



## Prosecutor appointment procedure

According to Article 42 of the RA Law on the Prosecutor's Office, 1. *"The Prosecutor General appoints the incumbents for the positions established under point 3 of part 1 of Article 37 of this Law from those included in the promotion list set under point 1 of part 1 of Article 39 of this Law, if the Qualification Commission has issued a positive conclusion for taking the relevant position.*

2. *The Prosecutor General appoints the incumbents for the positions established under points 4-5 of part 1 of Article 37 of this Law from those included in the list of promotion established respectively under point 2 and point 3 of part 1 of Article 39 of this Law.*

3. *The Prosecutor General appoints the incumbents for the positions established under point 6 of part 1 of Article 37 of this Law from those included in the list of candidate prosecutors who have completed the relevant study in the Academy of Justice or have been exempted from the study in the Academy of Justice according to part 10 of Article 38.*

The study of the invoked Law and the relevant regulations show that the Prosecutor General is the main actor and the main person in charge of making appointments in the prosecution system. The Prosecutor General's decision is based on the promotion list.

Promotion lists are made based on the results of and at the end of the study in the RA Academy of Justice.

According to point 26 of part 1 of Article 28 of the RA Law on the Academy of Justice, "A person included in the list of contenders for judge candidates, list of candidates for autonomous positions of the Anti-Corruption Committee, the list of candidates of investigators and prosecutors is considered as having received professional training if he/she has got a positive grade in all the examinations of the subject courses and has also been assessed positively after the probationary period". According to part 2 of the Article, the cumulative score of graduation from the Academy of those included in the list of contenders for judge candidates, list of candidates of autonomous positions of the Anti-Corruption Committee, list of candidates of investigators and prosecutors is calculated based on the grades of all the examinations taken in the frame of subject courses".

The aforementioned points of part 1 of Article 37 of the Law envisage:



- head of the structural subdivision of the Prosecutor General's Office, Prosecutor of the city of Yerevan, Deputy Military Prosecutor,
- Deputy Head of the structural subdivision of the Prosecutor General's Office, Deputy Prosecutor of the city of Yerevan, Prosecutor of the administrative district of the city of Yerevan, Prosecutor of the region, military prosecutor of the garrison, senior prosecutor of the Prosecutor General's Office,
- Prosecutor of the Prosecutor General's Office, senior prosecutors and prosecutors of structural subdivisions of the Prosecutor General's Office, deputy prosecutors of administrative districts of the city of Yerevan, deputy prosecutors of regions, senior prosecutors of the Prosecutor's Office of Yerevan, deputy military prosecutors of garrisons, Head of the structural subdivision of the central military prosecutor's office, senior prosecutor of central military prosecutor's office,
- Prosecutors of the Prosecutor's Office of Yerevan, senior prosecutors and prosecutors of Prosecutor's Office of administrative districts of Yerevan, regions and garrison military prosecutor's office, senior prosecutors and prosecutors of structural subdivision 27 of the Central Military Prosecutor's Office, the prosecutor of the Central Military Prosecutor's Office.

**Neither the Law on Prosecutor's Office, nor the Law on the Academy of Justice specify which principle and procedure are applied to make a choice from the lists and make an appointment, what criteria are used for the Prosecutor General to give preference to candidates who have had the relevant training and to appoint to office.**<sup>1</sup> This means that the Prosecutor General has too much discretion in the selection of a candidate from the approved lists and appointment of the prosecutor, which can lead to corruption risks, and enhance mistrust towards appointments and thus also the system in general.

To make more trustworthy and predictable the process of appointment to office in the system of Prosecutor's Office, we recommend *making an amendment to the acting regulations and establish that the Prosecutor General makes an appointment from the list according to the*

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*education received in the Academy of Justice and the descending order of cumulative scores of the study. This means that in terms of appointment to the office, priority is given to the candidate with higher scores, and in case of equal scores, priority is given to the candidate with longer experience.*

**Article 42. The procedure of appointment of a prosecutor**

1. The Prosecutor General appoints the incumbents for the positions established under point 3 of part 1 of Article 37 of this Law from those included in the promotion list set under point 1 of part 1 of Article 39 of this Law, if the Qualification Commission has issued a positive conclusion for taking the relevant office, in the descending order of the cumulative scores at the point of graduation. In case of equal cumulative scores, preference shall be given to the candidate with longer experience.<sup>2</sup>

2. The Prosecutor General appoints the incumbents for the positions established under points 4-5 of part 1 of Article 37 of this Law from those included in the list of promotion in the descending order of the cumulative scores at the point of graduation. In case of equal cumulative scores, preference shall be given to the candidate with longer experience.

3. The Prosecutor General appoints the incumbents for the position established under point 6 of part 1 of Article 37 of this Law from the list of candidate prosecutors who have completed the studies in the Academy of Justice or have been exempted from studying in the Academy of Justice in accordance with part 10 of Article 38 of this Law.

4. In case the prosecutor is, in a manner prescribed by this law, appointed to a different position of the same rank in accordance with the hierarchy set under Article 37 of this Law, he/she is not included in the list of candidates of prosecutors or the list of service promotion.

5. The regulations established by this Article do not apply in case of appointment of the head and deputy head of the subdivision performing the functions of confiscating property of illegal origin, and prosecutors. If a person has been appointed to a position for the first time in the system of procuracy in the subdivision performing the functions of confiscating property of illegal origin, he/she cannot be transferred to another subdivision without observing the procedures established under Article 38 of this Law.

*(Article 42 was amended on 16.04.20 ՀՕ-245-Ն)*

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<sup>2</sup> The recommended amendment is highlighted.