

## **LEGISLATIVE VIEW OF THE CONDITIONS AND THE PROCEDURES FOR APPOINTMENTING AN AMBASSADOR**

**Dejan Marolov PhD, Goce Delchev University, Faculty of Law, Stip,  
Republic of Macedonia, e-mail: [dejan.marolov@ugd.edu.mk](mailto:dejan.marolov@ugd.edu.mk)**

### **Abstract:**

The legal framework of the conditions and the procedures for appointing an Ambassador of the Republic of Macedonia has been given by the Law on Foreign Affairs. There is a relatively good legal framework for the appointment of new ambassadors, which is largely similar to the legal framework of the countries in the region. However, the Macedonian legal framework has its own specifics. This paper will mostly rely on qualitative research methods.

**Keywords:** *Ambassador, conditions, procedures, Law on Foreign Affairs*

### **Introduction**

This paper analyses and comments the legal framework which regards the conditions and the procedures for appointment of an Ambassador of the Republic of Macedonia, which has been given within the Law on Foreign Affairs from 2006. Although it has passed considerable time since the adoption of the Law on Foreign Affairs, through which some changes were made, there were not sufficient serious analysis of the anticipated legal solutions about the conditions and the procedure for the appointment of an ambassador. Therefore, this paper deals with this issue in two parts. The first one analyses and comments the conditions and the second one analyses and comments the procedures for appointing an ambassador.

### **Conditions provided by the Law on Foreign Affairs**

All the necessary conditions for a person to become an Ambassador of the Republic of Macedonia are listed in Article 36 of the Law on Foreign Affairs<sup>1</sup>.

As first condition is mentioned the existence of citizenship of the Republic of

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<sup>1</sup> Article 36 from the Foreign Affairs Law, Official Gazette of the Republic of Macedonia no.46 from 11.04.2006

Macedonia, which means that exclusively a citizen of RM (Republic of Macedonia)<sup>2</sup> can be an Ambassador. This requirement sounds completely reasonable, because, as a person with such function and authorizations, he/she must possess only the citizenship of the country he/she represents abroad.

The second pointed condition is having high education. To possess high education, in order to be able to represent the own country as ambassador<sup>3</sup> is quite logical, too. However this is not detailed explained, i.e. it is not clear what kind of high education is required. This theoretically gives people who have never met social sciences possibility to fulfil this condition. We propose making some further changes of this point, i.e. concretizing in direction of reducing the high education condition only in the area of diplomacy or political-legal sciences or at least in social sciences as more general field.

The third condition is to have active (very good) knowledge of two foreign languages<sup>4</sup>. There is also a sub – condition, which is, at least one of these languages must be an official language in the UN<sup>5</sup> (United Nations). In addition, if an ambassador has been sent to a country with official language, which is different from those of the official usage in the UN, it is also required basic knowledge of the host language. The third condition arises from purely practical reasons. In order to represent the own country abroad, the ambassador must carry out certain official and unofficial communications with the authorities and the local population during the performance of this function. The request for at least elementary knowledge of the host language is a kind of recognition of the reality that the Republic of Macedonia as a pretty small country features limited opportunities in the diplomatic sector, i.e. cannot provide candidates with good host language knowledge in each country the Republic of Macedonia has an embassy. It would be ideal, if every Macedonian embassy had diplomatic staff with proficient knowledge of the host language. However this solution still remains valid.

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Arabic, Chinese, English, French, Russian and Spanish

In that direction is also Article 43, which says: *“in accordance with the receiving State, the Ambassador can be accredited at the same time for one or more states or international organizations”*<sup>6</sup>.

Similar to the previous article, here also is revealed a real situation of the Republic of Macedonia, which is that it can hardly provide an individual embassy in every country. There is indeed no real need for an individual embassy in every country, so it leaves an opportunity open that one ambassador can be appointed as ambassador to several countries simultaneously.

If we go back to the third so-called language condition we must mention the changes made in 2013, according to which one of the foreign languages must be English and the second one must be one of the official languages in UN or EU<sup>7</sup>. There are also another changes regarding the provisions which determinates what tests are exactly relevant and which marks are sufficient as proof for foreign language knowledge<sup>8</sup>.

The fourth prescribed condition is that the candidate for ambassador must have gained high diplomatic title or be already acknowledged in the field of foreign policy and international relations<sup>9</sup>. This requirement leads to appointing a person with experience for ambassador, i.e. avoiding situations of appointing persons without sufficient knowledge as ambassadors.

The fifth condition requires psychophysical and health capability<sup>10</sup>. It was made a change later, saying that the candidate must not have had any prohibition to perform a profession, activity or duty<sup>11</sup>.

The final condition is to own an adequate safety certificate.

With the sixth condition has been complied the legal prescribed list of conditions for practising this type of function.

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<sup>6</sup> Article 43 from the Foreign Affairs Law, Official Gazette of the Republic of Macedonia no.46 from 11.04.2006

<sup>7</sup> Article 10 from Changes And Additions Law of the Foreign Affairs Law, Official Gazette of the Republic of Macedonia No.26 from 20.02.2013

<sup>8</sup> Ibid

<sup>9</sup> Article 36 from the Foreign Affairs Law, Official Gazette of the Republic of Macedonia no.46 from 11.04.2006

<sup>10</sup> Ibid.

<sup>11</sup> Article 8 from Changes And Additions Law of the Foreign Affairs Law, Official Gazette of the Republic of Macedonia no.107 from 29.08.2008

Interesting is to note that until the decision by the Constitutional Court of 07.11.2007, the Law on Foreign Affairs had an additional requirement for appointing an ambassador<sup>12</sup>. It was about the former article 36 paragraph 1, line 6, which is: *“must not be convicted with imprisonment-punishments of at least six months of crimes in connection with official duties, or other criminal act which makes him unsuitable for an Ambassador.”*<sup>13</sup> (Translation in English by Dejan Marolov) But this was abolished with the before mentioned Decision by the Constitutional Court. What is this issue about? Although this condition itself seems fairly logical, it could still be considered as controversial, if a person who has served prison for longer time for committing a crime connected with official duties could be appointed to be ambassador. This means that a person who has already had serious problems with the law could not take a post that provides him immunity from criminal prosecution. It contains itself the assumption that the person who has once committed a crime, will probably again be in conflict with the law. At the same time this assumption contains the possibility for lifelong stigmatization of people who have broken the law once before and have already paid their debt to society.

Therefore, taking in consideration Article 23 of the Constitution<sup>14</sup> i.e. every citizen has the right to perform a public function, the fact that in this way one right of the citizen who had committed a crime is limited and the fact that in a way he/she gets additional sanction outside of the already adopted verdict (where this limitation is not predicted), the Constitutional Court abolished the line six<sup>15</sup>. Accordingly, satisfying of this requirement is no longer obstacle to the appointment of ambassadors. Accordingly, satisfying this requirement is no longer condition on the way of appointment of ambassadors.

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<sup>12</sup> Decision of the Constitutional Court of the Republic of Macedonia U no. 80 / 2006-0-0 from 07.11.2007

<sup>13</sup> Article 36 from the Foreign Affairs Law, Official Gazette of the Republic of Macedonia no.46 from 11.04.2006

<sup>14</sup> Constitution of the Republic of Macedonia

<sup>15</sup> For more see: Decision of the Constitutional Court of the Republic of Macedonia no. 80 / 2006-0-0 from 07.11.2007

The Law on Foreign Affairs stipulates also that at least two thirds of the total number of ambassadors is appointed by diplomatic officials with high diplomatic titles from the Ministry of Foreign Affairs<sup>16</sup>. Later it was reduced to ¼ .<sup>17</sup> This ensures that at least ¼ of the appointed ambassadors are professionals. This provision is quite debatable because there are occasional requirements that this post should be run by 100% professionals. But for the time the same provision remains as it is.

### **The procedure prescribed by the Law on Foreign Affairs**

The procedure for appointment of Ambassador is prescribed with Articles 37-43 of the Law on Foreign Affairs. According to these Articles the procedure is initiated by the Minister on Foreign Affairs<sup>18</sup> who submits a proposal for a new Ambassador to the Government of RM. If the proposal is accepted on the Governmental session, the Government informs the President of the Republic of Macedonia in written. After this the President will give his opinion about the proposal for appointment of the ambassador within 30 days and informs the Prime Minister in written. The relatively short period of 30 days given is because the ambassadorial post should not be left empty for longer time and it should be avoided the so called “pocket veto” (which would mean bringing the proposal in the pocket and not giving any answer for a longer time). After obtaining a positive opinion by the President, the Ministry of Foreign Affairs asks for an agrément by the receiving state<sup>19</sup> about the new ambassador. After receiving the acceptance, the new Ambassador meets the Minister on Foreign Affairs and the parliamentary working body on Foreign Affairs, where he/she explains his/her views and opinions about the relations with the state or the international organization he is appointed in. After receiving the agrément, the President of the Republic signs a decree about appointing the Ambassador. The decree is published in the Official Gazette of

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<sup>16</sup> Article 36 from the Foreign Affairs Law, Official Gazette of the Republic of Macedonia no.46 from 11.04.2006

<sup>17</sup> Article 8 from Changes And Additions Law of the Foreign Affairs Law, Official Gazette of the Republic of Macedonia no.107 from 29.08.2008

<sup>18</sup> After a preliminary alignment between him and the President of the Republic

<sup>19</sup> For the appointment of ambassador in an international organization an agrément is not required but the rules for the appointment of a permanent representative with a rank of Ambassador apply.

RM, after which the Minister on Foreign Affairs initials and the President signs the credentials. Finally, after this there is one month period for the new Ambassador to take the duty. According to the Law on Foreign Affairs the mandate of the ambassadors lasts four years starting from the day of taking the duty.

Setting up such a framework does not allow any element of the executive itself to build a monopoly on the appointment of ambassadors, because the procedure for appointment requires involvement of the Minister on Foreign Affairs, the Prime Minister and the whole Government as well as the President of the Republic. Although fairly limited, the legislature is also included through the compulsory introduction of the new Ambassador in front of the working body of the Assembly. Although this model often generates misunderstanding between the President and the Government in practice, especially in situations where the President and the Prime Minister come from different political parties<sup>20</sup>, it is proved to be relatively functional. In general the procedure for appointment of ambassadors is quite similar to other solutions in the Laws on Foreign Affairs and other laws in the former Yugoslav republics and neighbouring countries. However, it is normal to exist some specifics in the legislation of RM. The provision of the Law on Foreign Affairs<sup>21</sup> according to which, “*in naming ambassadors it is respected the principle of appropriate and equitable representation of citizens belonging to all communities and the principle of equal opportunities between the sexes*” is unique. Exactly the first part of this provision, which says that the appointment of Ambassadors is based on the principle of appropriate and equitable representation, in practice means that during the appointment of ambassadors there must be represented candidates from all communities, different from the Macedonians. That, on the other hand means that it is compulsory that some of the appointed ambassadors belong to the minority communities.

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<sup>20</sup> Notable for the time during the mandate of President Branko Crvenkovski from SDSM when the Prime Minister was Nikola Gruevski from VMRO-DPMNE

<sup>21</sup> Article 36 Paragraph 3 from the Foreign Affairs Law, Official Gazette of the Republic of Macedonia no.46 from 11.04.2006

### **Conclusion**

The legislation of the Republic of Macedonia regarding the terms of the procedure for the appointment of ambassadors is mainly based on the actual needs and capacities of the state. There is a relatively good legal framework for appointment of new ambassadors, which is largely similar to the legal frameworks of the countries in the region. However, the Macedonian legal framework keeps its own specifics. But the good legal framework does not always guarantee the good work. In this sense, the existing of legislation should not be understood as one made forever. On the contrary, much deeper analyses should be made and foreign experiences should be followed in order to provide better legal solutions regarding the requirements and the procedure of the appointment of ambassadors. This will allow better selection of qualitative staff who will be able to represent the country abroad.

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