

**MACEDONIA JUDICIAL REFORM IMPLEMENTATION
PROJECT**

**REPORT OF REVIEW OF DRAFT REVISED
LAW ON ACADEMY FOR JUDGES AND PROSECUTORS
AND
RECOMMENDATIONS**

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1. INTRODUCTION

1.1 Objective

This report is the culmination of a review of the draft revisions to Law on The Academy for Judges and Public Prosecutors, (Academy) which have entered the legislative process of the Republic of Macedonia. The report summarizes the review and analysis completed by this reviewer along with comments and recommendations to be considered before the draft law is acted upon. The comments and recommendations address some of the challenges of implementation.

This effort and this report is in support of the Macedonia Judicial Reform Implementation Project (JRIP). The JRIP is being carried out by DPK Consulting, Inc., a division of ARD Inc. of Burlington Vermont, under its contract with the United States Agency for International Development (USAID). This Project is a follow-on project to the Macedonia Court Modernization Project (MCMP) which completed its contractual tasks on September 30, 2007. MCMP assisted the Academy in its start-up years. JRIP has now been called upon to assist the academy in various tasks including assistance to the Academy and the Ministry of Justice (MOJ) in revisions to the law governing the Academy. Its support includes participation in the working group established by the MOJ and other assistance bringing the draft revisions to a satisfactory parliamentary conclusion. The JRIP is now reviewing a final draft of the law and is assisting the MOJ, as requested, in sharpening and refining the draft as deemed necessary.

This consultant is familiar with the laws and legal culture of the Republic of Macedonia and has previously worked with MCMP and JRIP in support of the Academy. The consultant also has experience with judicial education through a previous position with the New York State Court System. Based on this experience the consultant has been asked to review the proposed revisions, make comments and recommendations and assist, as needed, in assuring the laws Parliamentary passage.

This report contains various comments and/or recommendations, which, in this reviewer's opinion, would streamline and/or strengthen a number of the articles proposed in the draft law under review. There are also suggestions for additional sections and language that, in the reviewer's opinion would make the intent of certain sections clearer.

1.2 Background

The Academy is a link in an integral process of the nomination, selection and choice of the future basic court judges and public prosecutors of the Republic of Macedonia. Its work is a part of the package of laws within the Strategy for Judicial Reforms adopted by the Government of the Republic of Macedonia in 2004 and represents a new system of selection of judges and public prosecutors based on the system of merit.

The Academy for Training of Judges and Public Prosecutors was established by the Law on The Academy for Training of Judges and Public Prosecutors published in the Official Gazette of the Republic of Macedonia, No.13/2006. The Academy is not a part of the regular educational system but rather is part of the independent judicial system.

The Academy's mission and main purpose is to provide competent, professional, independent, impartial and efficient performance of judicial and prosecutorial function through selection, organization and implementation of initial training of candidates for judges and prosecutors and continuous professional training of judges, prosecutors, judiciary and prosecution personnel including court administrators.

In order to realize these main goals the Academy in collaboration with other judicial institutions in the Republic of Macedonia pursues a strategy that assures an objective system aimed toward mitigating political influence in the election and appointment of judges and public prosecutors based on precise and

measurable criteria. It also provides for, compulsory and continuing training of judges and prosecutors as well as other target groups from the judiciary.

This strategy has been directly implemented through continuous general and specialized training curricula, which will contribute toward efficient and independent judges and public prosecutors. During creation of the basic principles of the Academy's working strategy, international standards and modern educational techniques have been gleaned from training institutions in the region and in Europe.¹

The Academy as a public institution performs activities of public interest and has a status of legal entity. It is independent, has own employees, equipment, premises and budget. The headquarters of the Academy is in Skopje. In its administration it is separated from the Councils (Judicial Council and Council of Public Prosecutors) as well as from the Ministry of Justice and the Supreme Court.

1.3 Methodology

After being contacted by the Chief of Party of JRIP, this reviewer obtained the most current English translation version of the draft revised Law on The Academy for Judges and Public Prosecutors. The reviewer discussed the issues of concern with the JRIP staff legal advisor. The current law on the Academy that is under review, and for which the revisions are proposed, has been examined as well as the original mission and goals of the Academy.

1.4 Organization of Report

The Report will address each article of the proposed revised law, which in the reviewer's opinion, require scrutiny, changes, or in some cases, clarification or comment. For ease of review the English version of the proposed legislation is attached to this report with "comment" or "recommendation" as appropriate using red fonts following articles requiring attention. It should be noted that several comments and/or recommendations are generated by confusion in the text, which may, in fact, be due to awkward translation, or words in the original Macedonian text, which may not have a satisfactory English language equivalent. A Macedonian speaker should review these sections.

¹ See Council of Europe documents (CCJE – Opinion No 4 and No 9, documents and acts adopted by the Lisbon network, the documents of the European Commission, the European Judicial Training Network – EJTN)

2. ANALYSIS AND RECOMMENDATIONS OF DRAFT REVISIONS TO THE LAW ON THE ACADEMY OF JUDGES AND PUBLIC PROSECUTORS

2.1 Comments and Recommendations

Initially, it should be noted that the Academy has been running successfully since its creation in 2006. It has, of course, experienced some challenges, which are endemic to any newly created institution. Still, the Academy has already developed a stellar reputation and has graduated judges and prosecutors who are distinguishing themselves in judicial public service. The genesis of the proposed revisions is not therefore theoretical deliberation but generated by the practical experience of the director, staff, and students over the last several years. The proposals are well grounded in experience and practice and, overall, provide a major step in judicial reform in general and the enhanced professionalism of the Academy --an important independent institution of higher learning in the Republic of Macedonia.

On the following page is the draft Law on Court Services provided to this reviewer for analysis and recommendations. Following each article requiring commentary, the “Comments” and/or “Recommendations” are highlighted in red.

PROPOSED LAW ON THE ACADEMY FOR JUDGES AND PUBLIC PROSECUTORS

I. GENERAL PROVISIONS

Subject of the law

Article 1

This law shall establish and regulate the work of the Academy for Judges and Public Prosecutors (hereinafter in the text: the Academy) as an educational and scientific research public institution for admittance and professional development of candidates for judges and public prosecutors, continuous training and enhancement of the professional competences of the judges and public prosecutors, continuous training of the administrative offices in the judiciary and public prosecution, training of entities that participate in the implementation of the laws from the area of the judiciary, scientific research and analysis in the area of judicial theory and practice, management authorities and financing.

Comment: An excellent introductory paragraph, which clears up some of the uncertainty of the current law. It is now clear that the Academy has the authority to conduct trainings for wide a wide array of entities that participate in the implementation of the laws. These, presumably include public notaries and enforcement agents. There is reference to the training of the “administrative offices in the judiciary”. It is assumed, (but is not clear to this reviewer in the English text) that this includes court administrators and court secretaries in the smaller courts. It should be apparent that Court Administrators are included.

Recommendation: The Court Administrators and Court Secretaries should be specifically referenced in the legislation. The training should also include their designees with special focus on the areas of finance, court management and court administration. Although mentioned later in

the text of the law, the orientation and training of mentors should be specifically referenced in this introductory article. It is recommended that reference also be made to the training of educators and trainers.

Purpose of the establishment of the Academy

Article 2

The purpose for establishing the Academy is to ensure professional, independent, impartial and efficient execution of the judicial and public prosecution function, as well as professional and efficient execution of the activities of the administrative officers in the judiciary and public prosecution.

Recommendation: The purpose should include the education and continuing educations of the entities mentioned in Article 1 including Court Administrators.

Activity of the Academy

Article 3

(1) The Academy performs enrollment and professional development of future judges and public prosecutors, continuous professional development and improvement of the knowledge of the already elected judges and public prosecutors while they perform their function, as well as development and training on professional, ethical and competent performance on the working tasks and assignments, of the entities stipulated in article 1 of this Law, in accordance with the international standards and principles.

(2) The Academy performs its activities through:

- Enrollment of participants to the initial training by way of organizing an entry exam;
- Organizing and implementation of initial training for the participants who are future candidates for judges and public prosecutors in the basic courts and the basic public prosecution offices, and organizing the final exam;
- Organizing and implementation of continuous training for improving the professional competences of the judges and public prosecutors;
- Organizing and implementing continuous training of the administrative offices in the judiciary and public prosecution, as well as training of the entities stipulated in article 1 of this law;
- Conducting scientific research and analyses in the area of judicial theory and practice, and
- Perform other activities determined by law or the Statute of the Academy (hereinafter in the text: Statute).

(3) In order to execute its tasks, the Academy:

- Organizes and implements domestic and international conferences, round tables, seminars, study programs for study visits and other forms of training and professional development;
- Establishes and maintains cooperation in the field of training with domestic and foreign institutions, organizations and associations, especially with the professional associations of judges and public prosecutors, the chambers as well as with the non-governmental sector, with a view of development the concept of interdisciplinary and social dimension of the trainings;
- Cooperates with European networks for institutional training, the Lisbon network at the Council of Europe and the European training network of the European Union, facilitates

international exchanges of judges, public prosecutors, as well as the entities stipulated in article 1 of this law;

- Organizes and manages a library;
- Issues publications and performs other publishing activities for its own purposes;
- Cooperates with the faculties of law for the purpose of developing programs for professional orientation and preparation of the students in the, and
- Organizes and participates in research projects and other scientific activities of relevance for the enhancement and development of judicial training.

Recommendation: In Subsection I the Court Administrators and Court Secretaries and their designees should be mentioned as one of the targeted recipients of the Academy's educational services.

Status of the Academy

Article 4

- (1) The Academy has the status of a legal entity.
- (2) The headquarters of the Academy is in Skopje.
- (3) The Academy shall be registered with the Central Registry of the Republic of Macedonia after it has been constituted and the authorities of the Academy have been selected.

Acts of the Academy

Article 5

- (1) The core act of the Academy is the Statute.
- (2) The Statute regulates the following:
 - The internal organization, the manner of executing the activities of the Academy;
 - Management and governance of the Academy;
 - The rights and obligations of the entities stipulated in article 1 of this law;
 - The composition, the manner of formation, as well as the decision making process and the competences of the authorities and the bodies of the Academy;
 - The rights, obligations and responsibilities of the Academy regarding legal transactions;
 - Enrollment of participants in the initial training;
 - Contents of the programs for the entry exam, initial training, continuous training programs, programs for training of educators and mentors and other specialized programs;
 - Criteria for selection of educators and mentors;
 - Method of financing and use of the funds to do the work, and
 - Other issuer.
- (3) The Statute shall be enacted by the Management Board of the Academy with a two third majority of votes of the total number of members.
- (4) The Statute and the other general acts of the Academy shall be published in the "Official Gazette of the Republic of Macedonia", on the web site of the Academy and in other ways that facilitate their accessibility to the public.

Seal of the Academy

Article 6

- (1) The Academy shall have a seal.
- (2) The seal shall contain the name Republic of Macedonia, the shield of the Republic of Macedonia, the name and the headquarters of the Academy.
- (3) The form and content of the seal, the appearance of the signs and other markings, as well as the method of use shall be regulated by the Statute of the Academy.

Comment: It is questionable whether the seal needs to contain the “headquarters” of the Academy. It seems unnecessary and will clutter the seal needlessly. Also, the Academy will have a nation-wide image as it grows and extends its reach by “long-distance” and regional learning programs.

Article 7

Political and partisan organization and activities shall not be allowed in the Academy.

II. AUTHORITIES OF THE ACADEMY

Article 8

The authorities of the Academy shall be the Management Board, the director and the Program Council.

Management Board

Article 9

- (1) The Management Board shall be the managing authority of the Academy and shall comprise 13 members.
- (2) The members of the management board, ex officio, shall be: the president of the Judicial Council of the Republic of Macedonia, the president of the Council of Public Prosecutors of the Republic of Macedonia, the president of the Supreme Court of the Republic of Macedonia, the public prosecutor of the Republic of Macedonia and the Minister of Justice.
- (3) The Supreme Court of the Republic of Macedonia, on a general session, shall appoint two judges, one of which shall come from the pool of justices of the Supreme Court of the Republic of Macedonia, and the other from the pool of judges of the lower courts or the Administrative Court, as well as their deputies.
- (4) The Judicial Council of the Republic of Macedonia shall appoint two members, one of whom shall come from the pool of judges of lower courts and his/her deputy, and the second member and his/her deputy shall be proposed by the Association of Judges of the Republic of Macedonia.
- (5) The Public Prosecution of the Republic of Macedonia shall appoint two members, of whom one shall come from the pool of public prosecutors in the Public Prosecution Office of the Republic of Macedonia, as well as his/her deputy, and the second member and his/her deputy shall be proposed by the Association of Public Prosecutors of the Republic of Macedonia.
- (6) The Council of Public Prosecutors of the Republic of Macedonia shall appoint one member from the pool of public prosecutors in the lower public prosecution offices, as well as his/her deputy.
- (7) The Minister of Justice shall appoint one member from the pool of managing civil servants in the Ministry of Justice, as well as his/her deputy.

(8) The director of the Academy shall also participate in the work of the Management Board, but without the right to vote.

Comment: a. In accordance with the proposed law, a deputy member will be appointed for each member who serves on the Management Board of the Academy and who is not serving ex officio. The law seems to be silent as to what circumstances would require the attendance of the deputy. If the member could simply decide not to attend on several occasions for frivolous reasons or no reason at all, the Management Board will lose continuity and decreased effectiveness. A better practice would be to stipulate under what circumstances the deputy (or alternate) might attend. Ex officio members do not have deputies appointed. Theoretically, eight deputies and five ex officio members may attend a meeting therefore limiting the continuity and institutional memory needed for seamless operations.

b. The non-ex-officio members of the board consist in part of judges from the Supreme Court as well as “the lower courts or the Administrative Court”. It is unclear if this means members from the Basic Court only or whether it includes the Appellate Court. (It being an intermediate court but lower than the Supreme Court).

c. The reviewer is not sure of the rationale of including a managing civil servant from the Ministry of Justice as a member of the Managing Board. The MOJ has an important role in the judiciary but should not be expected to know the details of judicial education and continuing education. Accordingly, this reviewer finds it a curious addition.

Recommendation: a. The criteria for a deputy attending a meeting should be clearly defined – such as for a serious illness, family emergency or the incapacity of the primary member. The president of the Management Board should monitor this. A deputy should attend only with the president’s prior approval.

b. It should be made clear whether the term “lower court” used in this context includes the appellate region judges. It is recommended that it should include appellate judges as well who should be eligible for appointment to the board.

c. The representative of the MOJ on the Managing Board should be replaced. Perhaps a senior member of the Court Administrators (or the General Secretary of the Supreme Court) would be a choice more operationally beneficial.

Responsibilities of the Management Board

Article 10

The Management Board shall have the following responsibilities:

- To enact the Statute and other general acts of the Academy and to monitor their implementation;
- To elect the president of the Management Board and his/her deputy;
- To appoint and dismiss the director of the Academy;
- To decide about temporary removal from office of the director while the instigated procedure for dismissal is pending;
- To determine the termination or dismissal of a member or a deputy member of the Management Board;
- To appoint and to determine termination or dismissal of members or deputy members

in the Program Council;

- To appoint and to determine termination of the function of the members of the Entry Exam Commission and the Final Exam Commission and their deputies, and to adopt their reports during the procedure for taking the exams;
- To determine the list of educators upon a proposal from the director;
- To dismiss the educators that come from the pool of judges and public prosecutors from the Academy upon a proposal from the director;
- To determine the list of mentors upon a proposal of the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors of the Republic of Macedonia and to determine the termination of the status of a mentor upon a proposal of the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors of the Republic of Macedonia;
- Upon a proposal from the Program Council, to determine programs for the entry exam, the initial training and the final exam, programs for continuous training, general and specialized training programs, and training programs for educators and mentors;
- To determine a program regarding the reflection of the equal representation of citizens from all ethnicities in the Republic of Macedonia in all programs of the Academy;
- To enact an annual financial plan and program for work of the Academy, and submit it to the competent authorities;
- To determine the method in which the funds of the Academy will be used to finance the work of the Academy;
- To enact a strategic plan of the Academy;
- To adopt the final annual account and the Work Program submitted by the director;
- No later than the 1st of March in the current year, to adopt the annual report for the work of the Academy during the previous year and to submit this report to all of the institutions represented in the Management Board;
- To provide guidelines for cooperation with related institutions, organizations and associations in the country and abroad, for international projects, grants and donations;
- To enact rules of procedure for its work;
- To enact acts of internal organization and systematization of working positions and other general acts regulating the work of the Academy, upon a proposal from the director;
- To enact decisions, resolutions and conclusions, and
- To perform other tasks stipulated in this law and the Statute of the Academy.

Comments: One of the important tasks of the Management Board is to enact rules for its work. The current law says, “deliver” rules. This may have already been done. If it has not been, or if the rules need revising to meet the mandates of this new law, it should be done expeditiously.

Recommendation: A set of rules or a revised set of rules should be adopted by the board within 30 days of the effective date of this revised law. The director may draft the rules with the assistance of a committee of the Management Board as may be designated by the president. The proposed rules should then be submitted to the entire Managing Board for consideration, and amendment if necessary.

Term of office of the members of the Management Board

Article 11

The term of office of the members of the Management Board and their deputies, except for the ex-officio members, shall be 4 years with the right to one reelection.

Comment: Good management dictates that there be a seamless decision making process made on a regular basis by any management board. This is often interrupted when an entire board, is replaced because of the expiration of all members terms at the same time. This law is silent as to that point and it is presumed that all, or most, of the members were appointed simultaneously and that their mandates expire at the same time.

Recommendation: A system for staggering the expiration dates of new appointees should be written into this law so that in the future newly appointed members (except, of course, ex officio members) have terms ending in different years. Making some appointments of future members for less than 4 years but allowing a maximum of 8 years of service in total (2 terms) will accomplish this. Staggered term expiration dates can be accomplished over time.

Termination of the term of office and dismissal of a Management Board member

Article 12

(1) The term of office of a member of the Management Board shall terminate due to the following:

- death;
- upon his/her request;
- if the function or the employment that that member performed is terminated;
- if the member is incapacitated and cannot perform the function of a member or

deputy member of the Management Board for more than 6 months due to illness or other justified reasons.

(2) A member or a deputy member of the Management Board shall be dismissed if he/she:

- performs the function in the Management Board unprofessionally and unconscientiously;
- has a legally effective decision banning him/her to perform the profession, activity or duty, issued against him/her, and
- has been convicted with a legally effective court decision, to a prison sentence of more than 6 months.

(3) In the cases stipulated in paragraph (1) or paragraph (2) of this article, the authority that appointed the member or the deputy member that was dismissed or whose term of office terminated, shall nominate a new member or a deputy member within at most 30 days after the day when the decision for dismissal or termination of the term was enacted.

(4) The newly appointed member or deputy member of the Management Board shall continue the work until the expiration of the term of office of the members of the Management Board.

(5) Until a new member is appointed to the Management Board, the member functions shall be performed by the deputy member, and until the election of the president of the Management Board, the functions of the president shall be performed by the deputy president of the Management Board.

President of the Management Board

Article 13

(1) The president of the Management Board shall be elected from the pool of judges and public prosecutors, members of the Management Board.

(2) The president of the Management Board cannot be selected from the pool of ex-officio members of the Management Board.

(3) The president of the Management Board shall have a deputy that shall be selected from the pool of judges and public prosecutors, members of the Management Board.

(4) The term of office of the president and the deputy president of the Management Board shall last for two years, with the possibility of one reelection.

Method of work of the Management Board

Article 14

(1) The management board shall perform its responsibilities on a public session.

(2) The sessions of the Management Board shall be convened and chaired by the president of the Management Board.

(3) A session of the Management Board can also be convened upon a request of the director or a member of the Management Board.

(4) The Management Board shall hold its session if more than half of the total number of members of the Management Board is present.

(5) A member of the Management Board shall be considered present if there is a two-way telephone or other ling (videoconference) that guarantees identification and allows participation in the discussion and the decision making process. The vote of this member shall be confirmed with the minutes of the session, by the present members of the Management Board.

(6) Minutes of the Session shall be kept for each management board session. The minutes shall be signed by the chairperson of the session and the minute taker. The session can also be recorded with audiovisual means.

Recommendation: a. The option of recording the sessions with “audiovisual” means should provide the option of “audio” means also since audiovisual equipment may not be available or convenient at a given time.

b. There should be a requirement for a minimum number of meetings a year, set in advance, to provide for continuity and follow-up. At minimum, there should be a requirement for an “Annual Meeting” whereby the yearly reports and financial accountings will be formally presented and filed.

Decision making process of the Management Board

Article 15

(1) The Management Board shall make its decisions with a majority vote of the total members of the Management Board.

(2) If the required majority, stipulated in paragraph (1) of this article, is not secured, the session shall be postponed and the president shall immediately schedule a new session that will be held within at most 8 days.

Reimbursement of costs of the members of the Management Board

Comment: The current law allows for a maximum of 15 days for reconvening a meeting if a quorum is not present. The 8 days provided in this Article is adequate and a needed improvement over current law.

Article 16

The president and the members of the Management Board shall be entitled to reimbursement of travel and daily costs, in accordance with the applicable regulations, with the exception of the ex-officio members.

Director of the Academy

Article 17

(1) The director shall be a managing and an executive authority of the Academy.

(2) The director of the Academy (hereinafter in the text: Director) shall be appointed by the Management Board of the Academy on the basis of a public call, which shall be published in the “Official Gazette of the Republic of Macedonia” and in at least two daily newspapers. One of the newspapers shall be issued in Macedonian language and the other shall be issued in a language different than the Macedonian language, which is spoken by at least 20% of the citizens that speak an official language.

(3) The Management Board shall be obligated to enact the decision to publish a call for election of a director, at least 60 days before the expiration of the term of office of the director.

(4) The deadline for applying to the public call shall be 15 days from the day of publication in the “Official Gazette of the Republic of Macedonia”.

(5) The director shall be a person that has at least 10 years of working experience as a judge or a public prosecutor, with high professional characteristics, and with active knowledge of one of the official languages of the European Union.

(6) The method and procedure for appointment and dismissal of the director shall be regulated with the Statute and the general acts of the Academy.

Comment: The Academy is an institution of higher education, which is earning a national as well as an international reputation. It is a “post graduate” school and will be accorded similar recognition with other such institutions throughout Europe and beyond. There will be significant interaction with similar institutions as time goes on. Nomenclature is important with international interaction carried on by the director. In similar institutions the academic head of such an institution is often called “Dean”. The term “director” relates to an administrative or executive role and Dean refers to the academic role.

Recommendation: The director should specifically be permitted to use the designation “Dean”, when appropriate, especially in his or her dealings and correspondence with the international judicial educational community.

Rights and duties of the director

Article 18

The director shall have the following rights and duties:

- Manage the work of the Academy;
- Represent the Academy before the domestic and international institutions;
- Execute the decisions of the Management Board;
- Coordinate and organize the work of the Academy;
- Ensure the existence of proper conditions for the everyday functioning of the Academy;
- Submit a proposal work program to the Management Board;
- Submit an annual report about the work of the Academy to the Management Board;
- Participate in the preparation of all training programs under the competence of the Academy;
- Participate in the work of the Management Board and chair the sessions of the Program Council;
- Propose a list of educators;
- Establish and maintain cooperation with related domestic and foreign institutions with a view of promoting training;
- Manage the department for professional, administrative, technical and ancillary matters in the Academy;
- Manage the financial assets and the property of the Academy;
- Propose changes and additions to the Statute and other general acts of the Academy;
- Be accountable about the legality of the work of the academy, and
- Perform other matters in accordance with this law, the Statute and the general acts of the Academy.

Article 19

The salary of the director shall be determined in accordance with the current regulations on salaries of judges of the Supreme Court of the Republic of Macedonia and the public prosecutors in the Public Prosecution office of the Republic of Macedonia.

Term of office of the director

Article 20

The director of the Academy shall be appointed for a period of 4 years, with the right to a reelection.

Termination of the term of office and dismissal of the director

Article 21

(1) The term of office of the director shall terminate before the time for which he/she is appointed, in the following cases:

- In case of death;
- Upon his/her request;
- If the director is permanently incapacitated to work, and

- If he/she fulfills the conditions for retirement.
- 2) The director shall be dismissed before the expiration of the term of office for which he/she was appointed:
- Due to unprofessional and unconscientious performance of the function;
 - If there is a legally effective decision against the director banning him/her to perform the profession, activity or duty, and
 - If there is a legally effective court decision against him/her convicting him/her to a ако со правосилна судска одлука е осуден на казна затвор во траење над 6 месеци.
- (3) Against the decision of the Management Board to dismiss the director, the director shall have the right to an administrative dispute before a competent court.
- (4) Until the appointment of a new director, the Management Board shall determine an acting director from the pool of members of the Management Board.

Program council

Article 22

- (1) The Programme Council shall be a professional body of the Academy.
- (2) The Program Council shall comprise seven members and their deputies, appointed by the Management Board from the pool of judges, public prosecutors, managerial civil servants from the Ministry of Justice, as well as other renowned lawyers from the scientific and research thought in the area of the judiciary.

Article 23

- (1) The following can be appointed members of the Program Council:
- An active judge or a public prosecutor with at least six years of working experience as a judge or a public prosecutor;
 - Active professors of legal sciences or renowned lawyers with academic status of PhD with at least three years of experience in a concrete area of law;
 - Management level civil servant from the Ministry of Justice with at least six years of working experience in the area of the judiciary.
- (2) The members of the Program Council should possess high professional qualities and reputation with respect to performing the function and the profession, they should have confirmed results from their performance, published papers, article, and they should have experience in teaching or mentoring in the area of the judiciary.
- (3) The term of office of the members of the Program Council shall be two years.
- (4) The members of the Program Council cannot be members of the Management Board of the Academy, members of the Entry Exam Commission, or members of the Final Exam Commission.
- (5) The members of the Program Council can be educators in the Academy.

Nomination and determination of the members of the Program Council

Article 24

- (1) The members of the Program Council shall be appointed by the Management Board on the basis of nominations by the institutions represented on in the Management Board of the Academy. The candidate nominations shall be submitted to the Academy together with

curriculum vitae.

(2) The nomination of the members of the Program Council shall be performed as follows:

- The Supreme Court of the Republic of Macedonia, on a general session, shall nominate two members and their deputies. One member and his/her deputy shall be nominated from the pool of justices of the Supreme Court of the Republic of Macedonia, and the second member and his/her deputy shall be nominated from the pool of judges from the lower courts or the Administrative Court;

- The Public Prosecution Office of the Republic of Macedonia shall nominate two members and their deputies from the pool of the Public Prosecution of the Republic of Macedonia. One member and his/her deputy shall be nominated from the pool of the Public Prosecution Office of the Republic of Macedonia, and the second member and his/her deputy shall be nominated from the pool of the lower public prosecution offices of the Republic of Macedonia;

- The Judicial Council of the Republic of Macedonia shall nominate one member and his/her deputy from the pool of its members;

- The Council of Public Prosecutors of the Republic of Macedonia shall nominate one member and his/her deputy from the pool of its members;

- The Minister of Justice shall nominate one member and his/her deputy from the pool of management level civil servants in the Ministry of Justice.

Comment: a) The proposed law refers to “deputies”. There seems to be no limitation on how often a deputy may replace a regular member and for what reasons.

b) Education and training for court administrators seems to be contemplated. Representatives of court administrators and/or their association should be consulted for input regarding any training contemplated for them by the Academy. Focus groups staffed by target audiences are indispensable to any effective and relevant adult training course.

Recommendation: A formal protocol should be developed whereby the Program Council can obtain this input when programs are planned for court administrators and court staff. The same applies to the entities mentioned (but not enumerated) in Article 1 including enforcement agents and public notaries.

Competences of the Program Council

Article 25

(1) The program council of the Academy:

- shall determine a proposed program for the entry exam;
- shall determine a proposed program for initial training;
- shall determine a proposed program for the final exam;
- shall determine a proposed program for continuous training;
- shall determine a proposed program for training of educators and mentors and other specialized programs;
- shall monitor the realization of the programs and their efficiency and performance;
- shall renew and develop the training programs, depending on the annual analysis of

the training needs, the performed evaluation, the proposals and suggestions from the participants in the training, the educators and mentors, as well as the national and international legislation and practice;

- shall provide guidelines for improving the teaching methods and techniques, independently and in cooperation with the educators and mentors;
- shall provide opinions about the list of educators;
- shall provide advice, proposals and suggestions to the authorities of the Academy about improving the quality of the teaching, and
- shall perform other activities in accordance with this law, the Statute and the general acts of the Academy.

(2) When determining the proposed programs stipulated in paragraph 1 of this article, the Program Council shall take into consideration the current regulations applicable in the Republic of Macedonia as well as the legislation of the European Union and other international courts.

Termination of the term of office and dismissal of a member of the Program Council

Article 26

(1) The term of office of a member of the Program Council shall terminate due to:

- death;
- his/her own request;
- in case of termination of the function or the employment in the authority where he/she performed the function or where he/she was employed, and
- if he/she cannot perform the function of a member or a deputy member of the Program Council for more than 6 months due to illness and other justified reasons.

(2) A member or a deputy member of the Program Council shall be dismissed if he/she:

- performs the function in the Program Council unprofessionally and unconscientiously;

- has a legally effective decision banning him/her to perform the profession, activity or duty, issued against him/her, and
- has been convicted with a legally effective court decision, to a prison sentence of more than 6 months.

(3) In the cases stipulated in paragraph (1) or paragraph (2) of this article, the authority that appointed the member or the deputy member that was dismissed or whose term of office terminated, shall nominate a new member or a deputy member within at most 30 days after the day when the decision for dismissal or termination of the term was enacted.

(4) The newly appointed member or deputy member of the Program Council shall continue the work until the expiration of the term of office of the members of the Program Council.

(5) Until a new member is appointed to the Program Council, the member functions shall be performed by the deputy member.

Reimbursement of costs of the members of the Program Council

Article 27

The members of the Program Council shall be entitled to reimbursement of travel and daily costs, in accordance with the applicable regulations.

Method of work of the Program Council

Article 28

(1) The sessions of the Program Council shall be convened and chaired by the director of the Academy.

(2) The educators, as well as other people which, with their professional knowledge and experience can contribute to improve the teaching in the Academy, can also be present on the sessions of the Program Council.

Appropriate and equal representation in the authorities of the Academy

Comment: Section 2 of this Article should be strengthened to provide a protocol (referred to in Article 24 above), which will result in the presence of representatives of appropriate target groups such as court administrators, public notaries, enforcement agents etc. when appropriate.

Article 29

The principle of appropriate and equitable representation of citizens of all ethnicities in Republic of Macedonia will apply with respect to the constitution of the authorities of the Academy, appointment of educators, constitution the Entry Exam Commission and the Final Exam Commission.

III. EDUCATORS

Definition of educators

Article 30

(1) The educators shall be people trained to implement the training programs in the Academy.

(2) Educators in the Academy shall be people that, by directly implementing the training programs, contribute to maintaining a high level of knowledge and skills of judges, public prosecutors, as well as the entities stipulated in article 1 of this Law, in accordance with the domestic legislation and the European and international standards.

(3) After finishing the training for educators in the Academy, the educators can be permanent educators of the Academy, or part time educators.

(4) The procedure and the method of preparation, the number, the term of office and the composition of the proposed list of educators, the remuneration, as well as надоместоците, as well as the criteria for evaluation of the participants and on the initial and continuous training shall be regulated with the Statute and the general acts of the Academy, in accordance with the principles of publicity, professionalism and equal access.

(5) The rights and obligations of the educators shall be regulated with a contract signed between them and the Academy, in accordance with the Statute and the general acts of the Academy.

Educators of the Academy

Article 31

The educators of the Academy shall be domestic and foreign judges and public prosecutors, lawyers and professors of law and other faculties, that shall work in the programs for initial and the programs for continuous training of the Academy, notaries, mediators, enforcement agents and managerial civil servants.

Article 32

(1) The educators on the Academy shall be determined from the pool of judges and public prosecutors, lawyers or professors of law or other faculties, with six years of working experience.

(2) The members of the Management Board, the Judicial Council of the Republic of Macedonia, the Council of Public Prosecutors of the Republic of Macedonia and the director of the Academy can also be educators of the Academy, but only in the area of continuous training and they shall not be entitled for remuneration.

(3) The persons stipulated in paragraph 2 of this article can also educate the participants in the initial training, but without the right to receive remuneration and to assess the participants in the training, in accordance with the general acts regulating the implementation of the initial training.

(4) The members of the Management Board, their deputies, the members of the Entry Exam Commission and their deputies, as well as the members of the Final Exam Commission and their deputies can also be elected as educators in the initial training.

Part – time educators

Article 33

(1) Part – time educators shall be experts engaged for the purposes of a specific training event or a cycle of trainings on specific areas of law and topics, as well as trainings for general complementary and non-legal areas and topics, from the pool of renowned experts in the relevant areas, medicine, information technology, foreign languages, sociology, communication sciences, economy, psychology and other sciences, related to the topics from the training programs.

(2) The director of the Academy shall be obligated to submit the list of part – time educators engaged during the course of the year, as well as their curriculum vitas and evaluations of the trainings they have implemented, to the Management Board for perusal.

(3) The Management Board by expand the list to include additional new educators, upon a proposal of the director, in order to address certain new topics and programs.

Recommendation: The following should be added to section (1) of this Article;

- a. Case management, and case processing,
- b. Legal writing,
- c. Legal research and
- d. Court administration.

IV. MENTORS

Article 34

(1) The persons that can be mentors, in accordance with this law shall be active judges and public prosecutors, with at least six years of working experience, continuously assessed with a positive grade by the authority monitoring and assessing their work, capable and ready to convey the experiences and knowledge. They shall implement the second phase of the initial training – practical training. The mentors shall have completed the mentor training in the Academy.

(2) The mentors shall be determined by the Management Board of the Academy upon a proposal from the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors.

(3) The following persons cannot be elected as mentors: members and deputy members of the Management Board, the Program Council, the Entry Exam Commission, the Final Exam Commission, the president and the members of the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors of the Republic of Macedonia, the presidents of the courts and the public prosecutors in the public prosecution offices in the Republic of Macedonia.

(4) The procedure, the conditions, the criteria for selection, the duration of the mentorship, the rights and obligations and remunerations of the mentors shall be regulated with the Statute and the general acts of the Academy.

Recommendation: Add to this article requiring that mentors may not participate in the mentoring program contemplated by this Article until the mentor participates in an orientation and training program offered by the Academy

V. PROFESSIONAL, ADMINISTRATIVE, TECHNICAL AND ANCILLARY SERVICES IN THE ACADEMY

Article 35

(1) The employees in the Academy shall have the status of civil servants and, with respect to their rights, obligations and responsibilities, the Law on Civil Servants shall apply.

(2) The employees that perform administrative, technical or ancillary activities, shall not have the status of civil servants and, with respect to their rights, obligations and responsibilities, the Law on Employment Relations shall apply.

VI. FINANCING AND FUNDS FOR OPERATION OF THE ACADEMY

Sources of Financing

Article 36

(1) The funds for the work of the Academy shall be provided from the Budget of the Republic of Macedonia.

(2) Other sources of financing shall be:

- Donations and gifts and
- Revenues of the academy from issuing of publications, realization or training for other target groups outside of the area of the judiciary, realization of projects, grants, which are not contrary to the core activity of the Academy, and with the agreement of the Management Board.

Article 37

The level of the budgetary funds shall be sufficient to cover the organization and implementation of the entry and final exams, the initial training and the mandatory continuous training, in accordance with this law.

Offices and Equipment

Article 38

(1) The Government of the Republic of Macedonia shall provide the appropriate offices and equipment for conducting the operation of the Academy.

(2) The Academy can also provide funds for offices and equipment from donations and grants, with the agreement of the Management Board.

VII. TRAINING OF JUDGES AND PUBLIC PROSECUTORS

Definition and purpose

Article 39

The training of judges and public prosecutors shall mean an organized acquisition and development of practical and theoretical knowledge and skills necessary to for independent, autonomous, professional and efficient performance of their function.

Types of trainings

Article 40

The Academy is organizing initial and continuous training.

Initial training

Article 41

The initial training shall be organized for the purpose of acquiring practical and theoretical knowledge and skills, in order to create highly trained, professional and efficient

candidates for judges and public prosecutors in the basic courts and the basic public prosecution offices, as a prerequisite for adherence to the rule of law principle and the protection of human rights and liberties and creation of good quality justice in the interest of the citizens of the Republic of Macedonia.

Participants in the initial training
Article 42

(1) The participants in the initial training shall be persons that have passed the entry exam and have been admitted to the initial training.

(2) The total number of participants in the initial training shall be determined on the basis of the decisions of the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors of the Republic of Macedonia, taking into account the total number of vacancies for judges and public prosecutors in the basic courts and the basic public prosecution offices, as well as the projections of the needs of positions to be filled after the completion of the initial training.

(3) The decisions stipulated in paragraph 2 of this article, made by the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors of the Republic of Macedonia shall be submitted to the Academy no later than 31st of March in the current year.

Requirements for admittance in the initial training

Article 43

- (1) The requirements for admittance in the initial training are as follows:
- Law degree from a four year university or a law degree by having 300 credits in accordance with the European Credit Transfer System (ECTS) and at least 27 years of age.
 - Bar exam;
 - The candidate **must have** a temporary measure involving ban to perform the profession, activity or duty, imposed against him/her;
 - The candidate should be a citizen of the Republic of Macedonia;
 - The candidate should have active knowledge of the Macedonian language;
 - The candidate should have active knowledge of one of the official languages of the European Union, from which the English language shall be mandatory. The knowledge of the language shall be proven by an internationally recognized certificate;
 - Practical work with computers, and
 - The candidate should be able to work and to be in good general health.

(2) The type, method, procedure and conditions for the health examinations, as well as the level of practical work with computers and the knowledge of the foreign language stipulated in paragraph 1, items 6, 7 and 8 of this article shall be prescribed, with a bylaw, by the Judicial Council of the Republic of Macedonia.

Comment: a. See red font above in the 3rd “bullet” in section 1. Presumably there is a “not” missing in this English translation.

b. It is noticed, and may be an oversight, that there is no requirement for practical experience either in the practice of law or academia. This is a policy issue however, and may be intentional. It is recommended that practical experience precede judicial service.

Public advertisement for admittance in initial training

Article 44

(1) The Management Board shall enact a decision to publish a public advertisement for admittance of persons to take the entry exam, within 15 days after the day when the decisions stipulated in article 42, paragraph (2) of this law were received in the Academy.

(2) The public advertisement shall be published in the “Official Gazette of the Republic of Macedonia” and in at least two daily newspaper, one of which shall be published in the Macedonian language and the other shall be a newspaper issued in one of the languages spoken by at least 20% of the citizens that speak an official language different than the Macedonian language.

(3) The deadline for submitting an application shall be 15 days counting from the day of publication of the public advertisement in the “Official Gazette of the Republic of Macedonia”.

Principles of the admittance in the initial training

Article 45

(1) The admission in initial training shall be available to anyone that fulfills the requirements determined with this law, the Statute and the general acts of the Academy and that will successfully pass the entry exam in one exam session.

(2) The procedure for organizing and taking the entry exam shall be based on the principle of publicity of the rules, the methods and the manner of implementation, assessment and publication of the results, as well as the work of the Commission for Admittance in the initial training, based on objective and publicly published criteria, that ensure independence, objectivity, as well as free access to the entry exam program.

Equal representation

Article 46

When selecting the candidates that will be admitted to the Academy, the appropriate representation of the citizens that belong to all ethnicities in the Republic of Macedonia shall be ensured without disrupting the criteria envisaged with this law.

1. ENTRY EXAM FOR THE INITIAL TRAINING

Purpose of the entry exam

Article 47

The purpose of the entry exam is to establish the level of professional knowledge required to participate in the initial training program.

Preparatory course

Article 48

The Academy shall organize at least once or multiple times during the year, preparatory courses for all persons that have applied to the Academy for admittance.

The preparatory course shall be organized at least 45 days prior to the entry exam.

Entry exam

Article 49

(1) The entry exam for the initial training shall be organized once per year, not later than 30th of September, and it shall comprise the following:

- Taking a qualifying exam;
- Taking an exam, and
- Taking a psychological test.

Basic objectives and principles of the entry exam

Article 50

(1) The qualifying test shall be selective, written and anonymous and shall comprise a check of the theoretical knowledge about the substantive and procedural law, the international law, the law of the European Union, the most significant judgments of the European Court of Human Rights.

(2) The exam shall be practical and shall comprise a written part, which shall be anonymous, and a verbal part which is aimed at checking the acquired theoretical knowledge, as well as the capability to apply the laws in practice, logical and analytic thinking, verbal and written communication, understanding of the importance of the judicial function or a public prosecution function, preparation of court decision, indictments, as well as the attitude toward the professional ethical code.

(3) The psychological test shall be implemented for the purposes of verifying the social capacities to perform the judicial or a public prosecution function.

Procedure for taking the entry exam

Article 51

(1) The procedure for taking the entry exam shall be organized in the Academy, in accordance with the Entry Exam Program which shall be published at least three months before the entry exam and shall be renewed as necessary, in accordance with the changes to the legislation.

(2) The procedure, manner, conditions for taking the entry exam, as well as the rights and obligations of the persons taking the entry exam shall be regulated with the Statute and the general acts of the Academy.

(3) If a candidate is discontent he/she shall have the right to file an objection to the Entry Exam Commission within 8 days from the day when the candidate received the notification. The candidate shall have the right to file an appeal against the decision of the Entry Exam Commission, to the Management Board of the Academy within 15 days after the candidate received the decision.

Comment: This and other sections provide for a two-tier appeals process for a discontented candidate. The first step is to file an “objection” with, in this case, the Exam Committee. The second step is an appeal to the Managing Board. One step directly to the Management Board

seems sufficient. However, whether a one or two-step protocol is to be followed there should be some time limit for the Entry Exam Board to act and provide a reviewable decision. The Managing Board also should be constrained to act within a certain time frame. This may well be covered in the Statute and Rules to be adopted under this new proposed law.

Entry Exam Commission

Article 52

(1) The Entry Exam shall be taken before the Entry Exam Commission (hereinafter in the text: the Commission).

(2) The Commission shall comprise seven members and their deputies with a term of office of 4 exam sessions.

(3) The Management Board shall constitute the Commission stipulated in paragraph (1) of this article. The commission shall have the following composition: four members and their deputies upon a proposal from the Judicial Council of the Republic of Macedonia, shall come from the pool of judges, two members and their deputies shall be selected upon a proposal from the Council of Public Prosecutors from the pool of public prosecutor, and one member and his/her deputy shall be selected upon a proposal from the Minister of Justice from the pool of management level civil servants in the Ministry of Justice.

(4) The members of the Commission can be judges and public prosecutors, as well as management level civil servants in the Ministry of Justice which, in their professional carriers have excelled in their professionalism, ethics, proven results in their work and that have high reputation in the judiciary.

(5) For the purpose of implementing the psychological test, the Academy shall engage professional persons or an appropriate institution.

(6) The members of the Commission, each exam session shall select their president from the pool of judges and public prosecutors.

(7) The members and the deputy members of the Management Board, the Program Council, the Final Exam Commission, the director of the Academy, as well as the educators and the mentors that are involved in the initial training, cannot be members of the Commission stipulated in paragraph (1) of this article.

(8) The Members of the Judicial Council of the Republic of Macedonia, or the Council of Public Prosecutors of the Republic of Macedonia, or the deputy Minister of Justice cannot be members of the Commission stipulated in paragraph (1) of this article.

Remuneration for the work

Article 53

The members of the Commission stipulated in article 52 of this law, shall be entitled to remuneration in the amount determined with the general acts of the Academy and the current regulations regarding the execution of the Budget of the Republic of Macedonia.

Taking the entry exam

Article 54

(1) The entry exam shall be taken before the full composition of the Commission stipulated in article 52 of this Law.

(2) The president of the Commission stipulated in article 52 of this Law shall submit a report about the course of the procedure for taking the entry exam, to the Management Board of the Academy for approval.

Assessment

Article 55

(1) The qualification test and the exam shall be assessed with grades from “1” to “10”.

(2) The psychological test shall be assessed with the grades “satisfactory” or “unsatisfactory”.

(3) If an applicant received a grade of “3” or less on the qualification test or the exam, or a grade of “unsatisfactory” on the psychological test, then the applicant shall be considered not to have passed the entry exam.

(4) The final grade of the entry exam shall be a sum of the grade on the qualification test and the exam.

Comment: The Academy strives to attract the most highly qualified candidates to the judiciary and the ranks of the prosecutorial service in the Republic of Macedonia. Section 3 of this Article provides that an assessment of “3” or under will constitute a failure on the entry exam. It seems too low.

Recommendation: Change the “Satisfactory” assessment to “5” or perhaps “6” or above.

Rank list

Article 56

(1) The Commission stipulated in article 52 of this law, shall determine the rank list of participants in the initial training on the basis of the final grade.

(2) The persons that have achieved success shall be admitted to the initial training in the Academy in accordance with the order stipulated in the rank list until the envisaged number of participants, determined with the decision stipulated in article 42, paragraph (2) of this law, is filled.

(3) If an applicant is discontent, he/she shall have the right to file an objection to the Commission stipulated in article 52 of this law within 8 days from the day when the notification was received. The candidate shall have the right to file an appeal against the decision of the Commission stipulated in article 52 of this law, to the Management Board of the Academy within 15 days from the day when the candidate received the decision.

Comment: Here, as above, there should be some time limits for resolutions of the objections and appeals.

Status of participants in the initial training

Article 57

(1) By acquiring the status of a participant of the initial training in the Academy, the participant shall establish an employment relation for a definite period of time with the Academy for the duration of the training, until he/she successfully completes the training, and then the candidate shall acquire the status of a candidate for a judge or a public prosecutor.

(2) During the initial training, the participants shall be entitled to remuneration in the

amount of 80% of the salary of a senior judicial advisor in a basic court, as well as to pension and health insurance in accordance with the law.

(3) The procedure, manner, the conditions for implementing the initial training, as well as the rights and obligations of the participants in the initial training shall be regulated with the Statute and the general acts of the Academy.

Comments: Under the old law the candidates were able to have their former positions held for them in the event that a judicial seat was not available after passing the final examination. The new law does not mention that point. There should be some assurance either through this legislation or through some other vehicle, which assures some protection for graduated candidates who do not immediately have a judicial seat available. Another law unfamiliar to the reviewer may well cover this.

Contents and duration of the initial training

Article 58

(1) The initial training shall encompass the substantive and procedural laws, the court and public prosecutorial practice and ethics, the international legal standards, scientific and professional papers in the area of the national and international law, as well as the skills for the judicial and public prosecutorial function.

(2) The initial training the participants shall last for 24 months and shall be implemented in 2 stages, as follows:

- First stage – theoretical education in the Academy for 9 months, and
- Second stage – practical education in the courts and public prosecution offices and other institutions, in accordance with the initial training program, for a period of 14 months.

(3) The court, or the public prosecution office where the participant will implement his/her second stage of the initial training shall be determined on a regional basis, i.e., in accordance of the appellate region where the participant lives or stays.

Comment: The revised proposed law mandating 24 months of training for participants is excellent. Fifteen months was good but 24 months is better. During the second stage the participants should be able to offer significant assistance to the courts to which they are assigned and to the individual judges. Important work such as legal research and decision drafting is an vital step in the participants judicial training and should, at the same time, be of great assistance to the courts.

General goals of the theoretical and practical education in the Academy

Article 59

(1) The goal of the theoretical education in the Academy is to develop for the participants a wider general knowledge of the material as well as the procedural domestic and international law and the law of the European Union from a practical point of view, develop the technical specificities regarding the judicial and the prosecutorial profession, the ability for logical thinking, introduction to social, cultural and economic aspects of law, as well as openness toward the social milieu, by practicing appropriate models in the courts and the public prosecution office and other institutions.

(2) The goal of the practical education is to deepen the knowledge and the skills that the participants have acquired in the first stage, develop the practical judicial and prosecutorial skills

in accordance with the standards for quality and efficiency, strengthening of the sense of responsibility, the capabilities to conduct the process, as well as the capability for ethical execution of the judicial or public prosecutorial function.

(3) The goals of the theoretical and practical education in the Academy shall be achieved in accordance with the program for implementing the initial training.

Assessment of the initial training

Article 60

(1) The success achieved during the first stage – theoretical education in the Academy shall be assessed with at most 30 points, by forming a rank list of the participants and publishing it on the web site of the Academy.

(2) The participants in the initial training that ranked better on the ranking list stipulated in paragraph (1) of this article **can be** determined to become a judge or a public prosecutor **until** all the vacancies for judges or public prosecutors envisaged with the decisions of the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors of the Republic of Macedonia stipulated in article 42, paragraph (2) of this law, have been filled, and the other participants shall be assigned to the remaining positions for judges or public prosecutors.

(3) In order for a participant to go to the second stage of the training, he/she shall be required to receive at least 21 points from the score in the first stage of the training. The candidate that will receive less than 21 points in the first stage of the training will lose the status of a participant in the initial training.

(4) The performance achieved in the second stage – the practical education shall be assessed with at most 20 points, and a ranking list of the candidates shall be prepared and it shall be published on the web site of the Academy.

(5) In order for the participant to be able to take the final exam, he/she shall be required to receive at least 14 points of the score achieved during the second stage. The candidate that will receive less than 14 points in the second stage of the training will lose the status of a participant in the initial training.

Comment: Presumably the word “not” was omitted from the translation (see red font above in subsection (2))

The point system seems fair and transparent and makes the goals clear for the participants

Final exam

Article 61

(1) After the completion of the initial training, the participants in the initial training shall take a final exam. The final exam shall verify the practical knowledge and capabilities acquired during the initial training, for performing the judicial function in the basic courts or the public prosecutorial function in the basic public prosecution offices.

(2) The performance on the final exam shall be assessed with at most 50 points.

(3) If a participant in the initial training scores less than 35 points on the final exam, he/she shall be considered not to have passed the final exam.

(4) The participant in the initial training stipulated in paragraph (3) of this article shall have the right to retake the final exam within six months from the day when he/she took the final exam for the first time.

(5) If the participant in the initial training stipulated in paragraph (4) of this article

retakes the exam and receives a score of less than 35 points, he/she shall be considered not to have completed the initial training and shall lose the status of a participant in the initial training.

(6) If a candidate is discontent he/she shall have the right to file an objection to the Final Exam Commission within 8 days from the day when the candidate received the notification. The candidate shall have the right to file an appeal against the decision of the Final Exam Commission, to the Management Board of the Academy within 15 days after the candidate received the decision.

Final Exam Commission

Article 62

(1) The Final Exam shall be taken before the Final Exam Commission, which shall comprise seven members and their deputies with a term of office of 4 exam sessions.

(2) The Management Board shall constitute the Commission stipulated in paragraph (1) of this article. The commission shall have the following composition: four members and their deputies upon a proposal from the Judicial Council of the Republic of Macedonia, shall come from the pool of judges, two members and their deputies shall be selected upon a proposal from the Council of Public Prosecutors from the pool of public prosecutor, and one member and his/her deputy shall be selected upon a proposal from the Minister of Justice from the pool of management level civil servants in the Ministry of Justice.

(3) The members of the Commission stipulated in paragraph (1) of this article, each exam session shall select their president from the pool of judges and public prosecutors.

(4) The members and the deputy members of the Management Board, the Program Council, the Final Exam Commission, the director of the Academy, as well as the educators and the mentors that are involved in the initial training, cannot be members of the Commission stipulated in paragraph (1) of this article.

(5) The Members of the Judicial Council of the Republic of Macedonia, or the Council of Public Prosecutors of the Republic of Macedonia, or the deputy Minister of Justice cannot be members of the Final Exam Commission.

(6) The members of the Final Exam Commission can be judges and public prosecutors, as well as management level civil servants in the Ministry of Justice which, in their professional carriers have excelled in their professionalism, ethics, proven results in their work and that have high reputation in the judiciary.

(7) The members of the Initial Training Final Exam Commission shall be entitled to remuneration in the amount determined with the general acts of the Academy and the current regulations regarding the execution of the Budget of the Republic of Macedonia.

Procedure for taking the exam before the Final Exam Commission

Article 63

(1) The entry exam shall be taken before the full composition of the Final Exam Commission.

(2) The president of the Commission stipulated in article 62 of this Law shall submit a report about the course of the procedure for taking the final exam, to the Management Board of the Academy for approval.

Final grade

Article 64

After the completion of the initial training, the participant shall receive a cumulative final grade, which shall be calculated as the sum of the grades received during the two stages of the initial training and the final exam.

Final rank list

Article 65

The Final Exam Commission shall determine a final rank list of candidates for judges and public prosecutors on the basis of the final grade stipulated in article 64 of this law.

Comment: The series of articles regarding final exams and rankings seems exceedingly fair, transparent and even-handed. Well done.

Certificate of completion of the initial training

Article 66

(1) The Academy shall award the candidates for judges and public prosecutors, a certificate for completion of the initial training, which shall contain the grade for each of the stages of the training as well as the final grade.

(2) The certificates stipulated in paragraph (1) of this article shall be issued in a form that shall be determined with an act of the Management Board of the Academy.

Rights and obligations of the candidates for judges and public prosecutors

Article 67

(1) After completing the initial training, the participant in the initial training shall acquire the status of a candidate for a judge or a public prosecutor.

(2) The selection of judges and public prosecutors in the basic courts or the public prosecution officers, from the pool of candidates that have completed the initial training, shall be performed by the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors of the Republic of Macedonia on the basis of the published advertisements for selection and in accordance with the order reflecting the achieved results and stipulated in the final ranking list.

(3) The first three candidates from the final rank list shall have the right to compete for the selection to the position of a judge or a public prosecutor in the appellate region where they implemented the second stage of the initial training or in a different appellate region.

(4) The other candidates for judges or public prosecutors from the final rank list shall be obligated to apply to every advertisement for selection of judges in basic courts or public prosecutors in a basic public prosecution office.

(5) If, for a certain position for a judge or a public prosecutor, there are multiple candidates with the same number of points, the advantage shall be given to the candidate for a judge or a public prosecutor from the appellate region where they implemented the second stage of the initial training.

(6) If a candidate for a judge or a public prosecutor failed to apply to the published advertisement stipulated in paragraphs (3) and (4) of this article for two consecutive times, then this candidate shall lose the status of a candidate for a judge or a public prosecutor.

(7) The consequence from the loss of the status of a candidate for a judge or a public prosecutor stipulated in paragraph (6) of this article shall be that the candidate shall have to reimburse the costs and other remuneration incurred for his/her training, in accordance with a calculation determined by the Academy for Judges and Public Prosecutors.

Comment: The consequences from the “loss of status” enumerated in section (7) seems quite harsh if the loss was the result of serious health problem or other emergency type issues not within the control of the candidate.

Recommendation: Perhaps some solution can be found to mitigate the penalty where the failure is beyond the practical control of the candidate, especially when health issues intervene.

VIII. CONTINUOUS TRAINING OF JUDGES AND PUBLIC PROSECUTORS

Definition and objective

Article 68

(1) The continuous training represents continuous professional development of the theoretical and practical knowledge and skills in order to ensure professional and efficient performance of the judicial and public prosecutorial function, the function of a court president or a public prosecutor, the administrative offices in the courts and the public prosecution offices, as well as the entities stipulated in article (1) of this law.

(2) The continuous training can be mandatory or voluntary.

(3) The continuous training shall be mandatory for the judges, public prosecutors, the court president and public prosecutors of public prosecutor offices.

(4) The users of voluntary continuous training shall be administrative offices in the judiciary and public prosecution, as well as the entities stipulated in article 1 of this law.

(5) The Academy shall organize the continuous training independently or in cooperation with domestic and foreign workers.

Comments: A strong component of the courthouse team is the court administrator (or court secretary in smaller courts). Continued education and training for these judicial public servants should be mandatory for at least one session per year. This can be done, in collaboration with the Association of Court Administrators.

Recommendation: Include court administrators and court secretaries under the section, which mandates training. The law should provide that this may be completed regionally and, when available, by “distance learning” techniques. The law should also stipulate that education and training requirements might be satisfied by courses, seminars and workshops in other countries, if approved by the Management Board (or Programme Council). Such out-of-country education should be approved as to substance and duration.

Article 69

(1) The continuous training for professional development shall be implemented in order to develop and expand the knowledge and expertise of the judges and public prosecutors while

they perform the judicial or public prosecutorial function, strengthen their independence and integrity, as a core prerequisite for the rule of law, protection of human rights and liberties, as well as creation of a transparent, fair and efficient judiciary, based on international standards for fair and impartial adjudication.

(2) The continuous training for professional development of the court presidents and the public prosecutors of the public prosecution offices shall aim at developing the capacity to manage the matters under their competence, determined by law.

(3) The continuous training for professional development of the administrative offices in the courts and the public prosecution offices, as well as the entities stipulated in article 1 of this law that participate in the enforcement of the laws from the area of the judiciary, shall be implemented in order to acquire and develop the knowledge necessary to provide good quality professional and technical support to the judges and public prosecutors, as well as their professional development for the purpose of efficient implementation of the laws in the area of the judiciary.

Comment: The key to a well functioning judiciary is its Management Team. The president judges are the local key to a strong team and should constantly be brought up-to-date on leadership and management skills as well as the “team” concept which involves the court administrators.

Recommendation: There should be periodic trainings for president judges. The trainings do not need to be long or elaborate –but regular. Short but focused presentations can be delivered, for instance, during a portion of the periodic gatherings required by the Chief Judge. These should include the core elements of court administration, case management, budgeting, security etc., plus any special issues or challenges, which have unexpectedly arisen since the last meeting. It is also an opportunity for court administration to foster backlog reduction and user satisfaction issues.

A one or two day joint session should be held at least once a year with the president judges and the court administrators/secretaries. Some of the individual sessions should be joint with both groups addressing common issues; some sessions should be “break-out” sessions where the president judges and court administrators meet separately –coming together at the end of the program for a joint “rap up” and review session.

General program for continuous training

Article 70

(1) The continuous training for professional development of the judges and public prosecutors, the court presidents and the public prosecutors of the public prosecution offices, shall be implemented in accordance with the Program for Continuous Training.

(2) The content, the duration and the method of implementation of the continuous training stipulated in paragraph (1) of this article shall be determined in the General Program for Continuous Training.

Comment: Input from the field is important. Developing programs through consultation with the “users” –the target audience is important

Recommendation: There should be added to section (2) the following; “...in consultation with representatives of the president judges and public prosecutors”

Specialized program for mandatory continuous training

Article 71

(1) The newly elected judges and public prosecutors shall be obligated to attend continuous training immediately after they have been elected to the position of a judge or a public prosecutor.

(2) The content, the duration and the method of implementation of the continuous training stipulated in paragraph (1) of this article shall be determined in the Specialized Program for Mandatory Continuous Training.

Specialized program for voluntary continuous training

Article 72

(1) The Academy shall be obligated to prepare a program for voluntary continuous training, once per year and not later than the 1st of December for the next year.

(2) The Academy shall inform the courts, the public prosecutors and the entities stipulated in article 1 of this law, about the program stipulated in paragraph (1) of this law.

(3) The content, the duration and the method of implementation of the continuous training stipulated in paragraph (1) of this article shall be determined in the Specialized Program for Voluntary Continuous Training.

IX. TRAINING OF MENTORS AND EDUCATORS

Training program for mentors and educators

Article 73

(1) The mentors and the educators shall attend training for mentors and educators.

(2) The content, the duration and the method of implementation of the continuous training stipulated in paragraph (1) of this article shall be determined in a special program for training of mentors and educators.

(3) The Academy shall award the mentors and educators certificates for completing the training stipulated in paragraph (1) of this article.

(4) The certificates stipulated in paragraph (3) of this article shall be issued in a form that shall be determined with an act of the Management Board of the Academy.

Supervision

Article 74

The Ministry of Justice shall supervise the implementation of the provisions of this law.

Recommendation: The Judicial Council of the Republic of Macedonia should supervise the implementation of this law.

TRANSITIONAL AND FINAL PROVISIONS

Article 75

The bylaws envisaged with this law shall be enacted within 60 days from the day of legal effectuation of this law.

Article 76

The director, the members of the Management Board and the Program Council of the Academy, appointed in accordance with the Law on the Training Academy for Judges and Public Prosecutors (“Official Gazette of the Republic of Macedonia” no. 13/06), shall perform their duties until the expiration of their respective terms of office.

Article 77

On the day of legal effectuation of this law, the Law on the Training Academy for Judges and Public Prosecutors (“Official Gazette of the Republic of Macedonia” no. 13/06) shall cease to apply.

Article 78

This law shall become legally effective on the eight day after the day of publication in the Official Gazette of the Republic of Macedonia.