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INTRODUCTION

The American Bar Association/Central European and Eurasian Law Initiative (ABA/CEELI), currently one of the regional divisions of the ABA Rule of Law Initiative (ROL Initiative), developed the Legal Profession Reform Index (LPRI) to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyer identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provide benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The LPRI is primarily meant to enable the ROL Initiative or other legal assistance implementers, legal assistance funders, and emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with the ROL Initiative’s companion Judicial Reform Index (JRI), Prosecutorial Reform Index (PRI), Legal Education Reform Index (LERI), and other assessment tools, will also provide information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights and gender equality, and legal education reform.

The LPRI assessment does not provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department’s Human Rights Report and Freedom House’s Nations in Transit. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country’s legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process is not a statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country’s legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms “legal professional” and “lawyer.” The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world’s legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As a result, ABA/CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment; in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. Furthermore, the ROL Initiative has developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies, the PRI, an assessment tool for prosecutors, and the LERI an assessment tool for assessing the state of legal education in a given country.
Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers: avocat, avoués à la Cour, and advocates aux Conseils. An avocat is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An avoués à la Cour has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with avocats. In most cases, the avoués à la Cour only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The advocates aux Conseils represents clients in written and oral form before the Court of Cassation and the Conseil d'État (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, other factors further complicated efforts to define the term "lawyer," including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union (CCBE), there were 22,048 lawyers practicing law in Poland in 2002. Of that number, only 5,315, or 24%, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis. Therefore, excluding government lawyers and corporate counsel if necessary. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

**ABA/CEELI’s Methodology**

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34 (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the lawyer’s profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ROL Initiative, *Judicial Reform Index: Manual for JRI Assessors* (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations Basic Principles on the Role of Lawyers and the Council of Europe’s Recommendations on the Freedom of Exercise of the Profession of Lawyer and on ABA/CEELI’s more than 10 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.
To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology, and that provides flexible guidance on areas of inquiry. Particular emphasis was put on avoiding higher regard for common law concepts related to the structure and function of the profession of lawyers. Thus, certain factors are included that a Common Law or Civil Law lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool in a number of ways. For example, the LPRI borrowed the JRI’s factor “scoring” mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country’s reform progress since attempts at overall scoring would be counterproductive. Each LPRI factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of a factor statement to a country’s regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a “positive” score 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 is given a “neutral.”

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, PRI, and LERI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. 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 users to easily compare and contrast the performance of different countries in specific areas and – as LPRI is updated – within a given country over time. There are two main reasons for borrowing the JRI’s assessment process, “scoring,” and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats enables the ROL Initiative to cross-reference information generated by the LPRI into the existing body of JRI, PRI, and LERI information. This gives the ROL Initiative the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that built on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, the ROL Initiative forms a committee that includes the assessor and select ROL Initiative D.C. staff. The concept behind the committee is to add a comparative perspective to the assessor’s country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials are meant to help issue-spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to

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1 CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. ABA/CEELI developed the CEDAW Tool in 2001-2002.

2 For more in-depth discussion on this matter, see C.M. Larkin, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 AM. J. COMP. L. 605, 611 (1996).
structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI 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.

The LPRI was designed to fulfill several functions. First, the ROL Initiative and other rule-of-law assistance providers will be able to use the LPRI’s results to design more effective programs that help improve the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Third, combined with the ROL Initiative’s Judicial Reform Index (JRI), Prosecutorial Reform Index (PRI), Legal Education Reform Index (LERI), and other assessment tools, the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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KOSOVO BACKGROUND

Historical 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 [hereinafter SFRY] that was created in 1944. The Federal Constitution of 1974 [hereinafter SFRY CONSTITUTION] gave significant powers to federal units of Yugoslavia, promoting decentralization of the country’s administrative machinery. SFRY CONSTITUTION art. 1. Kosovo, while still technically a part of Serbia, was declared a “Socialist Autonomous Province” with its own constitution, parliament, Supreme Court, and national bank. As a result, Kosovo was essentially an equal unit of the federation and links with Serbia were weakened. Throughout this period, the region of Kosovo had an ethnic Albanian majority. In 1989, Kosovo’s autonomy was severely restricted by Serbian President Slobodan Milosevic, with power over the police, courts and civil defense, as well as economic, social and educational policy, taken over by Serbia. At that time, the over 80% ethnic Albanian majority was placed under martial law. War broke out in Serbian-controlled Kosovo in 1997-1998, as the Kosovo Liberation Army [hereinafter the KLA] began a political and military struggle for an autonomous Kosovo. The Yugoslav army and paramilitary police responded by trying to stop the KLA’s separatist movement. Following a period of bitter local conflict in 1998 and periods of international negotiations, forces of the North Atlantic Treaty Organization [hereinafter NATO] began an air war against Yugoslavia in March 1999. After a 78 day war, the Yugoslav forces withdrew from the Kosovo region.

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 paragraph 5 of United Nations Security Council Resolution 1244, U.N. SCOR (4011th mtg.) (June 10, 1999) [hereinafter Resolution 1244], as a United Nations [hereinafter UN] Protectorate. The Special Representative of the UN Secretary General [hereinafter SRSG] heads the international civil administration, which is called the United Nations Mission in Kosovo [hereinafter 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” (Organisation for Security and Co-operation in Europe [hereinafter OSCE]); and Pillar IV “Economic Reconstruction” (European Union [hereinafter 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), last amended by UNMIK Regulation No. 2002/9 (May 3, 2002) [hereinafter the 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 [hereinafter KFOR], operates within a unified military command and control 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’s troops and international personnel are not subject to the authority of UNMIK, and they enjoy immunity from the Kosovo justice system. See Military Technical Agreement between KFOR and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (June 9, 1999); and UNMIK Regulation No. 2000/47 On the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo (August 18, 2000).

A major step toward the resolution of Kosovo’s status was taken on March 26, 2007, with the publication of the REPORT OF THE SPECIAL ENVOY OF THE SECRETARY-GENERAL ON KOSOVO’S FUTURE STATUS and, in an addendum, the COMPREHENSIVE PROPOSAL FOR THE KOSOVO STATUS
SETTLEMENT (S/2007/168/Add.1) (March 26, 2007), prepared by Special Envoy Martti Ahtisaari [hereinafter the AHTISAARI PROPOSAL]. Under the Ahtisaari Proposal, Kosovo would become an independent state, governed pursuant to its own constitution, but would be supervised and supported for an interim but open-ended period by international civilian and military presences. Kosovo’s new constitution would be required to adopt certain principles to protect the rights of ethnic and religious minorities, decentralize government, further the rule of law, and incorporate the highest standards of internationally recognized human rights and fundamental freedoms. Kosovo would be administered by its own government, but an International Civilian Representative, acting on behalf of the EU and an International Steering Group, would have strong corrective powers to ensure successful implementation of the settlement. These powers would include the ability to annul laws and decisions of Kosovo authorities, and the authority to sanction or remove public officials. Additional international support and monitoring in the civil arena would be provided by the European Security and Defense Policy Mission and OSCE. Security would be provided by a NATO-led international military presence, supplementing a new multi-ethnic Kosovo force, until such time as Kosovo’s institutions are determined to be capable of the full range of security responsibilities. The Ahtisaari Proposal has been submitted to the UN Security Council, but as of this report no action has been taken by that organ and no date has been set for its consideration. Instead, a six-nation group (France, Germany, Italy, Russia, the United Kingdom, and the United States) began in late September 2007 a new round of talks regarding the status of Kosovo. If the Ahtisaari Proposal is adopted and becomes effective, there would be a 120 day transition period during which a new constitution would be adopted. UNMIK would then depart, and new general and local elections would be held within nine months after the effective date of the settlement.

Legal Context

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 22, 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. Laws promulgated in Kosovo after March 22, 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. UNMIK REGULATION NO. 1999/24 ON THE LAW APPLICABLE IN KOSOVO (Dec. 12, 1999), last amended by UNMIK REGULATION NO. 2000/59 (OCT. 27, 2000). UNMIK regulations are available online at the UNMIK website, http://www.unmikonline.org/.

In addition, the Constitutional Framework incorporates by reference and makes directly applicable in Kosovo several international human rights instruments, including the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms (with protocols) [hereinafter European Convention on Human Rights], the International Covenant on Civil and Political Rights (with protocols), the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the European Charter for Regional or Minority Languages, and the Council of Europe’s Framework Convention for the Protection of National Minorities. CONSTITUTIONAL FRAMEWORK, Chapter 3.

UNMIK has gradually handed over many of its powers to local bodies. In early 2001, by agreement with local political leaders, UNMIK formed twenty central administrative departments, comparable to ministries, to be led jointly 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 [hereinafter PISGs], including an Assembly, Prime Minister, and President of Kosovo, as well as nine central government ministries and various executive
agencies. UNMIK REGULATION NO. 2001/19 ON THE EXECUTIVE BRANCH OF THE PROVISIONAL INSTITUTIONS OF SELF-GOVERNMENT OF KOSOVO (Sep. 13, 2001), last amended by UNMIK REGULATION NO. 2006/34 (May 22, 2006). The 120-member Assembly was elected in November 2001, and the Kosovo government was formed in March 2002. Since the 2004 elections to the Assembly, UNMIK has gradually transferred responsibilities for additional ministries and created more positions and agencies within the Kosovo executive branch. Most importantly for this purpose, in late 2005 a Kosovo Ministry of Justice was established with limited competencies pursuant to UNMIK Regulation No. 2005/53 (Dec. 20, 2005). The SRSG has retained broad powers to ensure that Resolution 1244 is fully implemented, and has thus retained certain executive functions related to the justice system under the internationally-run UNMIK Pillar I Department of Justice.

Overview of the Legal Profession

As noted previously, under the 1974 SFRY Constitution, Kosovo possessed the status of a Socialist Autonomous Province [hereinafter SAP] within the Socialist Republic of Serbia and, as such, enjoyed substantial sovereign rights. A Law on Advocacy and other Legal Assistance was approved in 1973, providing for a self-governing Kosovo Chamber of Advocates [hereinafter KCA] based in Pristina in which qualifying lawyers could be registered. 1973 LAW ON ADVOCACY AND OTHER LEGAL ASSISTANCE, Official Gazette of the Socialist Autonomous Province of Kosovo [hereinafter OG SAP Kos.] No. 43/1973, amended by the LAW ON THE AMENDMENTS AND SUPPLEMENTS TO THE LAW ON ADVOCACY AND OTHER LEGAL ASSISTANCE OG SAP Kos. No. 46/1977 and the 1979 LAW ON ADVOCACY AND OTHER LEGAL ASSISTANCE OG SAP Kos. No. 48/1979 [hereinafter the 1979 LAW ON ADVOCACY]. During this period of autonomy, many Kosovar Albanians were registered as advocates or served as judges, lawyers, professors, and other legal professionals.

In 1989, Kosovo’s autonomy was severely restricted as Serbia assumed control of many of Kosovo's institutions, including the justice system. One consequence of this development was the discriminatory dismissal of Kosovar Albanian judges and prosecutors. Ethnic Albanian advocates already registered by the KCA were allowed to continue their legal practices, and they were joined by many of the dismissed judges and prosecutors. However, aspiring lawyers of Albanian origin were banned from the “official” law school in Pristina, and qualifying applicants were not permitted to take the jurisprudence (i.e. bar) examination. Members of the Albanian community established an illegal shadow government and a parallel educational system funded by a 3% “tax” on personal income of Kosovar Albanians within and outside Kosovo. This system included a law faculty that operated out of a private house in Pristina, providing legal education to ethnic Albanian students on a clandestine basis. The courses and credits offered by this underground law school were not, of course, recognized by the Serbian authorities, and students completing their instruction were unable to apply it in practice. When civil war broke out in 1997, the KCA essentially ceased to function and became a paper entity. By the time the war ended in 1999, many capable Kosovar Albanian lawyers had fled the province, while those who remained often lacked recent experience or access to current developments in laws and practices. Registered advocates had for the most part been educated during the socialist era, and were poorly prepared for work in the new democracy and market economy; few had direct knowledge of modern business laws and international human rights conventions. The KCA had to be reactivated with the help of international organizations, the ethnic Albanian law faculty had to be reincorporated into the University of Pristina and its facilities, and the ethnic Serb law faculty in Pristina had to be relocated to Mitrovica. The impact of the turmoil of the 1990s is felt to the present day and is reflected in many of the observations and conclusions in this report.

The term “legal professional” in Kosovo encompasses many related professions, including private practitioners who are registered advocates; non-advocates who may or may not have legal educations but are allowed to represent parties in certain civil and administrative proceedings (see discussion under “Private Practitioners” below); law school graduate trainees/interns known
as *praktikants*; in-house lawyers for businesses, governmental entities or agencies and non-governmental organizations; prosecutors; and judges. Following graduation from law school, subject to various qualification requirements, one may pursue any of these career paths and may later change careers to other legal fields upon successful completion of additional training and examinations.

- **Private Practitioners**

The 1979 Law on Advocacy remains in effect and serves as the prime authority on the private practice of law. In 2004, the Assembly of Kosovo passed a new Law on the Bar. **LAW ON THE BAR, Law No. 2004/40 (Sep. 8, 2004), currently available only in hard copy [hereinafter the PENDING LAW ON THE BAR].** Despite the lapse of nearly three years, UNMIK has yet to approve the Pending Law on the Bar, so it is still not the law governing private practitioners in Kosovo. Where relevant, however, this assessment will refer not only to the provisions of the 1979 Law on Advocacy but also to those of the Pending Law on the Bar.

The 1979 Law on Advocacy defines the term “legal assistance” to include essentially all of the activities commonly associated with the private and independent practice of law, including the provision of legal advice, drafting of lawsuits and complaints, drafting of contracts, wills, and other documents, representation of parties before courts and administrative bodies, representation of persons in other legal affairs, and legal counseling. **1979 LAW ON ADVOCACY art. 2.** Only “advocates” are permitted to provide all such legal assistance, while non-advocates may offer only those services authorized by that law. **Id.** **art. 3.** To be an advocate, one must meet certain qualifying conditions and register with the KCA. **Id.** arts. 35-36. The 1979 Law on Advocacy also provides for advocate “*praktikants,*” law school graduates who work as trainees or interns in the office of an advocate under the latter’s supervision. **Id.** arts. 54-62. Municipalities and work organizations may establish special service bureaus to provide legal assistance to their citizens and employees, respectively, using law school graduates as well as advocates for this purpose. **Id.** arts. 70-74. In those areas where there are no or insufficient advocates to provide necessary legal assistance, these legal service bureaus may offer representation even before courts and agencies using graduate lawyers who are otherwise eligible to be advocates. **Id.** arts. 75-78. Accordingly, except for *praktikants* and narrowly defined legal service bureaus, the 1979 Law on Advocacy allows only registered advocates to provide legal assistance.

The Pending Law on the Bar contains a comparably broad definition of “legal assistance” and generally allows it to be provided only by registered advocates or *praktikants* operating under their supervision. **PENDING LAW ON THE BAR art. 2.** Experts in other fields may provide legal assistance in the course of exercising their own professions, while law professors may offer only legal advice or expertise but not otherwise provide legal assistance. **Id.** The Pending Law on the Bar contemplates that special laws may regulate the provision of legal assistance by other institutions and organizations. **Id.** It also expressly permits the KCA to initiate judicial proceedings against unauthorized persons who provide legal assistance, although the nature and consequences of the proceedings are not specified in this law. **Id.** **art. 3.** Article 40.1(g) of the Pending Law on the Bar authorizes the KCA to issue a regulation on the registration of foreign lawyers, thus opening the possibility that lawyers from other countries may provide legal assistance to international bodies on matters of Kosovo law or even represent them in Kosovo courts.

Consistent with these laws, it is clear that the only persons who may represent defendants in criminal proceedings in Kosovo are registered advocates or (in limited circumstances) *praktikants* working under the supervision of registered advocates. **Provisional Criminal Procedure Code of Kosovo** [hereinafter CRIMINAL PROC. CODE], promulgated by UNMIK REGULATION NO. 2003/26 (July 6, 2003) art. 70.

The situation regarding civil proceedings appears to be quite different. Notwithstanding seemingly clear restrictions on the practice of law by non-advocates in the 1979 Law on
Advocacy and the Pending Law on the Bar, other laws allow virtually anyone to represent parties in civil cases. The SFRY Law on Contested Procedure, SFRY OG No. 4/1977 [hereinafter LAW ON CONTESTED PROC.], which continues to be the law in Kosovo since no successor has been enacted, generally permits parties to civil proceedings to appoint non-advocates, and even non-lawyers, to represent them in the proceedings. The only limitations in most cases are that the representative must be legally competent to act and may not have misrepresented him/herself to be a lawyer. LAW ON CONTESTED PROC. arts. 89-90. Article 91 does require that, where labor organizations and other self-governing organizations and communities are involved in disputes over property that exceeds a certain threshold value, their representatives must have passed the jurisprudence examination. They need not be registered advocates, however. The Law on Non-Contested Procedure says nothing about legal representatives except for a reference to “temporary representatives” who may be appointed in special circumstances. LAW ON NON-CONTESTED PROCEDURE OG SAP Kos. No. 42/1986 art. 6; see also OSCE, Legal Representation in Civil Cases (June 2007).

In the case of administrative proceedings, the law and the practice are not entirely clear. Article 35.1 of the Law on the Administrative Procedure, promulgated by UNMIK Regulation No. 2006/33 (May 13, 2006) [hereinafter the LAW ON ADMIN. PROC.] states simply that parties may participate “either personally or through representation,” without specifying who may or may not serve as the representative. Under conventional rules of statutory construction, it would seem that this gap would be filled by reference to the 1979 Law on Advocacy, which considers representation of parties in administrative proceedings to be “legal assistance” within the exclusive purview of registered advocates. The prior SFRY administrative procedures law, however, had allowed any person with capacity to act to represent a party, so long as the person did not misrepresent him/herself to be a lawyer. SFRY LAW ON GENERAL ADMINISTRATIVE PROCEDURE, SFRY OG No. 4/1977, last amended SFRY OG No. 9/1986 art. 58. It is not clear which of these positions prevails in actual practice, and it may well be that non-advocates serve as representatives in at least some administrative matters.

Non-advocates who represent parties in civil and administrative matters could be considered “private practitioners” while exercising their authorized functions, but it would seem inappropriate to classify them as legal professionals at all. Their permitted roles are limited to these types of cases and their qualifications, if any, are generally irrelevant. They are often relatives or acquaintances of the employing parties asked to assist on a one-time basis, and their engagements appear to be irregular or sporadic at best. They are generally subject to no educational or registration requirements, ethical constraints or disciplinary jurisdiction, and belong to no recognizable association. It would seem unlikely that a party would choose a non-advocate in one of these cases, except in highly unusual circumstances, if he/she had the ability to pay an actual advocate. For all of these reasons, it is impossible to assess these non-advocate representatives or their preparation, standards, and conditions of practice, and they will be disregarded for purposes of this report.

Other non-advocates may be engaging in the private practice of law in clear contravention of the 1979 Law on Advocacy. The assessment team received isolated reports that a handful of suspended advocates, non-advocate lawyers and even judges and prosecutors occasionally offer legal advice, draft contracts, or assist in the preparation of supposedly pro se cases for compensation. There is apparently at least one office of non-advocates registered with the Ministry of Trade and Industry as a provider of legal services that advertises and offers legal assistance. To date, there is no evidence the KCA or the police has attempted to take action against any of these persons. Again, though, it is impossible to determine the prevalence or scope of this problem or evaluate the persons who engage in these presumably unlawful practices.

Accordingly, this report will consider registered advocates to be the only private practitioners (persons who practice law for multiple parties on a regular and independent basis) in Kosovo, and
will thus focus on advocates. Other legal professionals will be considered only insofar as their legal education, preparation, and qualification requirements overlap those of advocates.

One becomes an advocate in Kosovo by registering with the KCA. 1979 LAW ON ADVOCACY art. 35. To be allowed to register, the applicant must fulfill the following conditions:

- Be a Yugoslavian citizen;
- Be able to work;
- Have a law degree;
- Have passed the jurisprudence examination (or be exempt, as in the case of law professors);
- Not be a worker in a common enterprise;
- Be a person trusted to carry out the advocates’ profession; and
- Not be under investigation or have been convicted for crimes against the people and state, against humanity and international law or against the armed forces, or for certain other crimes. Id. art. 36.

The Pending Law on the Bar contains somewhat comparable criteria for registration:

- Have the necessary professional skills;
- Be a permanent resident of Kosovo;
- Be a graduate of a law school or comparable educational institution recognized by the Ministry of Education, Science and Technology;
- Have completed at least one year’s experience as a praktikant for an advocate or court or two years’ experience in public administration;
- Have passed the jurisprudence examination in Kosovo;
- Have given the solemn oath;
- Not have been convicted of a crime making him unfit to practice law under the Code of Ethics;
- Not have been dismissed or be under suspension as a judge or advocate (if dismissed, the person may apply after five years following dismissal); and
- Not be involved in an incompatible activity, particularly an activity affecting his/her independence. PENDING LAW ON THE BAR art. 6.1.

In order to take the jurisprudence examination, the Law on the Bar Examination specifies that applicants must have graduated from law school under the four-year program in effect until recently or have attained a master’s of law degree. UNMIK REGULATION No. 2006/30 (May 2, 2006) [hereinafter NEW LAW ON THE JURISPRUDENCE EXAM]. Applicants must be habitual residents of Kosovo and must have worked either (a) for at least one year doing legal work in the regular courts, the public prosecutor’s office, or an advocate’s office, or (b) for at least two years doing professional legal work in institutions that implement laws. A shortened version of the jurisprudence examination is available for those who passed the professional examinations for working in public administration or for becoming judges in the minor offenses courts of Kosovo. A jurisprudence examination administered in April 2007 was reportedly the last to be conducted under the old law; the examination scheduled for June 2007 was to be held under the New Law on the Jurisprudence Exam.

Advocate Trainees/Interns (Praktikants)

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3 With the demise of the SFRY, this requirement is interpreted to mean a permanent resident of Kosovo.

4 This test is referred to as a “bar” examination in certain other laws and authorities, but for consistency and in recognition of the fact it is a prerequisite for judges and prosecutors as well as advocates this report will use the term “jurisprudence” examination throughout.

5 The term “common enterprise” is unique to the Yugoslavian socialist system, and this requirement is now interpreted to prohibit employment by any business enterprise or governmental entity or engaging in any other work or activity incompatible with the advocate profession.
As noted earlier, the 1979 Law on Advocacy provides for advocate praktikants, law school graduates who have not yet passed the jurisprudence examination. It is necessary for the praktikant to attach him/herself to a registered advocate and then to register in a separate registry of praktikants maintained by the KCA. 1979 LAW ON ADVOCACY art. 55. In this capacity, the praktikant trains to become an advocate by working on matters entrusted to him/her by the supervising advocate and following the advocate’s directions, and may not practice independently. Id. arts. 56 and 58. The KCA and the advocate are supposed to determine and carry out the professional training program for the praktikant, and the KCA may organize seminars and similar courses to further their development and preparation. Id. art. 57. Under The KCA is also supposed to have a fund to provide a stipend for praktikants during their training period, but there is nothing to require that a praktikant be paid for the services he/she provides to the advocate. Id. art. 52. Both the advocate and the praktikant may be subject to discipline, ranging from a notice to a suspension, for an “abuse in the course of duty and the advocate’s prestige.” Id. arts. 63–69. The praktikant may no longer continue in that status if he/she does not pass the jurisprudence examination within three years after qualifying to take it, or if he/she does pass the examination but fails to register as an advocate within a year after passing it. Id.

The Pending Law on the Bar contains similar provisions for praktikants, and provides expressly that the supervising advocate may be held responsible for any damages caused by the praktikant in the course of his/her performance. PENDING LAW ON THE BAR arts. 35 – 39.

- **In-house Counsel**

In-house counsel are legal professionals who are employed by companies, governmental entities or agencies, or NGOs, to provide legal assistance exclusively to the employer. There is no system for regulation of in-house counsel in Kosovo, other than the standards and policies of the employer, but these persons are typically law school graduates and often are otherwise eligible for registration as advocates. Article 36 of the 1979 Law on Advocacy treats being employed by a common enterprise as a disqualifying circumstance for an advocate. An in-house counsel seeking to become, or resume being, an advocate may register with the KCA upon termination of his/her employment. The duties assigned to in-house counsel vary with the employer, but they typically include legal compliance work, negotiation and drafting of contracts, advice to management on legal issues, labor matters, administrative appeals, and limited civil litigation to which the employer is a party.

- **Prosecutors**

Public prosecutors are law school graduates who have completed an internship (typically within a prosecutor’s office) and passed the jurisprudence examination. LAW ON PUBLIC PROSECUTOR OFFICE, OG SAP Kos. No. 32/1976, last amended OG SAP Kos. No. 18/1988 art. 24. A new law on prosecutors has been approved by the General Assembly of Kosovo but is awaiting UNMIK approval. Articles 46-52 of the Criminal Proc. Code set forth the powers, duties and responsibilities of public prosecutors in Kosovo.

The rules regarding appointment, promotion, and discipline of prosecutors were put in place by UNMIK under the jurisdiction of a Judicial and Prosecutorial Council. See UNMIK REGULATION NO. 2001/8 ON THE ESTABLISHMENT OF THE KOSOVO JUDICIAL AND PROSECUTORIAL COUNCIL (Apr. 6, 2001). This regulation of prosecutors and judges is in the process of being divided into separate bodies, but there is presently no Prosecutorial Council in force. A Judicial Council has been created, and for the time being it is responsible for both professions and has representation from prosecutors as well as judges. See UNMIK REGULATION NO. 2005/52 ON THE ESTABLISHMENT OF THE KOSOVO JUDICIAL COUNCIL (Dec. 20, 2005) [hereinafter UNMIK JUDICIAL REGULATION] art. 1.6.

- **Judges**
Judges are law school graduates who have satisfied the applicable work experience requirement and passed the jurisprudence examination. To be appointed as a judge one must meet certain requirements, including Yugoslavian citizenship, law school graduation, qualification for status as a worker, and moral and political fitness. **Law on Regular Courts, OG SAP Kos. No. 21/1978, last amended OG SAP Kos. No. 2/1989 [hereinafter Law of Courts] art. 69.** To serve as a judge of the municipal, district or commercial court, the person must also have passed the jurisprudence examination. See *id.* Judges of the Supreme Court of Kosovo must also be “eminent legal experts whose previous work offers guaranties for complete and proper performance of the function of judges of this court.” *Id.* A completely revised law on the judiciary has been passed by the Assembly of Kosovo but, like the Pending Law on the Bar, has not yet received the approval of UNMIK.

The UNMIK Judicial Regulation supersedes the Law of Courts where provisions are inconsistent, at least until such time as the revised version of the latter takes effect. The UNMIK Judicial Regulation requires that each prospective judge meets the following criteria: “(a) be a habitual resident of Kosovo; (b) be of high moral integrity; (c) be capable of performing full-time duties and work; (d) possess a law degree that is valid in accordance with Kosovo law; (e) have passed the Kosovo [jurisprudence] Examination or presently be a member of the Bar; (f) have passed the Judicial Entry Examination for judges; (g) have attended and completed the training required by law and other applicable rules; and (h) have a minimum of three (3) years of legal experience.” UNMIK JUDICIAL REGULATION art. 6.1.

- **Notaries**

Kosovo does not recognize a classification of legal professionals comparable to the notaries found in many civil law countries and post-socialist states. Functions such as the drafting of real estate contracts, mortgages and other obligations are typically performed by regular advocates, subject in the case of real estate transfers to judicial approval and cadastre registration.

**Organizations of Legal Professionals**

- **The Kosovo Chamber of Advocates (KCA)**

The KCA is an “independent social organization” created by law, with an established organizational structure. As previously observed, except in civil and administrative proceedings and except for certain legal service bureaus sponsored by municipalities or companies, the only persons who may provide legal assistance on a regular and independent basis are advocates. 1979 LAW ON ADVOCACY art. 3; see also PENDING LAW ON THE BAR arts. 2.2, 3, and 4. In order to practice as an advocate, one must meet certain qualification requirements and register with the KCA. See 1979 LAW ON ADVOCACY arts. 13, 35, and 36; see also PENDING LAW ON THE BAR arts. 4, 6.1, and 7. Registration with the KCA is thus a mandatory prerequisite for engaging regularly in the private and independent practice of law. The KCA receives an initial membership fee (presently 700 Euros) from newly admitted advocates and monthly dues (20 Euros, payable annually in advance in a lump sum of 240 Euros) from all registered advocates, and gets some financial support from international donors. It receives no funding from the government.⁶

The 1979 Law on Advocacy provides for the KCA and sets out its powers, responsibilities and organizational structure. For example, Articles 5-8 address the KCA’s role, independence and internal governance; Article 9 provides for the establishment of a code of ethics; Article 10 addresses admission and other responsibilities; Article 11 addresses supervisory functions; Articles 23-24 establish fee tariff and expense reimbursement; Articles 30-34 deal with law firms; Articles 39-43 provide for registration process; Article 44 addresses specialization authority; Articles 46, 49 and 53 provide for the KCA’s disciplinary role; and Articles 55-69 deal with

⁶ On July 7, 2007, the KCA Assembly approved an increase in the initial membership fee from 460 Euros to 700 Euros.
praktikant registration and discipline. Similar provisions exist in the Pending Law on the Bar. The KCA, in its assembly of advocates meeting on December 21, 2002, passed the Statute of the Kosovo Bar Association, which sets forth its internal governance rules, leadership bodies, procedures and disciplinary process. An amendment to this Statute was under consideration at the time of the assessment team’s visit.

The KCA was initially established in 1973. Prior to that time, Kosovar advocates were able to practice law but did so as members of the Chamber of Advocates in Belgrade. While the KCA continued to exist during the turmoil of the 1990s, its ranks augmented by ethnic Albanian judges and prosecutors dismissed from their professions, by the end of the war in 1999 it was essentially inactive. With the advent of UNMIK later in 1999, however, there was significant impetus to re-establish the organization as an effective working group carrying out its traditional responsibilities to the advocacy and the public. With strong international support, the KCA held its first post-war assembly on April 27, 2001, without most of the former judges and prosecutors who by then were able to return to their old professions. In roughly the same timeframe, Kosovo reinstituted the jurisprudence examination for the first time since 1990. The KCA was back in business.

Since its reconstitution, the KCA has grown rapidly. In January 2004, it had 300 registered advocates. By April 25, 2007, that number had risen to 461, a growth of 54%.

- Other Associations

Other membership organizations exist for certain branches of the legal profession. There are both a Kosovo Judges Association and a Kosovo Prosecutors Association, NGOs pursuing the interests of its members and other objectives. These are voluntary groups, unlike the KCA, that are funded by a combination of membership dues and contributions from international donors.

Before the war, there was a fairly active organization of legal professionals known as the Association of Independent Jurists, consisting primarily of Kosovar Albanians. It was engaged in human rights promotion, legislative lobbying and legal profession development activities. After the war, it changed its name to the Association of Jurists and tried to re-establish itself as a broader based bar association. At about the same time, however, the KCA was reconstituted and attracted international funding, and the Association of Jurists was unable to compete with it for members. The entity continues to exist, and individual members sometimes help draft laws and make media statements, but it appears to be largely dormant at this point.

Another nongovernmental organization, the Lawyers’ Association-NORMA, was founded in 1998 to encourage gender equity and promote and defend human rights, primarily of women. It consists of 12 lawyers, all women, seven of whom are active on a full-time basis, and has offices in five municipalities. Among other activities over the years, the association has provided legal aid, mainly to women, on family law, inheritance, and employment matters. It has also conducted workshops, roundtables and seminars on these and other topics of special interest to women. Funding for the association comes from membership dues and international grants.
SUMMARY FINDINGS

Brief Overview

The legal profession in Kosovo continues to make slow but steady progress toward international standards in most areas. Three factors rated neutral in the 2004 LPRI were upgraded to positive, while two factors improved from negative to neutral. No factors were downgraded. Four areas drawing positive correlations three years ago continue to do so, while ten categories remain in the neutral category. Negative findings were reached in both 2004 and 2007 in five subjects: preparation to practice law, resources and remuneration, minority and gender representation, disciplinary proceedings and sanctions, and alternative dispute resolution.

Private practitioners generally have and exercise the freedoms, rights, and responsibilities appropriate for members of the legal profession. The KCA benefits from dedicated and forward-looking leadership, which has instituted programs and organizational changes intended to address some of the deficiencies noted in the 2004 LPRI. At the same time, much remains to be done to improve the standards and reputation of the profession, especially in the knowledge and skills, ethical conduct and discipline of advocates. Some of the weaknesses in the KCA’s operation and in the competence of practicing advocates can be attributed to the turmoil of the 1990s, but this explanation has less force as each year passes. Kosovo also continues to suffer from a weak economy, which adversely affects attorney remuneration and a number of other factors. The international community has provided considerable direction and financial assistance for the profession and still does so, but since 2004 international funding has been withdrawn for a criminal defense resource center and for a program of legal aid to the indigent in civil and administrative matters. The legal profession, not to mention Kosovo generally, needs to become less dependent on international assistance and to institute programs and activities that are self-sustaining.

Positive Developments Relating to the Legal Profession

- The KCA leadership is increasingly aware of the need for improvements in the legal profession and in the programs and services it provides to its members and the public. The KCA has undertaken efforts to fill this need.

- While women continue to be underrepresented among advocates at 10.4% of the total, this share is a 46% increase over the 7.1% figure reported in 2004. The KCA has established a committee on women and minorities, and has launched initiatives intended to improve conditions for these groups and attract members to the profession.

- The University of Pristina law faculty has started legal clinics and a legal methodology course, both of which have the potential to improve the practical preparation of prospective advocates and to prompt other law faculties to offer similar opportunities.

- Kosovo now meets international standards in the areas of academic requirements, non-discriminatory admission, and formation of independent law practices.

Remaining Concerns Relating to the Legal Profession

- The 1979 Law on Advocacy still governs the legal profession even though it is from the SFRY era and is not adequate for the current situation in Kosovo. Unfortunately, a new law has been awaiting UNMIK’s approval for nearly three years. Even the new law appears to have some deficiencies compared to its predecessor and needs to be revisited. Among other adverse changes, it would drop immunity for advocates from criminal prosecution for statements made in the course of their representations in accordance with professional standards, and would eliminate special measures required
to be taken in police searches of advocate offices. The new law is also inconsistent in several respects with the KCA’s internal governance statute and present practices.

- Kosovo’s civil and administrative procedure codes allow virtually anyone to represent parties to those proceedings, permitting law to be practiced by people having no minimal educational or other qualifications, ethical requirements, disciplinary recourse or other regulation.

- Advocates are often threatened with physical violence by opposing parties, crime victims, and their respective family members who either identify them with their clients or seek to intimidate them into withdrawing from their cases.

- Law graduates are poorly prepared to practice law, in large part due to weak and theoretical legal educations, and advocates are not required to take a minimum number of continuing legal education [hereinafter CLE] hours each year.

- Women continue to be severely underrepresented in the profession, despite improvements since 2004 and efforts by the KCA to attract them. While ethnic minorities collectively are reasonably well represented, there do not appear to be any Roma advocates.

- The ethics, competence, and diligence of many advocates leave much to be desired. Court-appointed counsel for indigent defendants are too often unprepared and passive in their representations. The KCA has so far been insufficiently proactive and aggressive in setting and enforcing standards in certain areas, including admission requirements, disciplinary prosecutions for unethical behavior, CLE, and practice specialization.

- The overwhelming majority of advocates are poorly compensated. This fact not only impairs their standard of living but contributes to their general reluctance to spend time on unremunerated CLE and KCA activities, as opposed to client work, and to fund the KCA at a level where it can offer adequate resources and services. Their low compensation is partly due to Kosovo’s struggling economy, which may also be blamed for underfunding of the criminal legal aid program, lack of an adequate budget for the civil and administrative legal aid program, and the low overall state of the justice system. These difficulties will challenge the profession for the foreseeable future.
The Kosovo 2007 LPRI analysis reveals a developing legal profession in transition. While these correlations may serve to give a sense of the relative status of certain issues present, the ROL Initiative emphasizes that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. The ROL Initiative considers the relative significance of particular correlations to be a topic warranting further study. In this regard, the ROL Initiative invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. The ROL Initiative views the LPRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

<table>
<thead>
<tr>
<th>Legal Profession Reform Index Factor</th>
<th>Correlation 2004</th>
<th>Correlation 2007</th>
<th>Trend</th>
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<tbody>
<tr>
<td><strong>I. Professional Freedoms and Guarantees</strong></td>
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<tr>
<td>Factor 1 Ability to Practice Law Freely</td>
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<td>Neutral</td>
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<tr>
<td>Factor 2 Professional Immunity</td>
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<tr>
<td>Factor 3 Access to Clients</td>
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<td>Neutral</td>
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<tr>
<td>Factor 4 Lawyer-Client Confidentiality</td>
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<tr>
<td>Factor 5 Equality of Arms</td>
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<td>Factor 6 Right of Audience</td>
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<td><strong>II. Education, Training, and Admission to the Profession</strong></td>
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<td>Factor 7 Academic Requirements</td>
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<td>Factor 8 Preparation to Practice Law</td>
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<td>Factor 11 Non-discriminatory Admission</td>
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<td><strong>III. Conditions and Standards of Practice</strong></td>
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<td>Factor 12 Formation of Independent Law Practice</td>
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<td>Factor 13 Resources and Remuneration</td>
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<td>Factor 15 Minority and Gender Representation</td>
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<td>Factor 16 Professional Ethics and Conduct</td>
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<td>Factor 17 Disciplinary Proceedings and Sanctions</td>
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<td><strong>IV. Legal Services</strong></td>
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<td>Factor 20 Alternative Dispute Resolution</td>
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<td><strong>V. Professional Associations</strong></td>
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<td>Factor 23 Public Interest and Awareness Programs</td>
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<td>Factor 24 Role in Law Reform</td>
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I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

<table>
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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ←→</th>
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<tr>
<td>Advocates are fully independent under the law, subject to customary limitations, and are generally able to practice without undue interference, intimidation or sanctions. There have been some isolated actions by the government or police that raise concerns in this area, and advocates continue to be subject to occasional threats from opposing parties or families of crime victims. Physical attacks are rare but they have occurred, though it is unknown whether they were related to the professional activities of the advocates attacked.</td>
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Analysis/Background:

The Constitutional Framework does not address the legal profession except for assigning to the Provisional Institutions of Self-Government responsibility for the “organization of examinations for qualification of judges, prosecutors, lawyers and other legal professionals through an independent professional body,” a topic discussed under Factor 9. CONSTITUTIONAL FRAMEWORK art. 5.3(f). Thus, the 1979 Law on Advocacy is the primary legal authority applicable to the legal profession. There is also the Pending Law on the Bar, which has been enacted by the Assembly of Kosovo but still awaits approval by UNMIK. Both laws contain provisions relating to the independence and freedom of lawyers, specifically advocates.

The 1979 Law on Advocacy states that “advocates and other persons authorized to provide legal assistance are independent in performing their function.” 1979 LAW ON ADVOCACY art. 4. Except as may otherwise be limited by law, they have the “authority to undertake actions which they consider to be helpful to the party” they represent. Id. Article 6 goes on to provide that “[a]dvocacy as an independent profession is carried out by the advocates,” and their independence is to be furthered by organizing them under an independent and self-governing advocates’ association, specifically the KCA. Id. arts. 5-7. Similarly, the Pending Law on the Bar provides that the advocacy “is a free and independent occupation,” with independence to be achieved through “independent law practice as a free occupation,” by “provision of legal assistance in an independent manner,” and through “organization of lawyers through the [KCA] as an independent public organization.” PENDING LAW ON THE BAR art. 1.

These laws contain some customary and reasonable restrictions on an advocate’s independence. The 1979 Law on Advocacy, for example, imposes on advocates certain general standards of conduct, a duty of confidentiality, prohibitions against conflicts, and limitations on remuneration. 1979 LAW ON ADVOCACY arts. 14-19. The Pending Law on the Bar establishes comparable obligations that have the effect of limiting the advocate’s freedom of action, but in ways consistent with international norms and professional expectations. PENDING LAW ON THE BAR art. 12. Advocates who violate these rules or other standards set by the Code of Advocates’ Professional Ethics (June 11, 2005) [hereinafter CODE OF ETHICS], are subject to disciplinary sanctions imposed by the KCA pursuant to designated procedures and safeguards. See 1979 LAW ON ADVOCACY arts. 14 and 46-49; see also PENDING LAW ON THE BAR arts. 19-20. The assessment team received no information to suggest that these laws or the KCA’s disciplinary authority have
been used improperly or unfairly to intimidate or interfere with advocates in the legitimate performance of their professional duties.

The Criminal Proc. Code empowers the court to warn persons present at trial to behave properly and not to obstruct the work of the court. CRIMINAL PROC. CODE art. 335(1). The Criminal Proc. Code goes on to address the specific case of a defense counsel or other legal representative who disturbs order or fails to comply with the court’s directions regarding maintenance of order. The court may warn the lawyer and, if the warning is to no avail, may order the lawyer removed from the courtroom and fine him/her up to 1,000 euros. The court may also deny counsel the right to represent or defend his/her client if the counsel continues to disturb order, in which case the court is required to inform the KCA of the matter. Id. Court rulings imposing punishments, as opposed to mere warnings, are appealable and may also be revoked by the trial panel. Similarly, Articles 317-320 of the Law on Contested Proc. obligate the presiding judge in a civil case to maintain order and dignity and authorize him/her to warn, then remove and/or fine, any person who disturbs the work of the court. These judicial powers are generally not abused, and in fact some persons believe they should be used more often. There was one account, however, of a judge who, allegedly without cause, ordered an advocate to sit down and then fined him 200 euros when he refused to do so; the judge revoked the fine after the hearing. Another advocate reported that a judge, whom the advocate described as “corrupt,” removed the advocate from four different cases. It was unclear, however, what the basis of the removal was and whether the advocate appealed the removal.

One governmental action prompted significant concern among many members of the advocacy. The Ministry of Economy and Finance reportedly tried to require advocates to register with it, contending that advocates are doing business and are thus commercial entities. This effort was perceived by some advocates as attempted governmental control of the profession. By registering advocates, the Ministry would also be in a position to revoke, or threaten to revoke, their registrations and thus to intimidate advocates. Others perceived the Ministry’s action as a mere effort to obtain licensing revenue and to insure that advocates paid their taxes. After extensive negotiations between the KCA and the Ministry, a tentative truce was reached whereby advocates would not have to register with the Ministry and the KCA would agree that advocates must pay their taxes to the Ministry. The issue has not completely gone away, however.

The biggest problem advocates face in this area is threats from opposing parties or families of crime victims. It is reportedly fairly common for non-lawyers to identify opposing counsel with their clients and the acts of their clients, and to threaten, even commit, acts of violence against these advocates. Sometimes the motive for the threats is to intimidate an experienced and capable advocate from continuing to represent his/her client in a pending case, with the hope that the advocate will be replaced by someone less competent or that no replacement advocate will agree to serve. Experienced advocates contend that they refuse to yield to such threats and that, by so refusing, they have made it known that they will not be intimidated and have received no or fewer threats in recent years. In connection with this physical safety problem, sources pointed to the killing of one advocate in Prizren two years ago and the beating of another advocate in Pristina a year ago. Both attacks are apparently still under investigation and no one has been charged, so it is unclear why and by whom these advocates were attacked.

Approximately six months before the team’s onsite visit, a prominent criminal defense lawyer, another advocate, and a journalist were beaten by police in an early morning incident at a café in Pristina. Accounts of the circumstances of and provocation for the beatings varied considerably, but the three persons beaten were arrested and detained temporarily. See Seferi, After a fight, advocates . . . and journalist . . . were arrested [names omitted], Zeri, Oct. 27, 2006, at 6. It is possible that the police beatings and later arrests were justified or based on personal animosity unrelated to the advocates’ professional affairs, but there is some suspicion that they were targeted for their work on certain high-profile cases.
Another source reported isolated threats from police, which the source attributed to poor training. There were no other reports of threats or assaults by representatives of the government or the judiciary.

**Factor 2: Professional Immunity**

*Lawyers are not identified with their clients or the clients’ causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.*

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<th>Conclusion</th>
<th>Correlation: Positive</th>
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<tr>
<td>In general, state authorities, the judiciary, and other lawyers do not identify advocates with their clients or their clients’ causes. The 1979 Law on the Advocacy offers a limited form of criminal immunity to advocates, but the absence of a comparable provision in the Pending Law on the Bar raises concern for the future. A new civil law on defamation protects statements made in, and related to, judicial proceedings.</td>
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**Analysis/Background:**

As noted under Factor 1, lawyers are often identified with their clients by opposing parties and crime victims, but this factor focuses on how lawyers are viewed by state authorities and the legal profession. There is very little indication that advocates, even those who represent clients in controversial cases, are associated with their clients or their clients’ causes by representatives of the government or judiciary or by other advocates or prosecutors. One possible exception relates to the advocates who were beaten by police in the October 2006 incident discussed under Factor 1, but the facts and motivations involved in that case are far from clear.

Article 187 of the Provisional Criminal Code of Kosovo designates “insult” as a crime punishable by a fine or imprisonment for up to three months. *PROVISIONAL CRIMINAL CODE OF KOSOVO*, promulgated by UNMIK REGULATION NO. 2003/25 (July 6, 2003) [hereinafter CRIMINAL CODE]. The insult is not a crime if, among other exceptions, it is delivered in the exercise of one’s official duties or is not committed with intent to disparage. The Criminal Code’s defamation provision declares it a crime to “assert or circulate untrue statements about another person which damage his or her honor and reputation” with knowledge that the statements are untrue. *Id. art. 188.* There is no criminal liability if the statement is true or if the person making the statement had a well-founded reason to believe it was true. Criminal prosecution for either insult or defamation is initiated based on private prosecution by the alleged victim. *Id. art. 190.*
The 1979 Law on Advocacy provides that “[t]he advocate cannot be detained for the reason that he/she has committed a criminal offense in the course of his/her duty without the preliminary permission of the court that is handling the same trial.” 1979 LAW ON ADVOCACY art. 21. This article would appear to bestow on advocates a limited form of immunity from criminal prosecution for statements made, either in writing in pleadings and briefs or orally at hearings, including statements that could be viewed as insulting or defamatory. It would seem to offer less than complete protection for advocates, however, since the immunity is waivable by the court and not by their peers in the KCA.

There is no comparable clause in the Pending Law on the Bar, at least in its present form. An earlier draft of this law apparently made some provision for criminal immunity for advocates. See 2004 Kosovo LPRI at 10. If and when the Pending Law of the Bar is approved by UNMIK or otherwise becomes law, its present text would remove even the limited form of criminal immunity offered by the 1979 Law on Advocacy.

In 2007, a new law on civil defamation was recently enacted by the Assembly of Kosovo and approved by UNMIK. CIVIL LAW AGAINST DEFAMATION AND INSULT, promulgated by UNMIK REGULATION NO. 2007/13 (Feb. 28, 2007). It establishes a civil cause of action for willful publication of an untrue statement injurious to the reputation of another or for making a humiliating statement about another person. Id. art. 3-4. Among the exemptions from liability, however, is a “statement made in the course of any stage of pre-trial processes, and judicial or administrative proceedings, by anyone directly involved in that proceeding,” unless the statement is “totally unrelated” to the proceeding. Id. art. 9(c). This law dispels the uncertainty that previously existed concerning the possibility of a civil defamation action in Kosovo and, more importantly for this purpose, the availability of an exemption from civil liability for statements made by advocates in the course of representing their clients in judicial proceedings. Even so, the scope of this exemption and its application to written or oral statements made out of court or in disciplinary proceedings remain untested.

Factor 3: Access to Clients

Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

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<th>Conclusion</th>
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<tr>
<td>Advocates are able under the law and in practice to meet with their detained clients to prepare their defense without time limitations, but facilities for this purpose are inadequate.</td>
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Analysis/Background:

Nothing in the 1979 Law on Advocacy gives advocates the legal right of access to detained clients or suitable opportunities to prepare a defense. In contrast, Article 18 of the Pending Law on the Bar expressly entitles an advocate to meet with his or her client in private and without time restrictions, especially when the client is under detention. The appropriate authorities are obligated to send for the advocate when the client so requests.

The Criminal Proc. Code supports the right of advocates to have access to their clients. For example, it provides that “[t]he defense counsel has the right to communicate freely with the defendant orally and in writing under conditions that guarantee confidentiality.” CRIMINAL PROC. CODE art. 77(2). Moreover, the advocate’s right of access can be inferred from the many references in the Criminal Proc. Code to the defendant’s right to counsel, coupled with Article
77(1)’s grant to the defense counsel of the rights of the defendant. Among other provisions, the Code gives the defendant the “right to have adequate time and facilities for the preparation of his or her defense.” Id. art. 12(1). Furthermore, Chapter 3 of the Constitutional Framework incorporates certain rights and freedoms contained in various international conventions, including the European Convention on Human Rights. This Convention gives a person charged with a crime the rights “to have adequate time and facilities for the preparation of his defense,” and “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.” European Convention on Human Rights art. 6.3.

In addition, the Criminal Proc. Code states that “[t]he suspect and the defendant shall have the right to be assisted by a defense counsel during all stages of the criminal proceedings.” CRIMINAL PROC. CODE art. 69(1). The Criminal Proc. Code is replete with other specific grants of the right to counsel:

- From the time of arrest (id. arts. 12(6), 14(1)[2], 213(1) and (2), and 214(1)(4));
- Before and during every examination (id. arts. 69(2), 218(1), 231(2)[4] and (3), and 269 (3));
- During the confirmation hearing (id. art. 314(1) and (2)); and
- During the main trial (id. arts. 321(1) and (2) and 342).

Furthermore, under the Criminal Proc. Code, the suspect/defendant is also required to be informed of this right to a defense counsel of his/her choice or to have counsel appointed if he/she cannot afford to pay for legal assistance:

- At the first examination (id. arts. 12(5) and 269(3));
- Before every examination (id. arts. 69(2) and 231(2)[4]);
- When deprived of liberty (id. arts. 14(1)[2], 214(4), 270(6), 279(5)[1] and 282(2));
- At the beginning of the confirmation hearing (id. art. 314(1));
- In the summons to appear at the main trial (id. art. 321(2)); and
- At the main trial (id. art. 356(2)[3]).

The right to counsel may be waived by the defendant except in certain cases involving disabilities, detention on remand, or indictment for a crime carrying a potential sentence of imprisonment for at least eight years. Id. art. 73(1).

Virtually all reports received by the assessment team indicate that there is no problem in Kosovo for an advocate to obtain access to meet with a detained client without time restrictions, and in fact that the situation has improved over the past three years. The one deficiency pertains to the inadequacy of facilities for the advocate to meet with his/her client. There are very few detention buildings or courthouses that have rooms set aside for this purpose, so communications between advocate and client must often take place through cell doors, in hallways, or even in offices where other persons may be present. There do not appear to be any concrete plans to construct facilities in the future in order to remedy this problem. It is, therefore, physically difficult for the advocate to meet privately with the client to prepare his/her defense for trial.
Factor 4: Lawyer-Client Confidentiality

The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

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<td>The Criminal Proc. Code contains provisions respecting the rights of both advocates and their clients to confidential communications. These provisions are generally followed by the state, although facilities for advocate-client conversations are often inadequate. Broader protections are provided by the 1979 Law on Advocacy, but will not be available if such law is replaced by the Pending Law of the Bar in its present form.</td>
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Analysis/Background:

Under Article 22 of the 1979 Law on Advocacy, an advocate’s office may be searched only in accordance with a warrant issued by the investigative judge in a criminal proceeding involving the advocate. However, the warrant must specify the particular document or case for which the search is being conducted, and may not violate the client’s right to confidentiality. The KCA must be informed in advance of the search and allowed to have a representative present. In addition, Article 15 imposes a duty of confidentiality on the advocate, and states that the advocate cannot be required to testify regarding matters confided in him/her by the client.

The Pending Law on the Bar contains far more limited protection for the advocate and his/her relationship with the client. There are no provisions governing searches of the advocate’s office, and the only section addressing testimony bars the advocate from being interrogated as a witness for his/her client. PENDING LAW ON THE BAR art. 12.5. Under Article 12.4 the advocate is required to maintain client secrets, but apparently nothing obligates the government, police or prosecutors to respect the confidentiality of his/her communications with the client. The Pending Law on the Bar states that “[t]he lawyer is not allowed to file criminal charges in the prosecution body and may not be interrogated as a witness for the person he/she has provided legal assistance to”; this is an ambiguous provision which might limit some questioning of advocates but is by no means a complete shield that would effectively protect lawyer-client communications. Id. art. 12.4.

As noted under Factor 3, Article 77(2) of the Criminal Proc. Code provides that “[t]he defense counsel has the right to communicate freely with the defendant or arrested person orally and in writing under conditions which guarantee confidentiality.” In addition, under Article 213(3) (applicable to provisional arrest and police detention), “[t]he arrested person has the right to communicate with defense counsel orally and in writing. Communications between an arrested person and his or her defense counsel may be within sight but not within hearing of a police officer.”

Reports indicate that the police and other officials appear to be doing their best to permit the exercise of these rights, subject to the difficulties caused by inadequate interviewing conditions in many jails and courthouses. Guards typically place themselves in a position to observe but not overhear conversations between advocates and their clients. Isolated exceptions have occurred where police appear to be deliberately intrusive, perhaps because of poor training. Interviewing facilities pose the greatest obstacle to effective and confidential communications between advocates and detained clients, as private rooms are typically unavailable for this purpose. Sometimes it is necessary to speak loudly through a small opening in a door, or to converse in a crowded courthouse corridor, or to “borrow” the office of a policeman, prosecutor or judge to hold a client meeting, perhaps while the occupant is present. These conditions are not conducive to
the free and open exchange of information and advice contemplated by the Criminal Proc. Code and international standards.

There are no provisions in the Criminal Proc. Code dealing expressly with confidentiality of lawyer offices or files on client matters. Accordingly, if the 1979 Law on Advocacy is replaced by the Pending Law on the Bar in its present form, the explicit protections offered advocates in this area will no longer be available. Reliance will then have to be placed on constitutional protections generally available to citizens of Kosovo. See e.g., CRIMINAL PROC. CODE arts. 240-253; see also International Covenant on Civil and Political Rights art. 17.1, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp (No. 16) at 52 (Mar. 23, 1976), incorporated into the law of Kosovo by CONSTITUTIONAL FRAMEWORK art. 3.2(c) ("No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence....").

Factor 5: Equality of Arms

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.

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The Criminal Proc. Code offers reasonable rights and protections to the defense with respect to disclosure of evidence and other information, although its operation in practice is sometimes lacking due mainly to a shortage of staff, equipment and facilities. The laws governing civil and administrative practice say little about access to information, but appear to be neutral on their face and in their application.

Analysis/Background:

Article 10(1) of the Criminal Proc. Code provides that “[t]he defendant and the prosecutor shall have the status of equal parties in criminal proceedings, unless otherwise provided for by the present code.” The Criminal Proc. Code goes on to state that “[t]he defense counsel has the same rights that the defendant has under the law, except those explicitly reserved to the defendant personally.” CRIMINAL PROC. CODE art. 77(1). The Criminal Proc. Code generally follows this policy through all stages of a criminal proceeding, though less so before confirmation of the indictment.

Before the examination of the suspect or defendant, he/she must be instructed of the right to engage a defense counsel, to have counsel present during the examination, and to consult with counsel during the examination. See id. arts. 69(2) and 231(2)[4]. If the examination is conducted in violation of these and certain other rights, “the statements of the defendant shall be inadmissible.” Id. art. 235; see also id. art. 156(1).

When the prosecutor examines a witness before trial, he/she may invite the defendant and his/her counsel to be present during the examination and may permit the defense counsel to interrogate the witness. While these decisions are within the prosecutor’s discretion, the witness’s statement may be inadmissible in court if the defense counsel is not at some point given the opportunity to question the witness. Id. art. 156(2).

Before conducting searches and site inspections, the judicial police are required to advise the person to whom the order is directed of his/her right to have a lawyer present. They need not wait more than two hours for the lawyer to arrive, however, and need not wait at all if there are “exigent circumstances,” if armed resistance is expected, or if the effectiveness of the search is
likely to be undermined by advance notice. *Id.* arts. 241-242. Criminal Proc. Code Article 254 gives the defendant and his/her counsel the right to be present during the site inspection.

During the investigation, the defendant (and thus his/her counsel) may ask the prosecutor to collect certain evidence. The prosecutor is obligated to do so if the evidence might otherwise be lost, if the evidence would be exculpatory of the defendant, or if there are other justifiable reasons to collect it. The prosecutor may decline to honor the request, but must explain why in writing. Pursuant to the Criminal Proc. Code the defendant may appeal the prosecutor’s decision to the pre-trial judge. *Criminal Proc. Code* art. 239. In exceptional circumstances, either the prosecutor or the defendant can ask the pre-trial judge to examine a witness or order an expert analysis in order to preserve testimony or other evidence that might not otherwise be available at trial. *Id.* art. 238.

At all stages of the proceeding, the defense has full access to the records of the examination of the defendant and material obtained from or belonging to the defendant, among other items. Once the investigation is completed, the defendant may inspect and copy all records and physical evidence available to the court. The defendant may also inspect and copy any other items in the prosecutor’s possession that are material to the preparation of a defense or that the prosecutor may intend to introduce at trial. The prosecutor may refuse to do so only if there are sound reasons to believe that providing these items to the defense may jeopardize the investigation or public safety. In that event, the defense may seek an order from the pre-trial judge requiring the prosecutor to make the items available. These rights do not override other laws protecting the safety or privacy of witnesses or parties or preserving confidential information. *Id.* art. 142.

Once the indictment has been confirmed, special provisions of Criminal Proc. Code Article 307 are triggered to protect the rights of the defendant. Specifically, the prosecutor must provide the defense (if he/she has not already done so) records of statements or confessions, names of witnesses the prosecutor intends to call to testify and any prior statements they have made, the identifications of persons whom the prosecutor knows to have exculpatory information and records of any statements from them, the results of any physical or mental examinations or scientific analyses conducted in connection with the case, criminal and police reports, and information about tangible evidence obtained in the investigation. Thereafter, if the prosecutor receives any new materials of this nature, he/she must provide them to the defense within 10 days of receipt. *Id.*

The defense has a reciprocal obligation to disclose to the prosecutor information with respect to any alibi defense or exculpatory ground as well as a list of prospective defense witnesses. *Id.* art. 308.

The Criminal Proc. Code is thus largely evenhanded when distributing rights to the advocate and the prosecutor. This does not mean that it is universally recognized as fair or that there is true equality of arms in practice. Advocates have complained about procedures for the protection of witnesses, especially in war crimes trials, where the prosecutor knows the identity of the witness but the defense counsel does not. The prosecutor is able to interview the witness in advance of trial, view the facial expressions of the witness when he/she answers questions, and conduct whatever background check on the witness’s credibility and reputation that the prosecutor deems appropriate. The defense counsel lacks these opportunities to find weaknesses in the witness’s story, and is forced to rely on the prosecutor’s own professionalism and sense of fairness to uncover and disclose information that would help the defense. Obtaining copies of documents can be problematic when copiers are often broken or the operator is unavailable, and file reviews can be burdensome when there are not adequate facilities for examining the records. Advocates sometimes criticize the close relationships that appear to exist between judges and prosecutors, especially where they have offices in the same building, and contend that some judges are all too willing to defer to the prosecutor rather than consider the evidence and arguments independently. The fact is that judges and prosecutors train together at the Kosovo Judicial Institute, and presently are appointed, promoted and disciplined by the Kosovo Judicial Council, which has
representatives from both legal professions. According to one observer, a prominent defendant was placed in a special status under the exclusive jurisdiction of an international judge, without the defense counsel’s being informed of the determination or provided with the information upon which the decision was based. See, J. Chadbourne, *The Kurti Case: Law or Politics?*, KOHA DITORE (May 16, 2007). Other sources reported isolated occurrences in which the prosecutor failed to notify the defense counsel in advance of an interrogation of a defendant, yet proceeded anyway, or in which the defense counsel was denied a copy of document needed for use as evidence at trial.

Several observers noted disparities in resources, training, and experience that undermine the reality of equality of arms. While not technically part of the international standard for this factor, it is true that a relatively new advocate lacking government-paid advanced training, supervision by more seasoned lawyers and extensive courtroom experience may find it difficult to match up against a full-time prosecutor and the resources at his/her disposal. Reportedly, this imbalance tends to be most pronounced in criminal cases where the defendant is represented by court-appointed “ex-officio” counsel, and shows up periodically in war crimes trials where a local defense counsel confronts an experienced international prosecutor.

Outside the context of a criminal proceeding, equality of arms is less well-defined. In civil cases, the antiquated Law on Contested Proc. contemplates that the judge (or president of the panel) will essentially control the proceeding, with the parties and their counsel playing only limited roles. See e.g., LAW ON CONSTTESTED PROC. art. 311 (the president directs the trial, examines the parties, adduces the evidence, and controls who speaks). The Law on Contested Proc. allows a party to demand documents held by the other party in advance of trial. See id. art. 233. During the trial, each party and his/her representative may seek leave of the court to ask questions of witnesses or the other party. See LAW ON CONTESTED PROC. art. 302. Nothing in the law gives either party or representative an advantage over the other, and the assessment team heard no complaints of unfair or unequal treatment in these proceedings. Similarly, the Law on Admin. Proc. contains principles in support of equality before the law, objectivity and impartiality, and the rights of both natural and legal persons to timely and equal access to information available to public bodies. LAW ON ADMIN. PROC. arts. 5, 7, and 9. Other provisions of this law are neutral on their face, and there were no reports of contrary practices.

Factor 6: Right of Audience

*Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.*

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Advocates have the right, with certain reasonable exceptions, to represent their clients in criminal cases and are generally treated equally by the courts. Concerns have surfaced over a perceived tendency of at least some judges to defer to the evidence and arguments of prosecutors, among other issues of equality. In civil and administrative cases, almost anyone can legally represent a party, and lawyers who do so are allowed to appear before the body and receive equal treatment when doing so.

Analysis/Background:

Article 10(1) of the Criminal Proc. Code declares that “[t]he defendant and the prosecutor shall have the status of equal parties in criminal proceedings, unless otherwise provided for by the present Code.” The Criminal Proc. Code goes on to provide that “[the defendant has the right
and shall be allowed to make a statement on all the facts and evidence which incriminate him or her, and to state all facts and evidence favorable to him or her. He or she has the right to examine or to have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.” CRIMINAL PROC. CODE art. 10(2). Article 77(1) states that “[t]he defense counsel has the same rights that the defendant has under the law, except those explicitly reserved to the defendant personally.”

Under Article 70(1) of the Criminal Proc. Code, only an advocate who is a member of the KCA may represent a defendant in a criminal trial. An “attorney in training,” or praktikant, can replace an advocate and represent the defendant, so long as the crime with which the defendant is charged carries a maximum sentence under five years. If the potential sentence is at least five years, the praktikant may represent the defendant only if the praktikant has passed the jurisprudence examination. Only a full-fledged advocate may represent a defendant in a matter before the Supreme Court of Kosovo. Id. art. 70(1).

The only limitations on the right of an advocate to represent the defendant are the conflict of interest rules of Articles 71 and 72 of the Criminal Proc. Code. These rules preclude the advocate from representing multiple defendants in the same case, and from representing the defendant in a case where the advocate or a person related to him or her is the injured party, or where the advocate is related to the prosecutor, or where the advocate has been a judge or prosecutor in the same case, or (with certain exceptions) where the advocate has been summoned as a witness at the main trial. Id. arts. 71, 72.

Once engaged, the advocate may not be removed from the case unless he or she “disturbs order” in the court after being first warned. Id. art. 336(3). The removal decision is made by the court, but is appealable by the removed advocate. Id. art. 337(1). As noted under Factor 1, there have been a couple of reported incidents of alleged abuses of this power, but the exact circumstances are unclear.

The analysis under Factor 5 reports several concerns about equal treatment of advocates compared to prosecutors in criminal cases. These include issues about access to protected witnesses, conditions for obtaining and reviewing documents from the case file, the perceived closeness of judges and prosecutors in certain respects, and the superior training and experience of many prosecutors who may be matched against relatively new advocates. Of these concerns, the most troubling in this context is the closeness of judges and prosecutors and the alleged deference often shown by judges toward the evidence and arguments presented by prosecutors.

The representation rules in civil and administrative cases are far less rigid. The Law on Contested Proc. generally permits parties to civil proceedings to appoint non-advocates, even non-lawyers, to represent them in the proceedings. The only limitations in most cases are that the representative must be legally competent to act and may not have misrepresented him/herself to be a lawyer. See LAW ON CONTESTED PROC. arts. 89-90. The Law on Contested Proc. does require that where labor organizations and other self-governing organizations and communities are involved in disputes over property that exceeds a certain threshold value, their representatives must have passed the jurisprudence examination. See id. art. 91. They need not be registered advocates, however. The law requires the court to “give to each of the parties the opportunity to express itself regarding the claims and statements of the opposing party.” Id. art. 5. In the case of administrative proceedings, the law and the practice are not entirely clear. Article 35.1 of the Law on Admin. Proc. states simply that parties may participate “either personally or through representation,” without specifying who may or may not serve as the representative. There were no reports of advocates or other designated representatives being denied the right to represent parties in civil or administrative proceedings, or of being treated unequally by the court or administrative body. Representatives who are in fact advocates, or at least lawyers, would have obvious advantages when competing against parties acting pro se or represented by non-lawyers, but there were no reports of disparate treatment.
II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

*Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.*

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<td>Advocates and other legal professionals must have a formal, post-secondary legal education from licensed providers of higher education.</td>
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**Analysis/Background:**

Under Article 36.3 of the 1979 Law on Advocacy, one of the qualification requirements for prospective advocates is that they “have a law degree.” In addition, under Article 6.1(c) of the Pending Law on the Bar, states that the person must have a “faculty of law or other high education in law, recognized by the Kosovo Ministry of Education, Science and Technology [hereinafter MOE] as an adequate high education.”

In Kosovo, as in most civil law countries, legal education is basically an undergraduate program, with post-graduate opportunities, provided by a faculty of law at a university or similar institution to students who have received certificates of completion of secondary schooling. According to the Law on Higher Education in Kosovo, a bachelor’s degree necessitates at least three years of full-time study following secondary school. **[LAW ON HIGHER EDUCATION IN KOSOVO](https://www.moe.gov.kosovo/)**, promulgated by **UNMIK REGULATION NO. 2003/14** [hereinafter **HIGHER EDUCATION LAW**] art. 2.2(a)(i). The duration of post-bachelor graduate programs leading to a master’s degree or doctorate is not specified by the law. The Higher Education Law reflects and incorporates the general principles established by the **Declaration of the European Ministers of Higher Education at Bologna (June 19, 1999)**, [www.bologna-berlin2003.de/pdf/bologna_declaration.pdf](http://www.bologna-berlin2003.de/pdf/bologna_declaration.pdf), [hereinafter Bologna Declaration]. Degrees may be awarded only by an “accredited provider of higher education,” with the accreditation, licensing and quality assessment process conducted by the Kosovo Accreditation Agency [hereinafter KAA] under the overall direction of the MOE. **HIGHER EDUCATION LAW** arts. 4.1 (b) and (k), 4.3, 11.1-11.1, and 12.1. According to one report, the KAA has not yet been constituted and thus has not commenced operations. Accreditation may be given to either public or private providers of higher education and the accreditation certificate specifies the degrees and diplomas which the provider has the power to award. *Id.* art. 12.1. Once licensed, the provider enjoys considerable autonomy in determining the curricula, admission standards, professorial qualifications and titles, and graduation requirements for each of its authorized faculties. *Id.* arts. 7.2-7.3.

Under the Higher Education Law, licensed providers of higher education are required to admit students and employ personnel without discrimination on the basis of gender, nationality or ethnic origin, among other classifications. *Id.* arts. 3.1 and 13.5(a). In practice, however, the historical conflicts between Kosovars who are Albanian and those who are Serbs have led to parallel institutions of higher education. For a comprehensive report on parallel systems, see generally OSCE, **Parallel Structures in Kosovo 2006 – 2007** (2007). The University of Pristina campus in the city of Pristina primarily serves students of Albanian ethnic origin, while the other campus, in Mitrovica, accommodates mainly ethnic Serbs. Both are public entities receiving government
funds and are technically part of the same university, but in reality operate independently of each other. The ethnic distinction carries over to the respective law faculties run by these providers and the professors who teach their students. By way of background, the Faculty of Law in Mitrovica was founded in June 1961 and commenced operations in October of that year as part of the University of Belgrade. It became part of the University of Pristina upon the formation of the latter in 1969. During the 1990s, ethnic Albanians were not allowed to teach or study law on the Pristina campus, so the law faculty in Pristina consisted almost exclusively of ethnic Serb professors and students. During that period, Kosovar Albanian professors ran an illegal parallel law faculty from a private house in Pristina, teaching ethnic Albanian students. Its courses and credits were not, of course, recognized by the Serbian authorities, and students who completed their instructional requirements were unable to take the jurisprudence examination and thus become advocates. After the 1998-1999 war, the ethnic Serb professors and students relocated to Mitrovica and the ethnic Albanians took over the Pristina campus, resulting in the present state of de facto segregation. Some of the courses taught at Mitrovica pertain to Serbian law (which in certain cases overlaps with pre-war law still applicable in Kosovo), a few of which are taught by non-resident Serbian professors. Both law faculties claim the legacy of the University of Pristina founded in 1969.

A total of 20 private providers of higher education have been established and licensed in Kosovo, five of which (all in Pristina) have law faculties. There are, accordingly, a total of seven law schools now operating in the province.

The University of Pristina law faculty in the city of Pristina is the largest and best known law school in Kosovo, so this report will focus on it. Article 13.1 of the Higher Education Law provides for public providers of higher education to adopt statutes, subject to Ministry approval, addressing their governance and management. The Statute of the University of Pristina (July 5, 2004) [hereinafter U. OF PRISTINA STATUTE], contemplates centralized management of the entire entity under the control of a university board. U. OF PRISTINA STATUTE art. 17. The senate is the highest academic body of the university and determines strategies, criteria and standards for all academic units. Id. arts. 43, and 48-49. Under the U. of Pristina Statute, the senate consists of the university rector and vice-rectors, deans of all academic units, a representative elected by the academic staff from each unit, seven elected student members and two members chosen by the non-academic staff. See id. art. 44. The U. of Pristina Statute designates the law faculty as one of its faculties and provides for an academic study program in this area. Id. arts. 65 and 102. All faculties must submit their study programs, including enrollment conditions, curricula and course credits, to the senate for approval. Id. arts. 67 and 103. Consistent with the Bologna Declaration, undergraduate bachelor studies are required to last between three and three and one-half years and require between 180 and 210 credits, while post graduate master studies must have a duration of between one and one-half and two years and carry 90-120 credits. Doctoral studies continue for another three to four years and require at least 180 additional credits. U. OF PRISTINA STATUTE arts. 104-106. Full, associate, and assistant professors must have doctoral or equivalent degrees, among other criteria. Id. arts. 182-184. It was reported that the University of Pristina Law Faculty curriculum for undergraduates presently consists of 42 courses, with 14 courses (12 mandatory and two elective) each of three academic years.

Under Article 16, to be admitted, students must normally have completed their secondary education and successfully passed an entrance examination. A group of law professors monitors and grades this written examination (which is given using code numbers rather than names to preclude identification), and ranks applicants based on their test results and secondary school grade point averages. According to numbers provided by the school administration, the University of Pristina Law Faculty had a total of 4,395 total undergraduate students during the 2006-2007 academic year, of which 1,972 (45%) were women. Interestingly, the U. of Pristina Statute declares the university's commitment to gender equality, and specifies that "where a male and a female applicant have the same qualification, the female candidate will be preferred." Id. art. 7. The total number includes 731 persons who are registered as correspondence students. Out of the 4395 undergraduates, only 23 are members of minority groups: seven Roma, seven
Bosnian and nine Turkish, with no Serbs. There are no special admission preferences or incentives offered to minorities.

Until the recent implementation of the Bologna Declaration, prospective lawyers received four years of undergraduate education and could then get a master’s degree with another year of schooling. The shift to a three year bachelor’s program and a two year master’s course of study has generated considerable unhappiness among both students and professors. One issue was the administrative complexity of meshing undergraduates and courses to meet both four and three year programs at the same time. Another difficulty is that the present curriculum generates only 162 credits applying the standards of the Bologna Declaration, whereas 180 credits are required for a bachelor’s degree that will be recognized internationally. A third problem is the fact that Articles 2 and 3 of the New Law on the Jurisprudence Exam require that, to sit for the test, applicants must either have graduated from a law faculty under the old four year program or have a master’s degree, among other requirements. Without passing the jurisprudence examination, a lawyer cannot be an advocate, judge or prosecutor. Accordingly, students interested in pursuing any of these professions must now complete five years of legal study, rather than four, and obtain their master’s degrees. It was reported that planning is underway for a new, revised law school curriculum that will revert to the four/one (or a four/1.5) system. The revised four-year undergraduate curriculum, which is pending approval, will consist of 80 courses, with 15-18 courses (8 mandatory and 7-10 elective) each of the four academic years.

The advent of private law faculties in Kosovo, specifically in Pristina, has led professors at the University of Pristina to teach part-time at the private schools. This arrangement is necessary for the private providers, since in many cases the only available doctorate holders in this field are professors at the University of Pristina. It also helps the professors themselves by offering badly needed supplements to their meager university salaries, and assures some consistency of instruction and course content among the various law faculties. The reported downside of this situation is that professors are too busy to do any of these jobs properly, are unavailable to advise students having special questions or needs, and occasionally cut short their scheduled lecture periods to meet their other commitments. One source indicated, however, that one of the private law schools has its own professors, internationals who are at the school on a full-time basis.

According to multiple reports, law school courses are taught primarily in lecture style, with little or no student participation, and focus on theoretical education rather than the practical skills needed for legal professionals. As academic and professional leaders recognize the value of incorporating practical education and experience into the curriculum, this has begun to change. In 2005, the University of Pristina law faculty in Pristina and the ROL Initiative began offering a simulation/externship legal clinic, then in 2006 a legal methodology course, both of which are elective courses and neither of which presently earns the student course credits. The legal clinic is divided into two sections, criminal and civil, for up to 25 students in each section, and is provided through an arrangement with representatives of judges, advocates and prosecutors. The clinic consists of two hours of classroom instruction, simulation and role play exercises, along with a six hour externship of practical exercises, mentoring and observation in courts and offices. By the time of the assessment visit, a total of 165 students had participated in the two clinics. A live-client clinic, allowing law students to work on real cases for disadvantaged clients under a lawyer's supervision, has not yet begun at the law school but is under development. The legal methodology course emphasizes critical thinking in theory and practice, with rigorous training and development in case analysis and argument. The course provides instruction in practice techniques such as research, writing and drafting, accommodating 30 students at a time. The clinics and methodology course end their semesters with mock trial exercises, and are very popular with students and regularly oversubscribed.
As noted elsewhere, while advocates must have a university-level education in law, one need not be an advocate to represent parties in civil and administrative proceedings. In these cases, there are no qualification standards for legal representatives.

Kosovo meets the literal requirements for a positive correlation with this international standard, which does not take into account the quality of the legal education provided.

**Factor 8: Preparation to Practice Law**

*Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>The theoretical nature of most legal education in Kosovo, along with crowded conditions and historical circumstances, means that most newly graduated lawyers are inadequately prepared to practice law.</td>
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</tbody>
</table>

**Analysis/Background:**

The curriculum offered by licensed providers of legal education appears to provide a reasonably sound theoretical knowledge of the law in many areas, but few would argue that the typical newly-minted graduate (in Kosovo or most countries) has adequate knowledge, skills and training to practice law.

Legal education in most of Kosovo suffers from the turmoil of the 1990s, when ethnic Albanians taught and studied law in underground classrooms without official credit or recognition, and from the necessity after the war to reconstitute the University of Pristina law faculty on the Pristina campus. In a lot of cases, the professors there tended to be fairly senior and taught their courses using texts they had written many years before. The five private law schools in Pristina have only begun operations in the past few years and are thus essentially in a start-up mode as well. While Kosovo's ethnic Serbs were able to teach and attend law school in the 1990s in both Mitrovica and Pristina, those at the Pristina campus when the war ended relocated to Mitrovica, causing some transitional difficulties.

In addition, as observed under Factor 8, Kosovo’s law schools tend to teach courses on a theoretical level, offering very little opportunity for student interaction. Some practical skills are now being taught at the University of Pristina in Pristina through criminal and civil law legal clinics and a legal methodology course, but space is limited to relatively few students. The number of law students enrolled in law schools is very large and appears to be increasing, leading to overcrowded lecture halls and conditions that are not conducive to student participation. Professors are inadequately compensated, and often supplement their incomes by teaching part-time at private law schools in Pristina. This leaves them overextended and deprives their students of opportunities to meet with them outside the classroom.

Most of the interviewees who were asked stated that law school preparation was inadequate, but had varying opinions concerning the trend in quality. Some thought legal education was improving every year, while others said they had not seen any signs of progress. As several people commented, there will always be some especially talented and diligent students who will be able to do well after leaving law school, particularly if they were able to participate in the legal clinics and methodology course.
As will be noted under Factor 9, newly graduated law students are not allowed to practice law anyway, at least as advocates, until they complete an internship program and pass the jurisprudence examination. This practical exposure usually adds to the lawyer’s knowledge and skills and thus his/her preparation for the practice.

Factor 9: Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>To become an advocate, it is necessary (with certain statutory exceptions) to complete a one or two year internship and pass a jurisprudence examination. The level of supervision, training and mentoring of interns varies widely. Over half of the candidates typically fail the jurisprudence examination, but this is due more to the weakness of their legal educations than to the rigorous nature of the test.</td>
<td></td>
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</tbody>
</table>

Analysis/Background:

In order to become an advocate, and thus have the unfettered right to practice law in all forums and circumstances, the 1979 Law on Advocacy requires that the applicant register with the KCA. 1979 LAW ON ADVOCACY art. 35. See supra Kosovo Background for a discussion of the conditions which an applicant must meet to register.

In order to be eligible to take the jurisprudence examination, additional requirements are set forth in Articles 2 and 3 of the New Law on the Jurisprudence Exam. Specifically, the individual must have graduated from a law faculty based on the prior four-year program or have a master’s degree in law, must be an habitual resident of Kosovo, and must have worked for either (i) at least one year as an intern (praktikant) in a regular court, public prosecutor’s office or advocate’s office, or (ii) at least two years in professional legal work for an institution or other organization that deals with implementation of laws. Law students who complete their education under the new format of three years’ undergraduate study for a bachelor’s degree will not be eligible to take the jurisprudence examination under the new law. Instead, they will need to continue their studies for two additional years to obtain a master’s in law, and then they will still have to undergo both the praktikant experience and the jurisprudence examination. Law students affected by this new arrangement are not pleased.

The 1979 Law on Advocacy is supposed to be replaced by a Pending Law on the Bar, which has been enacted by the Assembly of Kosovo but not yet approved by UNMIK. While the conditions imposed for registration as an advocate under this law differ somewhat from those set forth in the 1979 Law on Advocacy, they include successful completion of the jurisprudence examination and either one year’s experience as a praktikant in a court or advocate’s office or two years’ experience in public administration.

Accordingly, under both existing and pending law, a prospective advocate must have completed a praktikant or comparable apprenticeship and have passed the jurisprudence examination to register with the KCA.

Articles 54-62 of the 1979 Law on Advocacy sets a few ground rules for praktikants employed in advocates’ offices: requiring them to be registered with the KCA in a separate registry; stating that they shall be trained to perform the independent practice of advocacy pursuant to a compulsory program of training and seminars established by the KCA and the supervising
advocates; forbidding them from practicing independently while serving in this capacity, and requiring them to work under the direction and instruction of the supervising advocates; imposing confidentiality and other obligations on the praktikants; and contemplating a fund within the KCA to pay stipends and loans to praktikants during their period of service. Articles 35-39 of the Pending Law on the Bar contains comparable provisions, adding that the praktikant may represent his/her supervising advocate in municipal courts and that the supervisor is liable for damages caused by the praktikant in the course of his/her work. Additional rules are set forth in Articles 78-84 of the Code of Ethics.

Reports indicate that praktikant opportunities for law graduates are fairly scarce in Kosovo. Some believe it is necessary to have a connection to be employed in this capacity. Many graduates serve as praktikants with no or nominal compensation simply to obtain the necessary credential to take the jurisprudence examination. Numerous sources indicated that the nature of the work and thus the benefit received varies considerably depending upon the advocate or court for which the praktikant works. Some supervisors are conscientious mentors who provide good training and observation experiences, while others use praktikants for administrative matters or as office receptionists. The overwhelming majority of advocates in Kosovo are sole practitioners, who often lack the time, office space and depth needed to provide appropriate supervision and training. The KCA funds 10 praktikants annually to serve in advocates’ offices under contracts that spell out the obligations of the praktikant and his/her advocate, including the nature of the work and training to be provided. Through this program, praktikants receive 100 euros monthly and what is uniformly regarded as excellent practical preparation for practice. The KCA also arranges two training sessions per month for these praktikants to help them prepare for the jurisprudence examination.

Jurisprudence examinations administered through April 2007 were actually held under prior law, and the first to be conducted using the New Law on the Jurisprudence Exam will be offered in June 2007. The jurisprudence examination has both written and oral phases, and prior law permitted applicants to take the oral component regardless of whether they passed the earlier written part. The biggest change in the new law is to require that the written stage be successfully completed before the candidate is eligible to take the oral segment. The examination is administered and graded by a committee formed by the Ministry of Justice. While some believe connections play a part in the examination grade, others disagree, at least with respect to the written phase which is conducted on a coded basis to shield the identities of test takers. Identities are apparent during the oral phase. A total of 12 sections, or topics, are covered by the examination. Applicants must pay a fee of 150 Euros in order to take the test.

Historically, the pass rate for the jurisprudence examination has fluctuated between one-third and one-half as shown on the following chart:

**OVERALL RESULTS OF JURISPRUDENCE EXAMINATIONS, 2001-2007**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL CANDIDATES</th>
<th>CANDIDATES WHO PASSED</th>
<th>PERCENTAGE PASS RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>77</td>
<td>26</td>
<td>33.8</td>
</tr>
<tr>
<td>2002</td>
<td>360</td>
<td>193</td>
<td>53.6</td>
</tr>
<tr>
<td>2003</td>
<td>380</td>
<td>131</td>
<td>34.5</td>
</tr>
<tr>
<td>2004</td>
<td>381</td>
<td>98</td>
<td>25.7</td>
</tr>
<tr>
<td>2005</td>
<td>226</td>
<td>81</td>
<td>35.8</td>
</tr>
<tr>
<td>2006</td>
<td>211</td>
<td>104</td>
<td>49.3</td>
</tr>
<tr>
<td>2007 (YTD)</td>
<td>132</td>
<td>65</td>
<td>49.2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1,767</td>
<td>698</td>
<td>39.5</td>
</tr>
</tbody>
</table>

Source: Ministry of Justice Department of Administration.
Pass rates are not available by gender and minorities. Information has been provided regarding the representation of women and minorities among candidates who passed but not the percentage of women and minority candidates taking the test who passed it. Over the entire period 2001-2007, women represented 28.5% of the successful candidates, but that figure has averaged 33% over the past four years. Ethnic minorities passing the test have been at a low level over the years, typically 3-4% of the total; they have included Serbs, Bosnians and Turks but no Roma during this period. The New Law on the Jurisprudence Exam forbids discrimination in determining eligible candidates “on the basis of race, color, religion, gender, political opinion, national or social origin, wealth, birth or position.” NEW LAW ON THE JURISPRUDENCE EXAM art. 2.1

Most observers commented that, despite the modest pass rates, the examination is actually fairly easy and should be made more difficult. They attribute the fact over half of the candidates typically fail the test partly to residual fallout from the lost decade of the 1990s, when Albanians were denied the opportunity to study law openly in regular classrooms or take the jurisprudence examination, and partly to the continuing inadequacies of law school educations.

**Factor 10: Licensing Body**

*Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admission to practice is administered by the KCA, and appeals of rejected applications may be made to a separate committee within the KCA and thereafter to the Supreme Court.</td>
<td></td>
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</tbody>
</table>

**Analysis/Background:**

As noted in Factor 9, to become an advocate and thus entitled to practice law without limitations, the 1979 Law on Advocacy sets forth several requirements that must be met. 1979 LAW ON ADVOCACY arts. 35, 36.

Article 10 of the 1979 Law on Advocacy gives the KCA the power and responsibility to decide whether to admit a prospective advocate to the profession. The KCA exercises this function through its governing board, the Executive Council. See STATUTE OF THE KOSOVO CHAMBER OF ADVOCATES (Dec. 21, 2002) [hereinafter KCA STATUTE]. The applicant is required to provide documentation of his/her satisfaction of the qualification requirements and to specify the location of his/her future office as an advocate. See 1979 LAW ON ADVOCACY art. 39. According to the KCA administration, the following documents must be submitted as part of this process:

- Written request for registration;
- Diploma of the law faculty;
- Certificate of passing the jurisprudence examination;
- Birth certificate;
- Certificate from the court that the applicant is not being investigated for any crime;
- Certificate of capacity to act;
- Recommendations from two registered advocates from the region where the applicant will be working;
- Two recent photos; and
- Proof that the applicant is not engaged in some incompatible work or activity.
The KCA assesses an enrollment fee payable at the time of registration, the present amount of which is 700 Euros. Regular dues are 20 Euros per month, payable annually in advance, so a new advocate must be able to pay 940 Euros when he/she is first registered.\(^7\) This is on top of the 150 Euro fee required to take the jurisprudence examination. None of the persons interviewed complained about the magnitude of these fees, although funding them is a concern for prospective advocates. Under Article 76.6 of the KCA Statute, the amount of registration, membership and other fees is determined by the Executive Council of the KCA. Upon admission, the advocate is required to give a “solemn declaration,” or oath, before the president of the KCA or his/her deputy. 1979 LAW ON ADVOCACY art. 43.

If the application is rejected by the KCA, or if the KCA takes no action on the application within two months after the submission of all required forms and documentation, the applicant may initiate an administrative contest. Id. art. 40. According to the KCA Statute, the appeal must be filed within 15 days after rejection (or deemed rejection) of the request for registration, and is submitted to an Appeal Assembly Commission within the KCA. Id. art. 14. This commission is appointed by the KCA Assembly to act as second instance authority on Executive Council decisions; it may not include any members of the Executive Council. Id. arts. 15 and 95-97. The commission has 60 days from the date the appeal is filed to act on it. Id. If the registration request is rejected because the applicant was determined not to be trustworthy to serve as an advocate, it may not be resubmitted for at least two years. Id. art. 41.

There is no explicit provision in either the 1979 Law on Advocacy or the KCA Statute that specifically addresses judicial review of the final decision of the KCA Appeal Assembly Commission. Nonetheless, Article 40 of the 1979 Law on Advocacy describes the appeal of a registration rejection as an “administrative contest,” and Article 140 of the Law on Admin. Proc. provides that “any administrative act of a discretionary nature may be subject to court or administrative review.” See id. art. 40; see also LAW ON ADMIN. PROC. art. 140. Moreover, Article 5 of the KCA Statute incorporates the Law on Admin. Proc. into registration and other KCA proceedings and decisions. Article 31(5) of the Law on Regular Courts assigns to the Supreme Court of Kosovo competence to decide the “legality of final administrative enactment in an administrative contest,” and it does so through its administrative chamber.

With one apparent exception, there were no reports of any rejections by the KCA of registration requests submitted by prospective advocates who met the objective criteria of the 1979 Law on Advocacy. In fact, other than the recommendations of two existing advocates, the KCA Executive Council receives no information and conducts no inquiry concerning the relatively subjective trustworthiness criterion for admission. The one exception concerned the KCA’s 2004 rejection of the registration application of the former warden of a prison where detainees were reportedly tortured or otherwise mistreated by guards supervised by the warden. While the warden was apparently not under investigation and had not been convicted of a crime, the KCA Executive Council determined that the warden had a bad reputation, had violated human rights, and if registered would harm the dignity and reputation of the KCA. It is unknown whether the Executive Council’s determination was appealed.

Most of the complaints received about the registration process were that the KCA has been too lax. Sources were unhappy that reportedly corrupt judges who were removed from their positions were allowed to register as advocates, something which reflected poorly on the profession of advocacy. Others thought that the KCA should give more consideration to the legal skills, even the mental health, of prospective members.

The 1979 Law on Advocacy is in the process of being replaced by a new law which has been enacted by the Assembly of Kosovo but is still awaiting approval by UNMIK. Article 6 of the Pending Law on the Bar contains the following criteria for registration:

\(^7\) The figures of 700 and 940 Euros are current as of July 7, 2007, when the KCA approved an increase in new member dues.
Professional skills;
Permanent residence in Kosovo;
Faculty of law, or other high education in law recognized by the Kosovo Ministry of Education, Science and Technology as an adequate high education;
At least one year’s experience as a **praktikant** for an advocate or court or two years’ experience in public administration;
Successful completion of the jurisprudence examination in Kosovo;
The solemn oath;
No conviction for a criminal offense that would make him/her unfit (“indecent”) to practice law in terms of the Code of Professional Ethics;
No dismissal or suspension from the function of judge or advocate; and
No involvement in an activity incompatible with the profession of advocate, particularly an activity undermining his/her professional independence.

The biggest changes from the old criteria appear to be the addition of the professional skills and “no prior dismissal” factors and the elimination of the trustworthiness element. Whether these changes will have any effect on the admission process and outcomes remains to be seen. The Pending Law on the Bar says nothing about the registration procedure or the appeal process, except for stating that the registration application is to be submitted to the KCA and the KCA board must decide on it within 60 days after submission. PENDING LAW ON THE BAR art. 5.1.

**Factor 11: Non-discriminatory Admission**

*Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
<th>Trend: ↑</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discriminatory admission is unlawful in Kosovo and does not appear to happen in practice. Women are only 10% of registered advocates, but this constitutes an improvement from 7% in 2004 and there is no evidence of discrimination against women in admission decisions. Minorities other than Roma are reasonably well represented in the profession.</td>
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</table>

**Analysis/Background:**

The 1979 Law on Advocacy says nothing about non-discrimination in the consideration of applicants for registration as advocates. This law is supposed to be replaced by the Pending Law on the Bar, which also contains no provisions forbidding discrimination in admission decisions. More generally, though, the Constitutional Framework that governs Kosovo states that all persons “shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.” 1979 LAW ON ADVOCACY art. 3.1. The Constitutional Framework goes on to incorporate certain international declarations and conventions, several of which contain broad non-discrimination provisions. CONSTITUTIONAL FRAMEWORK art. 3.2 In addition, the Assembly of Kosovo adopted the Anti-Discrimination Law in 2004, and it prohibits discrimination in, among other things, “access to employment or occupation” and “membership in any organization whose members carry on a particular profession.” ANTI-DISCRIMINATION LAW art. 4(a) and (d). Art. 2.1 of the New Law on the Jurisprudence Exam, forbids taking into account differences based on gender, religion, nationality or similar groupings in determining persons eligible to take the examination. It is therefore quite clear that the KCA may not lawfully discriminate against
persons seeking to register as advocates on the grounds of gender, race, religion, nationality, ethnic origin or other protected classifications.

There is no evidence that the KCA or other parties discriminate against women or minorities in the admission process. The 2004 decision of the Executive Council to reject the registration application of an ethnic Serb who was the former warden of a prison where detainees were mistreated appears to have been adequately justified on the merits. See Factor 10 for a more in-depth discussion. The KCA has created a special committee on women and minorities (including among its members one Serb and three women) that is pursuing outreach programs to attract these groups to the bar, assist them through the admissions process, and insure they are treated fairly once admitted. At the time of the assessment visit, planning was already well underway for two June programs. One is a women’s panel discussion intended as the first in a series that would serve as a catalyst for a women’s network within the KCA. The other is a seminar to be held in two cities with significant ethnic Serb populations aimed at recent graduates from the Mitrovica law faculty, orienting them on the KCA and its registration procedure and helping them prepare for the jurisprudence examination. The KCA Executive Council itself has among its nine members one woman and one Serb, and a former KCA president is a woman. Special efforts are also made by the Kosovo government to encourage Serbs and other minorities to take and pass the jurisprudence examination. The examination itself is offered in three languages (Albanian, Serbian, and English), and there is minority representation on the committee that formulates and grades the examination.

According to the KCA administration, on April 25, 2007 there were 461 total advocates. Of that number, 48, or 10.4%, were women. While the representation of women in the profession is by no means proportionate to their share of the overall population, it does constitute progress in relation to the 7.1% share reported in the 2004 LPRI. In the 2006-2007 academic year, 45% of the 4,395 undergraduates enrolled in the law faculty of the University of Pristina were women, so there may be further progress in the future. Women applicants for admission to this law faculty are given preference over equally qualified men.

Ethnic minorities collectively appear to be reasonably well represented in the KCA. While no recent census has been conducted in Kosovo, and the 1998-1999 war prompted many relocations of residents, the Statistical Office of Kosovo [hereinafter SOK] estimates that the current population consists of 92% Albanians and 8% other minorities by ethnic origin. See SOK, Kosovo in Figures 2006 (Dec. 2006) at 10, www.ks-gov.net/esk/esk/pdf/english/general/kosovo_figures_06.pdf (these percentages compare to 88% Albanians, 7% Serbs and 5% others reported the previous year). According to the KCA administration, as of April 23, 2007 its membership consisted of 91.5% Albanians, 5.7% Serbs, 1.5% Bosnians and 1.3% Turks, which would mean 8.5% for all minorities. No Roma are listed as advocates; while the current representation of this group in the total population is unknown, earlier SOK figures showed them at 1.7%. See SOK, Kosovo and its Population (Sep. 2003, as revised), www.ks-gov.net/esk/esk/english/publication/pub_popu.htm. The 4,395 undergraduates currently enrolled at the University of Pristina law faculty did not include any Serbs, but there were 23 (0.5%) members of other minorities, including seven Roma. Serb students are enrolled at the law faculty in Mitrovica.
III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

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<th>Conclusion</th>
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<td>Advocates may practice independently, in office-sharing arrangements, or as law firms, though there is some historical reluctance to form law firms and there is apparently only one such firm in operation. Pending changes to the law governing the profession may encourage greater use of associations.</td>
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Analysis/Background:

Article 4 of the 1979 Law on Advocacy states that “advocates . . . are independent in performing their function,” and nearly all advocates in Kosovo appear to take this statement literally. Virtually all are sole practitioners, although some enter into office sharing arrangements in which they preserve their independence and have their own clients and income, but split the expenses of their common facilities, equipment and occasionally staff among themselves.

An advocate can have only one office, according to Article 26 of the 1979 Law on Advocacy. The 1979 Law on Advocacy goes on, however, to explicitly authorize advocates to merge their practices and create “common offices,” self-governing enterprises having the same status as other business entities. 1979 LAW ON ADVOCACY art. 28. The common office must have at least three advocates, who enter into a contract establishing their relationship and its terms and submit their common office to the KCA for registration. Id. arts. 29 and 30. The advocates participating in the common office must have equal status and preserve their independence in the course of their duties. Id. art. 31. The advocates are personally liable, jointly and severally, for obligations to third parties. Id. art. 33. The KCA Statute repeatedly refers to associations, co-operative arrangements and joint offices of advocates and its separate registers for them. See KCA STATUTE arts. 1, 4, 5, 23, 27 and 29-31. However, the KCA Statute does not flesh out their governance, economic relations and other terms of operation.

The Pending Law on the Bar also contemplates joint offices of advocates operating under a governing “statute” which establishes the mutual rights and obligations of the members. THE PENDING LAW ON THE BAR art. 32. The joint office, as well as its individual members, must be registered with the KCA. Id. Advocates are jointly responsible for the obligations of the office to outsiders as well as employees, but are individually responsible for meeting their professional and ethical requirements. Id. art. 33. Article 34 of the Pending Law on the Bar provides for so-called “bar societies” among two or more registered advocates, which appear to be separate legal entities organized as commercial associations or similar enterprises.

Despite what appears to be clear authorization for advocates to practice in teams, the assessment team learned of only one group of Kosovo advocates operating as a law firm in the traditional sense. This firm was reportedly a partnership of two advocates that employed one associate and a praktikant, registered as a commercial partnership with the Ministry of Economy and Finance. The main reason virtually all advocates practice on their own as sole proprietors appears to be historical; advocates have always operated independently and that’s how they (and the public) see themselves. There may also be some reluctance to enter into actual partnerships because of uncertainty over some provisions of the 1979 Law on Advocacy. For instance, does the requirement for “equal status” mean economic and managerial equality, with identical profit
allocations and votes, or does it just refer to the professional status, authority and independence of the members? Does the requirement that an advocate “not be a worker in a common enterprise” mean that a law firm cannot employ lawyers who would have the rights and responsibilities of advocates but would be paid salaries and not have votes or share in the firm’s profits? Or does it simply prevent employees of regular businesses and other non-advocate entities from simultaneously practicing law as advocates? The Pending Law on the Bar does not mention “equal status” in this context and is less specific in its ban on workers (“not involved in an activity in contradiction to the profession of [advocate] and particularly an activity undermining his or her professional independence”), so some of the hesitation may go away when it is finally approved.

As advocates begin to see their roles as extending beyond criminal defense work into the full range of legal practice, and as international influences expand their reach into Kosovo, it is expected that advocates will recognize the need, perhaps the inevitability, of joining forces into law firms. Firms offer the benefits of depth, greater specialization, mutual consultation, pooling of expenses, greater marketing opportunities and often improved economic results, while preserving the professional independence of their members. They provide a mechanism for new advocates to find work and obtain experience under the watchful eye of seasoned mentors, while contributing to the profits of the firm. These benefits should in turn improve the status and influence of the profession, and better enable it to meet challenges likely to come from international competition.

Factor 13: Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

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<td>The availability of current laws and jurisprudence is spotty at best, even for advocates having access to computers (and many do not). While some advocates do very well economically, the overwhelming majority are not adequately compensated for their services.</td>
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Analysis/Background:

The access by advocates to laws in force and jurisprudence continues to be erratic. This is partly because current and comprehensive sources are inadequate, and partly because the most commonly needed sources are available only on line and many advocates lack computer skills or access.

In the case of laws and regulations, UNMIK has a web site that contains an official gazette with all of its regulations and administrative instructions in three languages, including regulations approving laws passed by the Assembly of Kosovo since 1999. This gazette, while useful, does not include all laws applicable to the province, such as those enacted before 1999 by prior governments that are nondiscriminatory and have not been replaced by new Kosovo laws. There is also a lag time of several months before a new law or regulation is posted on the site, and there is no hard copy counterpart published. The Assembly of Kosovo and the government have instituted their own official gazette, also in three languages, which is available both online (under construction) and in hard copy; however, this gazette did not commence operations until 2005 and is not issued that often. The ROL Initiative offers compact discs of Kosovo laws to advocates, but they are also incomplete. For several years, the Kosovo Law Center [hereinafter KLC] made hard copy compilations of laws available to the public, including advocates, but it lost its funding for this purpose and a later contractor reportedly failed to do its job. The Criminal
Defense Resource Center was established to provide resources, including international conventions and legal authorities, to criminal defense attorneys representing defendants accused of human rights violations and war crimes. It was never intended to provide resources to ordinary advocates, however, and it also lost its international staff and funding after a few years. It now operates on a greatly scaled-back basis as an arm of the KCA. Even to the extent laws and regulations are available, they are not well-indexed or codified in a user-friendly manner. There does not appear to be any law reporting service that operates on a self-sustaining basis and would be able to continue without extensive international support.

Jurisprudence is available only to the extent that decisions of the Supreme Court of Kosovo are selected for publication by the KLC in a separate bulletin. This resource is helpful but not always current and, of course, is not comprehensive. Many Supreme Court decisions go unpublished, and lower court decisions are never included. It is, therefore, difficult for judges as well as advocates to know what the jurisprudence of Kosovo is.

The KCA lacks the facilities and wherewithal to be a useful source of legal information. It has only a small office, and its library consists of a book case in the president's office having only a limited collection and no place to sit down and read it. Its only computers are used for internal KCA administration, data processing, registration and financial records. The KCA does publish a bulletin (in both Albanian and Serbian) that includes major legal developments, but it is incomplete and published irregularly, reportedly once or twice a year. To learn of new developments in the law, many advocates are dependent on information shared at KCA meetings and on conversations with court personnel. The KCA Statute contains provisions regarding the KCA library and bulletin, but they appear to be more aspirational than realistic under present conditions. See KCA STATUTE arts. 151-155, 163-165. An NGO, the Lawyers’ Association-NORMA, also collects legal literature and publishes newsletters, primarily on matters of gender equity.

With respect to remuneration, there are no official statistics or even informal estimates disclosing compensation information for advocates. The nearly universal view is that comparatively few advocates are doing well, some because of their established reputations and demonstrated skills and others allegedly due to improper or illegal conduct. The overwhelming majority of advocates are believed to be struggling to get by. The Kosovo economy is very weak, and many clients or prospective clients are poor. Many advocates’ offices, including those of experienced practitioners, are tiny one-room facilities with limited furnishings and equipment and no support personnel or room for support personnel. New advocates face the added burdens of starting up their offices and of having just paid for their legal education, jurisprudence examination, KCA registration and a year’s worth of KCA monthly dues; they also lack the name recognition needed to bring in clients and the funds required to advertise their professional services.

Pursuant to Article 23 of the 1979 Law on Advocacy, the KCA has the authority and responsibility to publish a fee schedule setting compensation amounts and expense reimbursement levels for advocates for different services and circumstances. This remuneration schedule is set forth in the Tariff adopted by the KCA Executive Council on December 12, 2002 [hereinafter Tariff]. The Tariff sets fees in criminal and civil litigated matters essentially on a “piecework” basis, authorizing separate charges for drafting different pleadings and motions and for appearances and other actions taken during the course of the case. Similar provisions cover drafting of contracts and other legal documents (where the advocate may charge either the Tariff amount or up to 1% of the contract value), giving of legal advice and opinions, review of documents, and other legal services. The Tariff permits the advocate to charge less than the published figure, but not less than 50% of that amount. TARIFF art. 4. It also allows the advocate to request a fee higher than the Tariff level, but not more than double the established amount. When providing legal services to foreigners, an advocate may charge the client based on the tariff applicable in the client’s country. Id. art. 2. The Tariff has been criticized for being too low by some advocates who believe they should be able to charge whatever the market will bear. For most others,
though, the problem is attracting clients who are able to pay even the amounts set forth in the Tariff. The differing perspectives of advocates and the KCA concerning the reasonableness and rigidity of the Tariff were recently noted in Musliu, Advocates “war” with one another, LAJMI (Apr. 15, 2007) at 5. There is a proposal to amend the Tariff to allow advocates to charge whatever fee they and their respective clients consider fair, provided it is memorialized in a written agreement; this proposal is to be considered at the July meeting of the full KCA assembly. The KCA assembly approved this amendment to the Tariff at its meeting on July 7, 2007.

Many advocates, especially those newly registered, rely on income from being a court-appointed counsel (known locally as “ex-officio” counsel) in criminal defense cases. These appointments are made by the prosecutor during the pre-trial stage and by the court once the case is ready for trial. The established practice is to pay the ex-officio counsel 30 Euros for each action taken, up to a maximum of 250 Euros in any given month regardless of the number of actions taken or clients represented. During the assessment team’s visit, this monthly maximum was doubled to 500 Euros, reportedly in response to the urging of the KCA and the judges’ association. The 30 Euro figure, however, was not changed. There were also complaints of a long lag time until payment is actually made by the authorities. On the other hand, several respondents criticized the diligence and performance of many ex-officio counsel, intimating that in some cases these advocates may actually be overcompensated for their services.

Between July 2001 and August 2005, a program funded by the European Agency for Reconstruction offered low income persons legal aid through the KCA in civil and administrative matters. This was an additional source of employment for advocates, but it ended when the funding ceased. UNMIK Regulation No. 2006/36 On Legal Aid (June 7, 2006) [hereinafter LEGAL AID REGULATION], calls for legal aid to be provided by advocates for disadvantaged individuals in a broad range of criminal, civil and administrative matters, with compensation arrangements to be worked out. So far, however, the administrative structure for implementing this Regulation is not entirely in place and no funds have been appropriated for the work of legal counsel. If and when it is fully implemented and funded, it has the potential to increase employment opportunities and remuneration levels for advocates.

The economic conditions facing advocates, while discouraging, are not significantly different from those encountered by other legal professionals. According to one source, new municipal court judges and prosecutors make 380 Euros per month (after tax), while new district court judges and prosecutors earn 480 Euros monthly (also after tax). Another interviewee said that the Chief Prosecutor and the President of the Supreme Court receive only 560 Euros after tax each month (650 pre-tax), seemingly low for persons at the top of their respective legal professions. In Kosovo as a whole, the average worker in the private sector earns 211 Euros per month while the average public sector worker brings in 190; it was not disclosed whether these amounts are before or after taxes. See supra Kosovo in Figures 2006.

Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

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<td>There are some CLE programs available to advocates in Kosovo, but they are relatively uncommon and tend to be organized and funded mainly by international sponsors. Advocates have an ethical obligation to continue their legal studies, but the obligation is very general and no minimum number of hours is mandated.</td>
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Analysis/Background:

There is nothing in the 1979 Law on Advocacy that provides for continuing legal education or obligates advocates to maintain, improve, or update their professional skills and knowledge. In contrast, the Pending Law on the Bar specifically obligates advocates to participate in CLE programs and other activities as provided by the KCA Statute and other legal documents, with annual hour minimums or expectations to be determined by a normative act of the KCA. See PENDING LAW ON THE BAR art. 16. The KCA Statute refers to CLE only to the extent it calls “build[ing] up permanently the professional level of both advocates and professional assistants …” one of the KCA’s tasks and assigns this responsibility to its Executive Council. KCA STATUTE arts. 4.3 and 76.8. There is reportedly a CLE commission within the KCA, but its existence and mandate are not reflected in the current KCA Statute. In addition, the Code of Ethics states that the advocate “should continuously expand his/her knowledge, should study legal literature and explore closely every current event, scientific and cultural progress, political events, etc.” CODE OF ETHICS art. 101. It does not, however, contain any specific CLE obligations or set hour minimums for participation in these activities. Accordingly, the present CLE responsibility of advocates is limited to an ethical obligation which is too loose and ambiguous to be meaningful or enforceable.

A limited number of CLE programs are made available for advocates in Kosovo. They are typically held through KCA auspices, but organized and funded by international donors such as the OSCE, the Council of Europe, the United States Agency for International Development, and the ROL Initiative. Specific numbers, topics, locations and participation figures for seminars were not provided to the assessment team, but there have reportedly been programs on Kosovo’s new Criminal Code and Criminal Procedure Code held in numerous municipalities around the province. Others have covered civil law, administrative law, plea bargaining and other subjects, usually in lecture format but more recently applying interactive learning techniques. Some have been held in other countries on various topics. The OSCE provides twice monthly training programs for praktikants to help prepare them for the jurisprudence examination. The KCA occasionally arranges training programs jointly with the Kosovo Judges Association and/or the Kosovo Prosecutors Association. Another organization, the Lawyers’ Association-NORMA, has organized and conducted numerous workshops, seminars and roundtables around Kosovo, focused primarily on family law and women’s issues and available not only to advocates but typically to the public as a whole. Until a few years ago, the Kosovo Law Center offered CLE with funding from the European Agency for Reconstruction, but that funding has ended. By the same token, the Criminal Defense Resource Center had earlier offered some CLE training but it has also lost its international financial support and been forced to scale back its efforts.

There can be little doubt that there is a great need for CLE for advocates in Kosovo. There is a broad consensus that legal education is inadequate to prepare graduates to practice law, and the praktikant program, while helpful, does not fully overcome that deficiency. Laws and jurisprudence are constantly changing in Kosovo, but are not readily available to all advocates. European and other international conventions and laws are or will be relevant to practicing lawyers in Kosovo, but there is no systematic effort underway to prepare them in these areas. Older advocates acquired legal knowledge in law school that may well no longer be accurate or relevant, and that may not have included topics relevant in a market economy. An entire generation of Kosovar Albanians was barred during the 1990s from attending or teaching law school openly in regular classrooms and from taking the jurisprudence examination, obviously impacting their professional competence. A judicial training institute in Kosovo provides advanced programming for judges and prosecutors, but it is not available to advocates. This institute will continue to widen the gap in skills and knowledge among these legal professions unless CLE for advocates is greatly enhanced and mandated.

A major obstacle to CLE opportunities and participation is economic and attitudinal in nature. Many advocates believe it is more advantageous for them to practice law than to study it, so pass
up existing CLE programs in favor of client work, often court-appointed (“ex-officio”) counsel engagements. This view is so strong that it is often necessary for CLE providers to pay travel and lodging expenses for out-of-town advocates to participate. Even then, some advocates will refuse to attend a seminar unless they are compensated for their time away from client work. Unfortunately, the fact most international sponsors do not charge registration fees, do pay travel and lodging expenses and sometimes offer added compensation merely reinforces this attitude and postpones the day when CLE in Kosovo can be self-sustaining. The only apparent solution is for the KCA to mandate minimum hours of annual CLE instruction, monitor compliance, provide the necessary programs, and charge what it takes to cover the costs through either user fees or increases in dues. It may be appropriate to phase in this solution over several years, but it should be fully in place before international funding dries up.

One way to improve and update the knowledge of advocates is to encourage them to specialize and then to offer, and require participation in, CLE courses according to specialty. Specialty recognition is already contemplated by Articles 44 and 45 of the 1979 Law on Advocacy, Article 9 of the Pending Law on the Bar, and Articles 156-162 of the KCA Statute. To date, however, no steps have been taken by the KCA to certify advocates for specialties within the profession.

**Factor 15: Minority and Gender Representation**

*Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.*

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<td>While some progress has been made over the past few years, women continue to be greatly underrepresented among members of the KCA. Official population estimates in Kosovo, if accurate, suggest minorities other than Roma are reasonably well represented in the ranks of the advocate profession.</td>
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**Analysis/Background:**

According to the KCA administration, on April 25, 2007 there were 461 total advocates. Of that number, 48, or 10.4%, were women. While the representation of women in the profession is by no means proportionate to their share of the overall population, the current 10.4% figure does constitute a 46% increase, and therefore significant progress, in relation to the 7.1% share reported in the 2004 LPRI. In the 2006-2007 academic year, 45% of the 4,395 undergraduates enrolled in the law faculty of the University of Pristina in the city of Pristina were women, so there may be further progress in the future. See Factor 11. Women applicants for admission to this law faculty are given preference over equally qualified men.

Ethnic minorities collectively appear to be reasonably well represented in the KCA. While no official census has been conducted in Kosovo since 1981, and the 1998-1999 war prompted many relocations of residents, the SOK estimates that the current population consists of 92% Albanians and 8% other minorities by ethnic origin. See *supra Kosovo In Figures 2006*. According to the KCA administration, as of April 23, 2007 its membership consisted of 91.5% Albanians, 5.7% Serbs, 1.5% Bosniaks, and 1.3% Turks, which would mean 8.5% for all minorities. No Roma are listed as advocates; while the current representation of this group in the total population is unknown, earlier SOK figures showed them at 1.7%. See *supra Kosovo and Its Population*. The 4,395 undergraduates currently enrolled at the University of Pristina Law Faculty in the city of Pristina did not include any Serbs, but there were 23 (0.5%) members of other minorities, including seven Roma. Serb students are enrolled at the law school in Mitrovica.
An excellent study of this issue was made by the OSCE based on earlier data available last year. See OSCE, *Gender and Minority Community Representation in the Kosovo Chamber of Advocates* (November 2006). Among the reasons cited for the underrepresentation of women in the profession were historical legacy (there were no female advocates registered in Kosovo until 1974); perceived gender bias; the public perception of women lawyers; lack of childcare facilities, family support and flexible working hours; and a preference among many female lawyers for other legal professions within the judiciary, civil service or NGO sector. *Id.* at 14-16. The report noted that women constituted 26% of judges and 18% of prosecutors, but only 9% (presently 10.4%) of advocates. *Id.* at 9 and 12-13. Using earlier figures showing that non-Albanians made up 12% of the overall population, the OSCE report concluded that minorities were underrepresented in the KCA with only 9% of its members. The latest estimate from SOK showing ethnic minorities at 8% of the population as a whole, along with current KCA data placing minorities at 8.5% of advocates, suggests that minority communities in Kosovo taken together are now reasonably well-represented in the KCA. Again, however, there has been no new census of the population so the overall minority component cannot be verified.

Increasing the involvement of women and minorities has become a priority of the KCA, which appointed a gender and minorities committee charged with improving the conditions and representation of these groups in the advocate profession. This committee has one Serb and three women among its members. In this connection, the KCA Executive Council has one Serb and one woman among its nine members, and a former KCA president is a woman. Working with the ROL Initiative, the KCA’s Women and Minorities Committee has been actively at work planning programs and initiatives toward the recruitment and retention of women and minorities in the profession. In June, the Committee plans to hold the first in a series of panel discussions bringing together women legal professionals, senior women law students and recent graduates to share advice and experience, with the aim of developing a women’s law network within the KCA and addressing the disparity between the percentage of women law students (45%) and that of women advocates (10.4%). The Committee has also scheduled June seminars to be held in Gjilan and Mitrovica, areas with substantial ethnic Serb residents, directed at recent graduates from the heavily Serb law faculty at Mitrovica. The seminars, funded jointly by the KCA and the ROL Initiative, would introduce these graduates to the KCA, make them familiar and comfortable with its policies and registration procedures, and help them prepare for the jurisprudence examination. These seminars were held as scheduled in June 2007, with significant success reported.

Women and minority advocates report very little, if any, discrimination in their daily professional activities. One female source mentioned that police or male lawyers have tried to steer prospective clients away from her because of her gender, but, to her knowledge, have been unsuccessful. Virtually all women and minority interviewees stated that they had never faced or observed discrimination in the courts, whether from judges, prosecutors, opposing counsel or court support staff. In one recent incident, a Serb advocate reportedly was denied a copy of a document the advocate needed to use at trial and was clearly entitled to receive, but the judge refused to provide it and the court president declined to hear the advocate’s complaint. The advocate was not sure whether the problem was due to discrimination against a Serb advocate and client or an equality of arms issue. This incident was clearly exceptional in the experience of that and other Serb advocates, based on interviewees’ comments.
Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

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<td>The KCA has adopted a laudable, comprehensive Code of Ethics, but it does not appear to be fully internalized and regularly followed by its members. Numerous disturbing allegations were made, and there appears to be a resulting lack of public trust in the profession. Recognizing this problem, the KCA has been working to revamp its Code of Ethics and disciplinary model to improve the Code of Ethics’ acceptance, compliance and enforcement.</td>
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Analysis/Background:

The 1979 Law on Advocacy provides that the KCA “issues the Code of Professional Ethics for Advocates.” 1979 LAW ON ADVOCACY art. 9. It goes on to direct that the Code of Ethics “include general rules governing the conduct of advocates in the course of their duty, basic moral standards and other norms in relation to the persons whose juridical interests they represent and the social community, advocates’ responsibility standards and other rules that insure an honest and competent accomplishment of duty.” Id. The 1979 Law on Advocacy itself contains some generally phrased professional obligations incumbent on advocates, including duties to act honestly, preserve the confidentiality of privileged information, provide legal assistance when asked (unless otherwise impermissible), avoid certain conflicts of interest, resign from representations under certain conditions, and deliver the case file to the former client upon resignation. Id. arts. 14-19. Similar obligations are imposed by Article 12 of the Pending Law on the Bar.

Pursuant to this authority and directive, the KCA Executive Council prepared and proposed to the full Assembly of Advocates the Code of Ethics in 2005, which was duly adopted by the membership. This is apparently the successor to a comparable 2004 version, and presumably to even earlier iterations dating back to 2001. The Code of Ethics sets forth some preliminary principles and then spells out more detailed provisions pertaining to: professional secrecy; relations with the client (including some conflict of interest rules); defense and representation in criminal cases; relations with the KCA, relations with courts, administrative bodies, and other state organs; communication with the client about compensation, relations with the opposite party, mutual relations between advocates, relations with praktikants of advocates, legal assistance to people in need, management of the advocate’s office, advertising and solicitation, and reimbursement of expenses by clients. Compared to the codes of professional responsibility found in many other civil law countries, especially those coming out of communist rule and conflict situations, the Code of Ethics for Kosovar advocates is remarkably comprehensive and detailed.

Only a couple of comments were received by the assessment team with respect to the contents of the Code of Ethics. One source criticized the perceived rigidity of the advocate’s obligation to abide by the KCA’s Tariff on legal fees, believing that the advocate should be able to charge what the market will bear and the client is willing to pay. In this connection, Code of Ethics Article 108 does allow the advocate to accept compensation in excess of the Tariff amount, but only if it is spontaneously offered by the client and does not significantly exceed the value of the advocate’s services. A recently approved amendment to the Code of Ethics will permit the advocate and client to enter into a written agreement setting a fee they consider fair without regard to the Tariff. Another respondent mentioned that the advertising provisions of Article 103 provoked some controversy within the KCA membership, but the specific issues and positions on this topic were not disclosed.
At the time the KCA Assembly was considering the Code of Ethics and for some period of time thereafter, significant efforts were made to educate advocates on its provisions. In addition, praktikants in advocates’ offices who are fortunate enough to be selected for KCA stipends are contractually obligated to learn the Code of Ethics as part of their internship duties. A candidate’s knowledge of the Code of Ethics is not, however, a topic tested in the jurisprudence examination or otherwise considered in the KCA admission process. There are apparently no ethics courses required or offered by law faculties, although some professors may work ethical scenarios and issues into their substantive course lectures.

The principal complaints involving the Code of Ethics concern the extent to which it is violated and the lack of real enforcement mechanisms and willpower to apply these by the KCA. While there are undoubtedly numerous advocates who follow the Code of Ethics zealously, there are clearly some who do not, based on comments received by the assessment team. Examples were provided of advocates who allegedly: greatly exceeded the fee limitations under the KCA Tariff; demanded a fee from a criminal defendant even though the advocate was separately paid as a court-appointed “ex-officio” counsel; refused to accept ex-officio counsel appointments at all; represented a client in a case where the advocate’s employer, a municipal agency, was the opposing party (simultaneously violating prohibitions against both incompatible employment and conflicts of interest); as defense counsel in a civil case appointed a replacement for him/herself where the replacement had previously served as plaintiff’s counsel in the same case; engaged in improper advertising; regularly paid police officers or prosecutors to refer criminal defense clients to the advocate; routinely made gifts to judges and initiated ex parte conversations with judges about pending cases; intentionally made inaccurate or misleading statements of fact or unfounded arguments in briefs and hearings before courts; paid bribes to judges and prosecutors to achieve favorable results for clients, or accepted funds from clients for that purpose but retained them; refused to give copies of case documents to clients; or failed to appear for a court hearing without notice or explanation. Perhaps the most common and recurring complaint involved advocates, especially when acting as court-appointed ex-officio counsel, who were unprepared, passive, and seemingly indifferent to the outcome of their cases in clear violation of their duty to represent their clients “with diligence and zeal.” CODE OF ETHICS art. 32. Several of these examples involve violations not only of the Code of Ethics but also of the 1979 Law on Advocacy and criminal laws. See also OSCE, Legal Representation in Civil Cases (June 2006) at 11–16, available at www.osce.org/documents/mik/2007/06/24936_en.pdf.

There is no way to know how widespread these ethical problems are, but the perception within the ranks of advocates, among judges and prosecutors, and in the public generally is a source of serious concern. The perception alone is troublesome, as it encourages more improper conduct (“everyone does it”) and undermines public confidence in the legal system and ultimately the rule of law. Several respondents pointed to the fact that reportedly corrupt judges were allowed to become advocates as a stain on the profession and a source of public distrust. Most interviewees stated that the biggest problem is the lack of enforcement of the Code of Ethics, with many open or at least widely suspected breaches going unpunished. See Factor 17.

The KCA leadership is well aware of the negative perceptions of advocate ethics and is determined to improve in this area. It has appointed an ethics committee charged with reviewing and revamping the Code of Ethics to improve its acceptance and compliance within the profession and to insure it is effectively enforced. This committee worked diligently for over six months with the assistance of the ROL Initiative, studying other international approaches, discussing problem areas, and considering possible solutions. Significant amendments to the Code of Ethics and to the disciplinary regime established in the KCA Statute were approved by the KCA assembly at its July 7, 2007 meeting. It is too soon to predict whether these changes will improve advocate adherence to, and enforcement of, the Code of Ethics.
As a separate matter, the KCA (with the support of the ROL Initiative) in early April 2007 recorded and began telecasting a public service announcement in which the KCA president informed the public of their right to file complaints against advocates and how to do so. The KCA has identified advocate ethics and discipline as an integrated problem and has taken concrete steps to address and resolve it.

**Factor 17: Disciplinary Proceedings and Sanctions**

*Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.*

<table>
<thead>
<tr>
<th>Conclusion</th>
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<tr>
<td>Pursuant to law and its internal statute, the KCA has the procedure and organs in place to discipline advocates who violate the standards and rules of the profession. It appears to be reluctant to use them, however, except for advocates charged or convicted in the criminal justice system. Advocates are rarely, if ever, subjected to prosecution in the Chamber’s disciplinary courts for violations of the Code of Ethics.</td>
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**Analysis/Background:**

The 1979 Law on Advocacy provides that the KCA is “an independent, professional and self-governed organization.” 1979 LAW ON ADVOCACY art. 7. Consistent with its self-regulatory authority, the KCA is empowered and required to adopt a code of professional ethics and to exercise disciplinary authority over its members. *See id.* arts. 9, 64. The Pending Law on the Bar contains comparable provisions in Articles 10-11, 19-20 and 40.

The 1979 Law on Advocacy calls for suspension of an advocate’s license if he/she is placed in police custody or if (in certain cases) there is a criminal or disciplinary proceeding initiated against the advocate for an offense that renders him/her unfit for the profession. 1979 LAW ON ADVOCACY art. 46. The KCA may decide the suspension on its own initiative or at the recommendation of the KCA disciplinary prosecutor. *Id.* The suspension may in grave situations continue until the end of the disciplinary proceedings against the advocate. *Id.* art. 47. The advocate also loses the right to practice advocacy in certain situations set forth in the law, including ceasing to meet the qualification requirements for admission, disability, and failure to practice without just cause for more than six months. *See id.* art. 48. The termination decision is also made by the KCA, and constitutes an action against which the terminated advocate may initiate an administrative contest. *See id.* art. 49. As noted under Factor 10, this means that the advocate may appeal within the KCA and thereafter seek judicial review by the Supreme Court of Kosovo. Provisions exist for reapplication for registration as an advocate in most circumstances. *Id.* art. 51. These suspension and termination provisions apply to what may be called “external” events: conditions or circumstances that do not originate with an internal KCA disciplinary proceeding.

The 1979 Law on Advocacy provides for advocates (as well as advocate praktikants, or interns) to be disciplinarily responsible for abuse of the duty and prestige of advocacy. 1979 LAW ON ADVOCACY art. 63. The KCA was charged with defining such abuse and devising procedures for determining if it incurred and sanctions to be imposed. *Id.* art. 64. Possible punishments may range from notice to a warning, a fine, or “temporary interruption of the right to practice” for a period of six months to five years. *Id.* art. 65. If the punishment is a temporary interruption of the right to practice, the sanctioned advocate may seek judicial review by the Supreme Court of Kosovo. *Id.* art. 68. Except where this law or the KCA Statute provides otherwise, the rules to be followed in these disciplinary proceedings are to be those applicable to criminal proceedings. *Id.* art. 69.
Article 60 of the KCA Statute previously provided for both first and second instance disciplinary prosecutors and disciplinary courts within the KCA governing structure. However, substantial revisions to the KCA Statute were approved by the KCA assembly at its July 7, 2007 meeting. Among these revisions were the deletion of positions of first and second instance disciplinary prosecutors and their replacement by a five member "Committee for Client Relations" appointed by the assembly from among the KCA membership. See KCA STATUTE arts. 60, 71, 99-101. The disciplinary court was replaced by a "Disciplinary Committee" consisting of nine members, three of whom must be non-advocate members of the public; all members are subject to election and dismissal by the assembly. See id. arts. 60, 71 and 103-108. The Disciplinary Committee acts in three member panels appointed by the Committee chairman; there is no requirement that a panel have a public member. See id. art. 104. There is now a Disciplinary Appeal Committee, instead of a Higher Disciplinary Court, and it has nine members, including three non-advocate citizens; it acts in panels of five, which must include two public members. See id. arts. 113-115. These changes appear intended to spread prosecutorial discretion over a broader group of advocates and increase public involvement and confidence in these proceedings. The KCA Statute as amended is hereinafter referred to as the "Revised KCA Statute."

The KCA Assembly elects both prosecutors and their deputies for terms of three years without possibility of re-election. Id. arts. 99-102. The disciplinary court, which decides cases in first instance according to the law, the KCA Statute, and the Code of Ethics, has a president, his/her deputy and five judges (also elected by the KCA assembly for three-year terms without right of re-election). KCA STATUTE arts. 103-105. Judges act in panels of three appointed by the president of the disciplinary court. Proceedings of the disciplinary court are held in private. Id. arts. 106 and 109. The disciplinary court has jurisdiction to decide both minor and serious violations of the advocate's duties after receiving the proposal of the disciplinary prosecutor. The accused advocate is entitled to hire a defense counsel from within the accused's community to represent him/her in the proceeding. Id. arts. 106 and 109-111. However, the Revised KCA Statute dropped the "accused's community" residential requirement, and added a provision for appointment of counsel by the Disciplinary Committee if the accused advocate cannot afford one or if the alleged violation is serious and the interests of justice so require. See KCA STATUTE art. 111. The higher disciplinary court decides cases in second instance. It has a president, deputy and seven judges, all elected by the assembly for three-year terms, and adjudicates cases in panels of five appointed by the court president. The panels of the higher disciplinary court work in closed sessions unless they decide to invite the parties to participate for explanatory purposes. Id. arts. 113-116.

Article 18 of the KCA Statute lists 19 offenses that constitute serious violations of the advocate's duties, including breach of confidentiality obligations, charging remuneration in excess of the KCA's tariff figure, taking the client's funds or business, bidding at public auctions against the client's interests, abusing a client's trust and authorization, failing to pay dues to the KCA, not returning case documents to the client, and maintaining an office outside his/her main office or changing the main office without informing the KCA. Violations of an advocate's duty and prestige in the advocate's private life can also be a serious violation. Minor violations include breaches of the Code of Ethics where the consequences are not severe. Id. arts. 119 and 121. Possible sanctions include reprimand, fine, and suspension of the advocate's practice for a period ranging from six months to five years. The Revised KCA Statute adds a warning to the list of possible sanctions. See KCA STATUTE art. 122. The reprimand is intended for minor violations, the fine for either serious violations or recurring minor violations, and the suspension only for serious violations. Id. arts. 122-125. The statute of limitations for commencing a disciplinary action in the case of minor violations is six months after knowledge of the violation and one year after it was allegedly committed; for serious violations, the statute expires one year after knowledge and two years after commission. The statute of limitations is suspended during a criminal proceeding for the same violation. Id. arts. 146-150.
Procedurally, a request for disciplinary action originates with the KCA Executive Council, its president, the president of one of the KCA's seven regional meetings, the Kosovo Minister of Justice, or the head of UNMIK's Department of Justice. See id. art. 126. The Revised KCA Statute also allows any citizen or advocate to initiate a disciplinary action. See id. Based on this request, the KCA disciplinary prosecutor initiates the proceeding. Individuals having complaints about advocates may route them through one of these channels; in practice, despite the wording of the KCA Statute, many file them directly with the disciplinary prosecutor or the KCA Executive Council. The disciplinary prosecutor sends a copy of the request to the accused advocate, who has 15 days to respond with his/her explanation. The prosecutor may meet personally with the advocate if the prosecutor desires to do so. Id. arts. 127-128. After these preliminary steps, the disciplinary prosecutor may determine that the charges are groundless, in which case he/she informs the party who requested the action and that party has 15 days to submit the complaint directly to the disciplinary court; the court has 30 days to make its decision, which is final. If the prosecutor confirms that the violation occurred, he/she raises charges and files them with the disciplinary court. Id. arts. 130-131. The disciplinary court president then appoints the panel, which can determine that no violation occurred, remand the charge to the prosecutor for supplementation, or put a temporary hold on proceedings if the outcome is dependent on a pending criminal proceeding. Id. art. 133. Either the prosecutor or the accused may appeal this decision to the higher disciplinary court. Otherwise, the disciplinary court schedules the hearing on the charge and so advises the parties. The hearing is held in KCA headquarters with the accused present, unless the accused is absent without justification and either had been heard or had the opportunity to be heard during the preliminary procedure. Id. arts. 135-137. After the hearing, the disciplinary court can either find the accused advocate guilty or discharge him/her from the accusations, and must issue a verdict. Copies of the verdict are sent to the accused, his/her counsel, the prosecutor, and the Minister of Justice. Id. arts. 139-142. Any dissatisfied party may appeal the verdict to the higher disciplinary court within 15 days, giving a copy of the appeal to the other party, who has a chance to respond. The higher disciplinary court deliberates in closed session and then affirms, amends or annuls the verdict of the lower court. The verdict is final, except for the possibility of appeal to the Supreme Court of Kosovo as noted earlier. See id. arts. 143-145; see also 1979 LAW ON ADVOCACY art. 49. The KCA reportedly informs the complainant of the outcome of the disciplinary action.

The KCA does not publish the results of disciplinary proceedings, even on an anonymous basis, so it is virtually impossible to learn of disciplinary sanctions or whether they are applied fairly and consistently. Advocates who are suspended or who lose their licenses are stricken from the registries of the KCA in its headquarters, at its regions, and in the courts, so are (or should be) precluded from making appearances for clients until they are fully reinstated. This would not, however, keep them from continuing to do work on pending cases without appearing in court, and certainly would not prevent them from giving legal advice, drafting documents or engaging in other forms of legal practice outside the courtroom. There is no mechanism for notifying present or prospective clients of the fact an advocate is no longer authorized to practice, much less that he/she has been reprimanded or fined. (the Revised KCA Statute calls for disciplinary decisions to be publicized, but there is still no provision for public dissemination).

The assessment team was unable to obtain meaningful information from the KCA about disciplinary complaints against advocates (i.e. the number filed, the alleged grounds, the outcome at various levels, the resulting sanctions, and trends in these categories over the past few years). The KCA administration did report that from 2000 through April 2007, a total of 57 complaints were filed against advocates, resulting in licenses being revoked in five cases, complaints being dismissed as groundless in 42 cases, and 10 cases still pending. Another source stated that he/she had learned that in 2006 there were 14 complaints referred to the KCA disciplinary court, presumably after earlier screening, and that the court had dismissed 12 cases while disciplining the other two advocates. A different respondent indicated that the KCA received 30 complaints per year, of which three were referred for disciplinary action and resulted in a suspension of all three advocates. Another stated that the KCA has initiated four disciplinary proceedings against advocates so far in 2007 (through mid-April). A separate interviewee made the surprising
statement that, since the war, no advocate has been convicted by the KCA disciplinary court. This person said that disciplinary sanctions were imposed on three advocates directly by the KCA Executive Council on the basis of external criminal proceedings against the advocates, not through disciplinary proceedings within the KCA. Someone else declared that there had not even been any cases brought to the disciplinary court for consideration, at least through 2006. Yet another informant said that 20 complaints had been received over the preceding 18 months from clients of advocates, mostly in civil cases, of which three were suspended for criminal activities; the investigation was done by the police rather than the KCA.

As these statements would indicate, there appears to be a strong consensus that the KCA disciplinary machinery does not work very well. To be sure, some if not most complaints from unhappy clients involve conduct that is not actionable: delays in the judicial system, fees that seem excessive (but are actually within the KCA Tariff), disappointing case results, etc. Other complaints appear to have greater merit but are filed after the statute of limitations period. Even so, numerous respondents mentioned what they considered to be legitimate and timely complaints that go to the KCA and die. To the extent the KCA does discipline advocates, it appears that these actions merely bootstrap criminal arrests and convictions resulting from the efforts of outside institutions.

The biggest problem appears to be the lack of will within the KCA to exercise the powers it has been given under existing law. The assessment team repeatedly heard statements to the effect that “Kosovo is very small and everyone knows everyone else,” suggesting that familiarity made it difficult to impose punishment on colleagues who stray from the ethical path. Several advocates were even willing to give up self-regulation of their profession, suggesting that advocate discipline should become the responsibility of the Supreme Court where it would presumably be exercised more objectively and diligently.

Another difficulty apparently is that many members of the public who observe advocate misconduct do not report it, often because they do not know how to do so. To address this specific concern, the KCA recently began a campaign of recorded public service announcements on television stations in which the KCA president explained the process for filing complaints against advocates. The first telecasts aired only a week or so before the LPRI onsite visit, so it is too early to determine how effective this campaign will be.

The KCA leadership has recognized that enforcement of its Code of Ethics is a major problem, and has appointed an Ethics Committee responsible for revisiting and revising both the Code of Ethics and the disciplinary model for enforcing it. The Ethics Committee has been working diligently, studying other international models and discussing possible revisions, with a view toward presenting an integrated proposal to the full KCA Assembly in July (the revised KCA Statute was a product of this meeting). At this point, however, the KCA’s actual record of disciplining and sanctioning advocates who fail to meet professional standards appears to be inadequate.
IV. Legal Services

Factor 18: Availability of Legal Services

*A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.*

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<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
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<tbody>
<tr>
<td>While opinions differ over whether there are now adequate numbers of advocates in Kosovo as a whole, the present number seem to be reasonably well distributed throughout the regions except for a few remote areas. With Kosovo’s small geographic area and advocates’ freedom to practice throughout the province, the existing distribution appears to be fairly acceptable.</td>
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**Analysis/Background:**

According to the administration of the KCA, the 461 advocates registered as of April 25, 2007 were distributed among the seven regions of Kosovo as follows:

**DISTRIBUTION OF KOSOVO ADVOCATES BY REGION**

<table>
<thead>
<tr>
<th>REGION</th>
<th>NUMBER OF ADVOCATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pristina</td>
<td>191</td>
</tr>
<tr>
<td>Ferizaj</td>
<td>30</td>
</tr>
<tr>
<td>Peja</td>
<td>66</td>
</tr>
<tr>
<td>Gjakova</td>
<td>30</td>
</tr>
<tr>
<td>Prizren</td>
<td>69</td>
</tr>
<tr>
<td>Mitrovica</td>
<td>28</td>
</tr>
<tr>
<td>Gjilan</td>
<td>47</td>
</tr>
<tr>
<td>Total</td>
<td>461</td>
</tr>
</tbody>
</table>

The number of advocates in the Pristina region is disproportionately large, even taking into account the fact this region accounts for over a quarter of Kosovo’s population. Still, Pristina is where the seat of government is located, with all of its administrative apparatus, the highest courts and many of its business headquarters, all of which add to the need for advocates. The one region which appears to have the smallest number of advocates in relation to its population is Mitrovica, the area that includes much of the ethnic Serb population in Kosovo. The Mitrovica situation is complicated by the fact that a significant number of Serb graduates of the Mitrovica law school opt not to join the KCA. Instead, they often choose to register with the Serbian Chamber of Advocates and/or practice in the unofficial “parallel” courts that have been established in that region to serve the Serb population. In addition, advocates based in Serbia occasionally come to Mitrovica on a temporary basis to handle particular matters for Serb clients. As a result, the number of advocates actually serving the Mitrovica region exceeds the 28 registered with the KCA.

Within any given region, of course, there are remote municipalities and other areas where no advocates have regular offices. Articles 75-77 of the 1979 Law on Advocacy authorizes employees of legal services providers who meet the requirements for practicing advocacy, under certain conditions, to represent citizens before courts and administrative organs in areas where there are no or insufficient advocates to meet the need. Various nongovernmental organizations, both domestic and international, supplement the work of advocates in assisting refugees, women, human rights victims, and others dealing with a wide range of legal problems.
It should also be noted that, while an advocate may have his/her office in one region, the advocate is free to practice law anywhere in Kosovo for clients located in any region. With the small geographic area of the province, it is relatively easy for an advocate to travel from one end to the other and serve clients throughout Kosovo.

There are varying views as to whether there are sufficient advocates in Kosovo generally, with many taking the position that more advocates are needed. According to this position, too many people represent themselves in civil and even criminal court proceedings and, while in many cases this is for economic reasons, in other situations the problem is that insufficient advocates are available. More qualified advocates are also needed to advise and assist clients on nonlitigated matters, including drafting of contracts and other legal documents, provision of legal advice, and counseling on compliance with laws and regulations. Once the new Legal Aid Regulation is fully implemented and funded, there will be even greater demand for advocates to represent disadvantaged clients in criminal, civil and administrative matters. The contrary position is that there are already sufficient advocates, many of whom are struggling economically as it is and are both available and anxious to take on additional clients who can afford to pay for their services. Adding to the ranks of advocates simply increases the number of professionals seeking a piece of the same-sized pie. These proponents believe that it’s more important to increase the number of courts, judges and prosecutors to enable the system to dispense justice more quickly and efficiently, and that more advocates alone would merely add to delays and backlogs.

**Factor 19: Legal Services for the Disadvantaged**

*Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.*

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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
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The government of Kosovo offers free legal counsel to needy individuals in most criminal proceedings, but the compensation is fairly low and most established advocates rarely if ever accept these engagements. Many of these cases are, therefore, handled by relatively inexperienced advocates who often fail to serve their clients diligently, actively and zealously. Free legal aid to the indigent is no longer available in civil or administrative matters, but a recent regulation (which has not yet been fully implemented or funded) would establish a program for doing so. Some advocates provide *pro bono* representation from time to time, but no statistics on these efforts were available.

**Analysis/Background:**

**Criminal Cases:**

Article 3.2 of the Constitutional Framework for Kosovo incorporates “internationally recognized human rights and fundamental freedoms,” including those set forth in eight separate international conventions, declarations and similar documents. These include the European Convention on Human Rights. Article 6.3 of this Convention gives a person charged with a crime the right “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

Article 12(4) of the Criminal Proc. Code states that “if the interests of justice so require and if the defendant has insufficient means to pay for legal assistance . . . an independent defense counsel
having the experience and competence commensurate with the nature of the offense shall be appointed for the defendant on his or her request and paid from budgetary resources.” Only advocates registered with the KCA or in certain cases praktikants working under their supervision, can represent defendants in criminal cases. Id. art. 70. Article 73(1)(1)-(4) sets forth four circumstances in which it is mandatory that the defendant have counsel, including a disabled or incapacitated defendant, a detention on remand, an indictment for a criminal offense punishable by imprisonment of eight years or more, and proceedings under extraordinary legal remedies when the defendant is disabled or long-term imprisonment has been ordered. Depending on the circumstance, the mandatory defense may commence as early as the first examination by the police or prosecution. Under Article 73(2), if a mandatory defense is required and the defendant does not engage a defense counsel, the competent authority conducting the pre-trial proceeding (typically the prosecutor) or the president of the court (once the trial phase commences) is required to appoint ex-officio a defense counsel at public expense. Even where defense counsel is not mandatory, if the defendant is financially unable to pay for the cost of his/her defense and the court or competent authority determines that the appointment of defense counsel at public expense is required by the interests of justice, a defense counsel must be appointed ex-officio from government funds. Id. art. 74(1).

Before 2007, the Department of Judicial Administration of Kosovo was part of the Kosovo Judicial Council and was responsible for paying the fees of ex-officio counsel, whether appointed by the prosecution or the court. At the beginning of 2007, this Department was transferred to the Ministry of Justice, where it now pays only the fees of such counsel chosen by the prosecution. The administration of the Judicial Council currently handles payment of ex-officio counsel selected by the court. The fee arrangement for ex-officio counsel is 30 Euros per activity, whether a court appearance, representation at an interrogation by the police or prosecution, preparing and filing a claim or pleading, etc. There had been a monthly cap of 250 Euros on all payments a given advocate could receive from all ex-officio engagements, regardless of the number of activities undertaken by the advocate or even the number of separate engagements for which work was performed. During the onsite visit, the assessment team was informed that this monthly ceiling was being doubled to 500 Euros, reportedly as a result of pressure from the KCA and the judges’ association. The 30 Euro “piecework” amount, however, would remain the same. It was not clear whether the increased cap would apply to appointments made by both the prosecution and the courts, whether a single cap would apply to both sources of payments, or how payments by the two administrations would be coordinated and monitored. Advocates have complained not only about the amount of the fees in ex-officio cases but also about alleged delays in payment that often extend for several months (see Factor 13).

Most observers reported that the ex-officio counsel system is not working very well in practice. While appointment procedures vary in different bodies and regions, it is apparently difficult to find experienced advocates willing to undertake such appointments, and there are often delays before the defendant obtains the representation to which he/she is entitled by law. This problem exists despite an explicit statement in Article 9 of the Code of Ethics that an advocate cannot without justification reject an ex-officio case assigned to him/her, and a duty set forth in Article 16 of the 1979 Law on Advocacy to provide legal assistance to the party seeking it absent a conflict of interest or similar bar. Appointments often go to inexperienced advocates who lack the skills and reputation to attract clients otherwise. The courts and prosecution have learned not to waste time trying to get established advocates to agree to these representations. Related to this, many respondents indicated that ex-officio counsel are often unprepared, passive, and seemingly indifferent to the outcomes of their cases. They allegedly fail to make reasoned arguments in support of their clients’ positions and to offer objections to obvious procedural or evidentiary irregularities. Article 32 of the Code of Ethics requires an advocate to represent his/her client “with diligence and zeal,” regardless of whether or how much they are paid for their services, but it is clear that many ex-officio appointees fail to meet this standard. Whether the increase in the monthly cap on ex-officio compensation from 250 to 500 Euros will affect the willingness of more
competent advocates to take on these engagements, or the diligence of those who presently perform them, remains to be seen.\(^8\)

**Civil and Administrative Cases:**

Between July 2001 and August 2005, a program funded by the European Agency for Reconstruction offered low income persons legal aid through the KCA in civil and administrative matters (see Factor 18). This program ended when the funding ceased. The recent promulgation of the Legal Aid Regulation calls for legal aid to be provided by advocates for disadvantaged individuals in a broad range of criminal, civil and administrative matters. Depending on household income level, a person may receive legal representation on family law issues, housing matters, wrongful discharge from employment, immigration cases, social assistance benefits and a host of other topics. So far, however, the administrative structure for implementing the Legal Aid Regulation is not entirely in place. Funds have been appropriated for the internal operations of the legal aid commission and its coordinating body, but not yet for the advocates who will be performing the legal services.

A nongovernmental organization (NGO), the Lawyers’ Association-NORMA, has a small staff of full-time and volunteer attorneys who provide legal aid, primarily to women, on family law, employment, inheritance and social assistance matters. There are a few other domestic and international NGOs that offer limited legal assistance in fairly narrow areas to refugees, minorities and others having special needs. Kosovo also has an Ombudsperson who seeks to promote human rights and protect persons from abuse of authority by governmental units and other official institutions. The Ombudsperson, with seven field offices and sub-offices, assists citizens through intervention, mediation and publicity but does not actually perform legal services. See OSCE, *Legal Representation in Civil Cases* (June 2007), www.osce.org/documents/mik/2007/06/24936_en.pdf, at 6-8.

Aside from compensated programs, advocates in Kosovo are obligated under Article 16 of the 1979 Law on Advocacy to provide legal assistance to a party seeking it, except where conflicts of interest or other specific impediments exist. On the other hand, the 1979 Law on Advocacy gives the advocate a right to remuneration for his/her services and reimbursement of expenses as provided in the KCA Fee Tariff. 1979 LAW ON ADVOCACY art. 23. The Code of Ethics states, “If legal aid is not an option, and the party cannot afford to pay the advocate, legal assistance should be provided free of charge, because providing parties having social problems with legal assistance free of charge is part of the traditional obligation and honesty of the advocate.” Id. art. 54. This obligation was seemingly diluted by an amendment to the Code of Ethics approved by the KCA assembly on July 7, 2007, providing that the advocate “may” notify the client of the possibility of free legal assistance only if the client requests such assistance, that the advocate then “may” (not “should”) provide it to a client receiving social welfare, and the advocate “must” provide it only if obligated by the KCA (Articles 54 and 85). In keeping with this *pro bono* obligation, advocates do provide free legal assistance to needy individuals from time to time, but no statistics are kept concerning these activities. The new Legal Aid Regulation requires the KCA to “encourage the provision of *pro bono* legal services to vulnerable groups by its members and [to] set standards for professional conduct in that regards.” LEGAL AID REGULATION art. 7.4.

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\(^8\) Amendments to the Code of Ethics approved by the KCA assembly at its July 7, 2007 meeting reiterated more emphatically the advocate’s obligation to undertake *ex-officio* representations and stressed that the advocate must “show diligence and respect the priorities set” when providing such assistance.
Factor 20: Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

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<th>Conclusion</th>
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Except in certain narrow areas, Kosovo lacks either legislation or institutions for effective alternative dispute resolution, so it currently is rarely pursued or even recommended. There are laws that encourage settlement discussions and conciliation, and efforts are underway to rejuvenate the use of mediation. Advocates sometimes advise clients on these alternatives to court litigation, but they appear to be in the minority under present circumstances. Arbitration within Kosovo is contemplated by a 1984 law but is virtually never conducted there. New, comprehensive laws and mechanisms are needed for both mediation and arbitration.

Analysis/Background:

Mediation and Conciliation:

The Code of Ethics states that the advocate “should, if it is in the interest of the party, try to reconcile parties in the dispute without starting a judicial or other proceeding, and during the entire proceeding he/she must try to solve the dispute by agreement between the parties.” CODE OF ETHICS, art. 33. However, an amendment to the Code of Ethics approved by the KCA assembly on July 7, 2007, revised art. 33 to refer only to “plea bargaining,” suggesting no ethical obligation to encourage settlements exists outside the criminal defense context. Some advocates as attempt reconciliation between parties a matter of course, certainly in divorces and other family controversies where conciliation attempts are mandated, but they may be in the minority where other disputes are involved. See e.g. LAW ON MARRIAGE AND FAMILY RELATIONS, OG SAP Kos. No. 10/1984, chpt. 8. A couple of advocates stated that they do not recommend conciliation or settlement to their clients, as they believe the effort wastes time and tends to be fruitless once the parties have reached the stage of hiring advocates. The absence of a viable system of mediation and conciliation in most situations contributes to their reluctance to pursue those channels. It is conceivable that some advocates do not encourage settlement to avoid losing a potentially rewarding employment.

Article 228 of the Criminal Proc. Code authorizes the prosecutor to refer certain criminal cases to an independent mediator if the offense is punishable by a fine or imprisonment not in excess of three years. In making his/her referral decision, the prosecutor is required to take into account such factors as the defendant’s personality and prior criminal record, the extent of the defendant’s culpability and the circumstances of the offense. A mediation referral requires the consent of both the injured party and the defendant, and cannot take more than three months to be resolved. Id. Despite the existence of this mediation provision, no administrative procedure is in place to train and certify mediators or otherwise implement this law, so it is never used.

Various laws contain provisions intended to encourage settlement of disputes, whether criminal, civil or administrative in nature. For example, Article 474 of the Criminal Proc. Code applies to cases involving a single judge and a private charge. It says that the judge before trial may call the defendant and the private prosecutor to court to clarify issues and see if settlement can be reached. There is also an apparent consensus among major players in the justice system to permit plea bargaining in criminal cases, though nothing has been officially announced or drafted. In addition, Articles 321-322 of the Law on Contested Proc., which serves as Kosovo’s equivalent of a civil procedure code, calls for the first instance court in a civil case to inform the parties during the proceeding of the possibility of reaching a settlement as to some or all claims and to help them achieve a settlement. The Law on Contested Proc. also allows a party even before
filing suit to go to court with an offer of settlement, and the court is then supposed to invite the
other party to come to court to hear the offer. Law on Contested Proc. art. 323. Finally, the
Law on Admin. Proc. provides, “In the course of an administrative proceeding between two
parties, the responsible public administrative body shall endeavor to reconcile the parties to the
proceeding.” Law on Admin. Proc. art. 52. Reconciliation in administrative cases is not
permitted if it would be adverse to the public interest or the legal rights and interests of other
persons or entities. Id. It is unclear whether judges and administrative officials have been trained
in settlement techniques, how commonly settlement procedures are attempted, and the extent to
which they have succeeded in resolving disputes without trials, if at all.

The new Legal Aid Regulation directs the legal aid commission to “[employ] legal and other
professionals to provide mediation services and support the development of alternative dispute
resolution mechanisms.” This commission had not yet been fully constituted, let alone
commenced operations, at the time of the assessment team’s visit.

Kosovo reportedly has a long tradition of private, unofficial mediation by respected elders,
especially in smaller cities and villages, of disputes between families. These disputes could
involve any number and type of issues, but typically had provoked “blood feuds” or were likely to
do so. In recent years, however, mediation seems to be on the wane. Neither it nor other forms
of alternative dispute resolution are taught as courses in law school, and it does not seem to be a
major priority of the government. Still, there are initiatives underway which might offer hope for
the future. UNMIK Regulation No. 2000/45 On Self-Government of Municipalities in Kosovo
(Aug. 11, 2000) provides in Section 32 for standing mediation committees at the municipality
level, focused mainly on establishing whether the rights of an ethnic community or one of its
members had bee or would be violated. According to one account, mediation committees have
been established in almost all municipalities, though they rarely meet and have accomplished
little. See OSCE, Alternative Dispute Resolution in Kosovo – A Needs Assessment (Feb. 2005)
at 11. Kosovo’s Ombudsperson also has trained mediators on staff who attempt to resolve cases
of alleged human rights violations or governmental abuse of authority. In addition, there have
been reports of a fledgling mediation center underway in Gjilan. If this pilot project is successful,
it is likely to be expanded to other cities as circumstances allow. What appears to be needed is a
comprehensive law on mediation that would put in place all of the administrative machinery for
mediation, including a facility, qualified trainers, a certification process, and clear rules for the
conduct of mediation proceedings. Certainly, the notorious backlog in disposition of court cases,
with delays stretching up to five years before the final appeal is exhauster and slow execution
proceedings after that, provides a strong incentive and justification for expanded alternative
dispute resolution in all of its forms.

Arbitration:

The Law on Contested Proc. contains extensive provisions for arbitration of disputes before an
arbitration tribunal. See generally Law on Contested Proc. arts. 469-487. These articles
envision the use of arbitration either as an ad hoc method of resolving controversies as they arise
or as a prearranged contractual commitment made at the time a business or similar relationship is
established. Id. art. 470. The arbitration tribunal is supposed to be established within chambers
of commerce and other organizations as may be provided by law. Id. art. 470. Some procedural
rules are established in the law for this process. The arbitration decision is final, unless the
parties agreed to second instance arbitration, and may not be contested or set aside except on
grounds one might expect in laws of this nature: the arbitration agreements was not validly
made, the arbitration procedural rules were not followed, the decision omitted the requisite
rationale or is incomprehensible or self-contradictory, the tribunal exceeded its mandate, the
decision required a party to perform an unlawful act, and so forth. While these provisions would
seem to offer a framework for arbitration in Kosovo, the facts are to the contrary. The law itself
was enacted in 1984 under a totally different system of government, and refers to institutions and
other terms that are no longer existent or meaningful. There is an arbitration court within the
chamber of commerce, which does have list of possible arbitrators, but according to one source only one case has ever been sent to it. Apparently, commercial contracts with international companies tend to have clauses calling for arbitration, but they typically provide for the arbitration to take place in Paris or Vienna. Again, a modern and comprehensive law, including provisions for training, certifying and selecting arbitrators as well as more detailed procedural rules, is needed to provide a workable basis for this important system of dispute resolution in Kosovo.

V. Professional Associations

Factor 21: Organizational Governance and Independence

Professional associations of lawyers are self-governing, democratic, and independent from state authorities.

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<th>Conclusion</th>
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<td>The KCA, a mandatory membership group, is self-governing and democratically operated. Except for some limited and understandable oversight by the government and parliament, and except for judicial review of certain decisions affecting individuals, the KCA is fully independent from state authorities.</td>
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Analysis/Background:

The 1979 Law on Advocacy defines the term “legal assistance” and, with certain narrow exceptions, limits the performance of these services to advocates who have registered with the KCA. 1979 LAW ON ADVOCACY arts. 2, 3, 7, and 13. The KCA is “an independent, professional and self-governed organization.” Id. art. 7. It is empowered to admit or reject applicants for membership (Articles 10 and 39), to terminate an advocate’s registration (Articles 48-53), and to impose disciplinary sanctions for “abuse of the duty and prestige of advocacy,” (Article 64), subject in each case to the right of a dissatisfied applicant or advocate to initiate an administrative contest and obtain judicial review in the Supreme Court of Kosovo (Articles 40, 49, and 68). Among other responsibilities, the KCA is also authorized and required to establish its own internal governing statute and issue a code of ethics for advocates. Id. arts. 8-9.

The 1979 Law on Advocacy subjected the KCA to a limited level of governmental oversight. For example, its governing statute and its Fee Tariff had to be approved by the Council of the Socialist Autonomous Province of Kosovo [hereinafter SAP Council]. 1979 LAW ON ADVOCACY arts. 8 and 23. The SAP Council also had supervisory powers over the general acts of the KCA, with authority to stay the execution of any such acts that contradicted the Constitution or the law, and to request reports from the KCA. Id. arts. 10-11. “Socio-political communities” were also expected to supply material means and facilities for the work of advocates, and to cooperate with the KCA on issues involving the material status of advocates or the material obligations of advocates to their communities. Id. art. 12. The SAP Council no longer exists, of course, and its successor is presumably UNMIK or the Provisional Institutions of Self-Government. The Pending Law on the Bar re-emphasizes the independence of the KCA and the profession of advocate, as well as the right of the KCA to govern itself. See PENDING LAW ON THE BAR arts. 1.1, 1.3, and 21.1. The Pending Law on the Bar has a provision for oversight of general KCA acts by the government, with the latter empowered to suspend a KCA act that allegedly conflicts with the law until the Supreme Court can decide the issue; however, it emphasizes that oversight is limited to the KCA’s adherence to the law and “must not undermine the autonomy of the [KCA].” Id. art. 29.1. The KCA is still expected to cooperate with governmental institutions and other
organizations promoting human rights and enhancing democratic development of Kosovo, is accountable to the Assembly of Kosovo (parliament) and government for its work, must submit an annual report to parliament, and has to inform the parliament and government about its internal election results. Id. arts. 29.2-29.3, and 30. While the continuing role of the parliament and government in overseeing certain aspects of the KCA has the potential to be intrusive and even obstructive, there is no indication that this has been a problem, at least in recent years. These powers are not unreasonable for a mandatory membership association that is a creature of legislation, operates as a monopoly (at least in criminal defense cases), and has significant authority over the composition and conduct of its members. In practice, the KCA is able to operate independently without governmental control or intimidation, and without government funding of any sort. It is subject only to the restraints of its governing law and statute, judicial review in the limited circumstances mentioned earlier, and the will of its membership.

While the 1979 Law on Advocacy is largely silent on the internal structure and governance of the KCA, the Pending Law on the Bar contains a number of provisions in these areas. For example, it establishes five bodies within the KCA (the general assembly of advocates, president, board, disciplinary committee and audit committee), and calls for the members of the board, disciplinary committee and audit committee to be elected to four year terms and the president to a two year term (in each case with the right to stand for re-election). Id. art. 22. The assembly consists of all registered advocates, provides for it to meet on a request of 10% of members, authorizes it to act by majority vote if a 50% quorum is present, and sets out the competences of the assembly. Id. art. 23. These competences include election of all bodies, adoption of the KCA statute and code of ethics, adoption of the KCA’s budget and membership dues, and approval of CLE measures. Id. The Pending Law on the Bar also describes the role of the KCA president, the duties of the 11 member board, the functions and composition of the five member disciplinary committee, and the responsibilities of the five member audit committee. PENDING LAW ON THE BAR arts. 24-28.

The present KCA Statute sets forth its own structure and governance rules which are not entirely consistent with the Pending Law on the Bar. The KCA Statute, for example, calls for terms in elective office of three years for members of bodies and one year for the president (Article 61), provides for first and second instance disciplinary prosecutors and courts, recognizes meetings (assemblies) for the seven regions (Article 60), requires annual meetings of the general assembly and special meetings on the request of one-third of members (Articles 62 – 63), sets a 75% quorum for the assembly (Article 69), and, of course, contains much more detail concerning the operation of the various bodies of the KCA (Articles 62 – 116). There are conflicts between the KCA Statute and the Pending Law on the Bar, and the KCA Statute was amended by the KCA assembly at its July 7, 2007 meeting, reportedly with the aim of addressing these inconsistencies. However, a full English translation of the amended statute is not yet available.

The important considerations for purposes of this factor are that the assembly of advocates meets regularly, elects its bodies and officers democratically by majority vote, and approves all of the vital documents, policies, and other measures that affect the governance and conduct of the profession. Id. arts. 62-74.

An amendment which was reportedly approved at the KCA assembly’s July 7, 2007 meeting would reduce the size of the assembly to a total of 81 members (from nearly 500 at present) who would be elected from the seven regional meetings in proportion to the regions’ membership in the profession. This amendment is intended to make the annual meeting of the assembly more efficient and productive, and to increase the role and profile of the regional meetings.

The KCA has also formed special committees to concentrate on certain topics deserving of special attention. These topics are CLE, ethics, praktikants, and women and minorities.

Comments from respondents indicate that the KCA governance system is as democratic and participatory in practice as it is on paper. This does not, of course, mean that all advocates are
fully satisfied with all of its leaders and policies. The assessment team received isolated observations to the effect that the leadership positions tend to rotate among the same people, that there are insufficient representatives in KCA bodies from the ranks of younger advocates, and that the KCA should do more to serve its members and promote law reform. Still, all members are eligible to vote for the KCA leadership and to run for election themselves if they want to see changes. It should be noted that the new amendment mentioned previously would allow members to be able to vote only for their regional delegates to the condensed assembly, not directly for the KCA leadership.

Other membership organizations exist for certain branches of the legal profession. There are a Kosovo Judges Association and a Kosovo Prosecutors Association, bodies pursuing the interests of their respective members and other objectives. These are voluntary groups, unlike the KCA, that are funded by a combination of membership dues and contributions from international donors.

Before the war, there was a fairly active voluntary organization of legal professionals known as the Association of Independent Jurists, consisting primarily of Kosovo Albanians. It was engaged in human rights promotion, legislative lobbying and legal profession development activities. After the war, it changed its name to the Association of Jurists and tried to re-establish itself as a broader based bar association. At about the same time, however, the KCA was reconstituted and attracted international funding, and the Association of Jurists was unable to compete with it for members. The entity continues to exist, and individual members sometimes help draft laws and make media statements, but it appears to be largely dormant at this point. No information was received concerning its internal governance.

One source suggested that the KCA try to expand its constituency to encompass more than registered advocates, most of whom are criminal defense lawyers. In this view, all law graduates who practice law in civil and administrative cases or as in-house counsel for businesses or governmental agencies would (after passing the jurisprudence examination and meeting other requirements) be brought into the fold. There, they would be given formal recognition as practicing lawyers, would be able to participate in CLE and other bar projects, and would be subject to ethical rules and disciplinary measures. This suggestion would, of course, require significant changes in the traditions of the organized bar in Kosovo as well as in the KCA's governing laws and internal statutes. Another respondent thought that the KCA should hire a larger full-time staff to support the elected bodies and officers and to manage projects on a day-to-day basis. The elected leaders all have their own law practices, and lack the time to run all of the KCA's activities. In this person’s view, they should limit their involvement to overseeing the KCA staff and making decisions on policies and budgets.

Factor 22: Member Services

Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

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<td>The KCA provides some limited benefits for its members and for the legal profession generally. Some of its member services and other activities are provided at the initiative and with the funding of international sponsors, not on a self-sustaining basis. The KCA is perceived as having low standards for admission, discipline and CLE that reportedly reflect unfavorably on the profession.</td>
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Analysis/Background:

The 1979 Law on Advocacy states that the KCA “approves its own statute and other general acts important to the conduct of advocates and the promotion of advocacy.” 1979 LAW ON ADVOCACY art. 8. The KCA is also supposed to issue a code of ethics for advocates, and is the entity that admits, registers and disciplines advocates. Id. arts. 9, 10, 35, 49, and 64. In addition, the KCA registers and oversees advocate trainees (praktikants) and maintains a fund to assist praktikants during their training periods. Id. arts. 54-62.

Article 4 of the KCA Statute lists nine special tasks to be carried out by the organization: preserving the authority and autonomy of advocacy; supervising advocates and joint offices of advocates for the protection of clients; building up permanently the professional level of advocates and praktikants; improving the ethics of advocates; studying factors affecting the rights of citizens and legal entities; advising governmental units of measures that are needed to advance advocacy and the rights of citizens and legal entities; taking care of the finances and other interests of advocacy; taking care of the rights and status of retired advocates and their employees; and coordinating with other associations and institutions, both national and international. The KCA is also required to maintain a library for the use of all registered advocates and praktikants (Articles 151-155); recognize 10 different specialties within the profession and certify qualifying advocates (Articles 156-162); and publish a bulletin for its members every six months (Articles 163-165).

As it presently operates, the KCA has the capacity to provide only limited services for its members and the profession. It has a small office of 60 square meters with two employees who are responsible for maintaining the KCA’s registries in addition to typical bar association work. The KCA’s elected leadership consists of busy advocates who have full-time solo practices, and are thus limited in the time they can devote to KCA member services. The KCA’s only computers are used for internal administrative purposes, and are not available for legal research by advocates. The KCA’s library consists of a book case in the president’s office, but its collection is small and there is no place for an advocate to sit and read the literature. It does publish a newsletter for members once or twice a year that contains articles on legal subjects and developments. The Kosovo Criminal Defense Research Center now operates out of the KCA office, but it has lost its international staff and funding and limits its assistance to human rights and war crimes cases (see also Factor 13).

The KCA leadership does represent the profession publicly and attempts to pursue the interests of the profession and its members. It has contributed to professional standards through its adoption of a Code of Ethics and its appointment of special committees in various important areas, including CLE and the promotion of the rights and membership of women and minorities. It has worked with the Assembly of Kosovo and UNMIK on the development and enactment of a new law regulating the profession and a regulation on legal aid to needy individuals. The KCA has tried to improve the administration and the remuneration terms of the court-appointed ex-officio counsel program, and efforts by the KCA and the judges’ association contributed to the recent decision to increase the maximum monthly fees payable to such counsel. See Factor 13. The KCA has sponsored or co-sponsored a number of CLE programs for advocates and praktikants. It established a program that enables 10 praktikants per year to work in advocates’ offices to gain the experience required for admission to practice, and offers jurisprudence examination training for them during their tenure. The KCA has collaborated with the judges’ and prosecutors’ associations in planning and holding popular “bench and bar” conferences and workshops. The KCA worked with the judges’ group to produce three cartoons promoting various aspects of the rule of law, directed at young children. The President of the KCA recently appeared in a televised public service announcement advising the public how to file a complaint about advocate misconduct. While this list of services is quite respectable, it should be noted that some have been undertaken at the initiative and/or with the financial support of international
organizations, principally the ROL Initiative; it is questionable whether and to what extent they could continue on a self-sustaining basis without this source of funding.

The KCA Executive Council represented the profession in trying to counter an effort by the Ministry of Economy and Finance to require advocates to register with that Ministry. See Factor 1. While the matter appears to have been favorably resolved, at least for the time being, one respondent stated that many advocates were unhappy that the Executive Council seemed prepared to concede the point out of frustration. It reportedly took a petition from these unhappy advocates to persuade the Executive Council to take a firmer position on behalf of the profession. The KCA has also received criticism for reportedly allowing corrupt ex-judges to become advocates, for not being more active in disciplining unethical or incompetent advocates, for not mandating minimum CLE attendance standards (a decision made by the assembly of advocates, contrary to the recommendation of the Executive Council), and for not yet establishing practice specialties. These perceived failures are believed to reflect unfavorably on the advocacy profession as a whole.

Factor 23: Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer’s role in assisting the public in defending such rights.

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The KCA has not historically supported public education programs, but recognizes the need and has begun participation in some narrowly focused efforts to heighten awareness and appreciation for the rule of law. Concrete activities to date have included production of public service announcements and animated cartoons focusing on ethics of advocates and judges, gender and ethnic equality before the law, and the importance of following the rule of law. Steps are underway to create an annual “Law Day” in Kosovo to celebrate and promote the rule of law.

Analysis/Background:

Public education concerning legal rights and obligations and awareness of the role of lawyers in defending and enforcing them are not among the express mandates of the KCA. With all of its other responsibilities and its limited resources, it is not surprising that the KCA has not given these activities a higher priority. Still, the UN Basic Principles on the Role of Lawyers state that “[g]overnments and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.” UN Basic Principles on the Role of Lawyers (1990), www.unhchr.ch/html/menu3/b/h_comp44.htm, Principle 4. A further basis for KCA involvement in this area can be derived from the 1979 Law on Advocacy, which provides in part that the KCA “analyzes and observes the social relations and other interesting phenomena in protecting the rights of citizens and organizations . . . .” 1979 LAW ON ADVOCACY art. 10. This mandate is also included among the tasks assigned to the KCA in Article 4 of the KCA Statute.

While public education and awareness programs have not historically been a concern of the KCA, its leadership now appears to have a growing appreciation of the benefits of such programs in advancing the rule of law, increasing public confidence in the legal system, and improving the prestige and status of the advocacy profession. In the past, citizens considered the law to be an instrument of repression, to be feared, rather than a protector of their rights and interests. The KCA, with the support of the ROL Initiative and in cooperation with the Kosovo Judges’ Association, has recently begun efforts in this direction. These steps include televised public
service announcements informing the public about their right to be treated equally before the court, and about attorney and judicial ethics and complaint mechanisms. They also include three cartoons featuring “Justice Kid,” targeted at young children and teaching the messages of gender and ethnic equality, the importance of following the law, and the need to choose talking over fighting. These activities commenced just before the LPRI onsite visit, so it is premature to attempt to gauge their coverage and effectiveness. The KCA has also taken steps to create an annual “Law Day” in Kosovo with the aim of celebrating and promoting the rule of law. Much remains to be done to educate the public about their rights under the law and to increase public awareness of the role of lawyers in defending and enforcing these rights. Still, the KCA seems to recognize the need to make progress in this area, and it has been a topic of discussions and initiatives not only in Pristina, but also at the KCA’s regional meetings.

Other institutions in Kosovo, including various international organizations, human rights advocates, the Office of the Ombudsperson, and domestic NGOs, have engaged in campaigns and projects to increase public awareness of their rights and obligations in certain areas, principally human rights, criminal law, family law and gender equity issues. The KCA has apparently not participated in these activities to date.

**Factor 24: Role in Law Reform**

*Professional associations of lawyers are actively involved in the country’s law reform process.*

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<td>The KCA does very little to assist in the law reform process generally, although it has provided input into new and revised laws that directly impact the profession. The “bench-bar” activities it has conducted jointly with the Kosovo Judges’ Association have identified areas where reforms are necessary and served as catalysts for change.</td>
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**Analysis/Background:**

Article 4(6) of the KCA Statute states that one of the tasks of the KCA is “[t]o inform local competent bodies of different instances regarding the situation and measures that need to be undertaken for the advancement of advocacy and the rights of citizens and legal entities.” This suggests that the KCA should have a role in the law reform process, not only on matters directly affecting advocates but also in legislation creating or enhancing the rights of the public.

The KCA was active in the drafting, preparation and passage of the Pending Law on the Bar, which of course would most directly and significantly impact its members. The experience and insight of KCA representatives was indispensable to the Assembly of Kosovo as it deliberated on this legislation. By the same token, though, KCA members could make invaluable contributions to the legislative process by providing knowledgeable advice and drafting assistance on a wide range of laws. These would obviously include laws on the court system, procedural codes, legal education, jurisprudence examination, legal aid, and other subjects where advocates are deeply immersed on a daily basis. In addition, the KCA could be very helpful in substantive areas where some of its members are established experts, including employment law, family law, commercial transactions, bankruptcy, social assistance and taxation. Beyond this, the ability of trained advocates to examine legislation on virtually any topic, identify ambiguities, inconsistencies and other potential pitfalls, and then resolve them before enactment should be well apparent to parliamentarians.
Nevertheless, there has been very little interest within the government or the Assembly of Kosovo in receiving input and assistance from the KCA, at least on matters not directly affecting the profession of advocacy. A legislative committee was once formed within the KCA, but it is inactive and the Assembly of Kosovo has not referred any draft laws to it. Some isolated KCA members are asked to review legislation occasionally, but it is typically because of special circumstances and relationships rather than recognition that the KCA is a good source of thoughtful input. It would be helpful to the parliamentary process if KCA review and comment were standard.

Of course, there are practical and economic limits to the ability of the KCA to commit advocate time to the law reform process without compensation. Most advocates are sole proprietors, with little backup or scheduling flexibility, and those who have the most expertise probably also have the biggest client demand for their legal services. A step the KCA could take in this area, as mentioned elsewhere, would be for it to establish specialties within the profession, certify advocates as especially experienced and knowledgeable in selected areas, and organize at least some continuing legal education programs and roundtables around these specialties. These measures would help identify pools of talent by practice areas, and thus logical contact points for efficient and technically sound contributions to law reform. In addition, advocates certified in a particular specialty can meet periodically to discuss topics of mutual interest, including gaps, deficiencies or outdated provisions in the laws they regularly encounter in their practices, and to make proposals that would remedy these problems. A good model demonstrating the merits of such meetings is the series of “bench-bar” roundtable discussions the KCA holds periodically with the judges’ and prosecutors’ associations. These popular sessions have identified areas where reform was needed, such as ex-officio counsel fees, attorney work space at courthouses and payment of case file copying charges, and led to successful efforts to make the reforms.
LIST OF ACRONYMS

ABA  American Bar Association
CEDAW  Convention for the Elimination of All Forms of Discrimination Against Women
CLE  Continuing legal education
EU  European Union
JRI  Judicial Reform Index
KCA  Kosovo Chamber of Advocates
KFOR  Kosovo Force (international military security providers)
KLA  Kosovo Liberation Army
KLC  Kosovo Law Center
LERI  Legal Education Reform Index
LPRI  Legal Profession Reform Index
NATO  North Atlantic Treaty Organization
NGO  Non-governmental Organization
OG  Official Gazette
OSCE  Organisation for Security and Co-Operation in Europe
PISGs  Provisional Institutions of Self-Government
SAP  Socialist Autonomous Province
SFRY  Socialist Federal Republic of Yugoslavia
SOK  Statistical Office of Kosovo
SRSG  Special Representative of the Secretary General (of the United Nations)
UN  United Nations
UNMIK  United Nations Mission in Kosovo