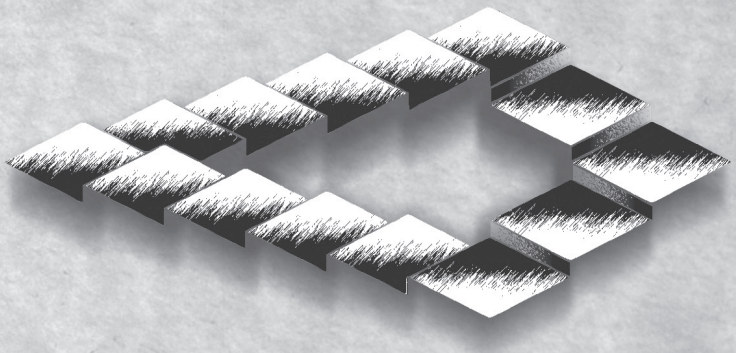
Macedonian Young Lawyers Association

Analysis of the legislative framework reforms implemented in the past 10 years, with respect to legal studies, practical work on legal matters and the bar examination.

Public Policy Document



ACCESS TO LEGAL PROFESSIONS FOR YOUNG LAWYERS

From a diploma from the Faculty of Law to a career in the judiciary, the public prosecution and the bar

Author: Goce Kocevski, MYLA

Skopje, March 2014

CIP - Каталогизација во публикација
Национална и универзитетска библиотека “Св. Климент Охридски”, Скопје

34-053.81:331.5]:347.96-051

КОЦЕВСКИ, Гоце
Пристапот до правничките професии за младите правници :
од диплома на Правен факултет до кариера во судството и адвокатура /
автор Гоце Коцевски. - Скопје : Македонско здружение на млади правници,
2014. - 56 стр. : табели ; 21 см

Фусноти кон текстот. - Содржи и: Анекс

ISBN 978-608-65401-7-3

а) Млади правници - Пазар на труд - Правни професии - Македонија -
2010-2012 - Истражувања

COBISS.MK-ID 97250826

Content

PREFACE:

„It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood."
James Madison, 4th President of the United States of America

&

„No other profession is subject to the public contempt and derision that sometimes befalls lawyers. The bitter fruit of public incomprehension of the law itself and its dynamics."

Irving Kaufman, Federal Judge

Dear all,

The document before you aims at raising the issue of the access of young lawyers in the Republic of Macedonia to the legal professions, an issue which, to say the least, has been neglected by the scientific and professional legal community. The access to the legal profession which, in Macedonia, was the subject of various changes and reforms in the past 10 years, includes the conditions and the phases that each law student has to go through within the framework of his/her own professional development towards any one of the legal professions. The implementation of the Strategy on the reform or the Judicial System[1] and the introduction of the Bologna process within the faculties of law have radically changed the way to study law, to acquire the initial work experience in the area of legal matters and to take the bar examination. This document focuses exclusively on these three initial phases of the professional development of future lawyers because the more advanced phases (training and election of judges and public prosecutors, the registration in the Registry of Attorneys etc.) have been sufficiently analyzed by the relevant scientific and professional community.

The document "From a diploma from the Faculty of Law to a carrier in the judiciary, the public prosecution and the bar:

[1]*Strategy on the reform of the judicial system, Ministry of Justice of the Republic of Macedonia, 2004;*

access to legal professions for young lawyers in the Republic of Macedonia" represents a continuation of the initiative of the Macedonian Young Lawyers Association of the Republic of Macedonia, supported by USAID's Judicial Strengthening Project, without whose selfless support these activities could not have been implemented. The initiative began in December 2013 with the organization of a one-day national conference on the topic "The Legal Profession in the Republic of Macedonia – Problems, Challenges and Perspectives", attended by relevant representatives of the legal profession which raised and discussed the most burning issues concerning lawyers and professions in general. With this document we want to go a step further and embark on a detailed analysis of some of the issues and challenges that have arisen from the conference in order to offer well informed recommendations on how to solve and overcome them.

This document should not be interpreted unilaterally, i.e. only from the viewpoint of the layers that need to go through the phases subject to this analysis. Rather, this document aims at pointing out the needs of the legal system and the judicial institutions with respect to a professional development system that will guarantee educated and professional lawyers which will be the basis of the future development of the Macedonian legal system. One must not forget that 30 years from now the key positions in the Macedonian judiciary will be held by lawyers that are currently graduating, acquiring their initial professional experience or taking the bar exam. Our future legal system will depend on them and the expertise and professionalism they acquire today.

In an attempt to show an objective picture of the legal framework with respect to the access to the legal profession, we will provide an overview of the reforms that have been implemented in the past period and we will identify and elaborate the problems and the related challenges. We honestly hope that the document below will be properly understood by the relevant institutions and the entire judiciary and will serve as a starting point towards undertaking appropriate measures and towards overcoming the indicated challenges.

Martina Smilevska, president

Macedonian Young Lawyers Association

Introductory remarks

1. The legal professions in the Republic of Macedonia and access therein

The legal professions[2] are regulated professions. The requirements that have to be fulfilled to acquire the right to "enter" these professions, the election procedures, the methods of operation, the special authorizations and responsibilities, as well as the procedures for termination of the profession are regulated by special laws. One characteristic of the legal professions is that, in addition to legislative regulation, they are also regulated by professional rules and standards[3] autonomous from the legislative power, which can be international or domestic. The titles, types and responsibilities of the legal professions vary from country to country depending on the legal system and the legal tradition.[4] However, the core legal professions include the judicial profession, the public prosecution profession and the attorney profession because of their special role within the framework of the judicial system. These three professions, through their involvement in determining the facts and applying the law, are involved in deciding on the rights and responsibilities of the parties in various disputes, as well as on the responsibilities of criminal perpetrators on a daily basis. Therefore they are on the front lines when it comes to the compliance with, practicing of, and the protection of the rule of law principle. Considering this particular role of these professions, every country must essentially have an appropriate "system for legal education which will guarantee the acquisition of the required knowledge, skills and values that will facilitate an effective practice of the legal profession by the attorneys, the judges and the public prosecutors"[5].

The access to the core legal professions in the Republic of Macedonia is limited by the requirements[6] for selection, i.e. "entering" in the profession. The attorney profession requires the candidates to acquire a university diploma in law, a specific period of professional experience in legal matters,

---

[2] The term "legal professions" for the purposes of this document shall mean all public offices, public assignments and professions where the legislatively mandated requirement is the possession of a university diploma in law including: judges, public prosecutors, attorneys, court administration staff that are lawyers, attorneys assistants, notaries, enforcement agents etc.;

[3] Example: Codes of Professional Ethics of Attorneys, Notaries;

[4] A comparative overview of the differences between the attorney profession in 13 countries can be found at http://www.law.harvard.edu/programs/plp/pages/comparative_analyses.php;

[5] Roy T. Stuckey (2002),,Preparing Students to Practice Law: A Global Problem in Need of Global Solutions", South Texas Law ReviwVol.43, P. 650;

[6] Please see article 12 of the Law on the Bar, article 45 of the Law on Courts and article 44 of the Law on the Public Prosecution;

the bar examination, as well as several other non-substantive requirements. The judicial and the public prosecutorial profession, in addition to the university diploma in law, a specific period of professional experience in legal matters and the bar examination, also require the candidates to attend initial training at the Academy for Judges and Public Prosecutors, to have specific foreign language skills, as well as an appropriate level of integrity and social skills necessary to perform the judicial or public prosecutorial function. The key difference between the attorneys on one hand and the judicial or public prosecutorial function on the other hand, revolves around the method of entry into the profession. While the attorneys are a free profession and appropriate candidates that have fulfilled the requirements can enter this profession freely[7], candidates can become judges or public prosecutors only through an election process conducted by a state authority authorized for such a purpose by the Constitution[8]. Something that the access to these three professions has in common and represents some kind of a "common denominator" is the initial requirements that anyone who wants to enter the professions has to fulfill. These include 1. a university diploma in law, 2. a specific period of professional experience in legal matters and 3. the bar examination. Therefore, the analysis of the access to the legal profession must necessarily include an analysis of each one of these phases in the professional development of the future legal professionals and identify and analyze the appropriate legal framework.

2. The legal professions and the reforms in the Macedonian judiciary in the past 10 years: a period of deep and substantive change

The Macedonian judiciary, including the legal professions, as an essential part of the judicial system, has undergone vast and deep changes in the past ten years. Driven by the need to strengthen the independence and increase the efficiency of the judiciary, as well as fulfill the criteria from the EU accession process, significant reforms were implemented, mostly as part of the process of implementing the Strategy on the reform of the judicial system[9]. The reforms were multidimensional and

[7] *After a previous decision for registration in the Registry of Attorneys, made by the responsible authority of the Bar Association of the Republic of Macedonia*
[8] *The Judicial Council of the Republic of Macedonia or the Council of Public Prosecutors of the Republic of Macedonia;*
[9] *The term Strategy for Judicial Reform means 1. "The Strategy for Judicial System Reform from 2004" and 2. "The Strategy for the Continuation of the Implementation of the Judicial System Reforms from 2009";*

encompassed several different areas of the judiciary, such as the reforms of the substantive law[10], the significant and deeper reforms of the procedural law[11] and the structural reform of the judicial authorities[12]. This last reform was the deepest reform of the judicial system implemented since gaining independence. It involved: changing the method for selection, training, evaluation and dismissal of judges, changes to the status of the court administration, changes in the organization of the judiciary, changes to the financing of the courts, as well as the establishment of 11 new judicial institutions[13], of which one of the key institutions is the Academy for Judges and Public Prosecutors which will implement the initial training of the future judges and public prosecutors. Parallel with the process of implementing the Strategy on the reform of the Judicial System, a reform of the criminal law was implemented as well[14]. The implementation of the latter resulted in a completely new concept for the criminal procedure and in abandoning the inquisitor model, which was particularly challenging for the legislative power as well, and even more so for the legal profession, which needs to adapt to the changes.

In addition to the aforementioned reforms of the judiciary, two additional processes were happening at the same time. These processes directly or indirectly influenced the conditions and the status of the legal professions. The first process is the introduction of the Bologna process in the higher education (including the faculties of law), which has led to changes to the curricula, the introduction of a three-tier system of studying (3 years undergraduate studies + 2 years graduate studies + 3 years doctoral studies), changes to the duration of the studies and the examinations. This process, although seemingly isolated from the judicial reforms, has still led to certain legislative changes regarding the requirements (university diploma attesting the completion of the law study program) in several laws. The second process is also connected to the establishment to several state and private faculties which has introduced competitiveness in the university education of lawyers which, in turn, has raised the issue of evaluation standards and the equivalence of the diplomas acquired from the different faculties.

[10]There have been several sets of changes and additions to the Law on Obligation Relations from 2001, the Criminal Code from 1996, as well as several other laws in the field of substantive law;

[11] With a view of increasing the efficiency of the judiciary, there have been changes to the Law on Civil Procedure (3 changes and additions from 2005 to 2011), the Law on Enforcement was enacted and modified several times (7 sets of changes from 2005 to 2011), a new Law on Administrative Disputes was enacted, as well as other procedural laws;

[12] Please see the final report from the IPA 2007 project "Assessment of the Implementation of the Strategy on the reform of the judicial system" by Dr. Alessandro Simoni and Mr. Wolfgang Tide;

[13] Ministry of Justice of the Republic of Macedonia, Challenges and Achievements 2006 – 2010, Skopje, March 2011, page 8.

14 Ministry of Justice of the Republic of Macedonia, Criminal Law Reform Strategy, Skopje 2007

The aforementioned changes and reforms of the entire judicial system were reflected in the access to the different legal professions. This has led to changes to the way of studying law and acquiring the title graduated lawyer[15], as well as the practical work[16] whereby the graduated lawyers were to acquire practical experience. The biggest change was the change of the manner in which the judges and public prosecutors were elected in accordance with the Law on Courts in 2006 and the Law on the Public Prosecution in 2007, whereby the initial training at the Academy for Judges and Public Prosecutors became a prerequisite for a judicial appointment in a basic court or a public prosecutorial appointment at a basic prosecution office. In addition, there were changes to the disciplinary accountability of the judges and a merit system for the purpose of career advancement was established. During this period, new legal professions were introduced, such as the enforcement agents and the public notaries[17] and an attempt was made to establish mediation as a separate profession with predominantly legal elements. The organization and the operation of the court administration also changed with the enactment of the Law on Court Service in 2008[18]. Companies were given the opportunity to provide legal consulting, where, previously, the provision of legal aid had been part of the job of the attorneys. The changes affected the attorneys as well. The attorney's exam was eliminated and the fee for registration in the Registry of Attorneys was significantly reduced. In addition to the status related issues, the role of some of the legal profession also changed during this time. Namely, the new Law on Criminal Procedure brought about a change to the concept of criminal procedure, which in turn changed the role of the defense attorneys and the prosecutors, which now have a much more active role with respect to proposing and disclosing evidence. In other words, there is a huge difference between the legal professions 10 years ago and the legal professions now, both with respect to the requirements for entry, as well as with respect to the methods of operation, exercising the special authorities and the termination of the function.

Seen from today's perspective, we cannot fail to notice that the reform process, in the segment related to the legal professions, went by without any in-depth professional or,

[15] Instead of a university diploma in law, as the title used to be, now there are several professional titles depending on the number of credits acquired by the law student (180, 240 or 300);
[16] With the elimination of the possibility whereby law interns could appear as authorized counsel at a hearing before a first instance court, as part of the changes of the Law on Civil Procedure that became legally effective in September 2011;
[17] Note: The notaries as a public function were introduced before the process of implementation of the Strategy on the reform of the judicial system, or in 1998, however the number of notaries has increased since 2003;
[18] Note: At the time when this document was prepared, this law was replaced with a new Law on Court Service which was adopted by parliament in March 2014;

particularly scientific analyses, as well as without appropriate papers which would empirically follow the process of changes and would provide evidence for assessing whether the selected models have, in fact been the most useful and the most efficient. This would in turn provide a basis for formulating recommendations for policy improvements. There are almost no scientific studies that employ scientific methods to assess whether the application of the Bologna system has, in fact led to the achievement of the planned objectives, whether there is any need to change the manner in which the bar examination is implemented etc. There are some professional analyses[19] which include certain elements of the access to and the functioning of the legal professions. However, these have been implemented solely in the context of analyzing a broader subject (independence of the judiciary, separation of power etc.) and they have only raised some issued related to the access to the professions. The only way to evaluate the judicial reforms is to consult the reports[20] [21] prepared at the behest of foreign donors that support the reforms. In addition to the lack of analyses, there is a noticeable lack of public debates with respect to the issues covered in this document. Some public debates that are being conducted are an exception to the rule. They are mostly implemented at the level of a specific profession and there are almost no debates related to issues that concern everyone, such as the issues covered in this document. Some of the few public spaces where some issues related to the reforms and the changes were raised are the occasional interviews[22] and the public statements of renowned lawyers and attorneys, which express their own standpoints and considerations regarding the changes. This absence of analyses and debates in Macedonia represents a significant difference from the other European countries which implement certain forms in the legal education and the legal professions. Just as an example, the introduction of the Bologna system in Germany caused serous reactions from the faculties of law, as well as from the professional associations, which instigated the development of a huge number of scientific and professional papers[23] and a public debate that persists for more than a decade.

[19] Within the professional legal journals;
[20] Berenchot and Imagos (2013), „Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organized Crime in the Western Balkans" – Lot 3, Final main report, IPA program for WB;
[21] Allesandro Simoni (2007), Assessment Report on the Implementation of the Strategy on the reform of the judicial system in Macedonia;
[22] Mostly for the web portal akademik.com.mk
[23] Peter M. Huber (2004), „Der "Bologna – Prozess" und seine Bedeuung für die deutsche Juristenausbildung[The Bologna Process and its Impact on German Legal Training]", European Journal of Legal Education.Vol. 35. Johannes Riedel, The Bologna Process and Its Relevance for Legal Education in Germany, 2 EUR. JN. LEGAL EDUC. 59 (2005). Andreas Bücker & William A. Woodruff, The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences, German Law Journal Vol. 09 No 05.

This lack of analyses and debates can adversely affect the legal professions because the reforms being implemented will not be based on evidence and will most likely not be appropriate for the needs of the Macedonian legal system. The lack of domestic analyses will be offset by reflecting models that have already been stablished in other countries, which may, or may not be applicable in the Republic of Macedonia. The scientific and professional community should not have a role only in the design of the reforms. Rather, they need to actively monitor the course of the reforms and to evaluate the reforms, especially when these reforms refer to a very important segment of the legal system of the country, i.e. the system of legal education that will educate the future legal professionals.

3. Changes in the access to the legal professions – which parts need careful analyses?

Although the scope and the heterogeneity of the reforms implemented in the past 10 years were emphasized on several occasions in this report and it was suggested that they need to be carefully analyzed, still, in order to provide a focus for this report we will dwell only on the reforms related to the access to the legal profession which are common for the attorneys, but also the judicial and the public prosecutorial profession. Every person that intends to enter one of these three professions has to first acquire a university diploma in law, then acquire practical work experience in legal matters and pass the bar exam, and therefore, this document will focus on the reforms and the changes in these three "phases" of the professional development of the future lawyers.

The analyzed reforms are multidimensional. The first analyzed reform is the introduction of the Bologna process in the legal education with respect to the diplomas and the titles acquired by law students and the harmonization of the laws that regulate the legal professions, with their diplomas. The second part will look at the legislative changes that affect the acquisition of work experience in legal matters, while the third part will analyze the new Law on the Bar Exam.

By identifying and analyzing the implemented reforms, this document will attempt to provide an answer to the question whether the legislative changes will increase the level of professional preparedness of the future legal professionals. The other reason for focusing on this problem involves its long term effect on the legal profession, and thereby on the legal system in the country. We have to take into account that in 30 years the

legal system will rely on the knowledge, the skills and especially the values of the generations of lawyers that currently graduate, acquire the initial aspects of the legal profession or take the bar examination. This problem, defined as such, focuses solely on the lawyers that wish to build their career in some of the legal and judicial institutions/public offices (judiciary, prosecution, the bar), i.e. to be a part of the core professions that support the legal system of the country, and hence the importance of an efficient and good quality legal education system.

The consideration of three separate stages related to the access to the profession was a methodological challenge due to the different subject matters, as well as the different legislative frameworks that regulate each one of them. Still the three phases are parts of one process and have the same basic objective, i.e. the education and training of future legal professionals to practice the profession independently. The law faculties introduce the students with the theoretical aspect of the legal system and the legal branches, the practical work on legal matters trains them in the practical skills necessary to practice any one of the legal professions and, finally the bar exam represents an instrument whereby the state verifies whether the graduated lawyer is capable of responding to the challenges related to working in the legal and judicial institutions and whether he/she can apply the regulations autonomously.

4. What is the purpose of this document?

The reason, or more precisely the incentive to prepare this document was to point out specific problems facing the graduated lawyers in their professional development and which can have broad and long term effects on the entire legal system.

The objectives of this document are:

- To provide an overview of the legislative framework reforms related to the university diploma in law, the practical working experience and the bar examination during the period from 2003 to 2013;
- To identify and analyze the potential problems and challenges arising from the implemented reforms, and
- To provide recommendations to overcome the problems and challenges in the areas considered by this document.

An additional objective for preparing this document is to point out to the need of a broad debate at the level of the legal profession, on the reforms that affect it and to stimulate the preparation of scientific and professional papers and analyses that will contribute to the development of a well informed and viable debate about these issues.

5. Document preparation methodology

When preparing this document we used an analysis of secondary data (desk research), which included identification and analysis of the relevant legislative framework[24] (laws, bylaws, other regulations, acts of state authorities), the strategic documents in the area of the judiciary, scientific and professional papers related to this field[25], excerpts from the media regarding the subject of this public policy document, as well as relevant international reports. Through the analysis of the legal framework the document identifies and analyzes the problems and the challenges, potential or actual, arising as a consequence of the implemented reforms, and provides suggestions on how to overcome them.

- **Constrains to the scope of the document**

This document primarily focuses on the legal framework that regulates the issues being analyzed herein. Because of insufficient empirical data it is not possible to provide more in-depth qualitative and quantitative data which should provide an incentive to conduct additional research and studies.

6. Content of the document

The document contains three parts, which relate to the three issues subject to this analysis, as follows:

Part 1 – acquisition of a university diploma in law – first step in the legal career

Part 2 – acquisition of working practical experience in legal matters or colloquially known as "internship"

Part 3 – changes in the manner of implementing the bar examination.

24Please see annex 1 of this document;
25 Please see annex 2 of this document;

Each part contains: an introduction and importance of the issue, an analysis of the legal framework and its reforms, identification of the key problems and challenges, conclusion and recommendations. Finally, the final conclusions provide a summary for the key findings and recommendations from this document.

The document also contains two annexes which contain an overview of the analyzed legal framework and references used to prepare this document.

Part 1

Acquisition of a university diploma in law – a first step to starting a career in the legal professions

1.1 Introduction and importance of the acquisition of a university diploma in law

The first step that all attorneys, judges and public prosecutors have to go through in their professional development is the completion of university education in law and the acquisition of the title of graduated lawyer. The role of the law studies[26] in the education of future lawyers is "to ensure that the students will have acquired the knowledge, skills and values they need to become professional in their jobs and the have the capacity to respond to the ideals of the legal profession"[27]. During their law studies the students become familiar with the theoretic and philosophical aspects of the law and the legal system and with the methods of studying law, they study the basic legal branches, and they become familiar with the effective laws in the Republic of Macedonia. During the school year 2013/2014 law study programs were offered by 4 state[28] and 5 private universities[29], accredited by the Ministry of Education and Science. Most of the students enroll in the oldest Faculty of Law "Iustinianus Primus", at the University "Sv. Kiril i Metodij" in Skopje.

The university law degree is more of an academic than a professional title, having in mind that the diploma, in itself, is not sufficient to practice most of the legal professions which, being regulated professions, have additional prerequisites and special licensing procedures. Therefore the diploma should be viewed as a precondition[30] to fulfilling the other prerequisites which will then determine whether a graduated lawyer will enter into one of the legal professions. This feature of the legal profession, where entering the profession is a question of regulation outside of the academic circles (legislative body,

---

[26]Certain countries legislatively regulate the goal of the law education. The German Federal State of Hess, in its Law on the Legal Education (Gesetz über die juristische Ausbildung des Landes Hessen) sppecifies that „the objective of the legal education is an enligthened lawyer that thinks critically and acts rationally and is aware of his/her responsibility as a defender of the free, democratic and welfare state managed by the rule of law, and who can recognise his/her obligation to improve the law"

[27]Lusine Hovhannisian (2006), „Clinical Legal Education and the Bologna Process", PILI Papers No 2,

[28]Faculties of Law at the University "Sv. Kiril i Metodij" – Skopje, the University "Goce Delchev" – Shtip, the University "Sv. Kliment Ohridski" – Bitola and the State University - Tetovo;

[29]Faculties of Law at the University FON, the University of Southeastern Europe – Tetovo, the University American College, the First Private European University – Skopje and the International University - Struga;

[30]A university diploma in law is a prerequisite for the bar exam, which, in turn, is a prerequisite for registration in the Registry of Attorneys or for enrolment in the Academy for Judges and Public Prosecutors;

professional associations), leads to a risk of a discrepancy between what university education offers as a degree and what is required by the law and/or the professional associations, something which was reaffirmed in Macedonia in the past 5 years. Namely two parallel processes that affected the legal professions, began in 2004 and 2005. The first process refers to the implementation of the Strategy on the reform of the judicial system described in the introductory part of this document, while the second process relates to university education, the introduction of the Bologna process and the European Credit Transfer System (ECTS) in the Faculties of Law in the Republic of Macedonia. These two processes, albeit independent and parallel, clashed at a common point that we will analyze in more detail below in the text.

1.2 What changed with the introduction of the Bologna system in the law studies?

The legal framework for the introduction of the Bologna system in the university education in the Republic of Macedonia was established in accordance with the Law on the Higher Education[31] from 2000, although the country formally became part of the Bologna process in 2003[32]. Most of the university education system, including the Faculties of Law, began applying the ECT system starting from the school year 2005/06. The key reform implemented to comply with the principles of the Bologna system was the change in the duration of the study cycles. Instead of the four year undergraduate academic curricula from the past, three year programs were introduced which raised the issue of the competences and the knowledge acquired during the studies.

Seen from the point of view of the legal studies, the introduction of the ECTS led to the abandonment of the four year legal education that had been established for the past fifty years and replacing it with a 3+2 system including three year undergraduate studies (bachelor), which involves the study of the basic legal branches and subjects, and specialized two year graduate studies (master), where the students specialize in one of the legal branches. This change of the titles and especially the duration of the legal studies raised several issues and challenges both for the law students,

[31] *Published in the Official Gazette of the Republic of Macedonia 64/2000;*
[32] *Ministry of Education and Science of the Republic of Macedonia, National Report on the Status of the Implementation of the Bologna Process in the Republic of Macedonia 2004-2005, Skopje 2005, available at http://www.ehea.info/Uploads/Documents/National_Report_FYROM_05.pdf*

as well as the legislators and the professional associations. The principle that had been accepted in the past by the laws that regulated access to the legal profession, whereby having a university diploma in law is a sufficient prerequisite for taking the bar exam, for registering in the Registry of Attorneys and for starting a judicial career etc., had to be changed because the of the issue which level (first or second cycle) would be required and sufficient for taking the bar exam and what would be requirement for entering one of the professions. At the same time, the adjustment to the new system had to respond to yet another challenge, i.e. the equivalency of the new diplomas with the diplomas acquired in accordance with the "old program", or where to put an equal sign between the titles acquired in the past and the titles acquired in accordance with the new way of studying, having in mind the differences in the duration of the study programs, as well as the differences in the curricula.

- It was accepted that the university diploma in law, acquired in accordance with the "old program" shall be equal to 300 credits according to the ECTS, i.e. completed second cycle of studies

Driven by the need for an appropriate response to the previously identified dilemmas and challenges, the legislator started a process of implementing a set of changes to the relevant laws[33] in 2010, which regulated the level of education (title) acquired in accordance with ECTS, needed to have the right to take the bar examination or start a career in one of the legal professions which do not require the bar examination. The timing of this set of changes was not chosen randomly; rather the changes coincided with the graduation of the first generation of students that completed their law studies according to the ECTS, which helped avoid the legal vacuum that could have occurred if the changes had not been made. The changes of 2010 indirectly equalized the diplomas acquired according to the old program and the diplomas acquired in accordance with the ECTS.

According to the Law on the Bar Exam from 2010, which was the first legislation that regulated this issue, the following

33Law on the Bar Examination (Official Gazette of the Republic of Macedonia 10/2010), Law on the Academy for Judges and Public Prosecutors (Official Gazette of the Republic of Macedonia 88/2010, article 44), Law on the Changes and amendments to the Law on courts (Official Gazette of the Republic of Macedonia 150/2010, article 15), Law on the Changes and amendments to the Law on the Bar, (Official Gazette of the Republic of Macedonia 113/2012, article 3 and 5);

had the right to take the bar exam 1. Graduated lawyers that have completed four years of university education in law and have worked for at least two years on legal matters and 2. Graduates lawyers that studied in accordance with the Bologna declaration and have acquired 300 credits in accordance with the European Credit Transfer System (ECTS) and have worked for at least one year on legal matters. Therefore, the condition for taking the bar examination, from the point of view of the

Graduated lawyer from a four year undergraduate program, the so called old program	=	Graduated lawyer that acquired 300 credits according to the ECTS (3 year of undergraduate studies + 2 years graduate studies)

diploma, is completed four year education according to the old program or acquired 300 credits according to the ECTS which is the equivalent of the master title from a five year education in law. This solution imposed the principle whereby all future attorneys, judges, prosecutors shall have at least a master title instead of the title "graduated lawyer". The law creates some kind of balance by reducing the duration of the internship from two to one year, which will make the total duration of the education and the necessary practical experience same as before. This principle of equalizing the four year law studies with 300 credits according to ECTS was also adopted in the Law on the Academy for Judges and Public Prosecutors of 2010, the Changes and amendments to the Law on Courts from 2010, as well as the Changes and amendments to the Law on the Bar from 2012. The prerequisites stipulated in the Law on Enforcement were also regulated in a similar fashion. The only exception was envisioned in the Law on Court Service from 2008, which gave the opportunity for lawyers that have acquired 180 credits to get employment in specific lower level positions within the court administration. The Law on the Public Prosecution Office and the Notary Law on did not undergo any changes which would regulate this issue and do not contain any provisions referring to the number of credits needed to fulfill the conditions related to the education, although, the Law on the Public Prosecution Office overcomes this vacuum with the Changes to the Law on the Academy for Judges and Public Prosecutors which, by regulating the conditions for admission and initial training, indirectly also regulates the conditions that every future public prosecutor has to fulfill.

- The exception from this rule in the public advertisements for admission to initial training at the Academy for Judges and Public Prosecutors

There is one exception from the previously mentioned principle whereby the university law diploma acquired according to the "old program" is sufficient to take the bar exam and is a sufficient education condition for entering the judicial or the public prosecution profession. That is the practice at the Academy for Judges and Public Prosecutors which, by the end of 2012, in the initial training admission advertisements, in the section Content of the Application and Necessary Documents, started requiring the candidates to submit a certificate that they have completed the Faculty of Law – four year university education in law and a certificate that they have completed the 2nd cycle of studies – master academic studies. This formulation imposes an additional condition to the students that have graduated in accordance to the "old program", which condition is not envisioned in the Law on the Academy for Judges and Public Prosecutors[34], the Law on Courts and the Law on the Public Prosecution Office. The second cycle of studies, according to these laws, is a necessary prerequisite only for the students that have graduated in accordance with the ECTS.

This practice of the Academy started at the end of 2012, with the public advertisement from 28.12.2012[35]. The previous advertisements for admission of candidates to the academy did not stipulate the additional requirement[36]. The explanation for requiring a certificate for completion of the 2nd cycle of studies, although this is not a legislatively mandated requirement, refers to articles 4 and 13 of the Regulation on the National Framework of Higher Education Qualifications[37]. This regulation establishes a new national framework of educational qualifications and equalizes them to the previously existing qualifications[38]. Therefore, the level VII/1 (equivalent to a graduated lawyer according to the old program) corresponds

[34] *Article 44, paragraph 1, line 1 of the Law on the Training Academy for Judges and Public Prosecution, which regulates the initial training admission requirements, states "a graduated lawyer who has completed four year university education in law and has attained a GPA of at least 8.0 or a graduated lawyer who has acquired 300 credits in accordance with the European Credit Transfer System (ECTS), with a GPA of at least 8.0 for each of the two cycles of university studies". In addition, article 45 of the Law on Courts or article 44 of the Law on the Public Prosecution require the candidates "to have acquired a university law diploma in the Republic of Macedonia or a notarized diploma from the foreign university"*

[35] *Published in the Official Gazette of the Republic of Macedonia 3/2013, as well as in the future public advertisements for admission of candidates published in the Official Gazette of the Republic of Macedonia 15/2013, 88/2013, 96/2013 and 167/2013;*

[36] *The public advertisement for admission of candidates to the initial training course, published in the Official Gazette of the Republic of Macedonia 128/2012, as well as previous advertisements did not contain the additional requirement;*

[37] *Published in the Official Gazette of the Republic of Macedonia 154/2010;*

[38] *See article 13 of the Regulation on the National Framework of Higher Education Qualifications (Official Gazette of the Republic of Macedonia 154/2010)*

to the new level VIA (1st cycle of studies, university and professional studies 240 credits), i.e. this is one level lower than the 300 credits in accordance with ECTS. Due to the difference in the qualification levels and by greatly stretching the scope the Regulation to cover the conditions that the future judges and public prosecutors should fulfill, the Academy stipulated an additional requirement in the advertisement, a requirement that is not envisioned by law. The reference to the Regulation led to contradictions in the advertisements themselves. Namely, in the section of the advertisements referring to Requirements for Admission to Initial Training the advertisements are fully compliant with the Law and do not stipulate the contested requirement, while, further in the advertisement, the section referring to the content of the application and necessary documents requires a document/certificate for completion of the second cycle of studies, which is not one of the requirements to enroll in the Academy.

This practice is wrong due to several reasons. Firstly, it is contrary and contradictory to article 44 of the Law on the Academy for Judges and Public Prosecutors, which clearly stipulated the conditions that the candidates need to fulfill and does not stipulate any additional requirements for the candidates that have graduated from four year faculty of law in accordance with the so called old program. The reference to the Regulation on the National Framework of Higher Education Qualifications[39], as a piece of secondary legislation, only deepened and further complicated the argumentation having in mind the supremacy of laws over regulations. In this specific case, the regulation provides for an additional requirement not envisioned by law, thereby derogating article 44 of the Law on the Academy for Judges and Public Prosecutors. In addition, this practice is contrary to the Law on Courts (which, indeed, is a systemic law) and to the Law on the Public Prosecution Office. These laws regulate the conditions that future judges and public prosecutors have to fulfill and none of them requires future judges and public prosecutors that graduated according to the "old program" to have completed the 2nd cycle of studies. In addition, the contested requirement is not necessary for taking the bar examination, which is a prerequisite for enrolling into the academy.

The argument about the need for equivalence in accordance with the Regulation and, later on, the Law, is

[39]*Note: In November 2013 the Parliament enacted the Law on the National Framework of Education Qualifications, which regulated this subject matter. However, until than the national framework had been regulated by secondary legislation which is subordinate to the law, in this case the Law on the Training Academy for Judges and Public Prosecutors;*

justified to an extent, but the manner in which it is implemented, by changing the public advertisements rather than changing the conditions within the laws, causes legal insecurity in a profession that trains future defenders of the legal security and the rule of law. In addition, before the equivalence stablished with the Regulation and, later on with the Law, can be applied in the higher legal education, has to be subjected to careful analyses. First, it should be determined whether the second cycle of studies for students that have graduate according to the "old program" is entirely necessary. If, for almost half a century the master title had not been a requirement for performing the judicial function, then one needs to carefully analyze and elaborate the need to have the additional requirement involving the second cycle of studies. On the other hand, this practice began in 2012 and the lawyers that had graduated before 2012 (2004, 2005, 2006) did not know or could not have known that they would have to fulfill an additional condition if they wished to continue their career in the judicial institutions. With this practice they are forced to sustain additional financial costs required for the 2nd cycle of studies. One consequence from this could be that a significant number of good quality lawyers, with already built careers, and who are in their early 30s and who have graduated according to the old program, but they have not acquired the masters title, will not be able to become part of the judicial system. This means that the legal and judicial system will lose this significant human resource which could strengthen the system with young, professional and successful lawyers, who will now end up in the bar or other professions instead of the legal and judicial institutions.

- Legislative regulation of the law studies in the Law on Higher Education

In order to harmonize the programs and the professional titles acquired by the law students, this issue was regulated in the Law on Higher Education[40], whereby the legal profession, together with several other professions[41] was recognized as a regulated profession. The changes from 2013 introduced a new provision in the Law on Higher Education; article 106a entitled Study Programs for Law Studies. This provision, which will start to apply from the school year 2014/15, legislatively regulates the study programs for law studies, their duration, the number of credits, as well as the professional title acquired by the students.

[40] *Law on Changes and amendments to the Law on Higher Education – Official Gazette of the Republic of Macedonia 15/2013*

[41] *Medical professions, dentists, veterinarians, pharmacists, architects, teachers in secondary and primary education;*

Types of law study programs in the Republic of Macedonia according to the Law on Higher Education

Name of the study program	Траење	Credits	Professional title
Undergraduate law study program	Three years	180	Lawyer
Undergraduate study program in law with a graduation assignment	3+1	240	Graduated lawyer
Graduate professional studies	3+1	300	Master of Law
Graduate scientific studies	3+2	270	Master of Legal Sciences

This framework can significantly contribute to resolving the issue with the equivalence of professional titles and simplify the regulation of the requirements that have to be fulfilled by lawyers intending to enter one of the specific legal professions (by selecting one of the four possible professional titles). The issue that should be debated will simply be which of the four possible professional titles should be selected as the most appropriate basic level of legal education required for taking the bar examination. We must note that this framework seems too late if we consider that, in the meantime, the laws that regulate the legal professions with respect to the required level of education were not unequivocal with respect to the titles. On one hand we have the graduated lawyers from four years university education in law and on the other hand we have the graduated lawyers with 300 credits according to the ECTS. Unlike the other regulated professions, the legal professions were (un)intentionally omitted in 2008 in spite of the fact that that time would be most suitable, before the laws began to change in 2010.

1.3 Conclusions

The aforementioned stipulations lead to two groups of conclusions.

1. Lack of a coherent national policy which will provide an answer to the question which level of education is required for professional development in the legal professions

The effects of the introduction of the Bologna system and the consequences from the change of the duration of the law studies suggest a lack of coherent national policy regarding the level of education required for working in the legal professions. Namely, the changes in 2010 envisioned two possibilities to enter: the first is a university law diploma acquired according to the old program (four years – graduated lawyer), while the second possibility is to acquire 300 credits according to the ECTS (5 years – master of law). Such a solution seems to be "temporary" and will apply while there are lawyers that have graduated according to the old program and the number of such lawyers will gradually decline. However, this solution has not been universally applied in all the laws that regulate the legal professions. Thus, the Law on the Public Prosecution Office and the Notary Law stipulate that the candidate is required to be a graduated lawyer and do not regulate what happens if the candidate graduated according to the ECT System. The lack of a coherent national policy is also visible in the public advertisements for admission to initial training at the Academy for Judges and Public Prosecutors, where the lawyers who graduated according to the old program have to fulfill an additional requirement, although the Law does not require it. Some progress has been made with the introduction of legal studies in the Law on Higher Education, as regulated professions. However, this is belated and can cause additional complications. Thus, according to this law, the professional title of graduated lawyer can be acquired after completing four years of legal studies. This title is stipulated in the Law on the Public Prosecution Office and the Notary Law, and therefore the candidates who have completed four years of legal education do fulfill the conditions in accordance with these laws. On the other hand, the Law on the Academy for Judges and Public Prosecutors evidently envisions stricter requirements, by requiring 300 credits instead of 240, which are required to become a graduated lawyer. The consequences from the lack of a coherent national policy are visible and refer to inconsistent regulation of the requirements related to the level of education necessary, both within the laws and in practice.

2. Legal inequality and insecurity for the students that have graduated according to the "old program", as well as the students that have graduated according to ECTS

This problem is not a direct consequence of the previous one. Considering the lack of a nationally accepted consensus about the basic level of education required to enter the legal profession, temporary and ad-hoc solutions are applied without taking into consideration the persons affected by this issue, i.e. the graduated lawyers. In addition, it is worth noting that both categories face legal inequalities or uncertainties. The graduated lawyers that have graduate according to the ECTS are required to study longer and to have completed the second cycle of studies, which represents a significant financial burden for the law students. On the other hand, the students that have graduated according to the old program are required to have longer work experience with legal matters (which creates some kind of balance), but at the same time they are required to have completed the second cycle of studies if the wish to enter the Academy for Judges and Public Prosecutors. Another issue is the different study programs on different law faculties, which have raised suspicions about differences in the student evaluation criteria. Such insecurities and inequalities can have a discouraging effect and direct the law students to other legal professions, instead of the judiciary, prosecution or the bar.

1.4 Recommendations to overcoming the problems

1. Preparation of an analysis of the impact of the implementation of the Bologna process on the legal studies and legal education

The comparative experiences show that the principles of the Bologna process need to be carefully implemented in the legal education. The changes in the duration of the studies and the new professional titles radically change the system that had been applied for the past fifty years and therefore the resistance from the legal profession, as well as the higher education institutions is natural and expected. A careful approach to the reforms is impossible without sound and scientifically based analyses, which will assess the existing legal education system and the needs of the legal system for lawyers. Only on the basis of such assessments can one determine the optimal level of education and title, which will guarantee the professionalism

and competence of the lawyers without burdening the students with scientific titles since they aspire to become legal practitioners after all. The analysis should be prepared by a project team that will include representatives from the higher education (faculties of law), representatives and experts from the Ministry of Justice, representatives from the legal and judicial system and institutions, as well as representatives from the independent legal professions. In addition, a careful analysis needs to be conducted of the comparative experiences of the European countries with the implementation of the Bologna system in the legal education. The findings and the conclusions from this analysis can be used as a basis for designing the curricula for the legal studies, as well as for the purposes of a national policy for human resources in the judiciary.

2. Define and harmonize the level of education required to enter and advance in the different legal professions

This recommendation emphases the need to bring back the security that existed 10 years ago, when the graduation from the faculty of law was clearly defined and was the first step to advancing in the legal profession. This means that all relevant laws should clearly and unequivocally regulate the required level of education for graduated lawyers according to the "old program" as well as those that graduated according to the ECTS, having in mind the need for equality of these two categories. This was achieved to a certain extent, but the practice of the Academy for Judges and Public Prosecutors and the application of the Regulation/Law on the national classification of activities can cause additional changes, which can be overcome only by careful and clear regulation of this issue, in a consistent manner, in each of the relevant laws. The regulation of legal studies in the Law on the Higher Education is a good start and provides proper terminology and professional titles that can be used further. In addition, the issue of the requirement for lawyers to have completed the second cycle of studies should be carefully examined during the harmonization process. Namely, the second cycle of studies usually is more scientific and usually does not guarantee that the candidate has the appropriate knowledge and skills to apply the law in practice. The other thing that has to be carefully considered is the fact that the faculties of law have certain second cycle programs whereby the students specialize in areas which are completely unrelated or slightly related to the judiciary (international relations, business law, history of law etc.).

Part 2

Acquisition of practical experience in legal matters, known as „internship“

2.1 Introduction and significance of the acquisition of practical experience with legal matters

Future attorneys, judges and prosecutors get their first contact with the law as a profession[42] when they go through their so-called „legal internship“[43], which is one of the prerequisites to sit for the bar exam. This stage of professional development is especially important because it establishes the necessary link between theoretical education attained at the law schools and the application of law in practice, as well as the routine work responsibilities of legal professionals. The link is established through an obligation to work on legal matters within a designated institution[44] or profession[45] over a designated period of time. The purpose of this mandatory work on legal matters is to offer opportunities for acquisition of practical knowledge and skills that are needed for independent high-quality performance in the legal professions. Drafting legal documents, administrative operations, studying legal regulations, communication with clients and other parties, representation, provision of legal assistance, are among the key skills that should be acquired by the law graduates in order to meet the challenges of the legal profession. In addition to practical knowledge and skills[46], we must not neglect the need for detailed and precise familiarization with the Macedonian legal system, as well as values[47] common to the legal professions. In view of these three elements, it turns out that the purpose of the legal internship is wider in scope than simply preparation to take the bar exam. The acquisition, or the failure to acquire

[42] *Vis-à-vis the law as a science, which is studied in law schools;*
[43] *The term internship, in regard to lawyers, is not included in the Macedonian legislation but it is generally accepted in the communication. The legal term is "work on legal affairs" as prescribed in the Law on Bar Exam;*
[44] *Court, Public Prosecution Office, State Attorney's Office, Ombudsman etc.*
[45] *Attorneys, notary, enforcement agent;*
[46] *Review of the key practical skills that should be adopted by any lawyers is included in the so called MacCrate Report of the Americal Bar Association where the followig are included as basic skills of the attorney's profession: 1. Problem solving skills, 2. Legal analysis and judgment, 3. Legal research, 4. Fact finding, 5. Communication skills, 6. Advisory skills, 7. Negotiation skills, 8. Organization and management of the work with legal affairs, 9. Identification and solving of ethical dilemmas. Robert MacCrate (1992), „Legal Education and Proffesional Development – An Educational Continium",A.B.A. Sec.Ledal Educ & Admissions 1;*
[47] *The values of the attorney's profession universal to all legal systems in the world include: 1. Loyalty, 2. Commitment to the clients, 3. Respect and protect the rule of law, 4. Support the legal system, 5. Act according to the applicable ethical codes and norms, 6. Personal integrity, 7. Providing professional and efficient legal assistance, 8. Respect of the other attorneys' work, 9. Awareness on the persons who are not able to pay for the legal assistance services and 10. Responsibility for their actions - Roy T. Stuckey (2002), „Preparing Students to Practice Law: A Global Problem in Need of Global Solutions, SOUTH TEXAS LAW REVIEW, Page 661;*

practical experience with legal matters, the (lack of) knowledge of the legal system and the (lack of) respect for the values of the profession would continue regardless of whether the person passed or failed the bar exam. The importance of legal internships is particularly pronounced in view of the fact that a person who has completed a legal internship and passed the bar exam may be enrolled in the Registry of Attorneys and independently practice as an attorney at law, a profession with a high degree of responsibility.

Referring to the significance of the legal internship for the future professional development of future legal professionals explained in the previous paragraph, this document offers an analysis of the existing legal framework that regulates the legal internship, including changes in this area that have taken place over the past ten years or so. Through presenting the current situation we will identify and analyze problems facing future legal professionals, as well as the challenges faced by the legal system of the country, which needs educated and proficient legal professionals. The analysis will answer the question of whether the current regulation of the „legal internship" offers opportunities to acquire the necessary practical experience with legal matters required to take the bar exam, as well as to independently apply the legal regulations. In answering these questions equal consideration will be given to the needs of young lawyers for access to work and acquisition of knowledge/skills, as well as the needs and capacities of the legal system.

2.2 Legal framework for practical experience with legal matters

The legal internship required to qualify to sit for the bar exam is regulated by several laws. Issues subject to regulation include: the types of institutions that may offer this kind of internship, the duration of the internship, how the internship is to be structured, rights and responsibilities of the interns, as well as the interns' rights in terms of labor relations. The provisions regulating these issues can be found in the Law on the Bar Exam, Law on the Attorney Profession, Law on Courts, Law on the Public Prosecution Office, Law on Labor Relations, as well as other laws or regulations concerning this area.

Where do legal internships take place?

According to the Law on the Bar Exam, what counts as practical experience with legal matters is work experience in a court[48], Public Prosecution Office, the Office of the State Solicitor, the Ombudsman, other state authorities, units of the local governments, attorney offices, notary offices, enforcement agents, commercial corporations and other legal entities and civic associations. Accordingly, a legal internship may take place in various state authorities, institutions and independent professions. The Law does not contain a more specific definition of the term legal matters that might precisely regulate what sort of work tasks are „of legal nature"; instead, it prescribes longer duration of practical experience in the entities and organs that, by nature of their main activities, are not focused on "legal issues" (in contrast to courts, attorney offices etc.) assuming that practical experience in the latter is not at the same level as in the former.

How long does it take to complete a legal internship?

The required duration of the practical experience is regulated in the Law on the Bar Exam. Until the enactment of the Law on the Bar Exam in 2010[49], the duration of practical experience with legal matters required for eligibility to take the bar exam was two years regardless of whether such experience is acquired in a court, attorney offices or a state organ. In 2010 this principle was abandoned and different durations of internships were introduced (see the table below) depending on whether the person applying to take the exam has graduated according to the so-called „old curriculum"or according to ECTS, and depending on whether the experience is being accumulated in „exclusively law-oriented"[50] entities/activities or in entities engaging in a more general scope of activities. This balancing is justified to some extent, in view of the need to equalize the years required to graduate and take the bar exam for all legal professionals, as well as take into account the difference between working in activities where almost all of the work may be characterized as "law-related" and working in other state authorities, commercial corporations and associations. The deficiency, or the weakness, of this solution lies in the fact that it offers no guarantee that the accumulated practical experience would be from work on legal matters, which takes us right back to the aforementioned problem that the Law contains no definition (or at least a guiding

[48] *Article 3 of the Law on Bar Exam;*
[49] *When the Law on Bar Exam of SRM was still in application, published in Official Gazette of SRM 26/1980 and 7/88*
[50] *Primarily the key judicial institutions such as the judiciary, prosecution and attorneys as independent profession;*

framework) on what can count as "legal matters". This could lead to a situation where someone doing administrative or technical tasks in an attorney office or a court with no other experience, could achieve eligibility to sit for the bar exam in a shorter time than a person working in a commercial corporation exclusively on legal matters (e.g. a legal consulting company).

Overview of the duration of the required practical experience with legal matters

Type of education	Experience with legal matters	Duration
Old curriculum	court, public prosecution office, state solicitor, ombudsman, attorney, notary, enforcement agent	2 years
ECTS		1 year
Old curriculum	Other state institutions, local governments, commercial corporations and other legal entities, civic associations	3 years
ECTS		2 years

What does the acquisition of practical experience with legal matters entail?

The Law on the Bar Exam does not go into more detailed regulation of how the practical experience with legal matters would be carried out, and leaves it to the regulations promulgated by the entities and professions where the legal internships take place. How the practical experience is implemented includes the performance of work tasks, record-keeping, supervision, as well as the program for the internship. This approach differs from the previous Law on the Bar Exam of 1980 and 1989, which was in force until 2010, where secondary legislation[51] precisely regulated how the practical training would be conducted in the judiciary entities (courts, Public Prosecution Office, Office of the Solicitor).

[51] *The Rulebook on the method of performance of the practice in the judicial authorities published in Official Gazette of SRM no. 09/1989 included precise provisions on the method of performance of the practice in the sectors of the judicial authorities (administrative office and intake office, court and out of court departments, payment orders, enforcement, criminal and misdemeanor departments). The Rulebook established an obligation for the judicial authorities to issue programs for any intern and the head of the judicial authority should take care about the implementation of the program. However, the article 28 of 2010 LBA placed the 1980 and 88 LBA out of force which ceased the application of this Rulebook which was issued for the 1980 law.*

1. Acquisition of practical experience in a court

The Law on the Courts and the Court Book of rules contain no provisions regulating the conduct of practical training in legal matters for interns and volunteers. The Law on Courts of 2006 envisaged a possibility to hire court interns for the purpose of acquiring practical experience for bar exam eligibility, but this provision was repealed by the amendments to this Law in 2010. The Court Book of rules of 2006, which regulated the recordkeeping procedures pertaining to interns, was replaced by new Book of rules in 2013, containing no provisions in this area. Parallel to the establishment of the court administration, there was a change in the role of the court interns, turning from accumulation of practical experience to become eligible for the bar exam into an accumulation of practical experience for purposes of taking the professional exam required to work in court administration. For this reason, with the exception of Article 61 of the Law on Labor Relations (regarding volunteering-type internships), there is no other legal basis for how legal internships should be carried out. As a result of this, the current legal framework lacks provisions that would regulate the work involving legal matters, supervision and recordkeeping, as well as the program to be followed. This gap is filled with ad-hoc solutions for these issues by the managements of each individual court.

2. Acquisition of practical experience in a Public Prosecution Office

Unlike the Law on the Courts, where the provision allowing the hiring (for full regular employment) of interns was repealed, it is still present in the Law on the Public Prosecution Service. According to this regulation, interns are assigned work and tasks with the purpose of acquiring practical knowledge in all areas of activity of the primary and higher Public Prosecution Offices[52].

3. Acquisition of practical experience in an attorney's office

The Law on the Attorney Profession includes the option of hiring interns in attorney offices in order to build their proficiency to independently carry out the attorney practice. The Law prescribes[53] that the legal assistance and other matters of public authority shall be conducted according to the instructions of the attorney supervising the intern. This

[52] *Article 85 of the LPPO;*
[53] *Article 28 of the Law on the Bar*

solution offers flexibility to the attorneys in supervising and directing the work of the interns.
We won't go into assessing the situation with legal internship in other types of institutions or entities (Office of the State Solicitor, Ombudsman, other state authorities etc.) because the legal framework that regulates this issue is almost nonexistent, and on the other hand our aim is to direct and focus our analysis on the judiciary and the attorney profession.

Work obligations of persons interning for practical experience with legal matters

As it was mentioned at the beginning, the goal of acquiring practical experience with legal matters is that future professionals become familiar with the routine tasks of the legal profession, so that after passing the bar exam they could be prepared to independently apply the legal regulations. In the judicial branch there is a problem with the absence of a source of law (legal basis) that would offer guidance on what the interns should work on, in view of the fact that all previously mentioned provisions have been repealed or voided. Work tasks for law graduates within the courts can be found in various departments, such as the court management, registry/intake office, civil law department, criminal law department, and may involve administrative work, reviewing court cases, assisting in the preparation of certain types of documents under mentorship. The situation is identical in the Public Prosecution Offices, where there is a legal basis for hiring interns. As for the attorney profession, the range of work tasks corresponds to the scope of activities of the law office, as well as the areas of law that the office is active in. Until 2011 there were good opportunities for accumulation of practical experience by independently representing clients in hearings in courts of first instance in small-claims cases (value up to 1.000.000 denars). In this way, the interns were really developing proficiency for independent application of the legal regulations and autonomous practice of the attorney profession. Nonetheless, with the changes to the Law on Civil Procedure that entered into force in September of 2011 this option was rescinded and remained available exclusively to attorney associates. Under this arrangement the interns in attorney offices will not have opportunities to acquire practical skills required for representation at a court hearing, yet they will be able to enroll in the Registry of Attorneys and fully and independently practice the attorney profession without a single day of experience in representing a client in court.

Employment status of the interns

Persons who need professional development for the purpose of taking the bar exam may enter into an employment contract with the state organ or institution indicated in Article 3 of the Law on the Bar Exam and to exercise all rights deriving from the employment contract. In reality, law graduates very rarely have this opportunity, mostly because of the limited number of job openings in the entities indicated in Article 3, as well as due to their lack of professional experience. For this reason, work experience is usually accumulated as a volunteering intern. The Law on the Attorney Profession explicitly allows this possibility, while the Law on Courts and the Law on the Public Prosecution Office contain no provisions regulating this issue or referring to an option for volunteer work in these judiciary institutions. In the absence of dedicated provisions, the volunteering is organized according to the Law on Labor Relations (Article 61 – volunteering internship). The employment status is important for reasons of protection of the rights of persons interning for practical experience with legal matters, in terms of work hours, breaks and leave, liability, as well as workplace safety.

2.3 Challenges and problems with the acquisition of practical experience in legal matters

The acquisition of practical experience by law graduates conducted according to the described legal framework is facing several challenges and problems – some arise because of the way the work on legal matters is (not) regulated, while others are consequences of circumstances beyond the power of the legislators. For purposes of coherence, in this document we shall limit our focus to the problems arising from the existing legal framework, while not neglecting the other challenges faced by the law graduates (limited numbers of opportunities for practical experience in the courts, the fact that one should expect to volunteer for extended periods of time without a source of income), that deserve additional analysis. Two key problems predominate, and they affect not only those who are acquiring practical experience with legal matters – they also have consequences for the legal system as a whole. The first problem is the insufficient, or in fact nonexistent legal framework for practical training in the courts, while the second problem is the impossibility of interns in attorney offices to accumulate practical experience through representation of clients in court hearings. What is common to the two

problems is their recency, i.e. they are consequences of reforms undertaken over the last few years.

- Acquisition of practical experience with legal matters in the courts is insufficiently and imprecisely regulated

As a result of the changes to the Law on the Courts of 2010, the enactment of the new Law on the Bar Exam in 2010[54], changes to the Law on the Court Administration and the enactment of the new Court Book of rules in 2013, at the time of the writing of this document the courts lack the legal framework required to accept law graduates into practical training with legal matters. In other words, the aforementioned legislation fails to regulate how the practical training is to be carried out (would the trainee/intern spend the entire period in one court department or multiple ones, would there be an obligation for a volunteering program etc.), the way in which law graduates would be accepted into practical training is also not regulated (by open public solicitation or through individually submitted applications), there are no provisions on how the interns are to be supervised or supported by a designated responsible employee of the court, and there are also no requirements on maintaining records on the interns. This legal gap is fundamentally a new situation because there used to be provisions regulating these matters in the past, but those provisions were either repealed or replaced by new regulations that failed to address these issues. The effects of the lack of regulations in this area would be felt most strongly in the primary courts, which accept law graduates for practical training. In the absence of a valid legal framework, they are forced to „improvise" and resort to ad-hoc solutions. This, on the other hand, could lead to practices that are not unified across different courts, as well as hinder access to practical training for the law graduates.

In addition to creating problems for the courts themselves, the existing legal framework should be changed also because the present system does not guarantee that the interns would acquire the experience and skills needed for passing the bar exam and for individual practice of the legal professions. In absence of clear rules on how the practical training is carried out, which areas of the law should be included, who is supervising the work of the intern, it must be concluded that the attained level of professional proficiency might be questionable. An additional circumstance that underscores the need for intervention is the

[54] *Which caused cease of the application of the Rulebook on the method of performance of the practice of the graduated lawyers in the judicial authorities;*

fact that this approach deprives the judiciary of the opportunity to recruit and select quality staff from the available pool of law graduates who might, through interning in the judiciary, successfully continue their careers in the court administration or as judges, instead of becoming attorneys or going into one of the other legal professions.

- With the repeal of the provisions allowing for interns in attorney offices to represent clients in hearings in the courts of first instance, those interns have lost the opportunity to acquire the practical skills needed for independent practice of the attorney profession

The revocation of the opportunity for interns in attorney offices to act as authorized representatives of clients in hearings for cases with a value not exceeding 1.000.000 denars will leave those interns without practical experience needed to practice the attorney profession, i.e. representation of clients in court proceedings. As a result of this decision, legal professionals having passed the bar exam without a single day of experience in court could register as attorneys with the full powers and authority of the attorney profession, and this can lead to omissions and errors in the initial contact with the courts, which could entail harm or losses to the clients. Besides, this arrangement could make the job harder for young attorneys who have just enrolled in the Registry of Attorneys for the simple reason that the general public, including potential clients, will be aware of the fact that the attorney has no practical experience in court, and will be reluctant to entrust their cases to those attorneys. Also, there is a possibility of a reduction in demand for interns in attorney offices because they could not act as authorized representatives of the clients, and that could limit access to practical training for many law graduates.

Without disputing the obvious intent to guarantee the proficiency and professionalism of authorized representatives, which in some ways is ensured by the requirement that only attorney associates may engage in legal representation, nonetheless the legislators could have selected another suitable way to guarantee professionalism in representation while at the same time offering opportunities for interns to acquire the needed practical experience.

2.4 Recommendations

- Amending the Law on the Bar Exam with a description and definition of the term 'legal matters' and providing legal basis for regulating how practical training is carried out

Defining the extent of the term 'legal matters' will facilitate the carrying out of practical training and at the same time will guarantee that law graduates are accumulating relevant practical experience for the bar exam. The solution from the Law on the Bar Exam of 1980 and 1989, to offer more precise rulebook regulation of carrying out practical training in the courts and Public Prosecution Offices, should also be considered, as it will make these matters easier for the institutions by allowing them to more efficiently plan their capacities for absorbing volunteers interested in practical training, and on the other hand will serve as some level of guarantee that the law professionals will have gained practical experience in multiple areas, which they would need to take the bar exam.

- Amending the Court Book of rules with provisions on internships, specifically concerning recordkeeping, mentoring and supervising volunteers

This recommendation is aimed primarily at the courts, and its purpose is to provide a clear picture on monitoring activities and a unified framework for administrative management of the practical training. This includes recordkeeping procedures pertaining to the interns and their work, mentor designation and in particular supervision over the work of the volunteers.

- Amending the Law on Civil Procedure to offer the opportunity to interns in attorney offices to act as authorized representatives in small-claims cases in the courts of first instance

Representation in court is one of the fundamental work tasks for attorneys. Thus, it is of particular importance that the attorney has acquired the skills needed for successful representation of the clients' interests. The only way to acquire such skills is through accumulation of practical experience while working as an intern. Implementing this recommendation will not reduce the professional quality of the legal assistance provided at all,

and on the other hand the small-claims procedure is simpler than the regular procedure, which makes it especially suitable for building practical experience.

Part 3

Changes in the bar exam procedures in 2013

3.1 Introduction and significance of the bar exam

With the completion of the internship and accumulation of the required practical experience in dealing with legal matters, the law graduates become eligible to sit for the bar exam. The bar exam is a mechanism for testing of the professional proficiency of the law graduates for independent application of the legal regulations in practice. Passing of the bar exam is a prerequisite for professional advancement in the key professions in the legal system: attorneys, courts and the public prosecution service[55]. This is why it is of particular significance for the legal system as a whole that the bar exam be designed in a way that enables a detailed verification of the legal professionals' knowledge of the judiciary system of the country, their command of the legal skills (logical reasoning, establishment of facts, formulation of legal argument, drafting of legal documents etc.) required for independent application of the legal regulations in practice. The bar exam, as a procedure for testing of the professional proficiency of legal professionals, is a part of most of the world's legal systems, but its implementation differs in the various countries, depending on the legal system and tradition. The Republic of Macedonia, being an heir to the legal system of the former Yugoslavia, which was based on the Austro-German legal system, had accepted the German model of a general exam for all legal professions, following two years of practical professional experience in legal matters, which is a sufficient prerequisite[56] for working as an attorney or judge. This concept of the bar exam (with some small variations) was retained for a long period, and was affirmed by the Law on the Bar Exam of 2010. Nonetheless, the period of application of this law was a long way from its predecessors, and at the end of 2013 a new law was enacted, which significantly changed the procedure for administering the bar exam. In this document we shall analyze the changes in the law, which still has not entered into force, and we will assess if the proposed changes would improve the testing of professional proficiency of the law graduates.

[55] *Until the establishment of the Academy for Judges and Public Prosecutors, the bar exam was the last check of the knowledge and skills of the lawyers. With work experience in legal affairs of 5 years after the bar exam, the lawyer could have been appointed for basic court judge;*

[56] *The issue of existence of the bar exam in its present form arises with the establishment of the Academy for Judges and Public Prosecutors as a training and examination institution for future judges and public prosecutors;*

3.2 The new Law on the Bar Exam of 2013[57]

In October of 2013 the Parliament of the Republic of Macedonia enacted a new Law on the Bar Exam, on the basis of a draft law submitted by the Ministry of Justice[58], thereby significantly changing the procedure of administering the exam by introducing electronic testing, multiple-choice questions, doing away with the oral and written portions of the exam and replacing them with a theoretical and practical portion, ending the practice of taking the exam in front of a Commission, as well as other novelties envisaged under the new law. The application of the law was deferred by one year, so it will become applicable in October of 2014. The change was explained by the need to introduce information technology in the testing procedure, good examples from the Ministry of Interior in conducting similar examinations, and by taking into account US experience with the bar exams there. Also, the drafter of the law indicated that it would contribute to the development of practical skills of the candidates passing the exam, improve the quality of candidates passing the exam, as well as the level of preparedness of the candidates in taking the exam[59]. On the other hand, there were significant negative reactions to the enactment of the law from the professional community, where the dominant argument was that the changes, contrary to the claims of the drafter, would lower the standards and increase the number of legal professionals that would pass the bar exam without having the required knowledge and skills, due to the absence of the oral portion of the exam and over-reliance on information technology[60]. Due to this level of polarization of positions with respect to the new law, and having in mind the significance of the bar exam for the professional proficiency of legal professionals and the testing of professional competence, a careful analysis of the new procedure for conducting the bar exam and an argument-based assessment are called for.

[57] *Official Gazette of RM no. 137/2013*
[58] *Identical Draft Law was proposed by group of parliament members in February 2013, but it was withdrawn from the procedure;*
[59] *From the explanation to the draft law submitted by the Government of RM and the Ministry of Justice as its representative;*
[60] *http://www.akademik.mk/elektronskoto-polagane-na-pravosudniot-ispit-sepak-ostanuva-na-dnevniot-red-na-sobranieto*

3.3 What changes were introduced in the Law on the Bar Exam of 2013?

The Law on the Bar Exam that is currently in force, enacted in 2010, is practically no different from the Law on the Bar Exam of 1980 and 1988 in terms of the procedure for administering the exam. The exam is taken in front of a Commission of distinguished jurists, where the Ministry of Justice is the professional and administrative body. The exam has two parts: written and oral. The written part comprises two subjects (courses) and the candidates are asked to draft legal document(s), while the oral part consists of answering questions from five subjects (courses) in front of the Commission. The exam is considered passed if a passing grade is received in at least three of the total of five subjects per session.

The new Law on the Bar Exam, which will become applicable in October of 2014, envisages several novelties in the procedure for administering the exam. Instead of the previous written and oral parts, the exam will comprise a theoretical portion and a case study[61], and both parts would be based on a publicly available database of questions[62] according to the multiple-choice principle[63] (one correct answer out of several choices offered). The theoretical portion would not only contain questions on statutory law, but also legal theory[64]. Also, the practice of examination before a commission would be abandoned in favor of retaining a role for the legal profession only in developing and verification of the questions and collections of case studies[65]. In technical terms, the examination would be conducted by a legal entity[66], instead of the Ministry of Justice, and it would be attended by representatives of the Government Cabinet of the Republic of Macedonia, the Ministry of Information Society and Public Administration, and the Ministry of Education and Science.

[61] *The theoretical part will check the theoretical knowledge of the candidates while the case study will check the ability to apply the laws in practice (Article 6 of the Law);*
[62] *The exam will be applied based on publicly available base of 2000 questions regarding the theoretical part and 500 questions regarding the case study. The number of questions will increase by 10% every following year (Article 20 paragraph 6 of the Law)*
[63] *The theoretical part shall include at least 50 questions with 5 choices, out of which one will be correct, two similar, one is slightly incorrect (few points are lost if selected) and one is largely incorrect (many pointe are lost if selected), while the case study has questions with 10 possible answer options, out of which one is correct, 5 are similar, and 4 are different (Article 19 of the Law);*
[64] *The legal reading will include primarily professional literature used in the highest ranked 100 higher education institutions in the law science in the world, ranked on the last list published by the World Class Universities Center of the Shanghai Ghiao Thong University. (Article 7 paragraph 2 of the Law);*
[65] *The questions will be prepared by the educators in the Judicial Academy and they will be verified by a commission composed by representatives of the leading judicial institutions in RM (Article 8 of the Law);*
[66] *The exam will be technically implemented by a legal entity registered in the Central Registry and selected by the Minister of Justice (Article 9 of the Law)*

The examination sessions will be recorded and broadcast live on the web page of the Ministry of Justice[67].

It is evident that the procedure for administering the bar exam is being thoroughly changed, which imposes a need to analyze the proposed solutions. The bar exam is the filter that future attorneys, judges and public prosecutors must pass through and it ought to be designed in a way that it can test the competence of legal professionals to carry out responsibilities that await them in the future.

3.4 Problems and challenges identified in the new Law on the Bar Exam

In this document's observation and analysis of the new Law on the Bar Exam, careful consideration was given to arguments presented in the draft law submitted to Parliament, as well as opposing arguments and objections presented from the podium of the Parliament, as well as the professional community[68]. The main question that we will try to answer is „Will the new procedure for administering the bar exam, as prescribed in the new Law on the Bar Exam, improve the testing of professional proficiency of the law graduates in applying legal regulations in practice, which is the fundamental aim of the bar exam?". The question is analyzed through the prism of the changes in the procedure for taking the exam, as well as the introduction of the multiple-choice question approach. Further analysis is made of the substantive diminution of the role of the judiciary institutions in conducting the exam, and the correspondingly expanded role of the executive branch, as well as the long-term effects of the implementation of this law on the attorney profession.

The new Law on the Bar Exam, i.e. the way that the examination is administered, opens serious justifiable doubts about its ability, as designed, to achieve the goal it is intended to achieve, namely the testing of professional proficiency of legal professionals in independently applying legal regulations in practice. The cancellation of the oral and written portion, the introduction of the multiple-choice question approach, the introduction of theoretical literature instead of legislation, and the public availability of the database of questions, are reasons that the exam's function as a filter will be seriously degraded.

[67] *Article 14 of the Law;*
[68] *See item 2 in Part 3;*

- The exam will not offer an opportunity to test the legal professionals' practical skills, which are necessary for independent application of legal regulations in practice

Having in mind that the goal of the bar exam is to test the professional proficiency of law graduates to independently apply legal regulations, it follows that the exam should be designed so that it offers a way to verify that the law graduate has the knowledge and skills to independently practice the legal professions that require the bar exam. Reviewing the routine types of work performed by attorneys, judges and prosecutors, it is possible to identify the knowledge and skills required for independent application of legal regulations. They include: 1. Writing of legal documents (complaints, pleadings, various motions/submissions; verdicts, orders, decisions; indictments and prosecutorial motions etc.). 2. Oral presentation of legal arguments (representation in court, participation in court proceedings, legal advice to clients), 3. Logical reasoning and formulation of legal arguments, and 4. research and analysis of applicable law.

With the new Law on the bar Exam, or more specifically doing away with the written and oral parts of the exam, these key skills would be impossible to test, which will cast doubt on the professional proficiency of the legal professionals that pass the bar exam. With the cancellation of the written portion of the exam there will be no opportunity to test one of the key skills necessary for independent practice of the legal professions – the drafting of legal documents. The absence of an oral part of the exam will also significantly weaken the ability to check the law graduates' command of legal language, which is also important for the independent practice of the profession.

The proposed procedure for conducting the exam with a theory portion and a case study with multiple-choice questions is efficient for verification of knowledge of the law and, to some extent, legal reasoning, but it is nowhere near sufficient to check if a person has the knowledge and skills required to apply the law in practice.

- The introduction of academic literature as indicated in Article 7 Paragraph 2 is unnecessary for testing the legal professionals' proficiency and will burden the exam with questions not relevant to the legal system of the Republic of Macedonia

With the introduction of academic literature that is in use at the world's top-ranked one hundred institutions of higher education in the legal disciplines as part of the literature that the bar exam would based on, the Republic of Macedonia would become one of the few countries in Europe where legal theory, rather than applicable law, would account for as much as 50% of the questions in the theory part. The intent behind this provision is justified to some extent, to educate legal professionals using literature from the world's leading law schools, but its assignment as required reading should be earlier, during law school studies. Law studies are the ideal time for future legal professionals to become familiar with global trends in law, legal principles, various legal systems and traditions and comparative surveys of leading areas of the law. In contrast, the bar exam is related to testing knowledge of applicable law in the state administering the exam, development of practical skills in applying the law, legal reasoning and constructing arguments. Adding literature that is studied in law school (as the law itself indicates, in fact) is belated and will needlessly burden the exam with questions (50% of the total), instead of using questions to test knowledge of the law of the Republic of Macedonia.

The second element that is questionable, to say the least, is the selection of the literature and the criteria that such selection would be based on. Here the Law is not at all precise on this issue and fails to specify the conditions for selection. One should not forget that the leading law schools come from different systems (civil law, common law, socialist, Islamic), different legal traditions (French, Austro-German, Scandinavian etc.), so the content might, but is not guaranteed to, be applicable to the circumstances and legal system of Macedonia. The criteria for assessing the relevance of any literature to the Macedonian legal system and the question whether such literature is necessary to assess the legal professionals' proficiency in independent practice of law are absent from the Law and it remains unclear how the selection would be made.

- The exclusive use of the multiple-choice question approach is insufficient and unsuitable for objective assessment of the knowledge and skills of law graduates

The method of testing using multiple-choice questions, as envisaged in the Law on the Bar Exam, has its strengths and there are arguments in favor of its use. The questions are simple to develop and administer, the grading is not time-consuming, there is hardly any human-factor influence in the

grading, and they can be easily administered with large groups of candidates. Nonetheless, in implementing this method as part of the bar exam there is still an issue of its suitability if the aim of the exam is not just to test "dry" knowledge of the candidates, but also evaluate their readiness to apply the law in practice. The selection of one out of five possible answers to a question can not establish whether the legal professional is able to draft a legal document or to formulate a convincing legal argument. This method is not suitable for testing legal knowledge because it is focused on memorizing, instead of in-depth learning and understanding of the law.

The application of this method is not in itself completely off the mark if it only constitutes a part of the exam, the one that would test knowledge of the legislation of the Republic of Macedonia. However, administering the entire exam using this method, even with 10 possible answers (for the case study), will lead to "photographic learning" and memorizing, instead of understanding the law. The reference to the administering of the bar exam in the USA is not entirely pertinent if we keep in mind that a part of the exam is indeed taken according to this method, but there is also a part with essay questions that asks the candidates to write several essays that would be the basis for evaluation of various legal skills[69],[70], whereas in our system even the case study would be multiple-choice. The situation that this method has been successfully used in other types of testing in the public administration simply cannot imply that it would be applicable to the bar exam due to the difference in purposes. The claim that the exclusive use of this testing method in the legal discipline is further bolstered by the fact that the largest law school in the country abandoned the practice of administering all exams using this method in 2012.

- The publicly available database of 2000 questions and 500 case studies that the exams will be based on will divert the candidates from studying legislation and literature to memorizing answered questions

One of the most problematic provisions of this law, which will have significant consequences on the reputation and level of difficulty of the exam, is found in Article 20 Paragraph 6 of the Law, stipulating that the exam questions would be made publicly available, along with references to law literature or

[69] *The State Bar of California, Description and grading of the California Bar Examination – General Bar Examination and Attorney's Examination, 2014 достапно на http://admissions.calbar.ca.gov/Portals/4/documents/gbx/BXDescriptGrade_R.pdf*

[70] *http://www.nybarexam.org/TheBar/TheBar.htm#descrip*

statutes where the answers may be found. In view of previous experience with similar tests, this will result in publicly available answers soon after the questions are published; these could be downloaded from the internet or copied in a copy shop, and would become the only material for preparation for the exam. Thus, instead of reading and analyzing laws, the candidates for the exam will only memorize the answers, thereby being able to pass the exam without the effort required to pass bar exams in countries around the world. This manifestly defeats the purpose of including world-renowned legal literature as part of the exam reading, because rather than reading these texts the candidates will choose the more time-efficient method – memorizing the answers to the questions.

The argument that exam questions are already publicly available, so there would be not that much difference, has a fundamental flaw. The questions that are publicly available at present are not actual questions, they are just titles of areas of law that should be thoroughly studied so that exam questions could be answered. On the other hand, the questions offered by this law are short, with one answer out of a choice of a few alternatives, which is far easier to memorize.

- Taking the bar exam will be alleviated by the fact that it would be practically impossible not to pass the exam

The Law on the Bar Exam is especially permissive with regard to the possibility of „failing“ the exam. For the first portion of the exam alone (five subjects/courses) the candidate would have three sessions to pass (e.g. February, April and June), while for the second portion of the exam (two case studies) there will be two separate exam sessions. Only if the exam is not passed in five sessions (almost a whole year) it would be considered failed. Comparing this with the Law of 2010, the candidate would have to pass at least three subjects/courses (assuming that the written part has been passed) in a single session, otherwise there is no passing the exam. Arguments in favor of this proposal are unknown, but one thing is certain - it will certainly not contribute to improving the quality of legal professionals who have passed the exam, nor will it strengthen the reputation of the bar exam as a filter through which future attorneys, judges and public prosecutors must pass. Instead of investing quality effort and time in preparing for the exam, future candidates are being incentivized to take a purely calculated approach to it, and the fact that they will have answers to the questions publicly available will inevitably make passing the bar exam easier. Instead of preparing legal professionals to deal

with voluminous material in a brief time period, which they will encounter frequently in their careers, the proposed approach, due to the use of multiple-choice questions, the publicly available database of questions and answers, and the option of taking the exam in five sessions, puts the bar exam at risk of being downgraded to the „oral part of the driver's license test". It is almost impossible to find a comparable arrangement in other legal systems, where the bar exam (regardless of its exact name) is one of the key milestones in the careers of the legal professionals and significant numbers of legal professionals do not pass the exam, and two failed attempts mean an end to a career in law[71].

- The new Law diminishes the role of judiciary authorities in administering the bar exam, while at the same time other state authorities related to the judiciary are getting involved

The Law changes the role played by the representatives of judiciary institutions according to the previous way of administering the exam. Namely, until now the exam was administered by a commission composed of 5 distinguished jurists (all from the judicial branch, including attorneys), who assessed the candidates independently. The new Law does away with this concept of assessment and the role of the judiciary authorities is reduced exclusively to 1. Development of a collection of questions, and 2. Verification of the questions. Further, the administration of the exam and assessment of the candidates goes to the Ministry of Justice and the legal entity that would administer the exam. The participation of the Ministry of Justice is not controversial at all, in view of its official powers in the judiciary, and the fact that it used to administer this exam in the past; what is a completely different matter, however, is the issue of the roles in administering the exam of: the representative of the Government Cabinet of the Republic of Macedonia (nominated by the Office of the Prime Minister), representative of the Ministry of Education and Science, as well as a representative of the Ministry for Information Society. The draft law documents contain no justification for this proposal, and no reasons for it are mentioned. In addition, representatives of these institutions will also be members of the commission that would be able to review the results of the exams five years after it has taken place, which enables direct influence of the executive branch over matters that are principally part of the judicial branch. We may assume that this practice is copied from the civil service exams or similar

71Example: the implementation of the bar exam in FR Germany (Zweites Staatsexamen, Assesorprüfung)

types of procedures, but we come back to the fact that the bar exam is not a civil service exam – it is an exam that is a prerequisite for practice of judicial or attorney professions. According to the Constitution of the Republic of Macedonia, independence and autonomy are the fundamental principles on which the judiciary and the attorney profession are based on as services to the public, thus the exam that future judges and attorneys need to pass should be designed in a way that would preclude any kind of undue influence, especially from the executive branch.

- Other issues arising from the Law on the Bar Exam that should be carefully considered and reviewed

In addition to the aforementioned problems related to the topic of this document, the Law contains other provisions that should, at minimum, be carefully reviewed and analyzed, and reformulated if needed. The provision allowing for the bar exam to be technically administered by a legal entity selected/contracted by the Ministry of Justice is insufficiently clear and precise. Without venturing into a debate about the justification for the possibility of a privately-owned legal entity to administer the bar exam, it can be concluded from looking at the provision that there is no indication of the criteria for selection of such entity, or the selection procedure. Aside from the prerequisite that the legal entity be registered in the Central Registry, there are no other requirements with respect to: the type of legal entity (public institution, commercial corporation, institution of higher education, scientific institute, civic association), its principal business, its capacity to administer exams, technical equipment or staffing. Also, there is no provision on the selection procedure (selection according to the Law on Public Procurement is too general), as well as the duration of the service. The provision on recording and live broadcast of the exam is superfluous, to say the least, in view of the fact that an exam event would have 30 or so people answering questions on computers. Streaming the exam might be justified if it were an oral presentation to a commission, but in this case it is an unnecessary expense that would not contribute to guaranteeing transparency in grading.

3.5 What will the application of the new Law on the Bar Exam bring?

The new Law on the Bar Exam has flaws that will preclude it from achieving the purpose for which it is being administered, i.e. testing the professional proficiency of law graduates for

independent application of legal regulations in practice. With the new procedure for taking the exam it will not be possible to test key practical skills necessary for independent practice of the profession, such as the legal professional's ability to compose a legal (written) document, or the ability to orally present a legal argument. The exclusive use of the multiple-choice question approach is not suitable for a proper assessment of a legal professional's ability to independently apply legal regulations in practice, and will incentivize candidates towards rote memorization, rather than in-depth understanding of legal norms. Added to this is the fact that there will be a publicly available database of questions, for which answers will be provided promptly; it can be assumed that a database of answers will also become available shortly after the questions are posted, and those answers will be the material that the candidates will use to prepare for the bar exam, which will degrade the status of the bar exam. This solution will make taking the bar exam easy, obviating the need to invest the appropriate time and effort. A further argument in favor of this position is the fact that the new law will allow candidates a total of five sessions to pass the exam, which will make it significantly easier to pass.

With these arrangements the bar exam will lose its role of a filter for legal professionals prepared to shoulder the burden of preparing for it and taking it; instead, it will attract and incentivize all law graduates to take the bar exam. If this happens, it is possible that the attorney labor market would become distorted (as, unlike the judiciary and prosecution service, which are closed professions, access to the attorney profession is free to all who pass the bar exam), thereby increasing the number of persons enrolled in the Registry of Attorneys.

In the end, it may be concluded that there is a noticeable trend to bring the bar exam methodologically closer to other exams that the state administers for various professions and positions, which is evident from the electronic test-taking using the multiple-choice question method, as well as from the involvement of representatives of state institutions who have no connections to the judicial branch in their work. This trend could be pernicious because the professions that require a bar exam are not civil service positions, and the nature of their work is different from the work of civil servants.

3.6 Recommendations

- Indefinitely postpone the application of the Law on the Bar Exam enacted in 2013 until substantive changes are made to the proposed method for administering the exam, for the aforementioned reasons

In view of the aforementioned deficiencies of the new procedure for administering the bar exam, which will be inadequate for testing the professional proficiency of legal professionals, and also will be significantly easier to pass, what is needed is to indefinitely postpone the application of the Law on the Bar Exam envisaged for October 2014. The weaknesses of the legal framework are visible and evident, and sooner or later they will have to be corrected, so it would be far more appropriate to not even begin applying the law this year at all. The 2010 law has a quite solid framework, which is being applied for over 30 years, and would be a much better solution until the proposed law is properly corrected.

- Open a debate about whether a new way of administering the bar exam is needed, and if so, to what extent; the debate should include the Ministry of Justice of the Republic of Macedonia, representatives of the judicial branch, a representative of the Public Prosecutor of the Republic of Macedonia, the Bar Association of the Republic of Macedonia, representatives of professional association of legal professionals, as well as experts from the faculties of law in the Republic of Macedonia

In implementing deep reforms that would affect the entire judicial branch, it is necessary to hold more in-depth and substantive public debates regarding the need for reforms or changes, as well as their direction and extent. The practice of skipping these processes could have negative effects that will manifest as difficulties in applying the laws, or the laws will not be responsive to the needs of the legal system of the Republic of Macedonia, as was made evident by the analysis of this Law on the Bar Exam. The debate around this issue, even if it is somewhat time-consuming, will offer the opportunity to select the truly most efficient solution that will reflect the particular needs of the legal professions and will guarantee proficiency and professionalism among future legal professionals.

- Design a way to administer the bar exam that would take advantage of state-of-the-art information technologies, but at the same time offer the opportunity to test the professional competence of legal professionals to independently apply legal regulations in practice, and strengthen the reputation of the exam itself as a filter to be passed by the future guardians of the principle of rule of law in the Republic of Macedonia

The need to make certain corrections to the administering of the bar exam, which has been administered in its present form (or with small changes) for over 30 years now, is evident and uncontroversial. Many things have changed over that period of time, including the change of the legal system in the country, as well as the role of information technologies in daily life. On the other hand, the legal professionals themselves are undergoing changes, which, along with the aforementioned points, imposes a need to change the way the bar exam is administered. Introduction of new technologies is needed and may be incorporated into the exam framework, but several criteria must be taken into consideration. First, the exam must offer the possibility to test whether the candidate has the required knowledge and skills, so that after taking the exam she/he can practice the attorney profession, for example. Also, the bar exam must enjoy a reputation of being a challenge to pass, in view of the special social responsibility of the professions that require it. Neglecting these two criteria will certainly not contribute to improving the quality and professionalism of the legal professionals who would pass the bar exam.

ANNEX 1

Legal framework analyzed for this document

1. Law on Higher Education - Official Gazette of the Republic of Macedonia no. 35/08, 103/08, 26/09, 83/09, 99/09, 115/10, 17/11, 51/11, 123/12, 15/13, 24/13, and two decisions of the Constitutional Court of the Republic of Macedonia from 2008 and 2013;

2. Law on the Bar Exam (no longer in force) – Official Gazette of the Socialist Republic of Macedonia no. 26/80 и 7/88;

- Rulebook on the Administration of the Bar Exam (no longer in force) – Official Gazette of the Socialist Republic of Macedonia no. 9/89;
- Rulebook on the Conduct of Practical Training for Law Graduates in the Judiciary Institutions (no longer in force) Official Gazette of the Republic of Macedonia no. 9/89;

3. Law on the Bar Exam – Official Gazette of the Republic of Macedonia no. 10/10;

4. Law on the Bar Exam – Official Gazette of the Republic of Macedonia no. 137/13;

5. Law on the Academy for Judges and Prosecutors – Official Gazette of the Republic of Macedonia no. 88/10, 166/12 и 26/13 and decision of the Constitutional Court of the Republic of Macedonia from 2011;

6. Law on Courts – Official Gazette of the Republic of Macedonia 58/06, 35/08, 150/10, 12/11 and decisions of the Constitutional Court of the Republic of Macedonia from 2007 and 2008;

7. Law on court service - Official Gazette of the Republic of Macedonia no.98/08,161/08, 6/09 и 150/10 and decisions of the Constitutional Court of the Republic of Macedonia from 2009 and 2010;

8. Court Book of rules (no longer in force) – Official Gazette of the Republic of Macedonia no. 71/07 и 157/09;

9. Court Book of rules – Official Gazette of the Republic of Macedonia no. 66/13;

10. Law on the Attorney Profession - Official Gazette of the Republic of Macedonia no. 59/02, 60/06, 29/07, 106/08, 135/11, 113/12 and decisions of the Constitutional Court of the Republic of Macedonia from 2003, 2008 and 2009;

11. Law on the Public Prosecution Office - Official Gazette of the Republic of Macedonia no. 150/07;

12. Law on Enforcement – Official Gazette of the Republic of Macedonia no. 35/2005, 50/2006, 129/2006, 8/2008, 83/2009, 50/2010, 83/2010, 88/2010, 171/2010, 148/2011, 187/2013

13. Notary Law– Official Gazette of the Republic of Macedonia no. 55/2007, 86/2008, 139/2009, 135/2011

14. Law on the National Framework for Higher Education qualifications Official Gazette of the Republic of Macedonia no. 137/2013

15. Regulation on the National Framework for Higher Education qualifications - Official Gazette of the Republic of Macedonia no. 154/2010;

ANNEX 2

Analytical sources consulted in the preparation of this document

1. Ministry of Justice of the Republic of Macedonia, Strategy on the reform of the judicial system, 2004;

2. Ministry of Justice of the Republic of Macedonia, Strategy for Further Implementation of the Reform of the Justice System, 2009;

3. Ministry of Justice, Challenges and Achievements 2006-2010 - Skopje, March 2011;

4. Dr. Fidanco Stoev (2011), Dosegashniot tek na sudskite reformi, Praven dijalog br. 5;

4. Berenchot and Imagos (2013), Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans – Lot 3, Final main report, IPA program for WB;

5. Allesandro Simoni , Assessment Report on the Implementation of the Strategy on the reform of the judicial system in Macedonia;

6. Peter M. Huber (2004), Der "Bologna – Prozess" und seine Bedeuung für die deutsche Juristenausbildung[The Bologna Process and its Impact on German Legal Training], 1EUR. JN. LEGAL EDUC. 35.

7. Johannes Riedel, the Bologna Process and Its Relevance for Legal Education in Germany, 2 EUR. JN. LEGAL EDUC. 59 (2005). Andreas Bücker & William A. Woodruff, the Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences, German Law

Journal Vol.09 No. 05

8. LUSINE HOVHANNISIAN, Clinical Legal Education and the Bologna Process, PILI Papers No 2, December 2006

9. Comparative Analyses of Legal Education, Law Firms, and Law and Legal Procedure, Country reports, Harvard University 2011 http://www.law.harvard.edu/programs/plp/pages/comparative_analyses.php

10. Roy T. Stuckey – Preparing Students to Practice Law: A Global Problem in Need of Global Solutions, SOUTH TEXAS LAW REVIEW, Page 650;

11. National report regarding implementation of the Bologna Process in Macedonia, 2005 http://www.ehea.info/Uploads/Documents/National_Report_FYROM_05.pdf

12. Legal Education and Professional Development – An Educational Continuum, 1992, A.B.A. Sec. Legal Educ & Admissions 1 (Robert MacCrate ed.);

USAID
FROM THE AMERICAN PEOPLE

JUDICIAL STRENGTHENING PROJECT

This analysis is published with support of the United States Agency for International Development (USAID).