



The Legal Profession Reform Index

For

MACEDONIA

June 2004

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INTRODUCTION

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

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

Scope of Assessment

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

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As a result, CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. In addition, ABA/CEELI has also developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies. At some point, CEELI may also consider developing an assessment tool for prosecutors as well.

Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers:

avocat, *avoués à la Cour*, and *advocates aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoués à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoués à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *advocates aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conceil d'Etat* (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, other factors further complicated efforts to define the term "lawyer", including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

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

ABA/CEELI's Methodology

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

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations Basic Principles on the Role of Lawyers and the Council of Europe's Recommendations on the Freedom of Exercise of the Profession of Lawyer and on ABA/CEELI's more than 10 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.

To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarify terminology, and that provides flexible guidance on areas of inquiry. Particular emphasis was put on avoiding higher regard for common law concepts related to the structure and function of the profession of

lawyers. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool¹ in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.² Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRI's are updated – within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will give ABA/CEELI the ability to provide a much more complete picture of legal reform in target countries.

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

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal

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

² For more in-depth discussion on this matter, see C.M. Larkin, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 *American Journal of Comparative Law*. 605, 611 (1996).



specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

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

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Assessment Team

The Macedonia LPRI assessment was conducted from April 29 to May 19, 2004 by Amanda J. Ashford, former CEELI Liaison and Legal Specialist, with the support of ABA/CEELI staff attorney Zarko Hadzi-Zafirov. The team received strong support from members of the ABA/CEELI staff in Skopje, including Country Director Marilyn Zelin. ABA/CEELI Legal Analyst Dr. Carson Clements provided research, analytical assistance, substantive law provisions, and prepared and edited the report for publication. ABA/CEELI expresses its gratitude to the many advocates, judges, law professors, government officials, and representatives of the donor community who met with the team and agreed to be interviewed for this project. Lists of the persons interviewed and the documents reviewed are on file at the Washington, DC office of CEELI.

COUNTRY BACKGROUND

Historical Context

In 1913, the land historically known as Macedonia was divided between Greece, Serbia, and Bulgaria. The portion under Serbian control became a republic of the Socialist Federal Republic of Yugoslavia in 1944. Following a referendum in 1991, it became independent as the Republic of Macedonia. As an accommodation to Greek objections to the use of the name Macedonia and symbols, which Greece considered exclusively Hellenic, Macedonia agreed to use the name the Former Yugoslav Republic of Macedonia for a ten-year period.

From February to July 2001, ethnic Albanian groups seeking autonomy clashed with Macedonian government forces in the area of Macedonia bordering Kosovo. NATO facilitated a ceasefire and on 13 August 2001, with international facilitation by the United States and the European Union, ethnic Albanian and Macedonian leaders (including all Macedonian political parties) signed the Ohrid Framework Agreement [hereinafter “Framework Agreement”]. The Framework Agreement preserved a unified, multiethnic state, with greater rights for minority groups. The Assembly of the Former Yugoslav Republic of Macedonia adopted the directives given in the Framework Agreement as constitutional amendments [hereinafter “Constitution Amends.”] in November 2001. The amendments concern development of a decentralized government, non-discrimination and equitable representation, parliamentary procedures, education, and the use of languages and expression of identity of the ethnicities. The provisions have a very significant impact on local self-government, higher education, and employment in public administration. Specific provisions that affect the legal profession include “positive discrimination” in enrollment at Skopje University of minority candidates and translation of all proceedings and documents for accused persons, or any party that belongs to a minority, in criminal and civil proceedings.

Macedonia is a parliamentary democracy governed by the Assembly, a President, the Government (executive), the Judiciary, and a Constitutional Court. The Constitution vests legislative authority in a unicameral Assembly (*Sobranje*) of 120-140 representatives, who are elected for four-year terms. By statute, the number of representatives was fixed at 120. The Assembly’s authority includes adopting and amending the Constitution, adopting and giving authentic interpretations to laws, adopting the budget, electing the government, electing judges to the Constitutional Court, and electing and dismissing all other judges.

The President of Macedonia is head of state and holds executive powers in conjunction with the government. The President is elected by direct election and serves up to two five-year terms. He or she appoints a mandator to constitute the government.

The government consists of the prime minister, deputy prime ministers, and ministers. Among other things, the government determines policy for implementing laws, is responsible for execution of laws, and proposes laws and the budget to the Assembly.

Macedonia’s court system was established pursuant to the 1991 Constitution and subsequent laws, particularly the 1996 Law on Courts.

Overview of the Legal Profession

The “legal profession” in Macedonia includes many related professions, all of which require undergraduate degrees from a Law Faculty (advocate, legal consultant, in-house counsel, prosecutor, judge, and notary). Following graduation, graduates may pursue one of these career paths, and in some cases may change careers within these fields with additional examinations and training.

The LPRI will focus on advocates and legal consultants as they constitute the two parts of the legal profession that represent clients in courts and other legal matters in Macedonia.

- Advocate

Under Article 10 (1) of the Macedonian Law on the Bar [hereinafter “Law on the Bar”], (enacted on 15 July 2002 and published in the Official Gazette of the Former Yugoslav Republic of Macedonia on 23 July 2002), “[t]he right to perform law practice... is obtained by registration in the Registry of Attorneys of the Macedonian Bar Association” [hereinafter “MBA Registry”]. Article 12 further states that “[a] person, citizen of the Republic of Macedonia who meets the general requirements for employment within the state administrative institutions, graduated lawyer with passed bar exam and who has a reputation for practicing law, can be registered in the [MBA Registry]”. Law on the Bar art. 12. The materials to be submitted for admission are detailed in Article 66 of the Bylaws of the Macedonian Bar Association [hereinafter “MBA ByLaws”] established in 2002. Article 67 of the MBA Bylaws gives the procedure upon which a decision is made and Article 68 stipulates that an oath be given. The oath requirement is also contained in Article 11 of the Law on the Bar. Advocates are the only lawyers who can represent criminal defendants in specified obligatory defense cases. However, most advocates have at least a minimal civil case practice. Advocates can practice either independently or may be employed by another advocate. Articles 6-9 of the Law on the Bar and Articles 46-55 of the MBA Bylaws cover conducting a law practice. In particular, Article 8 of the Law on the Bar deals with law firms.

- Legal Consultant

The term “legal consultant” refers to law faculty graduates that provide advice on civil and commercial matters to private clients. The profession of “legal consultant” arose in 1993 when the privatization process began in Macedonia and has grown with the increase in private enterprise. Unlike advocates, who are defined and regulated by the Law on the Bar, “legal consultants” are not defined or licensed by any specific laws or regulations. Although some “legal consultants” have completed their internships and passed the bar exam, they are not registered as members of the MBA and are not regulated by the Law on the Bar. According to the Constitutional Court decisions mentioned below, these people may represent clients before the courts in non-criminal matters under a Power of Attorney. Legal consultants generally work in firms with other legal and non-legal experts.

- In-house Counsel

In-house counsels are lawyers who are employees of companies and handle civil/commercial/labor matters for their employers. In-house counsel can, with the permission of the court, under Power of Attorney, represent their employer in civil matters before the court. Most have completed their internships and passed the bar exam. However, they cannot be members of the MBA as Article 20 of the Law on the Bar prohibits advocates from being employees (an exception is made for law firm employment of other advocates and/or legal assistants as described below). As a result, they cannot represent their employers on criminal matters. If a MBA member wishes to accept employment as an in-house counsel they must resign their membership before starting employment with the company, but may resume membership in the MBA upon leaving their employment by paying the appropriate fees.

- Legal Assistant (Attorney’s Assistant)

Articles 25-29 of the Law on the Bar establish the requirements and scope of duties for legal assistants. Essentially these are law school graduates who are “being professionally trained for independent practice of law and s/he shall execute the affairs related to the legal assistance and public authorizations according to the directions given by the attorney”. Law

on the Bar art. 26 (1). Legal assistants gain the right to take the bar exam after completing two years of practicing law. *Id.* at art. 26 (2). According to Article 28 “[a]fter passing the bar exam the attorney’s assistant may work as an attorney’s professional associate”.

- Legal Associate (Attorney Associate)

Often new graduates who have completed their required internship and have passed the bar examination will be employed in an advocate’s office as a legal associate. The legal associate usually takes on all of the legal tasks of an advocate, and as s/he is registered with the MBA as a member of the firm, s/he can represent clients in a criminal action.

- Prosecutor

Prosecutors are law faculty graduates, who have passed the bar examination and satisfy the applicable work experience. Under Article 37 of the Law on Public Prosecutor’s Office more than five years of satisfactory legal work after passing the bar exam is required for appointment as a Public Prosecutor or Deputy Public Prosecutor (and more than nine years experience for such positions at a Higher Public Prosecution Office).

- Judge

Judges are graduates of the law faculty, who have passed the bar examination, and satisfied the applicable work experience requirement. Graduates interested in pursuing a judicial career often satisfy the two-year experience requirement by serving as court interns in a basic court or an appellate court. Under the Law of the Courts [hereinafter “Law on Courts”] more than five years of satisfactory legal work experience after passing the bar examination is required for appointment as a basic court judge. Law on Courts art. 43. This requirement is generally satisfied by service as a court assistant (law clerk).

- Law Clerk

Those law faculty graduates interested in a career as a judge or within the judicial bodies usually start as a law clerk (court assistant). The activities and duties of law clerks is addressed in the Regulation for Performing Practice of Graduated Lawyers in Judicial Bodies [hereinafter “Regulation of Judicial Law Clerks”]. *Official Gazette of Socialist Federal Republic of Yugoslavia* No. 9/89 “Regulation for Performing Practice of Graduated Lawyers in Judicial Bodies”.

- Notary

Notaries are law faculty graduates and are governed by the Macedonian Notary Public Law. In particular Article 10 requires five years work experience as a legal practitioner, passing the Notary Public examination, and proof that they can provide the equipment and premises necessary to carry out their duties. Notary publics are responsible for filing certain types of contracts and real estate ownership records, as well as drafting contracts and agreements, preparing wills, corporate documentation, verification of documents, certifying Powers of Attorney, and similar legal documents.

- Power of Attorney

Finally any person (work competent) may appear in court under a Power of Attorney (except for persons who deal in pseudo-legal writing [unauthorized practice of law]). However, if the legal claim exceeds 1,000,000 MKD (Macedonian dinars), the person must have passed the bar examination. Therefore, in some instances, the right to represent a client in a civil court procedure is not limited only to persons who have finished law school and passed the bar examination

There is some controversy regarding who may represent clients in different cases (what constitutes the unauthorized practice of law). The MBA maintains that practicing in the courts is the exclusive right of advocates.

In a series of Court Decisions in 2003, however, the Macedonian Constitutional Court invalidated a number of articles of the Law on the Bar and further interpreted the constitutional rights of advocates versus other legal professionals.

- Decision of the Constitutional Court of Macedonia in Skopje No. 134/2002 (January 22, 2003)
The court addressed the issue as to who can practice law and determined that registered advocates are not a monopoly, but that in-house counsel and/or non-advocate lawyers can represent clients in court so long as they have completed the law faculty and have passed the bar exam. It is worth noting a related issue that has stirred a good deal of debate: namely, that one need not be a lawyer to represent another person or entity in a civil case if the subject of the suit is less than 1,000,000 MKD. A party can give a “Power of Attorney” to anyone, whether he or she has legal training or not, and that person can act as a representative of a party in any non-criminal case. It also expanded the legal profession to specifically include legal assistance provided by notaries who are regulated by the Law on Notaries.
- Decision of the Constitutional Court of Macedonia in Skopje No. 173/2003, (May 7, 2003)
The court limited the MBA’s ability to grant immunity to advocates and limited the right of the MBA to determine reciprocity with foreign advocates.
- Decision of the Constitutional Court of Macedonia in Skopje No. 51/2003, (May 22, 2003)
The court invalidated recently adopted provisions in the Law on the Bar requiring payment of registration and annual fees before registration of advocates.

The Constitutional Court has thus taken an active role in defining the legal profession on the basis that citizens should be given alternatives for legal representation. The court considered the citizen’s right to choose representation based on income and inclination.

As outlined in the LPRI Introduction, the scope of this report is limited to advocates and non-advocate lawyers, although some factors, such as those pertaining to legal education can be applied to the broader legal profession as outlined above.

Organizations of Legal Professionals

The Law on the Bar requires that in order to practice as an advocate, one must be a member of the MBA. Law on Bar arts. 6 (1) and 10 (1-2). Under the law, MBA members are the only advocates authorized by the government to represent indigent criminal defendants, known as “*ex-officio* advocates”. *Id.* art. 2 and Criminal Procedure Code art. 63 (4).

The MBA was established in 1945 by the Federal Ministry of Justice (Act No. 263) and the Charter for Organization of the Regular Courts in the Federal Republic of Macedonia. On the basis of the provisions of the Charter, the Macedonian government on June 16, 1945, approved the decision to, “establish the Bar Association with competencies on the entire territory of the Federal Republic of Macedonia.” The Charter regulated the legal status of the MBA and the status of the MBA was guaranteed by the Law on the Bar (*lex specialis*). The Law on the Bar provided for the independence of the legal profession by presenting the MBA as a unique institution independent from the government and protected from external influence and pressure.

Membership of the MBA slowly increased until the breakdown of the socialist system at the end of the 1980s after which time membership increased significantly. The increase was due in large

part to poor economic conditions and the lack of job opportunities. The total number of advocates admitted as members to the MBA from 1945 until 2003 are as follows:

| Period | Total number |
|-------------------|----------------|
| From 1945 to 1955 | 50 attorneys |
| From 1955 to 1965 | 91 attorney |
| From 1965 to 1975 | 259 attorneys |
| From 1975 to 1985 | 382 attorneys |
| From 1985 to 1995 | 1097 attorneys |
| From 1995 to 2003 | 2118 attorneys |

Today the MBA has 1320 members and approximately 1500 legal assistants and trainees.

In addition to the 1320 advocates registered with the MBA in 2004, there are a sizable number of non-advocate lawyers. Although no reliable figure could be obtained regarding the numbers of non-advocate lawyers working in Macedonia, some LPRI respondents thought that the number of non-advocate lawyers exclusively practicing civil law was as great as, or greater than, advocates registered with the MBA.

In addition to the MBA, there are two other lawyer associations operating in Macedonia. The Macedonia Business Lawyers Association [hereinafter “MBLA”] was established in 1968 to provide education for business lawyers. The MBLA currently has about 600 members.

The Macedonian Young Lawyers’ Association [hereinafter “MYLA”] was established in 2004 by a group of recent law graduates. Its mission is to support the development of civil society and the rule of law, focusing on increasing the legal literacy of the general population and improving the professionalism of young lawyers. It has approximately 50 members, and any lawyer up to and including the age of 35 may join.

Summary Findings

The LPRI assessment for Macedonia indicates that the legal profession has made important strides in legal reform. However, the legal profession is still struggling to achieve equitable minority representation, to overcome the legacy of post-World War II socialist Yugoslavia limitations on representation, to accept the responsibility inherent in self-regulation, and to establish the independence to discipline itself.

Establishing equality between the procuracy and advocates will require recognition of advocates as adversaries in the courtroom and a willingness on the part of the legal community to assume the responsibility for protecting the rights of the accused. Advocates need to be better trained and more willing to assert their clients' rights. Nevertheless, some important positive developments were observed in this area. For example, advocates reported no direct efforts on the part of the state to interfere with their work. In addition, they now have greater access to their clients and both confidential communications between lawyers and clients and the immunity that advocates have been granted under the law are respected.

The method of appointment and payment of *ex officio* (state-appointed) advocates and the legal aid system for providing representation to the indigent are problematic. Appointed advocates in the criminal sector are underpaid and, as a result, often do not provide an effective or robust defense for the accused. Generally, judges oversee how much they are paid. This system for payment does not provide incentives and may lead to corruption and manipulation. While the international community has provided funding for representation of indigents in civil matters, with no state supported legal advice available, long-term sustainability is problematic.

In civil practice, non-advocate lawyers have no mandatory bar association or state control to maintain a minimum level of professionalism. This lack of regulation cuts across many of the factors and is a significant impediment to reform of the legal profession. A related concern is that non-lawyers may represent parties in court on civil matters. Clients consider hiring non-advocate lawyers rather than advocates to represent them in civil court proceedings, not only because they lack the financial wherewithal to hire an advocate, but also because of a lack of confidence in the legal profession.

Advocates are largely independent from the Ministry of Justice [hereinafter "MOJ"], are self-managing and independent. Although tariffs (rates and fees) are established under the MBA's "Tariff Code: For remuneration and reimbursement for the activity of the attorney" [hereinafter "MBA Tariff Code"], fees are freely negotiated by advocates and clients. This freedom, of course, must be partnered with greater accountability if it is to survive. Although the MBA created the "Code on Professional Ethics of Lawyers, Associates, and Lawyer's Apprentices of the Macedonian Bar Association" [hereinafter "MBA Code of Ethics"], in 2002, and has the power to enforce it, discipline remains a serious problem. As discussed in Factors 16 and 17, advocates need to do more to police their own profession and to gain the public trust. The importance of building the public's trust in advocates goes beyond the sphere of legal professionals as this affects all anti-corruption efforts. "All complex schemes of corruption are done with the help of lawyers, and yet there are virtually no cases of disbaring lawyers (advocates) or applying anti-corruption peer pressure."³

Legal education is yet another important area that needs attention. As described in Factors 7 and 8, practical skills, ethics and clinics for all students at the university level would produce more competent professionals. A more stringent approach to the required two-year internship program is needed, particularly because the law faculty provides little practical or analytical training.

³ Tisne and Smilov, *From the Ground Up: Assessing the Record of Anti Corruption Efforts in South Eastern Europe*, Policy Studies Series 2004; The Soros Foundation Network at 69.

Although rule-of-law implementers like ABA/CEELI provide a great amount of continuing legal education (CLE) training, it remains to be institutionalized and standardized.

TABLE OF FACTOR CORRELATIONS

The Macedonia 2004 LPRI analysis reveals a developing legal profession in transition. While these correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI emphasizes that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA/CEELI views the LPRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

| I. Professional Freedoms and Guarantees | | |
|---|---|-----------------|
| Factor 1 | Ability to Practice Law Freely | Positive |
| Factor 2 | Professional Immunity | Positive |
| Factor 3 | Access to Clients | Neutral |
| Factor 4 | Lawyer-Client Confidentiality | Positive |
| Factor 5 | Equality of Arms | Neutral |
| Factor 6 | Right of Audience | Positive |
| II. Education, Training, and Admission to the Profession | | |
| Factor 7 | Academic Requirements | Neutral |
| Factor 8 | Preparation to Practice Law | Negative |
| Factor 9 | Qualification Process | Neutral |
| Factor 10 | Licensing Body | Positive |
| Factor 11 | Non-discriminatory Admission | Neutral |
| III. Conditions and Standards of Practice | | |
| Factor 12 | Formation of Independent Law Practice | Positive |
| Factor 13 | Resources and Remuneration | Negative |
| Factor 14 | Continuing Legal Education | Neutral |
| Factor 15 | Minority and Gender Representation | Neutral |
| Factor 16 | Professional Ethics and Conduct | Negative |
| Factor 17 | Disciplinary Proceedings and Sanctions | Negative |
| IV. Legal Services | | |
| Factor 18 | Availability of Legal Services | Positive |
| Factor 19 | Legal Services for the Disadvantaged | Neutral |
| Factor 20 | Alternative Dispute Resolution | Negative |
| V. Professional Associations | | |
| Factor 21 | Organizational Governance and Independence | Neutral |
| Factor 22 | Member Services | Negative |
| Factor 23 | Public Interest and Awareness Programs | Negative |
| Factor 24 | Role in Law Reform | Neutral |

I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

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

| Conclusion | Correlation: Positive |
|--|------------------------------|
| Independence of the legal profession is clearly defined by the law and advocates report that they are able to practice without improper interference, intimidation or sanctions. | |

Analysis/Background:

Article 53 of the Macedonian Constitution [hereinafter “Maced. Const”] provides that advocacy is “an autonomous and independent public service....” The Law on the Bar tracks this language in stating that the “attorney is impartial, independent, and autonomous in his/her work, and shall independently decide on the manner of representing the rights of his/her clients within the frameworks of the law, [Macedonian Bar] Association’s [hereinafter “MBA”] Bylaws and his/her authorizations.” Thus the legal framework provides advocates the basis to represent their clients without interference.

There were no reported instances of interference by the state in client representation. Advocates generally enjoy freedom from governmental pressure or sanction in their work.

While the courts have limited power to impose sanctions for misconduct during the proceeding, these sanctions are sparingly used and generally only for failure to appear at a hearing (often after more than three failures to appear) or showing disrespect to the court. There were no instances reported of sanctions being imposed for representation.

The MBA has the ability through the “Regulations for Disciplinary Responsibility” (2003) [hereinafter “MBA Disciplinary Code”] to impose sanctions on its members, but has not used this ability to unjustly sanction advocates.

Factor 2: Professional Immunity

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

| Conclusion | Correlation: Positive |
|--|------------------------------|
| Limited immunity is provided by law; and that immunity is respected in practice. | |

Analysis/Background:

Although the recent Constitutional Court Decision of 7 May 2003 removed complete immunity provided by the wording of Article 21 (2) of the Law on the Bar, which states that “the attorney has immunity in practicing law.” Advocates generally enjoy a broad spectrum of immunity including:

- The attorney may not be held liable for his/her opinion expressed while providing legal assistance⁴ and executing his/her public authorizations⁵;
- The attorney may not be arrested or detained for a crime committed in the course of executing the law practice, without previous approval from the Macedonian Bar Association;
- The offices of an individual attorney or a Law Firm may be searched only in the presence of the attorney and authorized representative of the Macedonian Bar Association (MBA);
- The search of the office of an individual attorney or a law firm may be executed only regarding the documents that are set forth in the search warrant issued by a judge in a criminal procedure, and the officers authorized for the search do not have any access to other written materials, documents, cases, or archives. *Id.* at art. 21.

While all respondents noted that advocates were often identified with clients and the client's causes, advocates did not feel overly identified with their clients or subject to special harassment because of whom they were representing. Both the public and advocates accepted the identification with clients as the status that an advocate must be willing to assume, especially in representation of criminal defendants.

In practice, advocates reported no actions against them for statements made while carrying out their professional duties.

⁴ Under Article 3 of the Law on the Bar legal assistance consists of providing legal advice; representation in negotiations and conducting other business protocol services; composing documentation for legal deeds; composing motions to the court and other court procedures; representing clients in courts, state institutions and other legal entities; defending accused persons or suspects; and performing other matters related to legal assistance.

⁵ Under Article 4 (1) of the Law on the Bar public authorizations are defined as consisting of conducting legal matters such as composing documents with a statement for confirming facts, except for a pledge on movable property rights and mortgage; certifying the conclusions of a trade companies' assemblies, civil associations, foundations and other legal entities as well as certifying the power of attorney.

Factor 3: Access to Clients

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

| | |
|---|-----------------------------|
| Conclusion | Correlation: Neutral |
| <p>Although there were reports that access to clients during initial questioning had previously been thwarted, advocates now generally have access to clients and are given adequate time for consultation. During pre-trial detention, however, advocates still report the presence of police or guards.</p> | |

Analysis/Background:

Access to clients and defense preparation are evolving concepts for Macedonian advocates. The laws and regulations give explicit rights for access. Interpreting those rights and the prevailing practice, however, requires an analysis of the law and the practice.

Under Article 3 (3) of the Macedonian Code of Criminal Procedure [hereinafter “Code of Criminal Procedure”], there are three stages of pre-trial detention for accused persons. Generally, during the first period, the police detain a person (or summon or apprehend) and can hold him for 24 hours before he is brought before a court. Code of Criminal Procedure, art. 3 (3). During the second, investigative stage, the conditions for access to an advocate are determined by the Investigative Judge. During this phase, the investigation is conducted and a determination is made as to formal charges. The accused can be detained during this phase for up to 180 days. Const. Amend. III⁶ Finally, in the third phase charges are brought. During this phase the trial judge further determines the accused’s right of access to an advocate.

Macedonian law gives the detained person an unequivocal right to an attorney at all phases. For example, Article 12 of the Constitution states that “[p]ersons summoned, apprehended or detained shall immediately be informed of the reasons for the summons, apprehension or detention and of their rights. They shall not be forced to make a statement. A person has a right to an attorney in police and court procedures.” In addition, Article 12 states that “[p]ersons detained shall be brought before a court as soon as possible, within a maximum period of 24 hours from the moment of detention, and the legality of their detention shall there be decided upon without delay”. The police always appear to take the full 24 hours allowed before bringing the accused before an investigative judge. At this stage, the investigative judge reviews the file to see if the accused has requested an advocate and informs the accused of his rights including the right to counsel. Advocates can be present during questioning at this phase and can meet with their clients, but in practice only with others present (see Factor 4).

Under Article 4 of the Code of Criminal Procedure “[e]veryone charged with a criminal offense shall have the right... to have adequate time and facilities for the preparation of his defense and to communicate with a counsel of his own choosing.” In addition, Article 63 (1) states that “[e]veryone has a right to a counsel in the pre-criminal and in the court procedure.” Furthermore, Article 63 (2) states that “[t]he person under suspicion in the pre-criminal procedure, i.e. the accused before the first questioning, must be instructed that he has a right to counsel of his own choosing and that counsel may attend his questioning.” In addition, Article 70 states: “If the accused is detained, he can freely and without supervision correspond and communicate with his counsel. [Except], during the investigation, the investigating judge may subdue this right to

⁶ See Maced. Const. Amend III (Official Gazette of the Republic of Macedonia No. 31/98 July 2, 1998). The Amendment replaces Paragraph 5 of Article 12 of the Macedonian Constitution and extends the period of detention until the indictment from 90 days to 180 days.

supervision, if the detention is determined under Article 184, paragraph 1, item 2, and there is a grounded suspicion that the accused might abuse the communication with his counsel”. Article 66 further grants the right to counsel in obligatory defense cases (see factor 19). Obligatory defenses include serious crimes (those with detention of 10 years or more) and cases where the accused is unable to assist in his/her defense.

All interviewees reported that access to clients was historically denied during the first phase and remains limited during the second, but is almost without constraints during the third.

Currently, the police are improving their procedures for informing detained persons of their rights to have an advocate and their rights to have an advocate appointed if they cannot afford one, and often provide a list of advocates. This is a relatively recent change and perhaps precipitated by recent initiatives provided by the U.S. Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT) and the Organization for Security and Cooperation in Europe (OSCE) for education and training of the police. Local bar communities provide a list of advocates available at the police station. A number of interviewees, however, doubt that the police are informing detained persons of their rights. In addition, there were reports of police denying information to advocates of the whereabouts of detained persons and moving them among police stations to avoid the advocate.

The investigative judge sets the conditions for advocates’ meeting with their clients, with further conditions as established by the facility. This results in advocates having regular access, but only under supervision of a guard. This is clearly not the time to prepare a defense.

While the Macedonian Law on Execution of Sanctions (“Official Gazette of the Republic of Macedonia” 3/97; amended in 23/99) is only applicable to convicted persons, the practice for visits during the investigative and pre-trial phases is to adopt its standards. In particular, Article 146 (1) states “[t]he visit of the convicted person can last up to 60 minutes.” In practice, visits with counsel are rarely so lengthy. This may be the result of the supposed application of Article 146 (2), which states that “[t]he rules of the institution regulate time, means and length of the visit.” However, as the Law on the Execution of Sanctions should apply only to convicted persons, the fact that visits are limited in time and conducted often in the presence of guards remains in apparent violation of the accused, apprehended, detained, or charged person’s rights under the aforementioned provisions of the Macedonian Constitution and Code of Criminal Procedure. Advocates report that when they visit clients during the investigative phase they generally only ask concerning his health (if he needs medical care), if he needs cigarettes, or if he wants them to contact his family. Visits generally are 30 minutes or less. Defense preparation, at this stage, does not appear to be undertaken with the assistance of the client. Advocates were unperturbed about this, as they would not discuss any of the facts with the client with a guard present. Advocates report no problems with the time, length or number of visits.

After the accused is charged, upon request from defense counsel, the trial judge grants permission to meet with the client. Under Article 70 of the Law on Criminal Procedure, “if the accused is detained, he can freely and without supervision correspond and communicate with his counsel. Exceptionally, during the investigation, the investigating judge may subdue this right to supervision, if the detention is determined under Article 184, paragraph 1, item 2, and there is a grounded suspicion that the accused might abuse the communication with his counsel”. In nearly all cases the investigating judge takes the position that the accused should not meet with his advocate without supervision, as they would abuse the communication (establish alibis, harass witnesses, conceal evidence, etc.) Therefore, private communication at this phase is rare.

Advocates’ meetings with clients appear to be restricted to visiting hours of the facility, but no advocate reported any difficulty with the time allowed, or the conditions of the meeting area. Interestingly, a trial judge reported that during the regular court review of detained persons, she was frequently asked by the accused to call their advocate, as their advocate had not met with them.

Factor 4: Lawyer-Client Confidentiality

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

| Conclusion | Correlation: Positive |
|---|------------------------------|
| The legal right to confidential communication and consultation is generally respected by the state. | |

Analysis/Background:

The legal right to confidential communication is recognized under Macedonian law. However, this right is not absolute and can be limited under certain conditions. For example, under Article 17 of the Macedonian Constitution “[t]he freedom and confidentiality of correspondence and other forms of communication is guaranteed.” In fact, “[o]nly a court decision may authorize non-application of the principle of the inviolability of the confidentiality of correspondence and other forms of communication, in cases where it is indispensable to a criminal investigation or required in the interests of the defense of the Republic”. *Id.* Furthermore, while Article 70 of the Code of Criminal Procedure states that the accused has the right to communicate with his counsel without supervision, it also provides for exceptions under Article 184, if there is a danger of escape, there is a fear he will destroy evidence or influence witnesses, or if there is a belief that he will commit a crime. In practice this means that during the investigative phase, advocates are never allowed to meet privately with their clients. However, once the accused is formally charged, lawyer-client confidentiality was maintained. No respondent reported a breach during this phase and there were no reports of searches of advocates’ offices or similar actions.

Section IV, Articles 19-22, of the Macedonian Bar Association (MBA) Code of Ethics outlines the requirements for maintaining attorney-client confidentiality (professional secrets). Article 19 states that “[a]ny information confided to the lawyer by his client regarding the requested legal advice, representation or defense, as well as any information found out by the lawyer in another way, and which is confidential, shall be considered to be a professional secret”. However, under Article 20 a waiver to disclosure can be granted when 1) the client permits; 2) it is necessary for the defense of his client, or 3) if he obtains permission from the [Macedonian] Bar Association. Article 22 also clearly dictates confidentiality of information obtained from the representation of an organization that continues even after representation.

Although in some legal systems additional waivers are often provided (i.e. to avoid serious injury or death, resolution of a dispute between client and advocate, etc.) the lack of these waivers has not been an issue with advocates.

In sum, confidentiality of communications is respected in both criminal and civil cases and there were no reported abuses.

Factor 5: Equality of Arms

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

| Conclusion | Correlation: Neutral |
|---|-----------------------------|
| Advocates have, both legally and in practice, the ability to obtain relevant information for representation of clients. In both criminal and non-criminal cases, however, the judicial bureaucracy delays access. | |

Analysis/Background:

Article 4 (2) of the Code of Criminal Procedure enumerates the minimum rights of the accused in a criminal proceeding. Every accused has the following minimum rights:

- To be informed immediately and in detail, in a language which he understands, of the crime he is charged with and the evidence against him;
- To have adequate time and opportunity for preparation of his defense and to communicate with a counsel of his own choosing;
- To be tried in his presence and to defend himself in person or by legal assistance of his own choosing and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment... if he does not have sufficient means to pay for it;
- Not to be compelled to testify against himself or his relatives or to confess guilt;
- To be present during the examination of the witnesses and to ask questions.

According to Article 161 (9) "when the investigating act is initiated, before the decision for investigation is brought" the provisions under paragraphs 1 to 8 of Article 161 are applicable. Paragraphs 1 to 8 of Article 161 provide that:

- The prosecutor and the [defense] counsel have a right to be present at the examination of the accused;
- The prosecutor, damaged, accused, and counsel have a right to be present at the inspection and at the hearing of experts;
- The prosecutor and the counsel have a right to be present at the search of premises;
- At the hearing of the witness the prosecutor, the accused and the counsel have a right to be present when it is likely that the witness will not attend the trial, when the investigating judge finds it necessary or when one of the parties has requested to attend the hearing. The damaged may be present at the questioning of the witness only when it is probable that the witness will not attend the trial;
- The investigating judge is obliged in an appropriate manner to inform the prosecutor, counsel, damaged and accused of the time and place of [conducting] the investigating acts to which they cannot be present, unless there is a danger of cancelling. If the accused has a counsel, the investigating judge will inform only the counsel;

- If the person, to whom the announcement for the investigating act is addressed, is not present, the act may be conducted in his absence;
- Persons present at the investigating acts may propose to the investigating judge the accused, the witness or the expert to be examined in order for the issues to be clarified, and if the investigating judge allows it, the persons present at the investigating acts may ask questions themselves. These persons have a right to request their notes be included in the minutes considering the conduct of certain acts, and they may propose certain evidence to be presented;
- Due to the explanation of certain technical and other professional questions in connection with the evidence or during the examination of the accused or initiation of other investigating acts, the investigating judge may ask the person with a certain specialization to give necessary explanation on those questions. If during the explanation the parties are present, they can ask that person to give a closer and more detailed explanation. In case it is necessary, the investigating judge may request explanation from an appropriate specialized institution.

Article 161 clearly seeks to place the parties on equal footing during the investigative stage. The prosecutor has no duty to directly disclose or release information to defense counsel as release of material is through the investigative judge. Investigative judges freely grant permission for review of the file and attendance at questioning. It is unclear if defense counsels actually avail themselves of this right. The investigative judge determines the content of the notes to be included in the file and his decision as to these matters can influence the record substantially. There were some indications that the record was sometimes subjective rather than objective.

In terms of the record in a criminal case, Article 124 states that “[t]he accused has the right to access to the records and objects that serve as evidence, after he has been examined.” In addition, Article 63 of the Rules of Procedure of Courts [hereinafter “Rules of Court Procedure”] (“Official Gazette of the Republic of Macedonia” 9/97) (applicable to both civil and criminal cases) provides for reviewing and copying procedural documents in the court file under supervision. Article 142 enumerates the statements and records that must be reduced to writing and maintained in the court file, and thus available to all parties.

Article 139 of the Macedonian Ministry of Justice’s Law on Trial Proceedings [hereinafter “Law on Civil Procedure”] (“Official Gazette of the Republic of Macedonia” 33/98, 44/02) provides that “the parties have the right to inspect and transcribe the files of the proceedings in which they participate. Other persons who have a justifiable interest may be allowed to inspect and transcribe specific files. The president of the council gives permission when the proceedings are in progress, and when the proceedings have ended, the president of the council, respectively the court employee designated by him”. Law on Civil Procedure art. 139.

In practice lawyers report little difficulty with reviewing files prior to the trial. However, obtaining copies of records is a laborious process whereby the lawyer must request permission from the trial judge and then the clerk processes the request. Without pressure and personal favors, this often causes some delay. The cost for copying documents is not uniform, but established by each court. While the costs are generally reasonable, they could be prohibitive for poor clients.

All advocates reported difficulties with obtaining records after the trial. The trial judges’ practice is to retain the files in chambers until a verdict or decision is issued. In civil cases this can be months.

Public access to court records is restricted, and generally only the parties and their lawyers have access to the case file. Others who desire to review the record must demonstrate their interest in the matter to the president of the court council hearing the matter or, after the file is sent to the

court archives, to the court president. In criminal cases, a nonparty is not permitted to review the case file, but only the decision, and then only if he or she demonstrates to the court president a reasonable justification for doing so, such as scholarly research.

Factor 6: Right of Audience

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

| Conclusion | Correlation: Positive |
|--|------------------------------|
| <p>Advocates and non-advocates alike are fully granted the right to appear before judicial and administrative bodies on behalf of their clients and respondents report reasonably equal treatment.</p> | |

Analysis/Background:

Articles 63-71 of the Code of Criminal Procedure guarantee advocates the right to participate at all stages of the criminal process. However, as noted in Factor 3, the police sometimes thwart those rights in the first 24-hour detention period.

Although respondents generally reported equal treatment by court officials, they noted that more experienced and prominent advocates tended to be treated more deferentially. Judges reported that while advocates who had appeared competently before them in previous cases received preferential treatment, if the advocate was inexperienced, the judge would take special measures to insure that the defendant was adequately represented. This took the form of taking the advocate aside and advising him of action that should be taken in the case.

II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

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

| Conclusion | Correlation: Neutral |
|--|-----------------------------|
| <p>All advocates and lawyers are required to be graduates from a law faculty. The establishment of new law faculties in Macedonia will expand opportunities for a legal education.</p> | |

Analysis/Background:

Under Macedonian law to become an advocate, one must be a graduate of a law faculty. According to Article 12 of the Law on the Bar “a person, citizen of the Republic of Macedonia who meets the general requirements for employment within the state administrative institutions, is a graduated lawyer [from law faculty] with passage of the bar exam and who has a reputation for

practicing law, can be registered in the Registry of Attorneys within the Macedonian Bar Association [hereinafter “MBA”].” In addition, Article 66 of the MBA Bylaws states that among the documents and materials to be submitted along with one’s request to be added to the MBA Registry shall be “...evidence that [they have] finished Law Faculty...” The recent Constitutional Court Decision of January 22, 2003 clearly expanded the right for non-advocate lawyers to appear in civil court proceedings on behalf of their clients, so long as they are a graduate of the law faculty and have passed the bar examination. The Court stated that “. . . the Court deems that resolutions specifying lawyers (*advocates registered with the MBA*) as exclusively competent for providing and rendering legal assistance cannot be justified, not even from the aspect that only they are qualified to perform that activity. This for the simple reason that lawyers are only one part of the unique legal profession, and they have the same kind of knowledge and abilities as the other persons whom have finished law school and passed the bar examination.”

While most advocates are graduates of the Skopje Law Faculty (“Iustinianus Primus” at the University “Sts. Cyril and Methodius”, Skopje, State University), many older advocates attended university in Zagreb, Croatia, Novi Sad, Serbia or Pristina, Kosovo (all formerly part of Yugoslavia). Since 1991 most new advocates have been graduates of Skopje Law Faculty. The Bar Examination Commission will recognize graduation from law faculties outside Macedonia, if other requirements are met (primarily citizenship).

Until 2001 Skopje Law Faculty was the only accredited law faculty in Macedonia. In 2001, a second law faculty was established at the South East European University of Tetovo [hereinafter “SEEU”]. International donors, including USAID and the EU, provided the financing for SEEU and support is expected through 2004 at which time SEEU may apply for financial support from the state. SEEU offers law courses in English, Albanian and Macedonian. The first law faculty graduates will graduate in 2004/2005. Therefore, SEEU law faculty graduates will, at the earliest, be qualified to take the bar examination in 2006/2007 after having completed a two-year internship.

There is also a Law Faculty at the University of Tetovo, which is offering classes in Albanian. Although the University opened in 1993, it was not formally recognized by the Macedonian government until 2003 and accreditation of the Law Faculty is still pending. Therefore, its graduates have, to date, not been deemed to meet the bar exam requirement of graduating from a Macedonian law faculty and are not practicing law. At the earliest University of Tetovo law faculty graduates will be qualified to take the bar examination in 2010 (after four years of law faculty and a two-year internship).

As all graduates now eligible for taking the bar exam are graduates of Skopje Law Faculty (except for graduates of universities outside Macedonia), this report focuses on that facility for an analysis of the academic requirements for lawyers. However, the Macedonian legal profession should anticipate a new generation of graduates in the next three years when SEEU graduates will have completed their internship and be eligible to take the bar exam.

There are approximately 5,000 students currently enrolled at Skopje Law Faculty. There was a significant 47% increase in enrollment between the 1999/2000 and 2000/2001 academic years. This was due mainly to the Dean’s policy of open enrollment. The rate of increase fell to 7% for the 2001/2002 academic year and 12% for the 2002/2003 academic year.

Skopje Law Faculty provides a four-year undergraduate law degree program, although often students take five or more years to complete their studies (see Factor 8). Additionally, Skopje Law Faculty offers both a Masters in Law and a Ph.D. degree program. The Masters is a two-year program, but more often is completed in 3 to 5 years. The Ph.D. is usually achieved in 5 to 7 years.

Although there is no night school program available, Skopje Law Faculty offers a rather liberal system for “non-traditional” students. Students may apply for a waiver to class attendance and



only be required to pass examinations (usually waivers are requested after the first year of university education). Waivers are liberally given, primarily for employment, but also based on a health certificate. Thus, if a student has a full time job he or she can still attend university by preparing for the exams without attending class. Although statistics as to non-class attending students were not available, respondents reported a significant percentage of students were not attending classes after the first two years. Most students attend classes during the first two years, while most do not attend classes during the last two years.

Nearly 1000 students are currently enrolled at SEEU. SEEU provides a four-year undergraduate degree. While the initial enrollment was only ethnic Albanians, approximately 10% of the current students are ethnically Macedonian. They are interested in studying at SEEU, as they believe that the SEEU Law Faculty has international recognition, which is important as young Macedonians often migrate to the United States, the European Union, Canada and other developed countries. Additionally, Macedonian students perceive that the curriculum and programs are more interesting and easier than at Skopje Law Faculty. For more information see ABA/CEELI, "Report on Minority Participation in the Legal Profession in Macedonia" (September 2004).

Factor 8: Preparation to Practice Law

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

| | |
|---|------------------------------|
| Conclusion | Correlation: Negative |
| <p>The Skopje Law Faculty provides lawyers with adequate theoretical knowledge of the law. Although there is support for expanding student opportunities for more practical and analytical skill development, additional resources need to be developed in this area.</p> | |

Analysis/Background:

The Skopje Law Faculty curriculum provides for both compulsory and elective courses. The mandatory courses include: constitutional, civil, criminal, commercial, procedure (criminal and civil), administrative, Roman law, etc. Courses are composed from "general" and "specific" law, meaning general concepts, models, institutes and specific Macedonian laws relevant for the respective area. The methodology used to teach varies from professor to professor and the extent of incorporating recent developments and amendments to national law necessarily depends on the professor's updating the course material.

There is currently no formal separate course for legal research and writing (discontinued in 1997). However, Skopje Law Faculty is considering a curriculum change and there is some support for including legal research and writing as a distinct course. To some extent writing is covered minimally in the fourth year clinical law program discussed below. The proposed curriculum change would be for the school year beginning October 2004. This may also include a change to a credit hour course determination (currently grades are given, but not on a weighted basis, which does not correspond to the European system to determine a Grade Point Average).

Instruction in legal ethics and/or professional responsibility is provided in an elective course, but there is no mandatory course. However, law professors insisted that ethics is included in all clinical law programs and in all courses as a portion of the materials taught.

Although Skopje Law Faculty has a compulsory clinical law program for fourth year students (established in 1994), it is not a traditional clinical law program, but more of a group

seminar/workshop/practicum. Students select their concentration from seven areas of law: civil, criminal, financial, administrative, international, trade, and constitutional. The professor responsible for each area is given latitude on developing the program for that area. Generally there is a case chosen for review and students draft documents for that case study. This includes a simulation of the case, review of evidence, drafting, and preparing the case for trial.

Skopje Law Faculty established a “Live Client Clinic” in 1999. Professors choose the most respected, best students to participate during their fourth year of study. Fifteen students are chosen for each of three areas: criminal, civil and non-governmental organizations (NGOs). A professor and an advocate are responsible for each area. The students interview clients, draft pleadings, and attend court hearings. After the decision, the class analyzes the decision. Under the law, only an advocate can represent a client in court, so students are not given the opportunity to represent clients, nor are professors allowed to represent clients. Students have served over 70 clients and the criminal law group met with 33 women prisoners in the last semester. The Public Interest Law Initiative, Columbia University Budapest Law Center, ABA/CEELI and others have provided assistance.

The “Live Client Clinic” is a good legal clinic model, but it is not offered to all students. The clinic reports that additional funding is needed to expand the program, which does not appear to be forthcoming from either the state or international donors. The Skopje Law Faculty would additionally like to have the ability to represent clients to facilitate involvement in more cases.

Respondents expressed a common sentiment that the law faculty provided theoretical training, but that students were not given sufficient practical and analytical skills training in preparation for the practice of law. Most classes are taught in large lecture rooms with more than a hundred students. There is little, if any, interaction between professors and students. Most testing is done by oral exams. While in some ways respondents were expressing similar sentiments to those of law students universally (education is more theoretical than practical), the absence of teaching analytical skills and the lack of interaction in classes hampers students’ ability to practice law. Respondents criticized professors who merely read textbooks and provide no analysis or interaction. Respondents were universally disappointed with the legal education provided as evidenced by low attendance after the first year of school.

Factor 9: Qualification Process

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

| Conclusion | Correlation: Neutral |
|--|-----------------------------|
| <p>A comprehensive bar examination is required for all legal professionals and grading is reasonably fair and transparent. A two-year internship is required, but the lack of any regulation of the internship results in uneven preparation for practice.</p> | |

Analysis/Background:

Internship Requirement

Before taking the Macedonian Bar Exam applicants are required to complete internships. Therefore, in enumerating internship alternatives, the Law on the Bar Exam includes many opportunities that would not necessarily be considered directly related to an advocate’s practice. Under Article 2 the right to take the Bar Exam rests upon showing that applicants are “... [g]raduated lawyers who have worked on legal matters for two years in regular courts, public

prosecutors offices, general attorney offices, courts for minor offences, in other state bodies, bar, business companies, municipalities and local self-government bodies and other associations of citizens (hereinafter: bodies and organizations).” In addition, Article 26 (2) states that “[t]he attorney’s assistant acquire the right to pass the bar exam after two years of practicing law.”.

In practice, most graduates attempt to obtain an internship in the field in which they later hope to practice. For example, those that hope to be judges seek an internship with the courts, future prosecutors seek an internship in prosecutor offices and future advocates attempt to intern with advocates. The law specifically allows an internship without pay so that graduates can fulfill their requirements. In practice, internships in Skopje are customarily with little or no pay. In some regions, however, interns were paid approximately \$150-200 USD monthly.

The quality of the internship varies considerably and of course depends on the “mentoring body”. For example, the Regulation for Judicial Law Clerks, Articles 4-11, sets forth a rotation schedule for law clerks, which depends upon the judicial body they are clerking for. In terms of duties, supervision, and record keeping Article 12 states that “[f]or accomplishing the law clerks practice... a program is deliberated in which it is specified: concrete duties that should be performed, the employee who will supervise and help the law clerk in his daily duties, as well as record all completed duties”. However, other internships, outside judicial bodies, are without rules or regulations.

Obtaining access to a good advocate’s office for completion of an internship is essential to a future as an advocate. Generally, advocates have their choice of graduates as the law school is graduating more lawyers than can be absorbed into the existing economy. However, placement in an advocate’s office is often by family association or patronage more than on scholastic merit or accomplishment.

Many young advocates, interns and legal associates complained that the Skopje Law Faculty curriculum and teaching methods had not prepared them to practice law. They stated repeatedly that they only learned to practice when they began their internship. They were however voicing the overall scheme clearly envisioned by the laws, i.e. that a post-graduate internship is a necessary factor before admission to practice.

While the requirement for internship is reasonable, the lack of any standardization or qualification makes for an uneven internship experience.

Bar Examination Requirement

An examination is expressly required for admission to the MBA as only citizens of Macedonia who hold a degree in law and have passed the Bar Exam can be registered with the MBA. The Minister of Justice [hereinafter “MOJ”] will recognize an applicant who has passed the bar examination for Yugoslavia if he passed the exam before 1990, but from no other countries. Therefore, many older advocates passed the Bar Exam of one of the other former Yugoslav Republics, but for the last 14 years, the Macedonia Bar Exam has been the only exam recognized.

Under the Regulations for Passing the Bar Exam (Official Gazette of the Socialist Federal Republic of Yugoslavia 9/89) the Bar Examination Commission [hereinafter “Exam Commission”] established by the MOJ administers the Bar Exam. The Law on the Bar Exam and Regulations for Passing the Bar Exam statutorily regulate the process. Although both pre-date Macedonia’s independence they apparently serve well as a structure to administer the Bar Exam.

Although authority for the Bar Exam is given to the MOJ, after the MOJ appoints the Exam Commission, all the major tasks for administering the exam are performed by the Exam Commission. However, the MOJ provides some technical support. The Exam Commission consists of five members who serve two-year terms. One member serves as president. Each

member is responsible for one area of law. Currently, the Exam Commission is composed of Justices of the Supreme Court, but previously law professors and experienced advocates have served on the Exam Commission.

The Exam Commission formulates the exam (chooses the questions), conducts the exam and grades it. Current methodology is that the member responsible for an area of law conducts that portion of the exam, but three members are to be present at each exam and the concurrence of a majority of the members are needed to grant a passing grade. In practice, however, only the member responsible for that area of law attends the exam. The same person, therefore, tests all candidates for that particular area of law and as long as the examiner uses the same standards, the test results are consistent. The exam has only a pass/fail determination (no assigned grades).

Registration for the exam is primarily a mechanical process: the applicant submits documents and payment. As long as the documents are in order, they are allowed to take the exam. No information is collected on the quality of the two-year internship or the character of the applicant. The MOJ does not check for a criminal record or other impediments. Payment varies with the number of exams taken; first time applicants pay 9,000 MKD (approximately \$180). If an applicant passes at least three of the five exams, he need not repeat those exams passed and subsequent exams are 2500 MKD and 3000 MKD (approximately \$60) for the written and oral examinations respectively. The proceeds from the examinations fund the examinations directly. The examiners are paid on the basis of number of exams given. Most applicants are working without pay as volunteers to fulfill the internship requirements and the cost of the bar exam is financially difficult for interns, especially those serving in the courts.

There are no special classes in preparation for the exam (bar review). There is a manual that can be purchased, but no group provides financial assistance for the purchase, nor are any scholarships given to defray the cost of the exam.

Five examinations are given yearly: February, April, June, October and December. Applications are submitted between the 1st and 15th of the month prior to the exam date along with the required documentation and fee. The Exam Commission can choose any day for administering the exam but normally chooses a working day. The exam is generally held in the Skopje Appeal Court, but sometimes held at the Skopje Law Faculty.

Statistics for pass rates in recent years:

| SESSION | 2002 | | 2003 | | 2004 | |
|---------|--------|--------|--------|--------|--------|--------|
| | PASSED | FAILED | PASSED | FAILED | PASSED | FAILED |
| FEB | 34 | 5 | 26 | 1 | 37 | 7 |
| APRIL | 21 | 9 | 29 | 2 | 43 | 6 |
| JUNE | 44 | 5 | 41 | 4 | | |
| OCT | 31 | 2 | 55 | 1 | | |
| DEC | 38 | 1 | 65 | 9 | | |
| TOTAL | 168 | 23 | 216 | 17 | | |

Passing Rate

86.4%

93%

83.75%

Statistics on the pass rate by gender or ethnicity are not maintained. But in the last four years, respondents think that more ethnic Albanians are taking the exam and that more women than men take the exam and have a higher pass rate. As noted in Factor 7, once graduates of South Eastern European University at Tetovo (SEEU) complete the required internship, more ethnic Albanians will assuredly attempt the bar exam. It is unknown what impact a legal education in three languages (Macedonian, Albanian and English) will have on passing a bar examination conducted in Macedonian.

In accordance with the regulations, an applicant has a minimum requirement to pass at least 3 areas of law during one exam, but then has 6 months to pass the remainder of the exam. There is no right to appeal, but the applicant can request an extension for cause. If the applicant needs additional time to take the exam (i.e., illness, business), the time for completion can be extended. To some extent, theoretical, substantive and practical areas of law are tested on the exam. The first day of the exam consists of constitutional law and criminal code and procedure. The second day of the exam is one week later and consists of civil law and procedure, commercial, and labor law. Criminal and civil procedure are examined both orally and in writing. The other subjects are only tested orally. As applicants are required to answer questions on the basis of current law, to some extent the exam can be considered always current or updated. The most recent formal update of the exam was in January 2004; before that it was last updated in 1999.

In the oral exam section, there are a large number of potential questions (approximately 50). Each applicant is asked three questions. The questions are public and the same set of questions is used for multiple exams. However, the particular set of three questions that each applicant must answer varies. The procedure for the two written exams is that each applicant is given a different set of case materials (police investigation statement, evidence, statements, etc.) along with the sealed decision of the Court. The applicant must then review the material and make a ruling and decision on the different parts.

As the potential questions for the oral examination portion are known and published beforehand, there is no unfair advantage to be gained by pre-disclosure of the exam. While grading could be a source of unfair treatment, with five different examiners grading each applicant, any corruption would require extensive intervention. No corruption was reported on the bar examination process, though some respondents felt that perhaps examiners gave preferential treatment to examinees that were related to friends or held high office. As this is such a subjective examination process, any accusations would be difficult to prove.

Additionally, some business/commercial lawyers not only take the bar exam, but also a separate exam to be a specialist in intellectual property. Article 120 of the Act of Industrial Property provides for registration of graduates of Law Faculty who have taken the specialist examination. Once registered, these lawyers can represent clients in actions before the Industrial Property Board.

The bar exam process is transparent in that the oral exams are open to the public. Often an applicant's family or friends will attend, but most of the audience is composed of future applicants who want to see the process and see how the questions are answered. This would seem to lessen any potential corruption by the examiners, because any preferential treatment given to an applicant would be obvious to the audience. However, some respondents questioned if all applicants were treated equally.

Factor 10: Licensing Body

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

| Conclusion | Correlation: Positive |
|---|------------------------------|
| Admission to the Macedonian Bar Association [hereinafter “MBA”] is self-regulated, but subject to administrative review. Non-advocate lawyers have no licensing body. | |

Analysis/Background:

After successfully passing the Bar Exam, an applicant submits a request for admission to the Committee for Admission of the MBA. Applications are rather perfunctorily processed. The procedure for obtaining a license as an advocate is outlined in detail under Articles 10-13 of the Law on the Bar and Articles 56-60, and 64-69 of the MBA Bylaws. The MBA is the licensing body for advocates.

According to Article 66 of the MBA Bylaws in addition to the request for admission submitted to the Committee for Admissions of the MBA applicants shall also submit:

- short biography;
- evidence [that they] finished [the] Law Faculty;
- evidence of passing the bar exam;
- certificate of citizenship;
- certificate from the Social Administration (competent to work);
- certificate that no criminal procedure is in process;
- certificate that they are not working;
- certificate from the court that [they are] not under sentence prohibiting practicing law;
- recommendation from employer and the basic bar community.

As the MBA is non-governmental, admission to the MBA is removed from any governmental influence. Macedonian advocates pride themselves for being independent from the government and strongly protect their independence. The additional documentation required under Article 66 has not caused any barriers to entry.

As noted previously, other than passing the Bar Exam, there is no licensing procedure for non-advocate lawyers who can represent clients before civil courts.

The appeals process following denial of admission is well established. For example, under Article 67 of the MBA Bylaws “[i]f the candidate does not fulfill the conditions stated in Article 66 of the Bylaws, the Committee for Admission shall enact a decision for refusal of the request for admission. Against the decision... the candidate has the right to appeal in a period of 15 days from the day when the decision was received. Upon the appeal the Managing Board shall decide. Against the final decision of the Managing Board the candidate can lodge an

administrative dispute.” However, the only denial of admission in recent years was to a judge who had been impeached. He filed an administrative action and the MBA’s decision was upheld and his membership was denied.

The competent authorities created by the MBA are derived from Article 13 (2) of the Law on the Bar, which states that “[t]he competent office within the Macedonian Bar Association determined with Bar by-laws shall decide upon an appeal filed against the decision for approving or [rejecting] the request for registration in the Registry of Attorneys within 15 days from the day the decision has been received.”

Factor 11: Non-discriminatory Admission

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

| | |
|---|-----------------------------|
| Conclusion | Correlation: Neutral |
| Admission to the Macedonian Bar Association [hereinafter “MBA”] is not overtly discriminatory. Affirmative steps are being taken to provide more minority representation, but ethnic minorities and women are generally underrepresented in the profession. | |

Analysis/Background:

As noted in the Historical Background, Macedonia is a multi-ethnic state with a significant ethnic Albanian minority that constitutes approximately 25% of the population. Other ethnic minorities, including Roma, Serbs, Turks, Vlachs and Bosnians, account for approximately 10% of the population. In contrast, approximately 6% of the MBA lawyers are ethnic Albanian and another 6% are from the other minorities. With respect to gender, approximately 32% of MBA members are female.

Citizenship is an explicit requirement for aspiring lawyers to enter the profession and to take the Bar Exam. Law on the Bar art. 12. While fluency in the Macedonian language is not an explicit requirement for aspiring lawyers to enter the legal profession, it implicitly is, as the Bar Exam is only administered in Macedonian and the majority of the Bar Exam is conducted orally. This creates a potential barrier for ethnic Albanian applicants.

There was no evidence of artificial barriers being created by the MBA to deny applicants the right to register based on ethnic origin, gender, etc. The MBA has 1320 members. Membership has rapidly increased in the last decade as a result of socio-economic changes. To date there have been no court challenges by ethnic Albanians or other minorities regarding MBA admission.

III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

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

| Conclusion | Correlation: Positive |
|--|------------------------------|
| <p>Advocates practice law independently without limitation. The concept of free association of lawyers is only beginning to be developed and there is some resistance to the formation of law firms.</p> | |

Analysis/Background:

The Law on the Bar, Article 6 (2) specifically states: “[t]he law practice shall be performed by individual attorneys, and attorneys joined in law firms.” Whereas Article 46 of the Macedonian Bar Association [hereinafter “MBA”] Bylaws provide that “[t]he advocacy activity, as a unique profession, shall be performed by an attorney individually or attorneys’ organization”. Early information from the MBA indicated that there were no law firms registered, but in June 2004, the first three-member law firm registered. However, the generally accepted interpretation of these provisions is that law firms are not acceptable. Some older advocates were of the opinion that it was illegal for them to practice law in any manner except as a sole practitioner.

Regardless of the statutory interpretation, Macedonia has a number of law offices. Law offices are typically small (2-10 employees) and will often be composed of a combination of one advocate, legal associates (some having passed the bar exam and some not) and perhaps interns. There is little, if any, support staff. The managing partner makes all decisions and all others within the firm are employees. Often there are no partnership agreements or employment contracts. Respondents state that they have a “gentleman’s agreement” as to payment.

As in many countries, the majority of advocates practice as sole practitioners. Although there are no legal barriers to opening a law office many advocates operate their practice from their homes. Advocate-respondents indicated that the main obstacles to establishing a law office are financial costs and establishing a client base. For example, one respondent reported that opening an office cost at least 1000 Euros, which was beyond the means of a beginning advocate. In fact, most advocates cannot afford to have a computer, land line telephone, reception area, staff, library or other amenities, which would be essential to a law office. Even sole practitioners must still purchase some furniture, maintain a mobile phone, pay rent, pay MBA fees, and cover other expenses.

After passing the bar exam, many lawyers chose to work as an associate in a law office. The MBA has a directory for registration of advocate’s legal associates. The managing advocate is the responsible party in the office and associates are employees. Although this is often a way for new lawyers to gain experience, the quality of mentoring varies among firms. Legal associates (who have passed the bar exam) appear in court on behalf of clients and have the rights and obligations of a registered advocate. After the President of the Court assigns an advocate to an *ex officio* case, legal associates often represent the client.

Legal consultants are often organized as corporations or sometimes have “office sharing” arrangements. Recently they have been forming Limited liability Corporations (LLCs) and partnerships, which require registration with the courts.

Younger lawyers often felt that the complexity of defining the organization and official bureaucracy were impediments to the formation of private legal practices. Most felt they did not have a sufficient client base to establish an office or firm. The only referral service in effect is for indigent defendants and this business is competitive. Advocates perceive an advantage to practicing law in an office sharing arrangement, partnership or other form of association, but there is little guidance for establishing a legal structure. Instead, they begin as a legal associate with a “famous” advocate and when they have built a name themselves, they open their own offices.

Factor 13: Resources and Remuneration

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

| | |
|---|------------------------------|
| Conclusion | Correlation: Negative |
| <p>Access to legal resources is limited for the majority of advocates. Remuneration for most legal services remains low based on the economic situation. Payment for <i>ex officio</i> appointed counsel is also low.</p> | |

Analysis/Background:

Lawyers have very limited access to legal resources such as laws, regulations, case decisions, commentaries and other pertinent information to enable them to defend the interests of their clients. Case decisions are only distributed to judges. Other research resources (books, treatises, laws), if available, are relatively expensive. For advocates outside Skopje availability of resources is understandably worse. Typically an advocate’s office has no library, computer, internet access, etc. (see Factor 12), especially in small towns. In these areas, advocates rely on the public library for access to some materials. Judges receive *The Official Gazette of the Republic of Macedonia* and copies of case decisions. Often they will share this information with advocates.

ABA/CEELI previously published court decisions for distribution to advocates. However, since this was discontinued there is no regular dissemination of court decisions to advocates. Most significant legislation is available through web sites on the Internet (Macedonian Legal Resource Center <http://mlrc.org.mk/>) and through other specialty associations of legal professionals, such as the Macedonian Business Lawyers Association (MBLA). However, many advocates lack access to the Internet.

Respondents held mixed views on specialization, but the consensus seemed to be that the economy would not support specialization and that an advocate had to handle both criminal and civil cases. There are a few highly visible, “famous” criminal defense advocates who have no difficulty in establishing a well-paying client base, but the remainder of advocates lacks a sufficient client base in criminal law matters to support a specialization. Respondents clearly understood the importance of developing expertise in one area of law, but the economic reality forced them to admit that most advocates will need to be proficient in a number of areas.

With 1320 registered advocates in a population of 2,022,547, advocates are clearly competing for a limited market. No respondent admitted that there were too many lawyers, but all thought there was just enough. As hundreds more lawyers are certain to be channeled into the profession each year, it is clear that the economy is not currently at a high enough level to support them. There is a specialized exam in intellectual property, which permits practice before the Industrial Property Board (see Factor 9).

Fees for legal services are dealt with in the Law on the Bar and the 1993 Macedonian Bar Association [hereinafter “MBA”] “Tariff Code: For remuneration and reimbursement for the activity of attorneys” [hereinafter “Tariff Code”]. Article 19 of the Law on the Bar states that “[t]he attorney is entitled to a fee, and compensation for the costs for his/her work, subject to the Tariff [Code] for fee and compensation for the attorney’s costs”. The MBA Bylaws, Article 37, gives the Managing Board the right to enact the Tariff Code. The most recent Tariff Code was adopted on March 28, 1993 and it and amendments to it apply to civil as well as criminal cases. The Tariff Code, Article 1 states: “[w]ith this Tariff Code will be determined an amount of the remuneration and the expenses for legal assistance. Attorney or the party have freedom to agree [to the] remuneration and the expenses, and also for the means of payment.” Therefore, although a fee structure is established, it is a minimum fee and advocates may also negotiate the fee with their clients. The Tariff Code appears to be more of a guideline for fees rather than an absolute requirement. Interestingly, Article 3 provides that “In cases in which one of the parties is a foreign physical person or legal entity, and in cases that have foreign language, or communication the remuneration is double”.

Although there is a discernible market for court-appointed counsel in criminal defense cases (*ex officio*), obtaining appointment is competitive and remuneration is often late and below the established tariff rates. Whether advocates receive sufficient remuneration from the state for court appointed legal defense varies by region. The state provides the funds for this payment through the courts’ budgets. Payment of fees is not from a centralized source, so depending on the court, the payments vary. Respondents stated that the historic delay in payment has recently improved. Typically, *ex officio* representation is paid at 50% of the Tariff Code, but the trial judge has the authority to establish the amount and some respondents stated that in some instances the amount was greater.

Unless an advocate practices in a firm, he or she typically has little if any staff. One source of staff has been interns who are fulfilling their requirement prior to taking the bar exam. Another are graduated lawyers who have completed their internship, but have not yet passed any section of or the entire bar exam. However, typical western staffing is not prevalent; advocates do not have paralegals, secretaries, office managers, or other employees. Most depend on their mobile phones for contact with the public and do not have answering services, voice mail, or other amenities.

Throughout Macedonia, most advocates’ offices are concentrated in areas near the courthouse. This sometimes presents an issue for availability of space. In some areas there is no room for additional office space, so the existing advocates have small offices. Legal consultants and those advocates who do not have a majority of their work in the criminal courts fare somewhat better. Skopje is experiencing a building boom with new commercial space available to lawyers. Outside Skopje, advocates and non-advocate lawyers have a choice for space and sometimes work from their homes

It is difficult to determine if legal professionals are financially successful as a whole. Although there are some well-known legal professionals who command high fees, many beginning legal professionals are struggling financially.

With the influx of advocates into the MBA in recent years, there appear to be more registered advocates than necessary for the criminal law sector. *Ex officio* advocates are not paid adequately for assurances of competent independent defense. Many advocates are dependent on the appointment system to have an adequate income, especially when beginning a practice. Most advocates also handle civil cases, which can amount to a substantial portion of their income. However, many advocates feared they would lose this business to notaries as a result of the Constitutional Court decision denying a monopoly to advocates (see Overview of the Legal Profession). The MBA has mounted a campaign to protect the lawyer’s monopoly on this business (see Factor 22). Non-advocate respondents perceived advocates as receiving more

pay than justified for just appearing in court and often commented on their belief that advocates were not paying taxes on their income.

It is also difficult to determine if non-advocate lawyers are financially secure. In-house counsel, who often represent their employer/client in civil proceedings appear to be faring well. They have the best working conditions, the most resources, and receive a salary. Articles 140-150 of the Law on Trial Procedure outline the standards for the prevailing party to recover trial expenses (attorney fees and costs) incurred in litigation. However, the Court has determined that as in-house counsels are salaried employees, their client is not entitled to recovery of attorney fees.

Provisions for the recovery of attorney fees are also found in the Code of Criminal Procedure and Law on Civil Procedure. For example, under Article 88 (2) (7-8) of the Code of Criminal Procedure expenses include "...necessary expenses for the counsel, necessary expenses for the private prosecutor and for the damaged as a plaintiff and their legal authorities, as well as recompense and necessary expenses for their authorized representatives". In addition, under Article 88 (3) "[t]he gross amount is determined within frames of amounts determined with a regulation considering the duration and complexity of the procedure..." Furthermore, under Article 88 (4) "[e]xpenses ...of this Article as well as necessary expenses for the competent counsel and competent authorized representative of the damaged as plaintiff (Article 67 and 93), in procedure for crimes prosecuted *ex officio* are paid in advance from the budget of the body that conducts the criminal procedure..." Article 93 (1) also states that "[r]ecompenses and necessary expenses for the counsel and for the authorized representative of the private prosecutor or the damaged must be paid by the person who is being represented, without respect to the fact who is obliged to bear the criminal procedure expenses..." However, under Article 93 (2) "an authorized representative who is not a lawyer has no right to recompense". Attorney's fees are determined according to the Tariff Code by virtue of Article 144 of the Law of Civil Procedure, which states that "...[i]f a tariff is prescribed for the compensation of attorneys at law or for other expenses these expenses shall be set according to that tariff". Recovery, however, takes a separate action and no information on frequency of recovery was available.

As in any country, the overall economic development in Macedonia appears to be the most significant indicator of the financial wherewithal of legal professionals.

Factor 14: Continuing Legal Education

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

| Conclusion | Correlation: Neutral |
|---|-----------------------------|
| Macedonia has not established continuing legal education (CLE) requirements for advocates nor non-advocate lawyers. What CLE has been provided to advocates is at the instigation of international donor organizations. In addition, non-advocate lawyers receive little CLE. | |

Analysis/Background:

Article 34 (2) (8) of the Law on the Bar states that the Macedonian Bar Association [hereinafter "MBA"] "is responsible for the professional training and education of attorneys and attorney's assistants". Article 3 of the MBA Bylaws mirrors this provision: "take care for professional training and improvement of the attorneys' legal associates and attorneys' trainees-at-law". The only reference to CLE for advocates is found in Article 24 and Article 25 of the MBA Code of Ethics. Article 24 states that a lawyer should "...evolve his intellectual abilities, professional and other social activities, always in the framework of the lawyer's vocation..." Article 25 further states that

“...[t]hrough continuous expert edification and raising the personal and moral reputation, the lawyer fulfills his professional duties and qualifies himself for successful performance...” Essentially, continuing education is couched, as an aspirational goal, in terms of self-improvement, rather than as mandatory.

The reality, however, is that advocates are acutely aware of the need for CLE, but cannot obtain this through the MBA. The MBA reported that more than 300 advocates attended approximately 18 seminars and round tables in 2003. Some of the round tables were not educational, but discussions on proposed legislative changes and developing a response to recent Constitutional Court decisions. Therefore, the amount of CLE actually given and the attendance were both small. CLE has been donor funded with the MBA co-sponsoring and providing an invitation list. The MBA states that it has a CLE Commission, but little effort has been undertaken to offer direct CLE through the MBA. With respect to MBA financial resources, there were no fees collected for CLE.

There are additionally some issues of exclusion from CLE. When CLE events are offered with the MBA, the MBA selects the invitees from its membership by use of invitations to the Bar Communities. Theoretically, the local Bar Community chooses attendees, but there is evidence that select members are invited to attend repeatedly with others never being included.

The implementation and confidence-building measures outlined in the Framework Agreement "invite the international community to assist in the training of lawyers, judges and prosecutors from members of communities not in the majority in Macedonia in order to be able to increase their representation in the judicial system" (section 5.4). For the last five years international donors, such as the Council of Europe (COE), ABA/CEELI, Organization for Security and Cooperation in Europe [hereinafter "OSCE"], Office of Overseas Prosecutorial Development, Assistance and Training of the U.S. Department of Justice (OPDAT), European Agency for Reconstruction (EAR), and International Organization for Migration (IOM) have provided content, speakers and all expenses for CLE in Macedonia.

International organizations tend to provide training to advocates and non-advocate lawyers for their particular project. The OSCE has provided training for advocates and non-advocate lawyers who are participating in the Court Monitor Project and the Helsinki Project provides training for its advisors. Respondents pointed out the need for additional training in European conventions to which Macedonia is a signatory, human rights cases, substantive law, management of firms, and advocacy skills. There has been no training on legal ethics.

The limited CLE offered was invariably set in either Skopje or in Ohrid (primarily for its conference capabilities and resort atmosphere). Although little CLE was offered in other regions, Macedonia is a small country and the vast majority of advocates live less than two hours from Skopje.

The approximately 600 mostly non-advocate business lawyers in the Macedonian Business Lawyers Association (MBLA) have exposure to continuing legal education at their semi-annual conferences. Particular subjects of interest are presented and participants are given a book with materials covered during the symposium.

Ongoing, significant changes magnify the strong need for continuing legal education legislation. However, the lack of non-donor funding will hamper legal professionals' desire for more CLE for some time.

Factor 15: Minority and Gender Representation

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

Conclusion

Correlation: Neutral

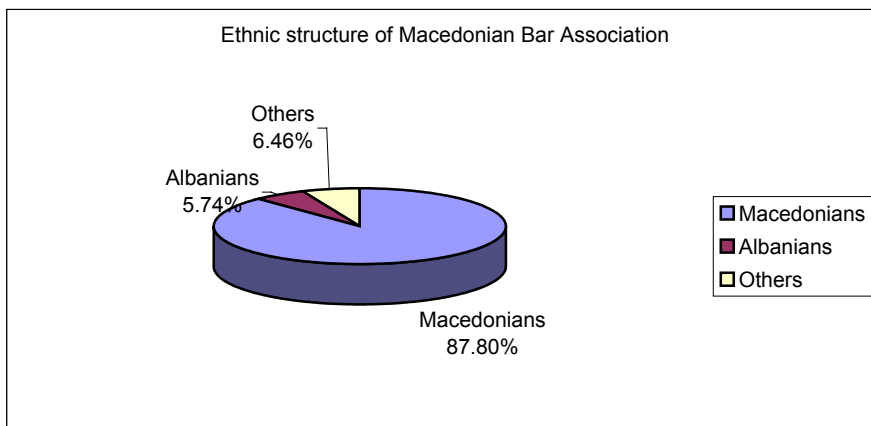
Neither ethnic minorities nor women are equally represented in the legal profession. While action is being taken to correct the ethnic under-representation, it will be some time before the fruits of these efforts will be experienced.

Analysis/Background:

Although ethnic minorities and women are under-represented in the legal profession, neither gender nor ethnic representation is generally acknowledged as an issue within the profession. Other than the educational programs described below, there are no programs actively seeking to include more women or minorities.

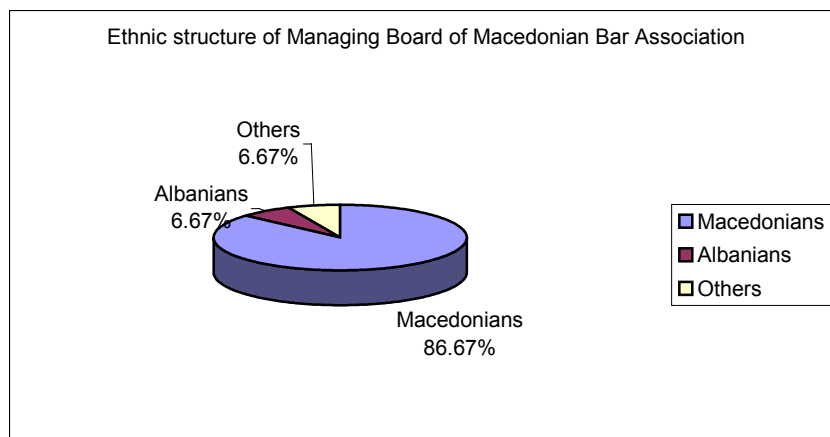
Ethnicity

According to the 2002 census, the population of Macedonia is 2,022,547; 1,297,981 or 64.18% are Macedonian, 509,083 or 25.17% are Albanian, and 215,483 or 10.75% are other minorities (Turks, Vlachs, Roma, Serbs, and Bosnians). As indicated below, ethnic minorities are under-represented in the MBA.



| Total | Macedonian | Albanian | Turk | Vlach | Roma | Serb | Bosnian |
|-------|------------|----------|------|-------|------|------|---------|
| 1320 | 1169 | 64 | 4 | 20 | 2 | 55 | 6 |

The governing body of the Macedonian Bar Association [hereinafter "MBA"] is the Managing Board. The Managing Board has 15 members including the President, of which there are 13 Macedonians, one ethnic Albanian and one ethnic Serb.



Among the reasons for this imbalance among advocates is that historically ethnic minorities have not studied law at the same rate as ethnic Macedonians and the ethnic Albanian population has increased at a higher rate than the Macedonian population in the last 10 years. In addition, the fact that the Bar Exam, passage of which is a requirement for admission to the MBA, is given in the Macedonian language may also be a factor. In any event the numbers are not the result of legally sanctioned discriminatory practices (see Factor 11).

One of the directives of the Framework Agreement is to increase the number of ethnic Albanian professionals and to increase the opportunity for ethnic Albanian minority students to study in the Albanian language. Opening the South East European University in Tetovo was a major step in this direction and establishing a law faculty at SEEU was a major step in eliminating obstacles for minorities' participation in the legal system.

Enrollment at SEEU (by ethnicity):

| Year | Macedonians | Albanians | Turks | Bosnians | Roma | Serbs | Total |
|--------------|-------------|-----------|-------|----------|------|-------|-------|
| 2001/2002 | / | 220 | / | / | / | / | 220 |
| 2002/2003 | 27 | 310 | 3 | / | / | / | 340 |
| 2003/2004 | 97 | 268 | 10 | 2 | / | / | 377 |
| Total | 131 | 778 | 10 | 2 | / | / | 921 |

Another directive of the Framework Agreement was that the principle of positive discrimination will apply in the enrollment in State universities of minority candidates until the enrollment reflects equitably the composition of the population of Macedonia. Although Macedonia had a "positive discrimination policy" for enrollment at the state-financed universities since 1991, the amendments to the Law on Higher Education enacted in July 2003 strengthened that policy.

For more information see ABA/CEELI, "Report on Minority Participation in the Legal Profession in Macedonia" (September 2004).

Gender

Although the MBA maintains no official statistics on gender, a review of the Registry of Advocates discloses that 32% are women.

The current gender analysis for the MBA is:

| Total | Male | Female |
|-------|------|--------|
| 1320 | 900 | 420 |

However the percentage of female advocates varies widely throughout the country, from almost 40% in the Skopje area to 0% percent in the smaller mostly ethnic Albanian towns.

All female respondents adamantly maintained that there was no gender discrimination in the legal profession and almost invariably pointed out that women outnumbered men in the judiciary. Overall gender distribution in the judiciary is: 291 men (46.6%) and 325 women (53.4%). See ABA/CEELI, "2004 Judicial Reform Index for Macedonia". Respondents opined that the lower number of women registered as advocates was based on: their unwillingness to open a law office (sole proprietorship); that women would rather have the regular employment of jobs in the judiciary, as a legal consultant or in-house lawyer; and that many men register as advocates because they cannot obtain regular employment elsewhere.

As under-represented as minorities are within the MBA, and as under-represented as women are, the total lack of any minority women in the MBA is striking. Respondents' explanations were predictable in stating that the lack of ethnic-Albanian women choosing to be advocates is derived from conservative customs and traditions and that the Albanian culture does not encourage women to pursue business or legal careers.

As there is no official organization for non-advocate lawyers, statistics for ethnic minorities and women are non-existent. Anecdotally, however, women appear to be better represented in that field.

Factor 16: Professional Ethics and Conduct

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

| Conclusion | Correlation: Negative |
|---|------------------------------|
| Although a Code of Lawyers Ethics has been established by the Macedonian Bar Association [hereinafter "MBA"], it is insufficiently enforced. Non-advocate lawyers have no professional standards and the public is generally critical of advocates' lack of ethics. | |

Analysis/Background:

Under authority of the Law on the Bar the MBA addresses ethical issues. For example, Article 5 gives the MBA the authority to "adopt a Code of Lawyers Ethics". Article 17 (1) states that "[t]he attorney shall provide the legal assistance to his/her client in a diligent and professional manner, in accordance with the law, Code of Attorney's Ethics and other Associations' regulations, and shall respect the confidentiality of clients' information". Article 17 (3) deals with dual representation: "[t]he attorney is not allowed to provide legal assistance when upon the same case s/he or other attorney from his/her office or law firm gave legal assistance to the opposite party...." Adoption of a MBA Code of Ethics is dealt with in Article 34 (2) (7), which states that the MBA shall "adopt the Code of Bar Ethics".

The MBA Code of Ethics was most recently updated in 2002 (with technical assistance from ABA/CEELI). The MBA Code of Ethics is comprehensive and provides specific guidance for advocates on principles of conduct, including:

- Relationship with the client including confidentiality, conscientious representation, and abandonment;
- Conflict of interest provisions when representing both parties to a contract;
- Conflict of interest in representing an adverse party in the same case or in activities adverse to the client;
- Acting with respect before the courts and administrative bodies, including honest representation of the law and facts;
- Obligations to the MBA and its other members, including collegiality and professionalism;
- Maintaining professional secrets;
- Continuation of education in the field of law and maintenance of high reputation;
- Requirement to teach and mentor apprentices.

The MBA Code of Ethics obliquely connects violation of the MBA Code of Ethics with grounds for disciplinary procedure: “[n]on-observance of these rules and principles from this Code on professional ethics of lawyers, associates and lawyer’s apprentices represents violation of the principles. All lawyers are obliged to take care for the regular application of this Code, as well as to point to every violation of professional ethics of their colleagues through the competent bodies of the MBA.” MBA Code of Ethics, Preamble.

Article 31 of the MBA Disciplinary Code (see Factor 17) does not mention the MBA Code of Ethics directly, but it incorporates some of the provisions of the MBA Code of Ethics as grounds for disciplinary action. In addition, Article 31 (4) considers “[n]on acting in accordance to the decisions of the Assembly or the Managing Board of the MBA” to be a disciplinary breach. As the Managing Board of the MBA created the MBA Code of Ethics it is implied that attorneys must adhere to it.

When joining the MBA, an advocate must sign a statement that he or she has read and agrees to the statutes and regulations of the MBA, including the MBA Code of Ethics. Law on the Bar, art. 11; MBA Bylaws art. 68. Legal ethics is not a compulsory course in the Law Faculty, although university respondents insisted that ethics was included in all courses as appropriate. In addition, there is no requirement that lawyers receive training in ethics and none has been provided.

As noted previously, non-advocate lawyers have no mandatory organization or any mandatory rules or regulations. The Macedonian Business Lawyers Association [hereinafter “MBLA”] acts as a voluntary organization sponsoring symposiums twice a year and has adopted a Code of Lawyers Ethics that is laudable, but has no enforcement provisions. Legal professionals that have passed the Bar Exam, but chose to be members of neither the MBA nor MBLA have no code of ethics or other legal requirements to adhere to under law.

Interviewees claimed that the MBA Code of Ethics was ineffective and often ignored in practice; although in principle it provided adequate guidance on important issues. Respondents’ statements on ethics were overwhelmingly negative with the comments focusing on excessive fees, poor preparation and training, and a lack of ethics.

Some examples of common complaints are that lawyers delay court procedures in order to earn more money; lawyers inform their clients that they need money to bribe the judge or a witness, but the client never knows if the lawyer gave the money to the judge or witness; and that service is substandard. For example, an interviewee reported that his advocate had asked him to provide non-existent evidence for trial in a civil case in which the advocate asked for documentation as to cost of repairs. Another respondent reported on a case where the time limit for appeal had expired and his advocate had not appealed. The advocate had the client sign a document that stated that the client was satisfied with the work, which prevented a later claim of malpractice or filing of a disciplinary action.

Factor 17: Disciplinary Proceedings and Sanctions

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

| Conclusion | Correlation: Negative |
|---|------------------------------|
| <p>Although advocates are subject to disciplinary proceedings by the Macedonian Bar Association [hereinafter “MBA”], discipline is rarely undertaken. There are no means for enforcing discipline against non-advocate lawyers.</p> | |

Analysis/Background:

The Managing Board of the MBA (in accordance with Articles 30-32 of the Law on Bar and Articles 22, 26-31, and 42 of the MBA’s Bylaws) adopted Regulations for Disciplinary Responsibility in 2003, which set out a comprehensive system for disciplinary procedures for violations of the standards of the MBA. While the Regulations do not specifically incorporate or refer to the Code of Lawyers Ethics, many of the acts mentioned in the Code of Lawyers Ethics are also mentioned in the Regulations.

Disciplinary breaches are narrowly defined in Article 31 and include:

- Nonperformance or negligent performance of legal assistance (including some conflict of interest cases);
- Non-performance in accordance with the Power of Attorney granted by the client;
- Breach of confidentiality; and
- Administrative breaches (failure to pay dues, notify the MBA of change of location, signage, advertising, performing another profession, etc.).

A disciplinary complaint is initiated with the Disciplinary Prosecutor (elected by the Assembly of the MBA). There appears to be no restrictions as to who can initiate a complaint. The process envisions a private hearing with the right to appeal within the MBA. If unsatisfied with the results, then the advocate can bring an administrative procedure in the courts, at which time the charges are made public.

The procedure is well-defined and adequately protects the accused advocate with: adequate notice of the charges, right to counsel, right to be heard, adequate time for preparation of a defense, right to a fair and timely hearing, and right to appeal. A procedure for maintaining records of disciplinary complaints is established with the administrative registers. MBA

Disciplinary Code art. 37. Final decisions are added to the advocate's file and are published in the newsletter of the MBA. Id. at art. 38.

In recent years at the MBA annual meeting, statistics on the number of complaints and the number pending are verbally reported to the elected delegates without disclosure of the accused advocates' names. At least one case was reportedly appealed from the Disciplinary Council to an administrative action in the court (with the MBA decision being upheld). Respondents' estimated that the number of disciplinary proceedings ranged from zero to twelve for the last year, however, the MBA did not provide any statistics.

Four disciplinary cases were published in the MBA newsletter in January 2004:

- Fine of 5000 MKD (approximately \$100) for violation of reputation of the bar. Advocate performed non-advocate activity by serving as President of the Managing Board of a company;
- Fine of 5000 MKD for representing clients in cases against an insurance company for which his father worked as legal advisor;
- Fine of 5000 MKD against advocate for advertising in newspaper insert that she would provide answers to legal questions in next edition of paper;
- Fine of 5000 MKD for violation of reputation of the bar. Advocate had been employed as legal director of company.

Even though the MBA's exclusive control of disciplinary procedures impacts transparency, the lack of transparency until the advocate is found guilty does not appear to be inappropriate. A respondent journalist expressed concern as to the lack of ability to obtain information on pending cases, but this does not appear to be a problem. When another journalist respondent had questioned the MBA President about disciplinary charges, he was furnished information. While many modern disciplinary boards have seen the wisdom of including non-lawyers in the disciplinary process, this is not an idea that was palatable to advocates. Of course, having judges and laypersons on disciplinary boards would increase the public's confidence in the process.

The reported cases do not reflect the failures in performance most frequently raised by respondents: representation of both sides in a case, lack of adequate legal representation, failure to appear in court, fee charges, and bribes. Advocate respondents were as critical of the disciplinary process as non-advocate lawyers. Statements that counsel received payment from both sides during litigation were common. Apart from a seeming lack of action on a wide range of practice deficiencies, when sanctions were imposed, the punishment was small at 5000 MKD.

Overall, based on the membership size and respondents' allegations of misconduct, there appear to have been relatively few actions pursued against advocates. Disregard of citizens' rights and expectations is harming advocates' reputation. There is at least some indication that the MBA is beginning within the last year to address this issue by publicizing disciplinary decisions.

Even though none of the interviewees reported any perceived unfair disciplinary hearings, there were reports of threats by the MBA of disciplinary proceedings. In 2002, there was an advocate strike regarding the new Law on Bar called by the Assembly of the MBA. Some advocates did not honor the strike, mostly in Skopje, but also outside the capital. The MBA initiated disciplinary procedures against those advocates who participated in the strike. Eventually the disciplinary cases were dropped. In some cases, the MBA determined that the advocate had a responsibility to his client to appear regardless of the strike (if the case involved a detention the advocate had to appear in court to protect the client's rights). Additionally, the MBA has allegedly threatened

advocates with discipline if they fail to adhere to the Board’s perceived best interests, including participating in activities that bear no relationship to the advocate’s responsibilities.

The MBA’s disciplinary procedure is the only existing discipline for lawyers. Non-advocate lawyers are not covered for either their trial practice representation or their other work.

IV. Legal Services

Factor 18: Availability of Legal Services

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

| Conclusion | Correlation: Positive |
|--|------------------------------|
| Advocates are adequately distributed throughout the country to provide access to legal services. | |

Analysis/Background:

There are 1320 registered advocates in Macedonia for a population of 2,022,547. The number of practicing advocates per region (bar community) is distributed throughout Macedonia in a reasonable proportion to the population. While advocates are concentrated in Skopje, all regions are well represented. As Macedonia is a relatively small country and nearly all of the country is accessible from Skopje, advocates appear in court outside of their residence area. Few respondents were concerned about availability of legal services in the regions. Therefore, there appears to be available advocates for defense of criminal matters throughout Macedonia.

Although all advocate respondents denied that there were too many advocates, they also stated that more advocates were not needed. This is true despite the fact that there is a huge backlog of cases in the Basic Courts, ranging from traffic violations to murder. The backlog is not due to a lack of advocates to represent clients, as most cases do not need advocate representation, but rather is attributable to inefficient court procedure. See Macedonia JRI (November 2003). It is also significant that the criminal caseload is high based in part to the practice of not engaging in plea-bargaining. Only if the defendant agrees to plead guilty unequivocally can a trial be avoided.

The issues raised by a large minority population with particular concerns including violation of human rights, citizenship rights for refugees and displaced persons, property rights for social cases, and others are being addressed somewhat by international organizations (See Factor 19).

Finally, Article 84 of the Law on Civil Procedure prohibits *pro se* representation in cases where the value is in excess of 1,000,000 MKD. “If in trials for property and legal claims the value of the dispute exceeds 1.000.000 dinars, authorized agents of the legal entities may be only persons who have passed the qualifying bar exam”. Law on Civil Procedure art. 84. Non-advocate lawyers, such as in-house counsel or legal consultants, often represent clients for cases above that amount rather than advocates.

Factor 19: Legal Services for the Disadvantaged

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

| | |
|--|-----------------------------|
| Conclusion | Correlation: Neutral |
| <p>While legal services are provided to indigent criminal defendants, under-funding of the system results in inadequate legal representation. International donor organizations, directly or indirectly, provide representation for indigents in non-criminal matters.</p> | |

Analysis/Background:

Criminal Legal Services (*ex officio* appointments)

Macedonian law provides a graduated requirement for providing free criminal defense to the accused. Therefore, the accused has the right to a court appointed counsel (*ex officio*) in many instances. For example, Article 66 of the Code of Criminal Procedure requires:

- If the accused is dumb, deaf, or incapable of defending himself successfully or if a criminal procedure is conducted against him for a crime for which, according to the Code a sentence of life imprisonment is proscribed, then he must have a counsel during his first questioning;
- the defendant must have counsel if detention is defined against him during the detention period;
- After the prosecution act due to a crime for which a sentence of ten years or more...is proscribed with the Code, the accused must have a counsel in the time of the prosecution act delivery;
- As soon as a decision for a trial in absence is brought, the accused who is tried in absence (Article 292) must have a counsel;
- if the accused is charged with a case of obligatory defense (serious crimes) according to the previous paragraphs of this Article does not provide a counsel himself, the President of the court will assign a counsel *ex officio* for the further duration of the criminal procedure until the final legally valid verdict....”

In addition, under Article 67 (1) “[w]hen there are no conditions for obligatory defense and the procedure is conducted for a crime for which a sentence of over three years is proscribed according to the Code, on his request the accused can be assigned counsel, if his property condition does not allow him to bear the defense expenses”.

In practice, the court always appoints an advocate if one is required. Respondents reported that for less serious offenses, a family member or someone the accused trusted sometimes represented the accused. The issue of non-advocate lawyer representation is more of an economical one and a concern for the Macedonian Bar Association [hereinafter “MBA”] as an encroachment into their exclusive right to provide legal services as discussed under Factor 21.

There is no public defender program in Macedonia, but all advocates registered with the MBA can be assigned to criminal defense cases and are paid by the state.

The procedure for appointment or selection of criminal defense counsel varies based on the stage of the proceedings, the police, the region, the investigative judge and the trial judge, but there was no indication that counsel was not being appointed as required at any stage. The practice in some police stations is to provide the eligible accused with a MBA Directory List from which he can choose an advocate. Before the investigative judge begins questioning he reviews the file to ascertain if the accused has requested counsel. One of his first questions is to ask the accused if he wants counsel and if he cannot afford counsel the judge will arrange to have counsel appointed. The trial judge's practice is to appoint from the list of advocates.

There are some concerns with the appointment, work and payment of *ex officio* advocates in Macedonia. There was an indication that judges do not necessarily appoint advocates in order (see Summary Findings). Some respondents indicated that depending on the charges a judge would appoint an advocate that was thought to be a better representative for the accused. However, there was also an indication that advocates were concerned that they were not appointed fairly or as often as they should be. Responses as to frequency of appointment varied considerably (one or two a year to six a month). Additionally, some advocates (presumably those with a sufficient practice) opted to not be included on the list of advocates for appointment. Although it is difficult to determine, the current practice of appointment may be subject to favoritism.

Although many advocates seek *ex officio* appointment, payment for representation continues to be inadequate. Additionally, the trial judge determines the amount of payment. Payment appears to be roughly based on 50% of the Tariff Code but varies depending upon the trial judge's determination of the time and/or value of the services rendered. Furthermore, payment for services has traditionally been extremely slow. Many respondents reported that they had never been paid for some representation in the past. Currently, regular payment appears to be much better, but still there is often a delay of months before receiving payment.

Civil Legal Services

Representation for indigent clients in non-criminal cases is provided through a number of sources: by both the MBA (through funding by others of the overhead) and various international donor groups. The MBA's Tariff Code states that "[f]or the party which is exempted from a payment of the expenses for the proceeding by the law (right of indigents), the attorney is obliged to give free legal aid". MBA Tariff Code art. 6.

The MBA has recently established legal clinics, "Free Legal Aid – Legal Culture and Socialization", in six towns outside Skopje (Bitola, Gostivar, Kumanovo, Delcero, Stip and Ohrid). The clinics provide assistance to: social cases, disabled, single parents, domestic violence cases, human trafficking victims and refugees. The clinics are operated with the cooperation of local non-governmental organizations (NGOs). By having the offices in the NGO office, they operate without overhead expenses. Law assistants staff the offices and are provided by the MBA as fulfillment of their two-year internship requirement. MBA advocates serve voluntarily. The MBA has organized round tables with experts to provide initial training for the advocates, but the legal assistants have not received any training.

The MBA reports that more than 300 consultations were made in 2003 and that 20 cases were completed. Legal aid is offered without discrimination on the basis of ethnicity, language, gender, etc. and adequate provision of legal services to minorities is emphasized.

The Organization for Security and Cooperation in Europe [hereinafter "OSCE"] sponsors the "Lawyers in Municipalities" program, a free legal advice project that started as a three-month pilot project and has been extended for three months in the former crisis area in two municipalities, Lipkova and Kamenjane. Most cases are civil cases: citizenship, social benefit entitlement and domestic relations cases. The lawyer can advise, but not represent citizens in court. They only provide a few hours of assistance a day for one or two days a week.

Assistance to victims of domestic violence is provided in Skopje through the NGO, ESE, but limited services are provided. “Temis”, the Macedonian Women Lawyers Association, has provided training programs and assistance for victims of human trafficking through grants from IOM and OSCE. Temis also sponsors an SOS line for immediate help for victims of family violence. Civil Society – CSRC ARKA in Kumanovo and Association for Protection of Roma Rights in Stip are providing assistance to Roma with citizenship problems with funding by UNHCR. The Helsinki Committee sponsors a Pro Bono Legal Clinic within its Skopje office providing legal advice to citizens, primarily in human rights cases. The clinic will draft documents and provide assistance, but in any court proceeding, an advocate will represent clients. In 2003, the Helsinki clinic provided assistance in approximately 500 cases and in 2004 they anticipate that the number will be doubled. Approximately half of all clients served have advocates and Helsinki provides legal support to these advocates. Helsinki also supports a Court Monitoring Project, working through a lawyers’ network of 35-40 monitors. Helsinki will intervene in human rights cases if necessary.

With support from international donors, several NGOs are assisting the Roma community with citizenship issues. The major problem facing these NGOs is a shortage of funds to pay filing fees (100 Euro per application) and a lack of funds for staff and legal fees.

Even though there are a number of organizations providing legal assistance, it is difficult to determine if all indigent citizens requiring assistance are being served. There may be a need for coordination or a unified system for legal aid.

Factor 20: Alternative Dispute Resolution

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

| Conclusion | Correlation: Negative |
|---|------------------------------|
| <p>Alternatives to litigation are not generally available and advice as to alternative dispute resolution (ADR) is rarely provided.</p> | |

Analysis/Background:

The Law on Civil Procedure, Chapter 30, Articles 438-459, provides a mechanism for litigants to use an “Elected Court” which is a three-member arbitration court. The legislation envisions use in international contracts, but it can be used anytime the parties agree in writing to the procedure. Despite the existence of arbitration legislation, this type of dispute resolution is not well developed in Macedonia and is used in only rare circumstances. Some respondents reported that arbitration was used in the business context with foreign clients. Respondents reported that the cost for arbitration made it an unattractive alternative to their client. As a result, most lawyers do not advise their clients about the availability of ADR. The legislation provides that the three-member arbitration court is paid for by the litigants, which is why advocates see it as expensive and unattractive. Essentially, individuals prefer the free court system to the cost of the Elected Court. There are no programs on court-annexed mediation or arbitration and ADR is not covered in the law school curriculum.

There is donor interest in ADR as indicated by a number of projects currently under development. For example, Southeast European Enterprise Development (SEED) and the International Finance

Corporation (IFC) are drafting a new Law on Mediation. In addition, the European Agency for Reconstruction (EAR) is working with consultants to propose a law on commercial arbitration.

Some respondents referred to the tradition of mediation in Macedonia and thought mediation would be acceptable to citizens based on this tradition. Overall though, most respondents were unfamiliar with any type of ADR and did not advise clients of it.

V. Professional Associations

Factor 21: Organizational Governance and Independence

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

| Conclusion | Correlation: Neutral |
|---|-----------------------------|
| <p>The Macedonian Bar Association [hereinafter “MBA”] is self-governing and independent from state authorities. The lack of regulation of the MBA and elitist leadership threatens democratic representation. Other professional associations are only beginning to be developed.</p> | |

Analysis/Background:

The MBA was established in 1946 immediately after the Second World War. One must be a member of the MBA to practice as an advocate, although one can practice as a non-advocate lawyer and represent clients in court without being a member of the MBA. The MBA is, however, the exclusive body to provide criminal legal defense representation in all obligatory defense cases and in practice its advocates represent nearly all criminal defendants.

The Law on the Bar addresses the makeup and duties of the MBA as well as the independence of the MBA. In particular Article 2 states that “the Bar is an independent and impartial public service with a sole purpose to provide and give legal assistance”. In addition, Article 5 states that “[t]he impartiality and the independence of the law practice as a public service shall be realized throughout a free and autonomous practice of law by attorneys free choice, organization of the attorneys in the Bar Association and its financing, autonomous creation of the documents for the Macedonian Bar Association’s and its sections’ operation, registration and deletion from the Registry of Attorneys, Registry of Attorneys’ Professional Associations, Registry of Attorneys’ Assistants, as well as developing the Code of Attorneys’ Ethics”. Furthermore, Section II Article 34 (1) states that “[t]he Macedonian Bar Association is independent and autonomous in its operations”. This framework is further enhanced by the MBA Bylaws.

The MBA Bylaws, contain a detailed process for the organization and structure of the MBA including: organization by Bar Chapters (regional bar communities) (MBA Bylaws, art. 10); election of delegates to the Assembly by Bar Chapter based on one representative per ten members (MBA Bylaws, art. 15); meetings of the Assembly (MBA Bylaws, art. 15) at least on an annual basis (last Saturday in May); duties of the Assembly (MBA Bylaws, art. 19); election of the Managing Board (MBA Bylaws, art. 20) (15 members elected by the Assembly); duties of the Managing Board (MBA Bylaws, art. 23.); officers and leadership of major components: the Disciplinary Court (MBA Bylaws, arts. 27-28), Disciplinary Prosecutor (MBA Bylaws, art. 26), Supervisory Board (MBA Bylaws, arts. 24-25) (three members elected by the Assembly), Appeal Council (MBA Bylaws, arts. 29-31), Advisory Council (MBA Bylaws, art. 32) (composed of experts and advocates appointed by the Managing Board); and determination of tariff list and setting of

fees (MBA Bylaws, art. 37). The MBA is an independent organization and interacts with the government only through the bar exam process (see Factor 9).

The MBA's governing structure conforms to the standards established by the MBA Bylaws as noted above. In practice, advocates have little involvement in the MBA except through election of representatives by Bar Chapters, and as the Assembly only meets annually, the Assembly merely approves the work of the Supervisory Council and Managing Board. The MBA President elected for a two-year term has a high degree of autonomy.

New members are required to pay an initial registration fee currently set at 1000€ or 61,000 MKD, which is considered extremely expensive for a new advocate based on current economic conditions in Macedonia. The registration fee was increased dramatically in January 2003 from 12,000 MKD, which understandably caused consternation among new member applicants. The Constitutional Court decision of April 15, 2003 addressed this issue and found that the imposition of the fee was invalid. However, the MBA apparently continues to charge the same registration fee. Annual membership fees are 5,000 MKD, which are generally paid quarterly. The MBA has had problems in collecting the membership fees in the past and has recently adopted a new procedure for the collection of past due fees. There is no funding from public sources.

Respondents were varied in their assessment of the MBA. Some reported disappointment in the recent leadership citing lack of involvement and consultation by ordinary members on matters of policy and failure to hold general membership meetings. Additionally, democratic decision-making and democratic selection of officers was questioned as nominations to important roles were based on "insider" connections. Younger respondents expressed a sense that the MBA was not providing a service to them commensurate with the costs.

Financial accountability concerns have also been raised in connection with the MBA. For example, the Skopje daily newspaper, "VREME", questioned expenditures and reporting of the MBA in a July 22, 2004 article "Fraud of 32,000 euros is shaking the Macedonian Bar Association". It stated that "Last year MBA had total income of approximately 200,000 Euro. More than 90% of the income is from the membership fees and registrations. The Supervisory Board report notes that during the last year it received a number of written comments regarding the negative balances of the financial expenses of the Managerial Board of the MBA." An official announcement by an independent auditor in September 2004, "VRME", however, stated that after an audit it had determined that there was no problem. However, many respondents questioned the appropriateness of per diem charges by the management for travel on behalf of the MBA.

The Ministry of Justice has no involvement in the MBA's operations except for the initial involvement with the bar exam.

Factor 22: Member Services

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

| Conclusion | Correlation: Negative |
|--|------------------------------|
| <p>The Macedonian Bar Association [hereinafter “MBA”] actively promotes the interests and independence of advocates, but does not provide adequate implementation of professional standards, continuing legal education (CLE) and other opportunities for its members.</p> | |

Analysis/Background:

To some extent the MBA promotes the interests of its members at the public policy level by mobilizing members, undertaking informal consultations with government authorities, and organizing media events. Most recently this has taken the form of promoting the MBA in attempting to modify legislation to circumvent the recent Constitutional Court decision of January 22, 2003 allowing non-advocate lawyers and laypersons to represent clients in court proceedings. The MBA recently published a paid newspaper advertisement about professional representation in trial. (*Utrinski Vesnik* May 19, 2004). There is also a strong opposition to allowing notaries to draft legal documents as specifically provided for in the Court decision. This is interpreted as an encroachment into the MBA's domination of legal services. The MBA appears to be enthusiastically pursuing its interest based solely on the perceived economic detriment caused by non-advocates' intrusion into the legal profession.

Although the MBA has established a CLE Committee and participated in approximately 18 seminars and round tables last year, its involvement was minimal, as content providers were international organizations. Space for only approximately 300 members was available last year and, with some members attending multiple round tables or seminars, the vast majority of members had no CLE. The MBA monthly newsletter informs members of upcoming CLE events and then a special invitation is sent to the Presidents of each Bar Community. While theoretically the Bar Chapter selects participants for CLE, selection criteria for participation have not been established and respondents complained that they were not included (see Factor 14).

No fees are collected for CLE and there is no requirement for maintenance of records on attendance or standards for minimum curriculum. All CLE seems to have been financed by international donors.

The MBA has established professional standards and ABA/CEELI assisted in a project to revise the MBA Code of Ethics two years ago. However, the standards are not generally adhered to, monitored or respected in practice. Standards are generally considered advisory and only to the extent a disciplinary violation is publicized by the media or directly affects the MBA are complaints investigated by the Disciplinary Council (see Factor 17). As noted in Factors 16 and 17, the MBA has a disciplinary mechanism that should protect professional standards. However, actual enforcement remains inadequate. Moreover, as mentioned in Factor 16 awareness of these standards appears to be low.

The MBA has considerable resources including a staff of five and the financial wherewithal to undertake lobbying and training activities, but has limited its involvement to protecting its rights as legal professionals. It does publish a monthly newsletter and quarterly magazine. However, advocates reported that they get little support or information from the MBA. Members generally rate the association's success in protecting the legal profession as good, but otherwise question what the MBA provides in services to its members.

Factor 23: Public Interest and Awareness Programs

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

| | |
|--|------------------------------|
| Conclusion | Correlation: Negative |
| International donor organizations are the exclusive providers of public interest and awareness programs. | |

Analysis/Background:

Neither the Law on the Bar nor the Macedonian Bar Association [hereinafter “MBA”] Bylaws have any regulations or statements that the MBA should play a role in public interest and awareness programs.

The international donor community in Macedonia has made a considerable effort to promote public awareness of legal rights and responsibilities including projects by the Helsinki Committee, Council of Europe (COE), and the Organization for Security and Cooperation in Europe (OSCE). Additionally the Ombudsman of the Republic of Macedonia has an on-going campaign to inform citizens of their rights. These programs include information on such legal issues as human rights, criminal law, and family law. However, the MBA has not participated in these activities, even as a distributor of others’ brochures or by furnishing information on the organization’s programs. Some interviewees indicated that the lack of support from the MBA might be a problem of lack of resources to undertake these projects or simply apathy on the part of the MBA.

In 2003, the MBA published a directory of all advocates with addresses and phone numbers for distribution to jails so that prisoners could locate an advocate. This directory includes a copy of the MBA Code of Ethics. A number of respondents indicated that this was often used by detainees to locate an advocate and the directory appears to be beneficial for both the state authorities and detainees. The MBA maintains similar information on its web site available to the public. This includes the names of all advocates and their addresses and phone numbers.

With a few exceptions, advocate respondents were generally unconcerned about the lack of public interest and awareness programs provided by the MBA. Advocates had an expectation that the international community would provide this. They tended to think that the MBA existed only to improve their status as advocates, benefits and reputation. Neither the MBLA nor Macedonian Young Lawyers’ Association [hereinafter “MYLA”] are currently taking a role in public awareness programs. Essentially these organizations are too loosely organized or in the case of MYLA too new to provide any assistance.

Factor 24: Role in Law Reform

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

| Conclusion | Correlation: Neutral |
|---|-----------------------------|
| The Macedonian Bar Association [hereinafter "MBA"] is now beginning to be involved in the law reform process, but it lacks sufficient impact on the process at this time. | |

Analysis/Background:

Article 23 of the MBA Bylaws provides that the Managing Board shall "...cooperate with the state institutions, as well as with associations and organizations..., review suggestions, study them and take attitudes towards them or pass decisions that are of interest of the advocacy; cooperate regarding the preparations of the regulations that are related to the activities of the advocacy; [and] follow the condition of the advocacy and give references and opinions for more successful performance . . ."

Establishing input into the legislative process has recently been a stated priority for the MBA. The MBA has a special commission, "Normative Acts", that prepares comments and organizes round tables for discussion with members. These have been organized for human trafficking, civil procedure, criminal procedure, and wiretap laws. At the conclusion, the MBA sends these comments to the appropriate Ministry and to Members of Parliament. The MBA successfully commented on recent wiretapping and attorney-client confidentiality provisions.

The MBA also reports that it is cooperating with the Ministry of Justice [hereinafter "MOJ"] and other ministries in providing input on new and amended legislation. The MBA has members on all committees. The MOJ routinely sends proposed legislation to the MBA for comment.

Respondents expressed some frustration that the MBA was not more involved in the legal reform process and that they were not asked to participate in the MOJ legislative working groups. The only legislation on which advocates, as a group, have had significant impact is the Law on the Bar. Nonetheless, the MBA has sought to provide some input at the parliamentary level and submitted comments to parliament on new legislation. The problem is that the true drafting and policy decisions are made within the government and the MBA has not been involved at that level. Involvement in legislative drafting has been at a superficial level and to date no serious efforts have been undertaken to increase the level of involvement.

The Macedonian Business Lawyers Association [hereinafter "MBLA"] has been active in legal reform. Its members participated in drafting the recently enacted revisions to Company Law, which went into effect 30 April 2004. They are actively contributing to changes in the Bankruptcy Law, Public Procurement Law, and Labor Law. The MBLA reported that parliament and government working groups are turning to it with more frequency to comment on draft legislation, especially new legislation involving company or commercial law. The MBLA is involved in semi-annual seminars, and its members often serve as experts for this legislation.

List of Acronyms

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| MBA | Macedonian Bar Association |
| O.G.R.M. | Official Gazette of Republic of Macedonia |
| MOJ | Ministry of Justice |
| SEEU | South Eastern European University at Tetovo |
| COE | Council of Europe |
| ABA/CEELI | American Bar Association Central European and Eurasian Law Initiative |
| OSCE | Organization for Security and Co-operation in Europe |
| OPDAT | Office of Overseas Prosecutorial Development, Assistance and Training of the U.S. Department of Justice |
| EAR | European Agency for Reconstruction |
| IOM | International Organization for Migration |
| CLE | Continuing Legal Education |
| UNHCR | United Nations High Commissioner for Refugees |
| ADR | Alternative Dispute Resolution |
| SEED | Support for East European Democracy Act |
| IFC | International Finance Corporation |
| MBLA | Macedonia Business Lawyers Association |
| MYLA | Macedonia Young Lawyers Association |
| LPRI | Legal Profession Reform Index |
| MKD | Macedonian dinars (as of August 2004 50 MKD=\$1 USD) |