local community. The CPU is provided to international judges because they undertake the most dangerous cases. Nevertheless, Kosovar judges and prosecutors also need protection.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

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

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<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tbody>
<tr>
<td>Judges have guaranteed tenure but over an uncertain period of time.</td>
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Analysis/Background:

UNMIK regulations or other legislation do not address judicial tenure, and the determination of the length of judicial appointments appears to be at the sole discretion of the Special Representative of the UN Secretary General (SRSG). At the beginning of the UNMIK mandate, judges were appointed for three-, six- and nine-month renewable contract terms. In December 2001, following the Kosovo Judicial and Prosecutorial Council (KJPC) recommendation, the SRSG extended judicial appointments through the end of the UNMIK administration. The extension of tenure through the termination of the UNMIK administration is stated in the judge’s appointment letter,
which is signed by the Deputy SRSG. The unlimited duration of UNMIK’s own tenure serves as an indefinite measure of judicial tenure. Judicial tenure during this period is guaranteed, subject to termination for disciplinary misconduct. See generally REGULATION ON THE KJPC; see also Factor 17 below for additional discussion on the removal of judges. The duration of judicial tenure is also confined by the mandatory retirement provisions of 65 years of age, although some judges want to raise the age limit to 70 years, in accordance with some other countries in the Balkans and in Western Europe.

According to most respondents, the limited duration of judicial appointments has created an atmosphere of uncertainty and anxiety about the future among the judiciary.

International judges receive three-month renewable contracts, pending approval by UNMIK. Recent proposals on the transition of the justice system from international to Kosovar control would likely eliminate most international judicial positions, but the timing is uncertain. Some respondents stated that short-term judicial contracts interfere with the independence of the judiciary in violation of the applicable European standards.

**Factor 15: Objective Judicial Advancement Criteria**

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

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<th>Conclusion</th>
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<tr>
<td>Judges are generally advanced on the basis of objective criteria, although the process may not always be transparent.</td>
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**Analysis/Background:**

An evaluation system to advise the Special Representative of the UN Secretary General (SRSG) on judicial promotions is laid out in ADMINISTRATIVE DIRECTION NO. 2001/17, Implementing UNMIK Regulation No. 2001/8 ON THE ESTABLISHMENT OF THE KOSOVO JUDICIAL AND PROSECUTORIAL COUNCIL [hereinafter ADMINISTRATIVE DIRECTION ON JUDICIAL EVALUATIONS]. As outlined in the Administrative Direction, the two-tiered evaluation system consists of an initial and a final phase. *Id.* § 1.1. The court president performs the initial evaluation of a regular judge, and the president of the immediate higher court performs the initial evaluation of a court president. *Id.* § 1.1(c). The president of the immediate higher court performs the final evaluation of a regular judge, while the President of the Supreme Court evaluates the president of the municipal court. *Id.* § 1.1(d). The presidents of district courts and the Commercial District Court, as well as Supreme Court judges receive both the initial and the final evaluation from the President of the Supreme Court, while judges of the High Court of Minor Offenses receive both evaluations from the President of their Court. *Id.* § 1.2. The Supreme Court President and High Court of Minor Offenses President are not evaluated under this framework. *Id.* § 3.4.

For the initial evaluation, the evaluator conducts an interview using a designated form, and the judge evaluated has an opportunity to provide written comments. *Id.* § 3. The evaluation and comments are then delivered to the final evaluator, who completes a special form and, under certain circumstances, may seek the opinion of a knowledgeable third party, interview a judge on the same court as the judge under evaluation, and, if appropriate, interview the initial evaluator and the judge under evaluation. *Id.* § 4. The final evaluation may confirm or modify the initial evaluation, and the final evaluator submits the modified final evaluation to the judge under evaluation, the initial evaluator, and the Kosovo Judicial and Prosecutorial Council (KJPC). *Id.* § 4.5. The evaluations are conducted on an annual basis, but additional evaluations may be
conducted if a judge or a court president is being considered for promotion or is under a disciplinary investigation and more than three months have elapsed since the most recent annual evaluation. Id. § 5.

Most respondents believed that the advancement criteria are not adhered to strictly because of the limited pool of qualified applicants. However, the judges did not seem critical of this deficiency as they recognize the limited availability of choice. Some respondents also complained that the process of judicial promotion is not transparent because judges are not consulted.

Factor 16: Judicial Immunity for Official Actions

*Judges have immunity for actions taken in their official capacity.*

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<th>Conclusion</th>
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<tr>
<td>Limited judicial immunity for official actions exists according to various sources of law.</td>
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**Analysis/Background:**

The issue of judicial immunity is regulated only in the Law on Regular Courts, which states that "A judge and a lay-judge cannot be called to responsibility because of the opinion given in making of court decision." LAW ON REGULAR COURTS art. 11. It further states that judges cannot be detained for a criminal offense committed during the course of official duties, "without the approval of the assembly of the social-political community which appointed them." Id. This provision is reportedly no longer applied since the assembly referred to no longer exists.

The Constitutional Framework does not provide for judicial immunity, although it does provide limited immunity for executive and legislative branch officials. See CONST. FRAMEWORK §§ 9.1.24, 9.2.6, 9.3.19. No UNMIK regulation on judicial immunity exists.

The new Provisional Criminal Code essentially reiterates the provisions of the former Criminal Code regarding judicial immunity. While it does not specifically mention judicial immunity, it does describe for which offenses judges are liable. Chapter 29, which specifies criminal offenses against official duty, prohibits offenses such as abuse of authority and bribery. Article 346 of the Code sanctions professional and lay judges who issue unlawful decisions with the intent to gain material benefit or damage another with imprisonment of six months to five years. The Code further proscribes certain criminal offenses by "official persons," such as abusing official position, fraud, or bribery. See generally PCC arts. 339-351. A judge is an "official person" under Article 107(1) of the Provisional Criminal Code.

None of the respondents were aware of cases where judges had been prosecuted under the guise of offenses against official duty for politically unpopular decisions.
Factor 17: Removal and Discipline of Judges

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

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Disciplinary proceedings for specified official misconduct of domestic judges are governed by objective criteria. However, international judges are subject only to the discretionary discipline of the Special Representative of the UN Secretary General.

Analysis/Background:

The Constitutional Framework allows the Special Representative of the UN Secretary General (SRSG) to dismiss judges based on Kosovo Judicial and Prosecutorial Council (KJPC) recommendations and only “exceptionally on his own initiative.” See CONST. FRAMEWORK § 8.1.g. In turn, the law specifies that the KJPC may recommend removal of a judge from office only as a result of a disciplinary proceeding; no other grounds for removal from office are provided.

The disciplinary process for official judicial misconduct is governed by the Regulation on the KJPC. According to the Regulation, the KJPC is responsible for the judicial disciplinary procedure jointly with the Judicial Inspection Unit (JIU) of the Department of Justice (DOJ). KJPC is defined as a nine-member multi-ethnic Council of international and local distinguished legal professionals of varied legal expertise, including former judges and prosecutors, attorneys, or law professors, who satisfy “the highest standards of efficiency, competence and integrity.” See REGULATION ON THE KJPC § 2.1. Although the law does not specify the ratio of internationals and locals, Kosovars recently became a majority on the KJPC.

Official misconduct is also defined in the Regulation on the KJPC and includes:

(a) commission of a criminal offense;
(b) neglect of judicial functions;
(c) acting in a manner incompatible with the obligation of a judge to be independent and impartial;
(d) having been placed, by personal conduct or otherwise, in a position incompatible with the due execution of his/her office; or
(e) breach of the code of ethics and conduct.

See id. § 7.11.

The JIU was established by ADMINISTRATIVE DIRECTION NO. 2001/4, Implementing UNMIK Regulation No. 2000/15 ON THE ESTABLISHMENT OF THE ADMINISTRATIVE DEPARTMENT OF JUSTICE [hereinafter ADMINISTRATIVE DIRECTION ON THE JIU]. It exists to investigate allegations of misconduct by judges, lay judges and prosecutors, and to conduct judicial audits.9 The law states that only the SRSG, or the co-heads of the DOJ, can file a complaint with the KJPC. (Although the latter positions no longer exist, the Office of Legal Advisor has not amended the regulation). See REGULATION ON THE KJPC § 7.2. However, in practice, the JIU accepts complaints from anyone, including those submitted anonymously. Court presidents are obligated to report complaints, although respondents speculated as to the number of complaints that remain unreported.

9 The Audit Unit of the JIU is not operating yet but the National Center for State Courts is assisting with its development. The Audit Unit will analyze the efficiency of the courts and propose reforms, in particular regarding the numbers and distribution of cases and judges.
The JIU investigatory process includes interviews and an inspection of the case file. If the JIU decides not to investigate a case, it must send an explanation to the Director of DOJ. In order to protect the independence of the judiciary, JIU is prohibited from accepting a complaint where a legal remedy exists. As an emergency precautionary measure, a judge under investigation can be suspended from office for the pendency of investigation and disciplinary proceedings, provided that such suspension is “temporary, not made public[,] does not deprive the judge of his/her salary[,]” and automatically terminates within 90 days. See Regulation on the KJPC §§ 7.15-7.16. JIU submits results of its preliminary investigation to the KJPC, which then decides whether to open a disciplinary proceeding.

When the disciplinary proceedings have been initiated, the KJPC is required to notify a judge under investigation of the charges against him/her and the reasons motivating the investigation, as well as to grant the judge access to the complete case file throughout the proceedings. See Regulation on the KJPC §§ 7.3, 7.7. During the proceedings, the judge in question has the right to representation by a peer or an attorney and to appear personally at a hearing, although his failure to appear after being properly summoned does not prevent the KJPC from proceeding with the hearing. Id. §§ 7.6, 7.8. A disciplinary proceeding involves hearing testimony from the JIU representative, the KJPC rapporteur, and the judge under investigation or his attorney; reviewing the case file; and issuing a final decision. If a violation is found, KJPC imposes sanctions, which include a reprimand, a reprimand with warning, or a six-month suspension. Id. §§ 7.10(a)-(c). Alternatively, KJPC may elect to recommend to the SRSG removal of the judge from office. Id. §§ 7.10(d)-(e). Any sanction imposed by the KJPC must be proportional to the gravity of the misconduct committed by the judge. Id. § 7.13. In creating the disciplinary proceeding, UNMIK neglected to include an appellate review process, although few sanctioned judges have sought appeals. DOJ’s Professional Development Unit is currently working on amendments to the Regulation on the KJPC to fill this oversight in the procedure and has adopted a process which has not yet been approved by the SRSG.

Since its inception through October 2004, JIU had received 624 complaints. It rejected 196 complaints as ungrounded after preliminary review. In 269 cases, JIU concluded after investigation that the evidence did not support the alleged misconduct, while 41 cases were forwarded to KJPC for disciplinary proceedings (the investigations are pending in the remaining 103 cases). KJPC had completed disciplinary proceedings in 34 of these cases and was unable to find proof of misconduct or sufficient grounds to proceed in 17 of them. For the remaining complaints, KJPC imposed three reprimands and four reprimands with warning, and recommended to the SRSG the removal of 10 judges. The types of misconduct included neglect of judicial functions (13 instances), having been placed in a position incompatible with the due execution of office (8 instances), acting in a manner incompatible with the obligation to be independent and impartial and breach of the Code of Ethics and Conduct (7 instances each), and commission of a criminal offense (6 instances). See UNMIK Department of Justice Weekly Report: Week of 12-18 October 2004; see also John Furnari, The Judicial Inspection Unit: Safeguarding Kosovo’s Judiciary, in 3 Bulletin of the Kosovo Judges Association at 4 (Oct. 2004).

Generally, the KJPC proceedings are open to the public, but the Council has discretion to restrict attendance to the parties involved, “if the interest of justice so requires.” Regulation on the KJPC § 7.9. KJPC decisions are provided to the judge involved but are not available to the public. The Kosovo Chamber of Advocates (KCA) claims that this ban also extends to that organization, and that it has been criticized for extending membership to dismissed judges. As a result, the KCA does not have a legal basis for denying membership to dismissed judges without the KJPC decision. However, according to the KJPC, it recently determined that the complaining party in a disciplinary proceeding is entitled to be informed of the results of the proceeding even in those situations where the disciplinary action is deemed private non-public data. It further determined that disciplinary proceedings resulting in removal from office of a judge or prosecutor are public if and when the SRSG acts upon the appropriate recommendation to remove the offender from office.
Most respondents recognized the accomplishments of JIU and KJPC, but also expressed some criticism. Prolonged investigations, sometimes exceeding one year, exert extreme pressure upon the judge under investigation. Understaffing at JIU seems to be the primary reason for the length of investigations. Many respondents asserted that JIU investigators lack professional qualifications, qualities of professionalism and often focus on slight infractions at the expense of more serious cases. Many believe that the public abuses the complaint process to carry out personal vendettas for a delayed or lost case. In some instances, respondents noted that judges are investigated for case delays, despite the well-known impediments to speedy case resolution, such as case backlogs of up to two years. In addition, respondents stated that the attitude of JIU investigators fosters anxiety and distrust among the judiciary.

Another criticism relates to the transparency of JIU procedures. Internal JIU rules governing the investigations include provisions to protect the privacy of judges under investigation. Ironically, many respondents objected to these protections, saying that a closed process raises suspicions of impropriety. In one instance, a respondent went so far as to say that the court president should be informed when a judge on his court is under investigation. On the other hand, some respondents would prefer an even higher threshold of confidentiality during the investigation. Respondents expressed great concern over JIU’s power to detrimentally affect a judge’s reputation, especially given Kosovo’s small population and tightly knit society. Some respondents objected to the placement of JIU within the executive branch, citing potential influence of the SRSG over the investigatory and disciplinary process. Many suggested that KJPC or, as in the past, court presidents should initiate investigations. While investigations initiated by a court president might avoid SRSG influence, the process would presumably raise other concerns of internal influence.

Most respondents also agreed that the structure and composition of KJPC needs to be transformed, although they differed as to the kind of transformation. Kosovar respondents tended to think that the majority of KJPC members should come from within the local judiciary but that the Council should also include other legal professionals such as a permanent representative from the KCA. Conversely, many international respondents preferred an international majority, remarking that the KJPC did not strictly follow the designated procedures in its early days, when Kosovars held the majority. Nevertheless, both Kosovars and internationals agreed that the high turnover of international KJPC members was disruptive and often resulted in cancelled meetings due to lack of quorum. The composition of the KJPC was recently altered, and an international judge was placed as the permanent KJPC chair.

Various proposals are being considered for the role of KJPC and JIU in the transfer of DOJ powers to the Provisional Institutions of Self-Government. Among the most prominent and popular of these is the division of the KJPC into the Kosovo Judicial Council and the Kosovo Prosecutorial Council. Although the KJPC currently has independent status, it continues to share administrative staff with the Professional Development Unit of the DOJ. After the projected transition date of late 2005, KJPC will have its own administrative staff. Under the various proposals, the JIU would continue under the roof of DOJ, become part of the Kosovo Judicial Council, or become an independent entity.
Factor 18: Case Assignment

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

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<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
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<tr>
<td>Court presidents continue to enjoy broad discretion in assigning cases to local judges and in selecting lay judges for trials. No random case assignment system exists for international judges.</td>
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Analysis/Background:

Methods of case assignment vary from court to court but none is particularly objective. Typically, the president of the court assigns cases according to a numbering system. Each case is assigned a number that corresponds to a judge. Some respondents complained that court presidents occasionally do not assign numbers to newly filed cases based on the justification that old cases have priority. In such situations, respondents explained that their professional responsibility left no alternative but to beg the court president to assign a number to the case.

The numbering system of case assignment is not always objective in practice. For example, the Prizren Municipal Court has only two judges specializing in civil matters, so the court president simply writes the initials of one of the two judges on the cases. Nonetheless, respondents agreed that an objective method of case assignment is better, at least in theory.

Respondents identified delay in case assignment as a significant problem. The delay is attributable primarily to a disproportionately high number of cases in comparison with a shortage of judges. Many more cases are brought than are solved; thus, the number of cases compounds quickly. See Factor 27 below for more detailed information on the judicial delays in Kosovo.

Procedural rules describe the order in which judges should take cases. In general, judges themselves classify the cases “in accordance with their value and urgent character” and determine in which order they will be heard. See RULES ON INTERNAL ACTIVITY OF THE COURTS art. 178 (O.G. SAP KOS. 7/81) [hereinafter INTERNAL RULES OF THE COURTS]. Certain categories of cases, such as labor cases, are defined by law as possessing an urgent character due to their potential and immediate financial effects on the complainant, which means they have priority. In addition, attorneys often submit written requests to the court asking for priority in urgent cases. In practice, judges themselves admitted that they often must improvise methods to prioritize their work and deal with the huge caseload. A new case may be resolved more quickly while an older one waits and vice versa. Respondents also complained that the case overload presents a ripe opportunity for corruption. According to interviews, parties and/or lawyers sometimes approach the referent (i.e., the filing clerk) with improper requests to expedite cases.

Upon petition of the parties or the judge in question, the court president has the authority to remove a professional or a lay judge from a case in certain circumstances, such as conflict of interest, partiality, external pressure, family relations, or to avoid undue delay. See PCPC art. 40; CCP art. 71. The Provisional Criminal Procedure Code also requires that a judge be excluded from participation at any stage of the proceedings if s/he participated in any other stage of the same case or in another case against the same defendant. See PCPC art. 40(2). In other words, the Code requires a different judge to order detention on remand, confirm indictment, and issue the verdict at the main trial. Several respondents complained that these new provisions are impracticable because most courts do not have enough judges to satisfy this requirement. Furthermore, judges and parties must inform the court president when they become aware of
circumstances necessitating removal. See id. art. 41; CCP art. 72. None of the respondents considered this requirement to be a problem.

Case assignment for international judges is even less objective. General geographic and subject matter jurisdictional restrictions apply to international judges, but they themselves determine whether the case fits within the jurisdictional parameters. A case can be transferred to a three-member panel (with at least two international judges) when the transfer is “necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice.” However, such transfer is not possible if the trial or appellate panel session has already commenced. See generally UNMIK Regulation No. 2000/64, On Assignment of International Judges/Prosecutors and/or Change of Venue. Generally, most major or high-profile, sensitive cases are now tried by panels composed pursuant to this regulation. Although international judges are supposed to work on cases only within assigned regions, their low numbers occasionally demand that they be moved among regions.

Factor 19: Judicial Associations

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

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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
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<tbody>
<tr>
<td>A judicial association exists to protect and promote the interests of the judiciary, and the organization is becoming more active.</td>
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Analysis/Background:

The Kosovo Judges Association (KJA) was formed on May 11, 2001 in accordance with the statute of the KJA. There are five branches located in each of Kosovo’s regions: Pristina, Prizren, Peja, Gjilan and Mitrovica. The KJA operates with an Assembly and a Managing Board, and the same structure is repeated within each regional branch. The duties of the regional branches deal primarily with collecting membership dues and assisting the Managing Board and international technical assistance providers with organizing events in the respective regions. Some international partners regularly attend Managing Board meetings and frequently consult with it on matters related to implementation of their projects.

All active judges in Kosovo, regardless of ethnic origin, are eligible for membership in the KJA. See KJA Statute art. 11. Although membership in the KJA is voluntary (see id. art. 2), almost all Kosovar judges belong to the Association. KJA members also include Serbian, Turkish, Bosniak and Roma judges. To become a member of the KJA, the judge must sign a request for membership form, which states that the judge accepts the responsibilities and will enjoy the benefits envisaged by the KJA Statute and other KJA documents. The Managing Board then accepts or rejects the request. See id. art. 11. Membership dues are 2.5 Euros per month.

In December 2004, all 15 international judges working in Kosovo were invited to join the KJA. Although the KJA Managing Board would like to include them as equal members of the Association, some issues must be clarified first. These include whether the international judges will be regular or associate members, the amount of membership dues, and eligibility to serve on management bodies or working groups of the KJA.

Since its inception, the KJA has engaged in various activities, including seminars on strategic planning and governance, project writing and fundraising, and the code of ethics, all of which were conducted with the assistance of ABA/CEELI. In addition, the KJA has begun a Judicial
Praktikant Program (supported by USAID and ABA/CEELI) to select and support law graduates in completing the one-year court apprenticeship. The OSCE Democratization Department has agreed to involve the Judicial Praktikant Program participants in trainings and seminars which it sponsors for the Kosovo Chamber of Advocates praktikants. In 2003, the KJA received a grant in the amount of 5,000 Euros from the Open Society Foundation to establish the Judges Association Professional Library. Finally, the KJA publishes a quarterly bulletin for its members. To date, three volumes of the bulletin have been published.

Respondents gave mixed opinions of the KJA. While some members expressed a positive outlook for the future of the organization, others stated that the organization should be more involved in promoting issues important to the judiciary. At present, activities by regional branches have been limited to initiating small library collections or providing financial assistance to sick judges. Furthermore, by all accounts, the Pristina regional branch is currently inactive. The Pristina Regional Chairman was dismissed by the Kosovo Judicial and Prosecutorial Council from his position as court president. Although he nominally continues as Regional Chairman, respondents described the Pristina branch as lacking in leadership.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

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<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
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<tr>
<td>The judiciary in Kosovo is subject to external pressure, primarily from private interests.</td>
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</table>

Analysis/Background:

The Law on Regular Courts states that “in exercising their judicial function, courts are independent and they make decisions on the basis of the [applicable] laws.” See art. 6. This provision is reiterated in the applicable procedural laws. See PCPC art. 8; CCP art. 7.

In practice, the judiciary in Kosovo is subject to external pressure, primarily from private interests. For the most part, judges did not feel or encounter pressure from other judges, government officials or institutions. Respondents were unclear about the media’s influence on judges, but believed that the media was not a reliable source for the public to learn about the judiciary.

Most respondents acknowledged that the judiciary is susceptible to societal pressure from friends, family, and the community. Kosovo is a small region with strong familial and societal connections. Sometimes judges become victims of violence or recipients of direct threats. They may also receive more subtle harassment through repeated phone calls or letters. Some respondents felt that the degree of danger from external influences has increased because judges are now handling organized crime cases. Frequently, the local judiciary may request that international judges relieve them of the burden by taking up such cases. Many respondents recognized this as an important role of the international judiciary. Nevertheless, respondents emphasized that little has been done to address the issue of external influence, although judges have raised the issue many times in various fora.

Most respondents agreed that the judiciary has not succumbed overwhelmingly to the temptations of corruption, despite extremely low salaries. Nevertheless, a recent media survey
revealed that the public perception of the judiciary is quite low – the public ranked the judiciary as the third lowest government institution, out of six, in the public confidence.

Respondents gave mixed responses regarding the independence of the international judiciary. Some believed that international judges operate completely independently from UNMIK influence. Others believed that UN politics influence decisions to prosecute certain individuals and that these politics carry over to the UN-employed international judiciary. A few respondents cited examples of perceived impropriety in which international judges received telephone calls from UNMIK during deliberations of judicial panels. However, other respondents did not have similar experience. One respondent offered an example where the international administration did not renew the contract of an international judge who, allegedly, in a decision did not follow the bidding of the administration. An impression also exists among the respondents that international judges exhibit greater leniency in sentencing. See also International Crisis Group-Europe, Report No. 155, Collapse in Kosovo at 9 (April 2004). Some respondents commented that international judges rarely order pretrial detention for Serbian defendants, although other ethnic minorities do not benefit in the same manner. Respondents attributed this leniency to politics of the day. ABA/CEELI has not verified whether the facts support this impression.

**Factor 21: Code of Ethics**

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

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<th><strong>Conclusion</strong></th>
<th><strong>Correlation:</strong> Neutral</th>
<th><strong>Trend:</strong> ↔</th>
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<tbody>
<tr>
<td>A comprehensive Code of Ethics and Conduct for Judges and a Code of Ethics and Conduct for Lay Judges exist but judges are not required to receive training on them.</td>
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</table>

**Analysis/Background:**

Two judicial ethics codes exist in Kosovo, entitled the Code of Ethics and Professional Conduct for Judges [hereinafter CODE OF ETHICS FOR JUDGES] and the Code of Ethics and Conduct for Lay Judges [hereinafter CODE OF ETHICS FOR LAY JUDGES]. The Codes were adopted by the Kosovo Judicial and Prosecutorial Council (KJPC) in 2001. The content of the Codes has not changed from that time. Specifically, judges are required to act with due integrity, impartiality, independence, and diligence, both in their judicial activities and outside the scope of their judicial mandate. They are to issue their decisions based on the facts of the case and applicable law, free from improper influences, pressures or threats, and must avoid any conflict of interest. See CODE OF ETHICS FOR JUDGES art. II.A.3; CODE OF ETHICS FOR LAY JUDGES art. II.A.3. Allowable extrajudicial activities are limited to speaking, writing, lecturing, teaching and participating in other activities “concerning the law, the legal system, and the administration of justice,” as well as social, recreational and charitable activities. See CODE OF ETHICS FOR JUDGES art. II.B.1. Judicial involvement in political activity or any discriminatory organization is expressly prohibited. Id. arts. II.B.2-3; CODE OF ETHICS FOR LAY JUDGES arts. II.B.2-3. Finally, professional judges must “avoid or discourage ex parte communication,” except in cases provided by law, and must promptly disclose any information discussed during such communication to other parties and attempt to procure their attendance. CODE OF ETHICS FOR JUDGES art. III.A.7.

In theory, the Codes apply equally to local and international judges in Kosovo but no specific body exists with the authority to investigate ethical violations of international judges. By contrast, the KJPC, in conjunction with the Judicial Inspection Unit (JIU) of the Department of Justice, regularly investigate and adjudicate ethical violations of the Kosovar judges. As of October 2004,
the KJPC has imposed sanctions for breach of the Codes of Ethics in seven instances. See UNMIK Department of Justice Weekly Report: Week of 12-18 October 2004.

Major ethical issues, such as conflicts of interest and prohibition on involvement in inappropriate extrajudicial activities, are also addressed in a number of UNMIK regulations and the Law on Regular Courts. Generally, the applicable legislation prohibits judges from engaging in activities that could influence their impartiality, independence or social reputation, or are otherwise incompatible with their judicial functions, including holding other public or administrative offices, engaging in any remunerative or not remunerative professional occupation, and involvement in political activity. See LAW ON REGULAR COURTS arts. 12, 74; REGULATION ON THE KJPC §§ 5.5-5.6; REGULATION ON THE APPOINTMENT AND REMOVAL OF INTERNATIONAL JUDGES § 4.2; ADMINISTRATIVE DIRECTION ON SPECIAL CHAMBER ON KTA MATTERS § 4.1. However, the KJPC may authorize involvement of judges in outside activities such as lecturing or performing a function in their field of competence, if these “do not affect the independence and dignity” of judicial office. See REGULATION ON THE KJPC § 5.5.

Judges are not required to receive ethics training prior to appointment or during their tenure. However, professional judges do receive basic instruction on the Code of Ethics for Judges during the induction course at the Kosovo Judicial Institute (KJI). In addition, the KJI and other organizations hold periodic seminars dedicated to judicial ethics. In 2003, the KJI held four separate two-day seminars on judicial ethics. Through participation in these seminars and in the induction course, most judges should have received copies of the Code of Ethics for Judges. In addition, the July 2004 issue of the Kosovo Judges Association Bulletin included an article on the “Judges’ Code of Ethics and Professional Behavior.”

The Kosovo judicial reform project run by the National Center for State Courts (NCSC) focuses, inter alia, on judicial ethics. First, the project seeks to establish the Audit Unit of the JIU, as mandated by Administrative Direction on the JIU, which will conduct performance reviews of judges and prosecutors, assess the current ethics and discipline system, identify training needs, and assist in ethics training. In addition, the NCSC will assist the KJI in conducting trainings on judicial ethics.

Some respondents recommended that the Code of Ethics for Judges and the Code of Ethics for Lay Judges be published and distributed to each person working within the judicial system, from the court presidents to the cleaning staff. Respondents stressed the importance for all court staff, not only judges, to understand how judicial ethics may impact their specific employment responsibilities.

**Factor 22: Judicial Conduct Complaint Process**

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

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<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tr>
<td>A meaningful complaint process exists under which judges, lawyers, and the public may register complaints concerning judicial conduct. The public is informed about the process, although the judges are critical of the manner of investigation.</td>
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**Analysis/Background:**

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct and is outlined in the Regulation on the KJPC and the
Administrative Direction on the JIU. The latter document established the Judicial Inspection Unit (JIU) of the Department of Justice to investigate allegations of misconduct by judges, lay judges and prosecutors and to conduct judicial audits. As described in Factor 17 above, the JIU accepts complaints from anyone, including those submitted anonymously. On the basis of the complaint, JIU conducts an investigation into the allegations and presents the results, through DOJ, to the Kosovo Judicial and Prosecutorial Council (KJPC), which reviews the file and determines if a violation has occurred and what sanction to impose. See Factor 17 above for a more detailed description of this procedure and statistics.

The Kosovo public seems to be fairly well informed about the judicial conduct complaint process. At the same time, many respondents were dissatisfied with the modus operandi of the JIU. They felt that the process was manipulated by individuals with personal vendettas against the judges or who misunderstood the role of JIU as another venue for appeal. According to respondents, parties sometimes threaten judges with formal complaints to the JIU. For example, in one property case, a party sent a letter to the judge threatening to complain to OSCE and UNMIK if the judge did not expedite the case. In this respect, respondents stated that the JIU should be more discriminating in selecting cases to pursue.

Factor 23: Public and Media Access to Proceedings

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

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<th>Conclusion</th>
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<tr>
<td>Generally, courtrooms are open to the public and the media. However, as a result of insufficient courtroom space, courts lack the capacity to accommodate everyone wishing to attend trials.</td>
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Analysis/Background:

According to the applicable procedural laws, trials are open to the public. See PCPC art. 328; CCP art. 306. However, the trial panel may exclude the public on motion of the parties or ex officio, after hearing the parties. See PCPC art. 329; CCP art. 307. The public may be excluded in order to protect secrecy, public morals, interests of minors or other particular interests. See LAW ON REGULAR COURTS art. 7; CCP art. 307. The possible reasons for exclusion in criminal proceedings are: protection of official secrets; protection of confidential information; law and order; protection of personal life of parties; interests of children; or protection of injured parties and witnesses. See PCPC art. 329. In closed trials, the judge can grant exceptions to permit attendance by certain officials, academics, public figures or family members. See id. art. 330(2); CCP art. 308. In addition, the law prohibits “photography, film, television and other recordings by technical devices of the confirmation hearing or the main trial,” although a court president or the President of the Supreme Court may authorize such recording during the main trial as an exception. See PCPC arts. 93(2)-(3). Apparently, many journalists and judges are unaware of this prohibition.

Members of the judiciary generally claimed that although sessions are public under the law, very often insufficient space, both in terms of few and small courtrooms, prevents attendance of the public and the media. Judges hold the majority of trials in their offices, which are too small for the public to attend. In high-profile cases with multiple defendants, the trials are often relocated to a larger venue to accommodate family members, the general public and the media. For example, the Dukagjini and Llapi trials, involving former Kosovo Liberation Army members accused of war crimes, were moved to an auditorium located off court premises, in order to accommodate the large numbers of visitors who wanted to attend. In other cases, the court may restrict attendance of individuals who are not participants in the proceedings or their relatives.
Respondents also commented that judges are sometimes confused about which sessions should be open to the media and the public. In some cases, the judge is unable to provide journalists with guidance as to whether to reveal the identity of a witness or victim. According to the OSCE, Kosovo courts do not consistently inform the public as to dates, times and places where trials will be held, resulting in enormous difficulties in obtaining such information and effectively creating a barrier to trial publicity. See OSCE, Review of the Municipal Courts at 25-26. In February 2004, Department of Justice issued Justice Circular No. 2003/7 on public access to justice, urging the Department of Judicial Administration to ensure public access to trials. Id. at 26.

Media respondents stated that the primary hurdle encountered in seeking access to trials is the paucity of courtroom space. They also added that international police responsible for maintaining order in the courtrooms occasionally misuse the issue of space for the purpose of excluding the media. Respondents further noted that, following instances of police criticism in newspapers, the international police sometimes have responded by excluding the journalists from the courtroom and suggestively placing their weapons uncomfortably close to them.

Respondents stated that broadcast journalists face the most barriers to courtroom access. The Provisional Criminal Procedure Code requires broadcast journalists to request permission for access from the Kosovo Supreme Court. See arts. 93, 335. According to respondents, the Court often denies such requests. Journalists complained that no opportunity exists for appealing a denial. Moreover, according to respondents, some judges overreach their authority by extending the requirement for Supreme Court permission to print journalists, demanding that they also obtain such permission to gain admission into the courtroom.

In cases where the Criminal Procedure Code allows, judges may exclude the public, including media representatives, from the courtroom. Respondents explained that media exclusion from trials ensures that the media presents only one side, typically that of the defense attorney, who is the most accessible person in the case.

**Factor 24: Publication of Judicial Decisions**

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

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<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tr>
<td>Judicial decisions made during trial are not available as a matter of public record, but final verdicts are generally available to parties in the case and other interested parties. Most appellate opinions are not yet published and open to academic and public scrutiny.</td>
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**Analysis/Background:**

The Law on Access to Official Documents establishes the rules under which any “habitual resident of Kosovo” and any “natural or legal person residing or having its registered office in Kosovo” may gain access to official documents of all Provisional Institutions of Self-Government. See generally Kosovo Assembly Law No. 2003/12, ON ACCESS TO OFFICIAL DOCUMENTS (promulgated by UNMIK Regulation No. 2003/32) [hereinafter LAW ON ACCESS TO OFFICIAL DOCUMENTS]. These rules “apply to all documents held by an institution, drawn up or received by it and in its possession.” Id. § 3.3. “Documents” are defined as “any content whatever its medium … concerning a matter related to the policies, activities and decisions falling within the institution’s sphere of responsibility.” Id. § 2(b). Thus, judicial decisions in principle should be classified as “official documents” under this Law. According to the Law on Access to Official
Documents, documents should be “accessible to the public either following a written application or directly in electronic form or through a register.” *Id.* § 3.4. Public access to official documents can be denied only in specified circumstances, where disclosure can negatively affect the protection of public interests in the areas of public security, defense and military matters or international relations, as well as individual privacy and integrity interests. Further, in the absence of “an overriding public interest in disclosure,” access to official documents may be refused to protect commercial interests (including intellectual property rights) of natural or legal persons or court proceedings and legal advice. *Id.* §§ 4.1-4.2.

At the same time, applicable procedural laws contain different provisions concerning public access to judicial decisions. Generally, judicial decisions made during trial are not published for the general public but final verdicts are written and available to parties in the case and to interested parties. See PCPC arts. 89, 123, 395; CCP arts. 150, 337. An exception is decisions issued the Supreme Court’s Special Chamber on Kosovo Trust Agency Related Matters, which, in addition to being communicated to the parties, must also be made available to the public. See *REGULATION ON SPECIAL CHAMBER ON KTA MATTERS* §§ 9.4-9.5. The category of “interested party” is defined by law, but the final determination as to who is an interested party is made by the presiding judge, pretrial judge or prosecutor, depending on the procedure.

The Kosovo Law Center (KLC) has published two issues of the Kosovo Supreme Court bulletin in which excerpts from decisions are printed. The first covers the period from 1999-2002 and the second from 2002-2004. The KLC has funding for two additional bulletins and intends to continue publishing. They will also attempt to include the district court decisions in future editions. Although the Kosovo Supreme Court decisions issued prior to 1989 were published, they are not widely available now. Many respondents felt that the decisions of the Supreme Court in particular should be available to the public. One respondent aptly described the availability as a form of continuing legal education for attorneys, judges and the public alike, in order to foresee how the Supreme Court would decide similar cases. While respondents believed that deleting names of parties would be appropriate, a reference collection of Supreme Court’s decisions would have an important role in educating the public about the rule of law.

Increasing public access to judicial decisions is mentioned among the activities of the Kosovo judicial reform project conducted by the National Center for State Courts. In particular, the project will establish a program for printing and updating the current versions of laws, regulations and case law. These collections will be available in multiple languages, organized and cross-referenced by subject matter, and distributed to the courts and the legal community. Secondly, the project will engage in judicial capacity building to meet information needs of the public.

### Factor 25: Maintenance of Trial Records

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courts do not create verbatim transcripts of proceedings, and court records are not freely available to the public.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

The courts do not produce verbatim transcripts of proceedings. A record of the proceedings (referred to as the minutes) is typically based on the judge’s oral summation, although the law allows the recording to be conducted via stenographic or audio-recording methods. See PCPC
arts. 86, 90, 92, 348; CCP art. 126; INTERNAL RULES OF THE COURTS arts. 182-86. In certain instances, the presiding judge may order that a specific part of the proceedings (e.g., testimony) be recorded verbatim. See PCPC art. 349. In contrast to the Kosovo JRI 2002, many respondents were not satisfied with the quality of the records. According to respondents, the process of judicial paraphrasing is subject to error, unless an attorney listens closely to the dictation of the judge and objects where appropriate. Many respondents felt that a stenography machine or other means should be used to record the statements verbatim.

By contrast, the records of proceedings presided over by the international judges were praised because they create verbatim transcripts. Some Kosovar judges have begun to follow this example and occasionally ask the attorneys to repeat what was said in order to record statements accurately.

As a rule, the general public does not have access to transcripts or other records of proceedings. Only the parties to the case have direct access, and interested parties can obtain access at the discretion of the court president. See LAW ON REGULAR COURTS art. 113; PCPC arts. 89(1), 350; CCP art. 150. Furthermore, despite rules to the contrary, some judges refuse to provide transcripts to attorneys. When transcripts are denied, the attorney must submit a written request to the court president, who usually compels the judge to provide the requested documents. Where counsel is court-appointed, the court typically provides materials to counsel, but the speed of the process could be improved. Because English is the official language in cases presided by an international judge (see generally UNMIK REGULATION NO. 2000/46, ON THE USE OF LANGUAGE IN COURT PROCEEDINGS IN WHICH AN INTERNATIONAL JUDGE OR PROSECUTOR PARTICIPATES), a delay usually ensues to accommodate the time for translation.

The National Center for State Courts (NCSC) is assisting the Department of Judicial Administration (DJA) with implementing several projects to improve the quality of court records. For instance, one of the projects concerns the installation of audio-recording equipment at ten pilot courts, as mandated by the Provisional Criminal Procedure Code. The completion of this project is expected by early 2005. Another NCSC undertaking is the Records Management Project, aimed at improving storage for transcripts. Currently, the DJA is evaluating existing archival records to determine which files should be destroyed and which should be retained.

VI. Efficiency

Factor 26: Court Support Staff

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges do not have adequate court support staff, either in terms of quantity or quality, to assist them with administrative or substantive tasks. Court staff structure varies from court to court.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

In general, respondents expressed dissatisfaction with the current court staff, the selection of which is under the purview of the Department of Judicial Administration (DJA), without effective input from the judiciary. Even the staffing table for the judicial system was constructed without consulting the judiciary. Respondents stated that greater numbers of court staff are needed to
assist with an ever-increasing workload. At the suggestion of OSCE, DJA has begun to address this need by adding one execution clerk per court.

An assessment of Kosovo’s judicial system prepared by the Council of Europe and the U.S. Office of Pristina includes data gathered in 2003 as to the numbers of court support staff servicing each level of the judiciary.

**NUMBER OF COURT SUPPORT STAFF IN KOSOVO COURTS**

<table>
<thead>
<tr>
<th>Court level</th>
<th>Administrative</th>
<th>Secretarial</th>
<th>Technical</th>
<th>Translator</th>
<th>Ancillary</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor offenses</td>
<td>154</td>
<td>92</td>
<td>26</td>
<td>27</td>
<td>125</td>
<td>424</td>
</tr>
<tr>
<td>HCMO</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>Municipal</td>
<td>209</td>
<td>131</td>
<td>51</td>
<td>29</td>
<td>201</td>
<td>621</td>
</tr>
<tr>
<td>District</td>
<td>41</td>
<td>43</td>
<td>22</td>
<td>10</td>
<td>51</td>
<td>167</td>
</tr>
<tr>
<td>Commercial</td>
<td>7</td>
<td>10</td>
<td>3</td>
<td>1</td>
<td>9</td>
<td>30</td>
</tr>
<tr>
<td>Supreme</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>1</td>
<td>3</td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td>422</td>
<td>287</td>
<td>110</td>
<td>69</td>
<td>392</td>
<td>1,280</td>
</tr>
</tbody>
</table>

Source: COE/DOJ, Kosovo Judicial System Assessment, passim.

These data suggest that on average, the judicial system employs approximately four support staff per judge. There are approximately seven administrative staff positions (e.g., court administrators, registrars, executions clerks, cashiers) per court, and a slightly smaller number of ancillary staff (i.e., handymen, messengers, security guards, cleaners, and drivers). At the same time, the number of judicial secretaries is slightly under the current number of judges, which means that some judges are forced to perform administrative tasks that would more appropriately be performed by support personnel. But perhaps most troubling is the evidence that the ratio of technical court staff (such as legal assistants and apprentices) per judge is approximately 0.35, which means that there is, on average, one law clerk or praktikant per three sitting judges. The lack of additional legally trained support staff contributes to lowered judicial productivity and overall efficiency of the courts. Legal assistants and praktikants can provide legal research assistance and draft written judgments, which would significantly speed up the time required for processing of cases. These concerns were echoed in the abovementioned report by the Council of Europe and the U.S. Office of Pristina. See id. at 89, 137, 198.

Moreover, the judiciary has only nominal input into the court staff hiring process. The standards and principles for the court staff selection process are governed by UNMIK REGULATION NO. 2001/36, ON THE KOSOVO CIVIL SERVICE, and ADMINISTRATIVE DIRECTION NO. 2003/2, implementing the above Regulation. The selection is conducted by a five-person Hiring Commission, comprised of three to four DJA representatives and one to two representatives from the district court with the vacancy. Many respondents felt that the composition of the Hiring Commission rendered judicial input into the hiring process impotent. In particular, respondents claimed that the district court representatives are usually outvoted and consequently, the Hiring Commission’s methods leave the impression that DJA has predetermined the candidate and merely follows the pro forma interview requirements. Thus, members of the judiciary viewed DJA, which falls within the executive branch, and its role in hiring court staff as impinging on judicial independence.

Respondents stated that, as a result of limited judicial participation in court staff selection, the court staff are often unqualified, ill-suited or unprepared for their positions. An overall belief is that nepotism and political affiliation plays a significant role in the DJA’s court staff selection and appointment process. Moreover, respondents believed that existing staff need better training, especially on computer usage.
Respondents drew attention to the overlooked importance of the role of court administrators in the smooth functioning of courts. The court administrator in each court is de facto responsible for the overall administration and management of the court (although in theory the law vests these functions with the court president – see Law on Regular Courts arts. 55-56). Currently, most court administrators have only a high school education and desperately need training in modern management and organizational techniques, as well as professional skills. Many administrators with law degrees have left to become judges or prosecutors. Respondents attributed this administrative exodus to the comparatively low salary and low esteem accorded the position. To address the problem, the National Center for State Courts is planning to provide training programs and to establish the Kosovo Court Administrators Association.

Respondents differed as to the extent of corruption among the court staff. Some stated that staff encountered few opportunities to engage in corruption, while others felt that the position of referent did present such opportunities. The referent’s position is similar to that of a filing clerk. S/he affixes chronological numbers to cases and is supposed to distribute them among the judges following the court president’s assignment. Thus, by deciding the order in which cases are heard, the referent wields the power to delay or expedite cases. Parties are well aware of the referent’s duties and may approach the referent with improper requests for “intervention.” Respondents emphasized that salaries for referents and other court staff should be increased to diminish the allure of corruption.

As a final note, the newly designated position of judicial police under the Provisional Criminal Procedure Code has not been developed. There appears to be some confusion over whether the institution of judicial police would fit better within the police or judiciary. In the interim, UNMIK has vested the powers of the judicial police with the investigating units of various police stations, acting in cooperation with the public prosecutor.

Factor 27: Judicial Positions

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>No system exists to create judicial positions as needed. However, the number of positions is undergoing revisions now.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

No system exists to create judicial positions upon demand. The Department of Justice (DOJ) and the Kosovo Judicial and Prosecutorial Council (KJPC) hold responsibility for determining the numbers of judges. Although the caseload has increased significantly, the number of judges has not increased accordingly.

As of October 2004, there were 313 serving judges in Kosovo, compared to the budgeted number of 363 judges. Of these, 14 judges were serving on the Supreme Court, five on the High Court of Minor Offenses, 46 on the district courts, nine on the Commercial District Court, 139 on the municipal courts, and 100 judges on the minor offenses courts. Overall, approximately 14% of all judicial positions remained vacant. The largest number of vacant judicial positions was registered in the municipal courts (26 vacancies) and the minor offenses courts (18 vacancies), while district courts, the Commercial Court and the Supreme Court each had 2 vacancies. At the same time, all positions on the High Court of Minor Offenses were filled. See UNMIK Department of Justice Weekly Report: Week of 12-18 October 2004. Some courts have fewer sitting judges currently than twenty years ago. For comparison, in 1989, municipal courts alone employed a total of 185
judges, which suggests an overall decrease of about 20 percent in the number of municipal court judges. The municipal courts in Mitrovica and Prizren have seen the sharpest decrease in the number of judges (47% and 38%, respectively). See OSCE, Review of the Municipal Courts at 10. The Prizren District Court had seventeen judges in 1989, and today there are only eight.

In a report prepared at the request of the Special Representative of the UN Secretary General (SRSG), the Council of Europe and the U.S. Office of Pristina have concluded that there is no accurate analytical tool for determining the number of judges required for effective administration of justice in Kosovo. The lack of such a formula resulted in understaffing at a majority of the courts, while some courts are overstaffed. Based on the analysis of the courts’ current caseload, the number of completed cases, and some additional factors, the report outlined several methods for estimating the number of judicial positions needed for each court. Additionally, it was recommended that in cases of overstaffed courts, the KJPC should either decrease the number of judges and transfer them to different courts or consolidate several municipal courts into one. In cases of understaffed courts, it was recommended that the KJPC should either increase the number of judges or subdivide the existing courts into several locations and hire additional judges for the new locations. See COE/DOJ, Kosovo Judicial System Assessment at 266.

The insufficient number of judges in Kosovo is the primary reason behind the significant delay in disposing of cases and a growing backlog of cases.

### CASELOAD OF KOSOVO MUNICIPAL COURTS

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of cases pending</td>
<td>190,083</td>
<td>249,695</td>
</tr>
<tr>
<td>Backlog: number of cases pending from previous years</td>
<td>33,538</td>
<td>61,713</td>
</tr>
<tr>
<td>Number of cases filed</td>
<td>156,545</td>
<td>187,982</td>
</tr>
<tr>
<td>Number of cases completed</td>
<td>127,913</td>
<td>167,795</td>
</tr>
<tr>
<td>Efficiency: ratio of completed cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>to total cases pending</td>
<td>67.2</td>
<td>68.9</td>
</tr>
<tr>
<td>to cases filed</td>
<td>81.7</td>
<td>89.3</td>
</tr>
</tbody>
</table>


As is apparent from the Table, courts resolve fewer cases than they receive, resulting in a constantly growing backlog. As can be calculated from the table above, the backlog at the beginning of 2004 reached 81,900 cases, a 2.5 times increase since 2002. Additionally, courts with the highest caseload also seem to be the least efficient. For example, Pristina Municipal Court had 44,459 cases pending in 2003 (including 32,055 filed that year); it cleared only 58% of its caseload by the end of the year (about 80% of the number of cases filed that year). See id. Annex 2 Table 2. By contrast, eight courts with comparably smaller caseloads (such as Dragash Municipal Court) resolved 98% or more of the total number of cases they received in 2003 (although some cases were nevertheless carried over into 2004). Id. Higher-level courts appear to have even lower efficiency ratios in terms of clearing their caseload. Thus, in 2002, district courts completed about 59% of the total number of cases pending (74% of cases filed that year), while the Supreme Court completed about 61% of the total number of cases pending (73% of cases filed that year). See COE/DOJ, Kosovo Judicial System Assessment at 30, 31.

Most respondents stressed that more judges are needed to address the growing caseload and that the judiciary has urged the DOJ to increase the numbers to no avail. Respondents complained that prolonged vacancies among professional and lay judges, sometimes lasting more than two years, have exacerbated the caseload. Often court sessions are postponed and cases delayed because there are not enough lay judges. Furthermore, respondents noted that sufficient numbers of professional judges are not available to fulfill the mandate of the Provisional Criminal Procedure Code, Article 40(2) of which requires a different judge to participate at each phase of the proceedings.
According to respondents, the case burden could be eased by hiring additional judges and redistributing the current judges. In some locations, judges are overloaded with cases, such as a Prizren judge with 2,000 civil cases, while in other locations, as one respondent noted, “we wait for the cases.” According to OSCE, in 2003 “seven [municipal] courts received over 300 cases per judge; whereas at the lower end, seven courts received less than 150 cases per judge.” Overall, the individual caseload per judge averaged 265.4 cases and ranged from 62.8 in Dragash Municipal Court to 427.1 in Prizren Municipal Court, and to 1,063 in Kacanik Municipal Court with one sitting judge. See OSCE, Review of the Municipal Courts at 11 & Annex 5 Table 9. Similar disparities can be observed in the caseload of minor offenses courts judges. While most courts had a caseload of 800-1,600 cases per judge in 2002, Dragash Minor Offenses Court had 418 cases and Gjilan Minor Offenses Court had 3,316 cases per judge. See COE, Kosovo Judicial System Assessment at 29. Distribution of caseload per judge is less disparate at the district courts level, ranging in 2002 from 210 cases in Gjilan District Court, 235 cases in Mitrovica District Court, 338 cases in Prizren District Court, 340 cases in Pristina District Court, and 384 cases in Peja District Court. Id. at 30. A redistribution of judges could result in a more feasible workload. Some respondents have pointed to the inefficient working methods of judges themselves as a contributing factor to the growing case burden.

As a follow-up to the report prepared by the Council of Europe and the U.S. Office of Pristina, some of the report drafters are currently working on a project to determine and update the appropriate numbers of judges within each court. Further, the DOJ has begun to fill vacancies of lay judges with the October 2004 swearing-in of 169 new lay judges, including 78 to the municipal courts and 91 to the district courts, bringing the total number of lay judges serving in Kosovo courts to 543. See UNMIK Press Release No. 1238, SRSG Swears in 169 Lay Judges for Kosovo Courts (Oct. 6, 2004).

Factor 28: Case Filing and Tracking Systems

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>The filing and tracking of cases is performed manually. The process leaves room for interference from parties and other persons with an interest in the case in determining the order in which cases are heard.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Case filing and tracking is still performed manually. The administrative office of each court is the receptacle for all case files, although files stay in the judge’s chamber during the course of a trial. Whenever a case file is taken outside the administrative office, a remark identifying its location must be made in the register, although such notations are not necessary for the file’s movement within the administrative office (e.g., for photocopying). See INTERNAL RULES OF THE COURTS arts.

Notably, this statistic takes into account only so-called “complex” cases, which include investigations, criminal cases, juvenile cases, civil cases, inheritance, and non-contentious cases (per DJA classification). Based on the total number of cases on the courts’ dockets, in 2002 six municipal courts received less than 800 cases per judge, while four municipal courts received more than 2,000 cases per judge; individual caseload per judge ranged from 475 in Dragash Municipal Court to 3,902 in Kacanik Municipal Court. See COE/DOJ, Kosovo Judicial System Assessment at 30.
After the court president assigns cases to judges, the cases are forwarded to the referent who assigns a number to determine the order in which cases are heard. The order for assignment of cases by the referent is subject to the discretionary advice of the court president, but typically cases receive numbers chronologically, according to the time of their receipt. Cases are kept in files according to their assigned case numbers, and documents within each file are registered with codes to designate the category of each document. On occasion, case files are misplaced. Moreover, the manual process of assigning judges and numbers to cases allows parties and other persons who may have an interest in the case to inappropriately influence and interfere with the court personnel involved.

The Department of Judicial Administration and the European Agency for Reconstruction are collaborating on a project to develop the Case Management Information System, a sophisticated and modern case tracking database that implements case registration and tracking, calendaring, and document generation functions. The three-phase pilot project focuses on improving case flow management by implementing the case tracking software. It should be noted that the project has suffered a setback due to the passage of the new Provisional Criminal and Criminal Procedure Codes. The previously designed software is undergoing revisions to incorporate procedural and terminological changes inherent in the Codes. The first phase is limited to filing and tracking the criminal cases in selected district courts. In the second phase, the project will extend to all district courts, and in the final phase, to all courts and will include both criminal and civil cases. The purpose of the project is to improve accountability and confidentiality while reducing paperwork. Access to the database will be reserved to judges and relevant court support staff.

**Factor 29: Computers and Office Equipment**

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>The judiciary has a sufficient number of computers and other equipment but lacks technical knowledge and skills to use the equipment effectively.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Respondents acknowledged adequate access to computers and other equipment. However, the almost unanimous response was that the judiciary lacks knowledge to use computers for anything more than basic word processing, while some judges lack even those minimal skills. Many court staff are similarly lacking in computer skills and are unable to assist the judges.

In a few courts, respondents stated that computers are outdated or broken. In one instance, the equipment suffered damage as a result of structural defects in the courthouse, such as roof leaks and poor wiring. Additionally, the functionality of computers is frequently restricted due to the power outages, resulting in the loss of information.

In many courthouses, the Department of Judicial Administration has prepared the necessary infrastructure for Internet connections, but inexplicably, they are not yet operating. With special training for the judiciary regarding online research, an Internet connection could become helpful in locating UNMIK regulations and other laws.
Factor 30: Distribution and Indexing of Current Law

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↑</th>
</tr>
</thead>
<tbody>
<tr>
<td>A limited system for distribution of laws exists but judges do not receive laws in a timely manner, nor is there a nationally recognized system for identifying and organizing changes in the law.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The existing system for distribution of laws to the courts is flawed, and judges complain that laws are frequently received late. However, respondents unanimously concurred that the distribution of laws to the courts has improved significantly since 2002.

The current distribution system works as follows: The Department of Justice sends new UNMIK regulations to the court presidents, who are then obligated to make copies and distribute them to the judges. UNMIK regulations are also published in English, Albanian and Serbian in the UNMIK Official Gazette, which has a delay of a few months prior to publication and receipt by the courts, as well as on the UNMIK website (www.unmikonline.org/regulations/index.htm), which occurs much faster but is nevertheless delayed by translation. Regulations are published in chronological order, and no system for codification or compilation of legislation by topic exists. Separately, the Department of Judicial Administration distributed copies of the new Provisional Criminal and Criminal Procedure Codes to each court. Currently, there is no office responsible for publishing the Kosovo Assembly laws and subsidiary acts or distributing them to the judiciary, although the UNMIK website recently began to post some of these laws. A law is currently being drafted to create an Official Gazette for Kosovo and to establish an office responsible for publishing the Assembly laws.

An ABA/CEELI initiative led to the development, publication, and distribution to the legal community of an index of UN legal materials applicable in Kosovo. The index can be used to track changes to UNMIK regulations and administrative directions and to identify acts by subject matter. The index has been published quarterly since 2002. Additionally, ABA/CEELI publishes a CD-ROM that contains an index of all laws applicable in Kosovo with links to the full text and related laws.

Judges can also receive laws and other legal materials when attending various trainings and seminars. For example, the Kosovo Judicial Institute induction course for newly appointed judges provides briefing materials, including UNMIK regulations, texts of criminal laws, international human rights instruments, and basic texts on housing and property rights. See KOSOVO JUDICIAL INSTITUTE ANNUAL REPORTS: 1999-2004 at 2 (Sept. 2004).

As English is the official language for UNMIK legal acts, the English version prevails. Obviously, this is not very helpful for those judges unable to read English. Nevertheless, the quality of translation into Albanian and Serbian remains a problem. In February 2004, two UNMIK regulations had to be republished with revisions from the previous translations.

As part of the effort to improve court operations, the National Center for State Courts, working with other stakeholders, including ABA/CEELI, is designing a legal printing program to provide the legal community with all sources of applicable law in Kosovo. See Factor 24 above for additional information about this project. Additionally, two websites are being developed to improve access to cases. The first is “KSLEX,” a website oriented towards the Kosovo judiciary, which would
include all applicable law, case law, and human rights standards. The Office of the Prime Minister is also developing a website oriented towards public officials that would include similar materials. It is anticipated that both websites will be accessible to the public and will provide access to a large number of legal resources. On a less optimistic note, however, electronic publishing is largely in vain at this time as it concerns the judiciary. Although many court buildings have an Internet connection available, most are not activated. Regardless, few judges have the necessary computer skills to utilize the online legal research tools when they become available.