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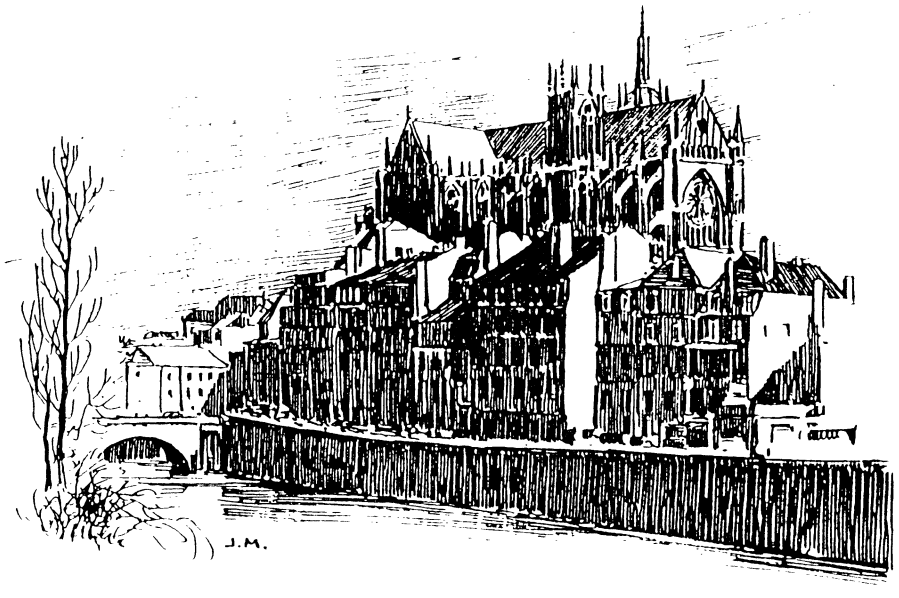
LEGAL EDUCATION AND TRAINING IN TOMORROW'S EUROPE



GERMANY

UNIVERSITE DE METZ

LEGAL EDUCATION AND TRAINING

IN TOMORROW'S EUROPE

Germany

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1. THE EDUCATION AND TRAINING OF JURISTS

1.1. HIGHER EDUCATION

1.1.1. GENERAL

1.1.1.1. Contents

The general condition for access to any traditional legal profession in Germany is primarily the *Befähigung zum Richteramt* (= 'competence for the office of judge'), as is stipulated in the *Richtergesetz* (= 'Act on the judiciary'). This capacity is recognised at federal level by two *Staatsexamen* (= 'State exams')

- the first is taken at the end of legal studies completed in a university
- the second is taken after a practical training in one of the jurisdictions of a federal *Land.*

The concept of the unitary jurist and "two-tier programme" (theoretical and practical) is the basis of the training system and has an major impact on the course contents, even if, in detail, there are certain references to the professional fields and the mutual relationship between studies and the preparatory training period should be maintained.

Concerning the object of studies, the *Richtergesetz* provides only general indications. The law differentiates between compulsory and optional subjects. Compulsory subjects are defined as being "the basic parts of civil law, criminal law, public law and procedural law, including the references to European law, the methodology of law and the philosophical, historical and social foundations of law". The optional subjects are supposed to complement and deepen the understanding of the compulsory subjects. Furthermore, the inclusion of the practice of jurisprudence, administration and the activities of judicial counsellor is explicitly prescribed.

Concerning the competence for the organisation of the *Staatsexamen,* the various *Länder* have pronounced decrees relating to the training and the exams for jurists, in which the contents of the compulsory and optional subjects are defined respectively. In this case too, their law only provides some guidelines. The general objective that guides the regulations is to limit the examination subjects in such a way that students can keep a general perspective, in spite of the enormous increase of the body of legal material and get an adequate preparation during their studies.

For this purpose, the "core parts" of the compulsory subjects are subdivided into elements which will be tested either as a whole or "in overview", or "in its major points ". More rarely, certain sections are explicitly excluded from the exam questions. As optional subjects, the mention certain fundamental areas (for instance History of law; Philosophy of law; Criminology), or specific areas (for instance Collective bargaining [Labour law]; Environmental protection law; Criminal law relating to economics). These areas are bundled into groups of optional subjects, each subject being subdivided into different parts. Both for compulsory and for optional subjects, there exist noticeable differences from one *Land* to another in the list of subjects. In all cases, the exams treat all the compulsory subjects and one optional subject or a group of optional subjects selected by the candidate.

The law faculties should, on the one hand, guarantee a training that enables the students to meet the conditions imposed to pass the *Staatsexamen.* One the other hand, they are free, because of the autonomy granted to the institutions of higher education, to determine their programmes. That is why the list of examination subjects does not necessarily correspond to the courses offered. These generally include a wide range of themes, with a tendency to be comprehensive and deal with the whole body of the law, though depending on the available teaching staff, their personality and their specific research interest. Modern mass universities, in spite of the increasing number of students they enroll, have not lost sight of this ideal that was

so dear to Humboldt, aiming at maintaining a close relationship between teaching and research. Hence, in some "niches" of the teaching routine, we can perceive marked tendencies for innovation and a great sensitivity to the evolution of law

1.1.1.2. Course Structure

At present Germany is not in a position to satisfy completely the strong demand for higher education in law. In 1993-1994 the law faculties could accommodate 19'000 students out of 26'000 candidates. The admission figures ranged between 100 and 895, for an average enrollment of 479 freshmen in 40 faculties. Applications are processed by a central office in Dortmund, which distributes the available places on the basis of the average marks obtained in the school-leaving examination qualifying for university studies and the time spent on the waiting list. In a second phase, the candidates selected are distributed among the various universities, the essential criterion remaining the choice expressed by the person concerned. In case of over-enrollment in the faculty wanted, students are selected according to social criteria.

It should be underscored that we are not experiencing an excessive concentration of applications for specific institutions. It is true that the universities of Cologne, Hamburg and Münster attracted the highest number of students, applications ranging from 1550 to 1200. However, 12 other faculties had an above average number of applications, and more than two thirds of all law faculties had more applications than places available.

Once enrolled in a law faculty, students have great liberty as to the choice of subjects. Usually, they have access to all the courses offered by the institution and announced at the beginning of the semester in the course offering guide. Despite some exceptions, there is no obligation to attend certain courses or to take them in a certain order. Study programmes developed by the faculties are essentially recommendations. They shall indicate how students can successfully complete their studies according to regulations within a preset time frame; they represent as well a commitment on the part of the faculties to offer continuously the minimum programme described.

Evidence of knowledge acquired in the course of study is provided only for those courses that, according to the various exam regulations, are mandatory for admission and are to be proved when enrolling in the first *Staatsprüfung*. These courses essentially are :

1° exercises in the three compulsory subjects, with , for each of them, a take-home paper and an invigilated exam;

2° a seminar with presentation of a paper;

3° a course on a fundamental subject with one of these tastes.

In some cases, the faculties require proof that the students have attended other compulsory courses, in particular the "exercises for beginners" which in turn are a condition for access to the "exercises for advanced students" mentioned above. There is usually no checking of attendance or exams on lectures.

The German *Richtergesetz* schedules three and a half years of study; this period can be shortened if it is proved that the requirements for admission to the *Staatsprüfung* are fulfilled. However, very few students take advantage of this possibility and most students have a much longer study period. In 1992, the average number of semesters completed by the successful candidates before their first enrollment in the *Staatsprüfung* rose to 10.3; more than 8 % among them had studied for 14 semesters or more, i.e. a duration two times longer than scheduled. This proportion even increases to 18 % if we include the students making their second attempt. There is no maximum duration of studies provided. Students are barred from further studies only when they have failed once and for all in their first *Staatsprüfung*, only one repeat being allowed. There is no maximum time span between the two attempts.

The organisation of the exam lies in the responsibility of the *Landesjustizprüfungsamt* (= '*Land* Office for law exams'). The members of the law faculties contribute to the process by participating in the selection of subjects and acting as examiners. In fact it is a part of their duties. They are then assisted by other members of the judiciary, for instance judges, prosecutors, higher civil servants, advocates, notaries, jurists working in the fields of business and labour relations. Concerning the structure of exams, all *Länder* have come out in favour of in the main two different systems. Whereas some *Länder*, in addition to 3 to 6 invigilated papers and an oral exam, require the writing of a take-home paper within a period of usually 6 weeks, others do not ask take-home papers and raise instead the numbers of invigilated papers to 7, or even 9. The way these parts of the examination are weighted varies widely from place to place. In general, results measured on a scale from 0 to 18 points in nearly all federal *Länder*, do not follow the bell-shaped curve. Out of the nearly 11'000 candidates who took the exam in 1992, 22 % failed (0 to 3 points) whereas 34 % obtained a "pass" grade (4 to 6 points); 28 % obtained a "satisfactory" grade (7 to 9 points); 12 % the "quite satisfactory" grade (10 to 12) and less than 4 % obtained the "good" or "very good" grade (13 to 18 points)[1].

1.1.1.3. Impact of European Programmes

For a long time, the transnational legal areas, such as International public law, Comparative law and International private law have been the subject of courses offered by universities. However, in the past, only a limited circle of students showed interest in them. In contrast to this, since the creation of the European Community, this area of studies have been expanding constantly. European law now appears as a self-contained legal discipline in the course programmes of most faculties and enjoys an increasing popularity. Moreover, this kind of law is beginning to be clearly differentiated from the law of European international institutions and has become substantive Community law, penetrating the various areas of national legal systems and infusing them a new flavour. The consequence is a wider range of courses offered. The above-mentioned *Richtergesetz,* in its amended 1992 version introduced "references to European law" into the compulsory subjects and clearly expressed the desired objectives : "to take into account the progress made by European integration and, particularly, the emergence of the Single Market".

The regulations applying to the training and exams in the *Länder* partially reflect this obligation to integrate these "references to European law". Some of them make a more or less well defined area of European law mandatory, instead of or parallel to them. This is the case in Bavaria : "The Law of the European Communities (including : Institutions; Sources of law and legislation of the European Communities; Relationship between Community law and national law; Fundamental liberties in the Common Market; Legal protection provided by Community law) in its major points". Some *Länder* – though fewer in number – include other supra-national areas of study into their compulsory subjects, for instance in Baden-Württemberg : Overview of international private law – general part, rules of conflict of laws in *EGBGB* (= 'Act for the introduction of the Civil Code'). In any case, these subjects are in competition with a large number of other subjects belonging to the compulsory programme.

Among the names given to the optional subjects and groups of optional subjects, we can cite "International public law, European Law" and "International private law and International procedural law, and Comparative law", in some cases complemented with subtitles such as "European private law (Baden-Württemberg); or "European and international business law" and "European history of law" (Lower Saxony). The *Land* of Brandenburg gives a well-detailed description of the group of optional subjects titled International private law and Comparative law : "Autonomous rules of conflict of laws and International private law of conventions, including international civil procedural law; brief overview of the major legal systems; Comparative law and unification of law"; likewise, in the options for European law and International public law : "the sources of the law of the European Communities, the

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1 *Jahresübersicht des Bundesministeriums der Justiz* of July 27,1993

fundamental liberties in the EEC Treaty and the way to apply them; the institutions and actions of the European Communities; Harmonisation of law, Politics, and external relations outside of the EC; Protection of the fundamental rights within the EC; System of legal protection (the latter point in overview); History and development of European integration; Institutions and instruments of the European Council; European Human Rights Convention; subjects of law and sources of International public law; with particular attention paid to Treaty law; Enforcement of international public law; Procedures for the peaceful resolution of conflicts; International human rights protection; as well as – in overview – Law of international organisations, in particular the United Nations; Maritime and Air law; Law in the case of an armed conflict. Saarland is an exception by offering "French private law and French national and administrative law" as a group of optional subjects. As to the rest, foreign legal systems are not supposed to be the object of examinations.

The effective international part of the compulsory subjects for the first *Staatsprüfung*, for which there are no precise standards, remains rather modest in scope; in fact, it tends not to be treated at all. In the area of optional subjects, the guarantee given to take them into account varies greatly from one Land to another. The *Länder* that not requiring take-home papers accord to them, in general, a relatively small part,.as for instance Baden-Württemburg with 7,5%, Bavaria and Rhineland-Palatinate 16,7%, or Saarland 17,7%. But in Berlin, where two of the nine invigilated exams are devoted to the optional subject, this proportion attains after all 26,6%. And the *Land* of Northern Rhineland. Westphalia allows a take-home paper, but not in the optional subject, Thus remaining for the latter, only a guaranteed ten percent share of the final result. Other *Länder*, having a system of take-home papers, devote more space to the optional subjects, as for instance Thüringen with 31%, Saxony-Anhalt with 32% and Hessen with even 40%. It is true that the Land Offices for Law examinations reserve themselves the right especially when they do not dispose of appropriate themes to assign a take-home paper on another area, which reduces the part in question to 6%, and 8%, and 6,7% respectively. However, in Lower-Saxony, the candidate can chose to turn in a paper in the optional subject, knowing that it will count for 30% of the overall grade.

This giving excessive preference to national law has a negative effect on the development of programmes for the promotion of international student exchanges which, such as the Erasmus Programme of the European Communities, require full recognition of the study time completed abroad. It is true that the German *Richtergesetz* only stipulates that "at least two years" of the schedulded three and a half years of study must be completed in a German university, which means that one can, in principle, validate up to one and a half years of study abroad. However, certain training and examination regulations of the *Länder* contain explicit restrictions in the sense that the validation lies within the discretion of the *Land* Offices for law examinations (for instance in Bavaria), others submit this validation to the condition that the student by these studies "was advanced correspondingly in his/her legal education" (for instance in Baden-Württemberg). On the other hand, the *Übungsscheine* (= 'certificate of successful participation in exercise courses') in the compulsory subjects which are so important for admission to the *Staatsprüfung* cannot, as a general rule, be acquired abroad since they are supposed to cover German law. Bavaria, however, introduced a provision to obviate this difficulty : the local faculties can "while taking into account the quality standards applicable to studies, recognise studies completed on the law of a foreign country in a foreign or national university, as a *Leistungsnachweis* (= 'certificate of achievement') corresponding to one of the three certificates required". Likewise, the equivalence of these certificates to the *Grundlagenschein* (= 'certification of successful participation in courses of the fundamental areas') is recognised.

The *Magisterstudiengang Europäische Rechtspraxis* (= 'Master's Course for European Legal Practice), established by the Department of Legal Science at the University of Hanover in 1988 follows another path. Starting from their third year of studies, the students are offered the opportunity of acquiring knowledge in various legal systems as well as European law, thus completing their normal law studies, and of preparing adequately – particularly by means of one obligatory year of studies abroad – for professional legal practice with an international dimension. Places for this type of studies are available in the universities participating in the ELPIS /(*European Legal Practice Integrated Studies*) Programme, a form of inter-university

cooperation implemented in all EC member states and all EFTA countries offering legal education at university level. The study period abroad must be spent either in Hanover if the student started his/her studies abroad, or, by Hanoverian students, in one of the foreign partner universities. During this time, the students must obtain 4 *Leistungsnachweise* on the national law of the country concerned. Furthermore, it is expected that the students will successfully attend classes in European law and Comparative European law; present a paper within a seminar and write a *Magisterarbeit* (= 'Master's thesis') on a subject related to Comparative law, to Conflict of laws, or to European law; and a final exam in oral form. After studying for 3 semesters according to regulations and after having passed all exams, the student will be awarded the university degree of *Magister Legum Europæ (M.L.E.)*. At this stage of their education, most students have taken the final examination of their normal legal studies. But this examination can be taken also after obtaining the title of *Magister*.

1.1.2. POST-GRADUATE STUDIES

Postgraduale Magisterstudiengänge:(= 'Postgraduate Master's Courses')

Approximately two-thirds of all the faculties of law in Germany offer *Magisterstudiengänge* which presuppose the obtention of diploma proving that they have completed their legal studies. Most of them are meant for students having a diploma obtained in a foreign university. The condition for admission is the equivalence of these diplomas or the legal studies prior to the German *Staatsprüfung* and German legal education, as well as sufficient mastery of the German language. The goal of these studies is defined as follows : according to the case, they shall "contribute to the promotion of international relations, to the furthering of future scientists and to the propagation of knowledge of German law abroad" (Mainz); they shall allow students "to familiarise themselves with German law in an exemplary manner" (Cologne); or put them in a position of "knowing the main features of the law in force in the Federal Republic of Germany so well that they are able to deal with the given legal problems in a scientifically deepened way, and to elaborate a solution worthy of publication" (Freiburg im Breisgau). Or (e.g. Kiel) it is referred to the suitability of the qualification "as preliminary stage to obtaining the degree of doctor in law which takes more time and demands achievements on a higher level".

Studies for the title of Magister are designed to take two semesters; the programme is composed of a certain number of lectures offered by the faculty, in some cases with specific *Leistungsnachweisen*. The final exam, which always comprises a written *Magisterarbeit* (= 'Master's thesis) and – with only one exception – a specific oral exam, lead to the obtention of a title with has various denominations, e.g. *Magister iuris (M.iur.)* in Göttingen, *Magister iuris (Mag.iur.)* in Giessen, *Magister iuris comparativi (M.iur.comp.)* in Bonn, and in most cases – in reference to usage in English-speaking countries *Legum Magister* or *Magister Legum* abbreviated as *LL.M.*

The post-graduate programmes offered by the University of Saarland and the University of Bremen represent a particular case. They also presuppose a final examination of legal studies, but they are open to both German and foreign students likewise and display a specifically European dimension. The special programme called "European Integration" and launched in 1981 in to be in Saarbrücken is meant to give to students an opportunity "to gain deeper scientific insight into the legal and economic foundations of European integration and also their historical and political context". The self-contained programme covers 2 semesters and is composed of basic courses, optional courses and seminars, with subjects all related to Europe. If students show evidence of their successful participation and the acquisition of sufficient knowledge in three languages of the European Community, including German, they are awarded a *Zertifikat über europäische Studien* (= 'Certificate of European Studies'). Highly qualified students having completed a *Magisterarbeit* in the areas of institutional or substantive European law can take an additional oral exam and thus obtain the title of *Magister des Europarechts (LL.M.Eur.* or *M.Jur.Eur.)*. With the support of the EC Comission, within the framework of the Jean-Monnet Action, the University of Bremen started a post-graduate

programme in 1991, the curriculum of which shall reflect "present-day legal and economic developments on the way to the Single Market" and offering a thorough study of this process in an international context. The second trimester of this 9-month programme is spent in general rule in a foreign university or in one of the European institutions. The title of *Magister Legum Europæ (LL.M.)* is awarded after successful completion of the *Magister* exam consisting of a written paper and an oral exam.

Distance studies :

Covering special demands, the Department of Legal Science at the *FernUniversität - Gesamthochschule* in Hagen offers primarily a wide range of continued education programmes to graduates holding a position in the professions.

For instance, they offer courses to *Diplomjuristen* in the former GDR; *Referendare* and young lawyers – "Introduction to the advocate profession"; corporate lawyers – "Introduction to Japanese civil law". These distance teaching courses assume primarily the form of written lectures that are distributed by mail, in certain cases with the assistance of audiovisual aids (video tapes and lectures by TV)

1.1.3. DOCTORAL STUDIES

The faculties of law award the university title of *Doktor der Rechte (Dr. jur.)*" - or of *Doctor iuris utriusque (Dr.iur.utr.)*, or any other title of the same type, after the thesis *(Dissertation)* is written and the oral exam passed, which is based on, either the totality of the legal subjects (*Rigosorum*), similar to the first *Staatsprüfung*, or the subject of the thesis presented, in which case the oral exam becomes a defense of the theses put forth (*Disputation*).

Admission to doctoral studies supposes as a general rule that the candidate has completed his/her university legal studies by passing his/her first *Staatsprüfung* with at least the mark *vollbefriedigend* (= 'quite satisfactory'), being understood that a minimum study time should be spent where the defense will be conducted. However, some special provisions can be made. For instance, the candidates holding a diploma proving that they completed studies abroad with equivalent value are admitted, even if, in many cases, the regulations applying to doctoral studies require in some places the acquisition of additional qualifications. In general, admission can be requested directly from the Faculty concerned; it is however a general rule – and sometimes even expressly laid down in regulations applying to doctoral studies – that a member of the faculty accredited to direct doctoral research (the person who is commonly called the *Doktorvater* = 'Dissertation director') be involved; the latter has to approve the candidacy, suggest the subject of the thesis and supervise the research . In any case, the admission itself is decided on by the faculty. The dissertation is examined by at least two professors, whereas the oral exam and the giving marks is the task of an examination board composed of several members.

In general, there are no specific courses for doctoral students in law. They do however have the possibility to enroll in the universities concerned for the duration of their doctoral studies. There are no time limits imposed on the writing of the thesis; it is considered that it takes generally two years. During this period the doctoral candidate directs him/herself, except for consultations initiated by the dissertation director and possible doctoral seminars organized by him/her. A high percentage of doctoral students find themselves, at this point of their studies, involved in the life of the institution by being appointed to minor academic posts, such as assistants or research collaborators.

Very recently, Doctoral schools *(Doktorandenkollegien)* have been established at certain universities, to permit a follow-up of the candidates, in particular of the foreign ones, and their integration into a programme of research and study. For example, we can cite the *Graduiertenkolleg* entitled "Organisation and Action of Companies in German law, European law and International law." founded in 1992 at the Faculty of Law in Heidelberg. Offering to a restricted number of students instruction at the post-graduate level over a maximum of four

semesters, and relating to a particular theme, they also include the possibility of obtaining the degree of doctor in law.

1.2. TRAINING

1.2.Ø. LEGAL PRACTICAL TRAINING

After completing the first *Staatsprüfung* in law, successful students have a right to be be admitted to the judicial *Vorbereitungsdienst* (= 'legal practical training'), a 2-year training programme leading to the second *Staatsprüfung* and, with the quality of *Volljurist,* giving access to one of the state regulated professions, i.e. judges, prosecutors, lawyers or jurists in an upper administrative position.

For the whole extension of the *Vorbereitungsdienst* , the trainees, with the denomination of *Referendar(in)* , are placed under the supervision of the Ministry of Justice in the respective federal *Land,* and have the status of revocable civil servants; they receive monthly wages amounting to approximately DEM 1'840 gross (for single people under 26 years of age). This system also applies now to citizens from other EC member states who have passed the first *Staatsprüfung* in Germany[2].

Considering that the number of places available for positions as *Referendare* is limited for reasons of capacity, students with poorer results in their first *Staatsprüfung* are entered on a waiting list and might have to wait in certain *Länder* from some months to more than a year until they have access to the *Vorbereitungsdienst.*

The *Vorbereitungsdienst* consists of training periods lasting several months and spent in *Pflichtstationen* (= 'compulsory training posts') including a *Zivilgericht* (= 'Civil Court'), a *Staatsanwaltschaft* (= 'Prosecutor's Office') or a *Strafgericht* (= 'Criminal Court'), an administrative authority, a lawyer's office, and in one *Wahlstation* (= 'optional training post') spent in another adequate institution. There is no other provision for specialised training and examinations, for instance for future lawyers or jurists in the administration beyond this form of State-run education and training system to prepare *Volljuriste* who thus are all submitted to a unified system and acquire a broad range of skills and competence. The later choice of a professional line is however influenced by the preference given to subjects during the study and *Vorbereitungsdienst* periods, and by the results obtained in the two *Staatsprüfungen* .

The federal legislator has provided principles governing the *Vorbereitungsdienst* and the second *Staatsprüfung* in the German *Richtergesetz* . The exact volume and curriculum of the study programme and examination mode have been laid down in the regulations concerning training and exams in the various federal *Länder,* the time spent in the 'training posts', the post themselves and the form of exams slightly varying from *Land* to *Land.* However, all regulations have in common : the division into 4 *Pflichtstationen* , with a duration of at least 3 months for each of them, and one subsequent *Wahlstation* , of 4 to 6 months' duration in a sector of priority selected by the trainees.

Referendare are generally allocated to a regular Court for Civil Affairs for the first *Pflichtstation,* to familiarise themselves with the scope and modality of a judge's work. *Referendare* shall in particular learn to prepare judicial decisions on the basis of expert reports and the presentation of the case, to participate in hearings and to draft judgements and court orders. The training period in civil affairs lasts 6 months in most *Länder* , and four, five, or even seven in some others.

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2 § 4 *Beamtenrechtsrahmengesetz* (='Framework Act on Civil Service Law') in the form of the 10th *Gesetzes zur Änderung dienstrechtlicher Vorschriften* (='Act as an Amendment to the Provisions concerning the Civil Service Law') of Dec. 12,.1993, *BGBl.* I p. 2136

During the time of the practical work in Criminal law, the *Referendare* are trained in the functions of a prosecutor or of a criminal judge. In the *Land* of Lower-Saxony, this is done for example in the course of a 3-month training period in a prosecutor's office, where they practice in particular the drafting of orders to institute or to discontinue an investigation, or acts of indictment.

During the compulsory practical training period in an administrative authority - which lasts 3 months in Lower-Saxony, but longer in other *Länder*, for instance 7 months in Bavaria - the *Referendar* familiarises him/herself with the tasks assigned to the high administration. He/she should be able to create an overall idea of the larger sectors of planning, intervention and service.

Of the time spent training in administration, or of that spent in an optional post, three months (which equals one semester in the national system) may be spent in the *Verwaltungshochschule* (= High School of Administration) in Speyer. This is an institution of higher education for post-graduate study financed by the Federal Republic and the *Länder*, which is active in the areas of education (complementary studies of one semester, *Aufbaustudium* of one year, doctoral studies), and continued education for jurists in high administration and is doing research in administrative science. The school provides knowledge and competency in administration, economy, environment, planning, organisation, electronic data processing, and offers language courses in English and French.

During his/her stay in a lawyer's office, the trainee will above all practise by giving legal advice to clients, drafting official in-court and out-of-court acts, to formulate settlements, to write the initial draft of contract, to represent the parties involved in civil, criminal and administrative court cases.

In Lower Saxony the students have the possibility to extend by three months one of the four compulsory training periods (*Wahl-Pflichtstation*); other Länder provide longer compulsory training periods but no such *Wahl-Pflichtstation*. Most *Länder* provide that one part of the compulsory training period or its extension can be completed abroad in an approved institution.

Altogether the training period in compulsory posts (*Pflichtstationen*) lasts from 18 to 20 months. It is supplemented with work group sessions, seminars and test papers. European law, even if to a modest extent, is taken into account.

Following the training period in the *Pflichtstation,* students have to complete a training period in a *Wahlstation*, for 4 to 6 months during which they are trained in the chosen sector of priority. Such sectors are : Civil law; Criminal law; Administrative law, Labour law, Social law; Business law; Finance law; International law; and European law. The training can be pursued for instance in an Administrative Court, a Fiscal Court; or a Labour Court; or in a specialised law firm; a notary's office; an employers' union; a trade union; or in a legal department of a corporation. The student also has the possibility of receiving training in a department relating to a supra-national, international or foreign institution; most notably the United Nations or the European Union. The training periods with the EC-Commission and the European Parliament are particularly sought after. The German Foreign Trade Chambers abroad, the embassies, the consulates, the foreign law firms and courts are also eligible as training posts. Training at the *E.N.A. (École Nationale d'Administration)* in France, which also admits a limited number of German jurists, can also, under certain conditions, be a place where students can complete their *Wahlstation* or part of their *Pflichtstation* training period. In 1986, for instance, approximately 11 % of the trainees from Northern Rhineland-Westphalia completed their *Wahlstation* training period abroad.

In each training post and workgroup a certificate will be given with the evaluation of the results obtained. However, the second *Staatsprüfung* is always of the greatest importance. It is composed of a written and an oral part. In most *Länder* it includes 8 invigilated papers of 5 hours each; others require fewer invigilated papers but, in compensation, a take-home paper to be completed within 4 weeks. The oral part of the exam, which, in most *Länder*, also includes a case report, covers the entire practical training period, that means also the sector of priority chosen. In 1992, approximately 91 % of the candidates passed the second *Staatsprüfung,*

41 % with the grade "pass", 35 % with "satisfactory", 13 % with "quite satisfactory", approximately 2 % with "good" and barely 0.036 % being 3 students out of 8'344 candidates admitted with the "very good" grade to the examinations[3].

1.2.1. ADVOCATES

General :

In compliance with legal provisions, the lawyer is "an independent organ of the judiciary", free from the constraints that govern civil servants and from the influence of the State (§ 1 *BRAO*). He/she exercises a liberal profession, as his/her activities are not trade or business in the legal sense (§ 2 *BRAO*).

At the moment there are some 70'000 admitted lawyers in FRG, including some 70 foreign lawyers from the member states of the European Community or from a state that has signed the Treaty on the European Economic Space; the latter being registered with the professional denomination of their home country (§ 206 I *BRAO*). The number of lawyers has doubled in the past 15 years, and the curve continues ascending with a 5 % annual progression. The advocates altogether make up the statistically largest legal profession. It should be underlined in this respect that admission to the Bar depends exclusively on the *Befähigung zum Richteramt* (= 'capability to practice at the Bench'), and no other conditions relating to the professional qualifications of the candidate are imposed.

Admission :

Whoever has gained the *Befähigung zum Richteramt* has also a constitutional right guaranteed, according to Art. 12 I *GG* providing for full freedom in the selection of a profession. Admission can be denied only on the basis of one of the motives mentioned in § 7 *BRAO* , for instance because of forfeit of a fundamental right decided by the Federal Constitutional Court, severe criminal convictions or fraudulent bankruptcy.

The EC Directive for diploma recognition[4] was implemented in Germany by introducing a qualifying exam for the admission of holders of foreign diplomas to the advocate profession[5].

The exam to be taken at the *Landesjustizprüfungsamt* competent for the second *Staatsprüfung* in law is composed of a written examination of two invigilated papers of 5 hours each and an oral part of one hour including a short report, and covers Civil law as a compulsory subject and two optional subjects selected from among Public law, Criminal law, Business law and Labour law; all exams are in German. These requirements have in parts been criticised as being too hard[6].

Until present, the law has not been applied very often. Between 1991 and 1993, there were in total only 24 candidates, 10 coming from Greece, 4 from France ,and 3 from Great Britain and the Netherlands respectively. Of the 18 candidates who completed the procedure, 15 passed the exam[7].

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3 *Jahresübersicht des Bundesministeriums der Justiz* of July 27, 1993

4 Council Directive of Dec. 21, 1988 on a General System for the Recognition of Higher-Education Diplomas Awarded on Completion of Professional Training of at least Three Years' Duration" (89/48/EEC), *ABl.* No. L 19 of Jan. 24, 1989

5 Act of July 06, 1990, *BGBl.* I p. 1349; Decree on the "*Eignungsprüfung* for admission to the advocate profession", of Dec. 12, 1990, *BGBl.* I p. 2881

6 Hackl, "Eignungsprüfung für die Zulassung zur Rechtsanwaltschaft - Verstoß gegen EG-Recht ?", *AnwBl* 1993, pp. 312-314

7 Information provided by the Federal Ministry of Justice, Apr. 94; see also Leibrock, "Die Umsetzung der Hochschuldiplom-Richtlinie in Deutschland", *EuzW* 1993, pp. 634 ff.

Additional qualifications :

In compliance with the jurisprudence of the Federal Constitutional Court, not only misleading advertising is prohibited to the lawyer, but also selective advertising, that means activities designed to gain third parties to call on his/her services [8]. This is why lawyers are obliged to build their credibility on other bases in an increasingly competitive market, in particular by acquiring additional qualifications and hoping that their performance will reflect positively on them.

For that purpose, they can request from the competent Bar the authorization to post a specialty in advocacy, which can be done at the moment in the areas of Administrative law; Taxation law; Labour law; and Social law. In order to obtain the authorization the lawyer has to give evidence of having acquired special theoretical knowledge and practical experience, both far above the usual standards, in the legal area in question[9]. The specific theoretical knowledge can be demonstrated with the support of documents (certificates, credentials, etc) or by successful participation in seminars, whereas experience in general is considered proven only if the candidate can claim that he/she has properly presented a certain number of cases, both before courts or in the form of out-of-court settlements (between 40 cases in Social law and 80 in Labour law). Presently the extension of the specialities of the Bar to Family law, Criminal law and European law is being discussed, but a result not yet to be seen.

At the moment there are some 2'300 lawyers specialised in Taxation law, 420 in Administrative law, 1'350 in Labour law, and 300 in Social law. The annual rates of increase, which vary between 27 and 49 %, testify to the immense needs existing in the profession.

The other forms of specialisation are admission exams in the profession of *Buchprüfer / Wirtschaftsprüfer* (= 'accounts auditor / economic auditor'). By these means, a lawyer can hope to do better than his/her competitors in his/her activities as a counsellor or a representative on behalf of small- and medium sized enterprises, knowing that the latter do not have their own legal department. At the end of 1993, 391 lawyers were also sworn chartered accountants and 108 lawyers were also auditors.

Continued education

If only for reasons of judicial liability and competition, it is in the best interest of the lawyer to keep informed of the latest developments in legislation, jurisprudence and education. According to the draft bill on the new judicial legal regulation for the profession of lawyers and patent attorneys, continued education is to become a duty imposed on the advocate profession[10].

For that purpose, the lawyer will, not only as a matter of course, keep him/herself informed, by reading the professional journals, but also – at least in the main fields of his/her professional activities – profit from the multiple possibilities offered in the domain of continued education as well as by the competent Bar associations, as by private institutions (for instance the *Deutsche Anwaltsinstitut e.V.* in Bochum, or the *Deutsche Anwaltsakademie* in Bonn). The catalogue of the *Deutsche Anwaltsakademie* for the first semester of 1994, for instance, has more than 200 pages, listing seminars in almost all relevant legal areas, including numerous lectures on International law and the learning of foreign languages.

The response from lawyers is most favourable, despite the rather high cost. The *Deutsche Anwaltsakademie* and the *Deutsche Anwaltsinstitut* hosted in 1992 no less than 30'000 people and it should be underlined that many of the seminars lasted several days.

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8 *BVerfG, NJW* 1990, 2122 / 2123

9 Act on the "Distinctions awarded to Specialised Advocates, according to *Bundesrechtsanwaltsordnung' (RAFachBezG)*, Feb. 27, 1992, *BGBl* I p. 369, § 2 I 1

10 Projet § 43a VI, *BT-Drucks.* 12/4993

1.2.2. JUDGES AND PROSECUTORS

In 1991 some 18'000 judges as well as 4'000 prosecutors were in office in the FRG. The candidates to the Bench or to a post as prosecutor must have obtained results well above average in the two *Staatsprüfungen* in law. The acquisition of a certain experience is not supposed to be a condition for acceptance, but is considered to be an advantage. Upon nomination to a judgeship, which presupposes German citizenship, the appointment is made subject to a probation period (cf. §§ 10, 12 *DRiG*). During this period, which can last up to 5 years, the future judge can also work in a prosecutor's office. The monthly salary of a beginner is approximately DEM 5'500 gross (for a married person without children). In Lower-Saxony, for instance, the prosecutors are first appointed on probation, whereas, in other *Länder*, (in North Rhineland-Westphalia) they are immediately integrated into the Civil Service.

Continued education activities are constantly offered to judges and prosecutors. In Lower-Saxony, for instance, seminars lasting several days are organised for beginners several times during the year, to serve as an introduction to the various areas of activity. As for the *Deutsche Anwaltsakademie,* it offers continued education courses on particular legal problems and specific areas to all judges and prosecutors; the courses are organised in its Institute in Trier and Wustrau. It also offers seminars on European law and International business law. The approximately 5'000 places available each year are divided among the *Länder* according to a quota system. Certain *Länder* offer other continued training courses in the form of day-or week-long seminars which deal with such diverse subjects as Right of asylum, Economic or Electronic Data Processing delinquency. They are offered, not only to judges and prosecutors, but also to all personnel of the judiciary, for example *Rechtspfleger*, bailiffs, administrative employees and the medium-grade civil servants.

1.2.3. OTHERS

1.2.3.1. Notaries

The notaries, as an organ of the judiciary, are the independent holders of a public office and are entitled to have an official seal. But their profession is no business and no trade in the legal sense (§§ 1, 2 *BNotO*). Their legal activity is preventative in nature; it relates in particular to authentification.

The notaries are appointed by the Justice Administration in the *Land*,; the form of appointment differs from *Land* to *Land* : they can be either *Nurnotare* (= 'only notaries') or *Anwaltsnotare* (= 'lawyer-notaries'); the latter are admitted not only as notaries, but also as lawyers, and only in such numbers that are necessary for the proper practice of law. They are submitted to the control of the *Landgerichtspräsident* (= President of the *Landgericht*), of the *Oberlandesgerichtspräsident* (= President of the *Oberlandesgericht* / Court of Appeals) and the Justice Administration.

The condition to be registered as a notary is the *Befähigung zum Richteramt* according to *DRiG*; *Nurnotare* must additionally complete a three-year internship as a *Notarassessor* (= 'assistant notary'). Considering that the number of candidates in general vastly exceeds the number of places and openings, the selection of eligible applicants (those who meet all necessary conditions for appointment) is performed in relation to qualifications and expertise; the latter is assessed using a complex scale and calculation of points on the basis of exam marks; successful participation in preparatory programmes specially designed for future notaries; the number of cases when the applicant substituted for the notary in office; and possibly the time spent practicing as an advocate, this having been the main professional activity.

About 1'600 *Nurnotare* and about 8'700 *Anwaltsnotare* are admitted in the Federal Republic of Germany at the present time.

1.2.3.2 *Gerichtsvollzieher*

The profession of *Gerichtsvollzieher* which was introduced into the German law during the time when Napoleon had occupied the Rhineland regions, on the model of the French *huissier*. Originally, they were only "civil servants with extensive legal knowledge and practical skills"[11]; in the mean time, the conditions for access to the profession have been noticeably relaxed by later legislation.

The *Gerichtsvollzieher* is an organ of the judiciary competent for the serving of writs and the enforcement of executory titles; they maintain independence toward all parties. Civil servants who have had at least one year of training in the *mittlere Justizdienst* (= 'medium-grade judicial service') and are employed in this service can complete the additional training required to become *Gerichtsvollzieher* The training period lasts one year and a half in the case of Lower Saxony and consists of a 8-month course and traineeships at an *Amtsgericht* and with a *Gerichtsvollzieher*.

1.2.3.3 *Rechtspfleger*

The legislation on the *Rechtspfleger* conveys to them a series of tasks related to *Amtsgerichte* (='lower courts') such as sale by order of the court and sequestration of goods; holding of real property, commercial, association, and matrimonial property registers; cases relating to wardship, guardianship, and family; as well as the tasks of giving legal advice, judicial administration and calculation of the costs incurred in the pursuit of justice. The training of *Rechtspfleger*, which presupposes the obtention of the *Hochschulreife* or *Fachhochschulreife* (= exams giving access to a university or a *Fachhochschule* , respectively) is received in a *Vorbereitungsdienst* of 3 years and is composed of studies of at least 18 months in a *Fachhochschule* and of practical training periods of at least one year. The student in training is given a revocable appointment as a civil servant during his/her time in *Vorbereitungsdienst.* He/she receives a monthly salary of approximately DEM 1'520 gross (single person under 26 years old). The *Vorbereitungsdienst* ends with a special exam for *Rechtspfleger.*

There are some 1'500 practising *Rechtspfleger* in Lower-Saxony alone, along with some 2'200 judges and prosecutors and some 400 bailiffs.

1.2.4. CORPORATE LAWYERS

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Large companies have their own legal departments in which major decisions relating to the management of the corporation are prepared by taking all legal aspects into consideration. As a rule, such departments are subordinate only to the General Direction of the company.

Considering that business companies do not have to observe minimum qualifications when hiring legal personnel, also candidates graduates from universities but not having completed the practical training period, will succeed in finding a post – particularly in banks and insurance companies. But for higher positions, preference is generally given to applicants who have passed the two *Staatsexamen*.

Some firms train students who have passed a first screening test and make them into "made-to-measure" corporate lawyers by means of special trainee programmes, adapted to the requirements and expectations of the company, and to the applicants' skills and inclinations. The trainee, by taking part in the activities in various departments, can gain insight into the organisation and business structure of the company and acquire fundamental and important

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11 *Begründung zum Entwurf eines GVG* (='Motivation of a Draft Bill on the Judicature Act'), *Reichstag*, 2. Leg.-Per. II 1874, *Aktenstück* 4, p. 85.

specialised knowledge ("training on the job - learning by doing"). In a second phase the practical skills acquired can be deepened in specific areas and the trainee is systematically prepared to take over qualified tasks ("training off the job"). In large international companies the trainee is often sent abroad within and outside Europe for this period. During the whole duration of the programme (between 18 and 30 months) the trainees will have a feed-back by being at regular intervals informed of the training level they have reached.

Syndikus-Anwalt:

The *Syndikus-Anwalt* represents a certain type of corporate lawyer. This status refers to lawyers practicing their profession in part – sometimes to a large extent – in the service of an employer commissioning him/her on a permanent basis. The *Syndikus-Anwälte* mostly work in the legal departments of corporations, banks, insurance companies and associations. The *Syndikus-Anwälte* are however not allowed by the professional code of advocates to represent their permanent employers in Courts and Arbitration courts (§ 46 *BRAO*).

There are no special provisions for the admission of the *Syndikus-Anwälte* ; this is performed following the regulations applying to all lawyers. The admission committee must take care that the refusal clause of § 8 No. 8 *BRAO* be respected, according to which an applicant cannot be admitted to the advocate profession when he/she exercises an activity incompatible with the profession of lawyer or the image that the Bar must uphold. This regulation – which still recently was extensively interpreted in the jurisprudence of the disciplinary courts[12] – is, following a recent decision of the Federal Constitutional Court about the incompatibilities of the lawyer's profession with other professional activities[13], restricted almost exclusively to cases when the secondary activity is performed as real estate and insurance agent, as well as to members of the civil service for whom, in the eyes of the public seeking legal service, there is a risk that the independence of advocates might be impaired by this connection to the state.

It is estimated that the proportion of *Syndikus-Anwälte* in relation to the total number of lawyers admitted lies between 15 % and 25 %.

Fachhochschul-"Wirtschaftsjurist":

In the summer semester of 1994, the *Fachhochschule* in Lüneburg (Lower Saxony) will start a programme at *Fachhochschule* level specialised in Business law and economics, and leading after a study time of 4 years (including a semester for a traineeship) to the title of *Diplom-Wirtschaftsjurist.* According to the provisional curriculum, the essential subjects are Law, Management, and Foreign languages and subjects of general and cultural interest. The objective of the course is to provide a training of legal specialists that is adapted to the requirements of the industrial world, avoiding the overly "judicial orientation" of the traditional form of education and its supposed consequent gaps and shortcomings, in particular concerning "Fundamentals of European law"; "Capacity for orientation in international law"; "Foreign languages"; "Foreign experience".

The Bar, Ministries of Justice and Universities are rather skeptical and diffident toward the *Fachhochschul-Wirtschaftsjuriste,* as they consider them a threat to the model of the "unitary jurist"; they point out that the preparation for the traditional legal professions calls for a comprehensive education in law that could be acquired only by exploring the whole structure of the law. Using the term "jurist" for another professional category could therefore be misleading and confusing[14]

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12 cf. Engels, "Der Rechtsanwalt als Zweitberuf", *AnwBl* 1992, p. 202

13 *BVerfG* du 04.11.1992, *NJW* 1993, 317 sqq.

14 Motion adopted at the 74th General Assembly of *Bundesrechtsanwaltskammer* (='Federal Bar') on Sept. 24, 1993 in Lübeck; *DUZ* 1993, 12; see also Martin, "Fachhochschulausbildung von 'Wirtschaftsjuristen' ? Belebende Konkurrenz oder aliud gegenüber herkömmlichem Jura-Studium ?", *ZRP* 1993, p. 465

1.2.5. CIVIL SERVICE

The legal condition to take a position as a civil servant in the upper administration is basically the obtention of the diploma of the second *Staatsprüfung* after the *Vorbereitungsdienst*, as well as German nationality or the citizenship of any other EC member state. On the basis of the Directive on Recognition (89/48/EEC) EC nationals can also acquire the *Laufbahnbefähigung* (= 'capability for the career') in another way. The conditions to obtain this *Laufbahnbefähigung* by EC nationals from another member state are presently examined and developed on the level of the Federation and the *Länder*.

When applying to the upper administration, giving evidence of having studied one semester at the *Verwaltungshochschule* (= 'High School for Administration') in Speyer is considered an advantage. The administrative authorities also offer to their personnel introductory or continuing education courses the programmes of which is tailored to the needs of administrative practice.

2. NEW NEEDS AS TO EDUCATION AND TRAINING

2.1. SHORTCOMINGS AND LACKS

2.1.1. FROM THE POINT OF VIEW OF THE CHANGES IN LAW

Due to the pressure of social changes and the rapid development of law the structuring of legal education has been widely debated in Germany during the past decades. In particular the great reform discussions around the year 1970, and again around 1990 – culminating at the *Deutsche Juristentage* (= 'Congress of German Jurists') in Mainz and Munich – pointed out a series of shortcomings in the present system of legal education and training and examined them in a very critical light. We can refer here to numerous publications a small selection of which is listed in the appended bibliography.In the following, we will be content with underscoring the major points.

The main topics of the debate keep circling around the contrasts of unity and diversity to be termed by such pairs of concepts like generalisation / specialisation; expert knowledge / inter-disciplinarity; theory / practice. The question was raised – and is still being raised – whether the goal of educating "unitary jurists" should not be replaced by giving priority to the acquisition of professional skills in certain fields by means of specialised training courses. It is claimed that legal studies should open up to neighbouring disciplines and legal education should integrate a certain amount of social science. Sharp criticism has finally been levelled against the lack of interrelation between theory and practice. The representatives of the contrary position hold however that the various areas of legal science are inseparably connected with the legal system taken as a whole, and therefore law students should gain a comprehensive view of the whole system; only if they are educated as general practitioners will they have that kind of mobility and flexibility required to succeed in an increasingly competitive labour market. They have their doubts about the prominence given to social science and other related disciplines for jurisprudence and legal reasoning. And finally they fear that too much attention paid to practical training would be a threat to the scientific dimension of education and lead to insufficiencies in methodological training.

As these different ways of reasoning are stemming from a common socio-economic base, they should, as a consequence, not get lost in extremist statements. No one could reasonably claim that a "unitary jurist" trained after the model of the judge has absolutely no need to acquire some knowledge of advocacy. The endeavour to detach law from social and economic restraints would obviously be absurd. And that theory would be empty without practice, just as practice

would be blind without theory, this is a self-evident truth today. The bone of contention is rather the extent to which one or the other position should be weighed in relative terms.

Two negative points undoubtedly remain in spite of the implementation of reform programmes that were supposed to combat them. One is the fact that the students graduating in the German legal education system enter the labour market at a relatively late time, i.e. when they are 30-31 years old on average. The other one is the enduring existence of a kind of "phantom" educational system parallel to the official educational institutions and provided by private firms in the form of *Repetitorien* . A recent poll showed that 88 % of the students attended such a centre before taking their first *Staatsexamen*, and more than half of them did so for more than a year[15].

We have then good reason to raise the question as to whether this is not a symptom showing that the official State-regulated system of legal education fail to meet the real requirements of the target groups,which, from the point of view of social welfare, is unacceptable. Whatever the true reasons could be, there is good cause to look for them, not so much in the content and scope of the study programmes, but rather in the specific conditions and circumstances in which they are taught. It is quite clear that the development of law i, on the whole, characterised by a deluge of new norms and an enormous volume of legal material to be studied. But at the same time we have made considerable progress in the area of technical equipment to process it. It will be less and less necessary for future generations of jurists to memorise huge quantities of information. Correspondingly, priority is being given to forms of education and assessment leading to a systematic understanding of the legal system and the ability of working methodically.

Consequently the quantitative dimension of legal development does not necessarily require a change of study management in universities, provided we maintain what is essential and preference is given to exemplary learning over an exaggerated sense of perfection. As to the subjects of study, great liberty should be maintained in the composition of the teaching programmes, so that the widest ranges of interest and present-day developments can be properly taken into account.

2.1.2.From the Point of View of Building up the European Union

Already during the previous discussions in the years around 1970,, the increasing international involvement of law, in particular within the EC was considered as a factor to be taken into account for the reformation of legal education and training. Some authors referred to the severe selection principles prevailing in neighbouring European countries concerning highly specialised professional training, especially for judges and higher-level administrative civil servants, and to the fact that Germany had to ensure equivalence and could not afford to stay behind by applying lower standards of quality. The lack of international reference in education was also sometimes criticised.

It is only after the opening of the Single Market for legal services that the "europeanisation of law" came to the forefront of discussion. In this context, the driving motivation for reform is the necessity to maintain the competitiveness of German jurists, and particularly the "superannuation" of legal professionals educated in Germany when starting a career is criticised as a major handicap in competition. The subject of the department of legal education at the *Juristentag* in Munich is exemplary in this regard: "Which measures should be recommended to make legal studies shorter and more concentrated - with due consideration of competition between jurists from the EC member states ?" And a motion that was passed nearly unanimously by the many people attending demanded that the actual duration of education has

15 Hommerich , op. cit., p. 250

to "come closer to the notably shorter time spent for education by students in the other EC member states"[16].

This is only one side of the European challenge. In the cross-border view, the point is more than delivering jurists with in principle equal qualifications to the European market of legal professions, as quickly as possible and in competition with the other systems of education. It is even doubtful whether such a market of a scope worth mentioning is already existing at all. In any case, the chance for jurists to make a career in areas that are immediately connected to the Europe at large, in particular in the bodies of the European Union is extremely low. The majority of jurists active on the international level is however necessary for cross-border legal consultancy, and – now as ever – this activity requires good mastery of the norms of one legal order with all due consideration for the legal environment of Europe and thorough knowledge of the institutional context for a proper transfer of these norms to another legal system. Also in the most competitive form, the foundation of branch offices, this can actually be achieved only by cooperation of jurists with different socialisation. In so far competition is still primarily restricted to national partial markets and there is no reason at all to talk about competition "among the jurists from the EC member states".

On the other hand, the members of all legal professions will probably be expected to acquire additional qualifications because of the construction of Europe; this means that they will not only have to supplement their knowledge of purely European law, but also to acquire knowledge and skills in working with the other legal systems of Europe. The shortcomings observable in the educational field are still considerable in that respect. The science and teaching of law in Europe, irrespective of some remarkable achievements in the specific discipline of Comparative law, have been confined all too long within the narrow limits of purely national law, so that no dramatic change in favour of cross-border modes of reasoning could be expected to occur overnight. The necessary "europeanisation of legal science" is still in store.

This development has its quantitative dimension too. But the point here is not to have even more material to be studied and processed and whose scope could be the object of further discussions, as was the case in previous debates on possible reforms. The border lines are possibly more deeply rooted than is the separation between legal science and social science, because we have developed the habit of considering the objects of national legal systems as isolated from one another in a stronger way than the objects of the areas of science linked to the common conditions of life. Only close and immediate cooperation will manage to overcome national borders and, once again, develop a common legal culture on the European level. Language and student / staff exchange programmes are indispensable ways to achieve this goal, though, unfortunately at the moment, they are not available to a sufficient extent.

2.2. PERSPECTIVE

Because of the increasing complexity of law, endeavours toward greater recourse to the tools of modern information technologies will be necessary also in the field of legal education, and above all the activities of the Distance Teaching Universities, will be of great importance. Another point deserving special attention is the establishment of international networks for the provision of qualitatively first-rate scientific continuing education programmes by universities; this kind of task has been started by – among others – the *EUCEN* (*European Universities Continuing Education Network*). The progressive construction of unitary – or at least basically similar – legal structures in Europe might lead to some changes in the distribution of the weight and importance granted to the various areas of studies. But there is not yet any identifiable need for a fundamental change in the form of education for professional activities in new areas of law.

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16 *JNW* 1990, 2991/2997

2.3. QUESTIONING JUDICIAL "NATIONAL PROVINCIALISM"

The idea that such a "provincialism" should be overcome appears today as a self-evident truth, not needing further justification.

But when it comes to determining the strategy to achieve this goal, we should keep in mind the price to pay for the satisfaction of these new requirements. The path that has been taken so far for the management of relevant data in a hierarchical organisation, e.g. the practice of obtaining expert opinion with relatively long lag times in university institutes, libraries, and state legal information offices, was already rather onerous. But creating a structure offering to all people concerned direct access to information is not only very expensive, but not even feasible. This is why we should defend the idea of a reinforcement of international competence on a medium-level for all legal professions.

It should be underscored that all the measures proposed in the following could not be implemented with only the resources of individual institutions, nor with only those of a single member state of the European Union. The europeanisation of legal education which is to a large extent in compliance with the objectives of Art.126 and 127 of the Treaty of the European Community can be realised only in a long-term process of cross-border cooperation and is in this framework one of the permanent tasks to be accomplished by the European Union. The tendency appearing in the management of the Erasmus Programme to reduce drastically or even to curtail the financial assistance provided by the Commission, and to do so after a short period of initial support, is discouraging successful programmes and will have a deterrent impact on new initiatives.

3. MEASURES TO BE TAKEN IN ORDER TO MEET THESE REQUIREMENTS

3.1. MEASURES TO BE IMPLEMENTED IN UNIVERSITIES

3.1.1. INTEGRATING EUROPEAN MODULES INTO THE MANDATORY COURSES

On a broad basis, all students should be offered a fundamental knowledge of other national systems, of the requirements for international legal transactions, and of the increasing number of common legal provisions in Europe. The course offerings as to Comparative law, International private law, International public law and European law must be increased. But apart from that it would also be necessary to introduce corresponding teaching units in the form of modules dealing with Europe; these modules could be integrated into the lectures offered in the mandatory subjects.

We propose that these modules should be coherent in their content and represent approximately one quarter of the total time of instruction. Thus we will be able to achieve a certain interchangeability of teaching units, in relation with the possible participation of several teachers and universities in the programme.

It would also be important that foreign guest lecturers contribute to the programme on a regular basis. The curricula of the partner-universities could be harmonised in cooperation between the partner-universities in such a manner that various teaching units could be lectured at the the same time, by short-time exchanges of the teachers responsible for the courses in question.

3.1.2. DEVELOPMENT OF EUROPEAN TEXT-BOOKS

Appropriate teaching material with a European dimension and a close relation to the context of the subject concerned has to be developed, primarily in order to support the teaching of European modules, but also for use in special lectures. This material could include, for instance, text-books presenting legal norms, principles of jurisdiction and of doctrine, typical judicial rulings and practical exercises with solutions in the different European legal systems.

Since it is important, in view of their future activities, to lead the students as close as possible to the respective sources of law, it would be useful that the texts be presented, not only in a good translation into the language of instruction in order to guarantee the exactitude of its comprehensibility, but also, at the same time, in the original language.

Various specialists from European Universities will have to cooperate closely in the development of such text-books. The members of these work-groups will not be systematically the teachers who will offer these modules; in fact, the latter will have to complete the competencies of their colleagues. But it will be important that the people involved inform each other at regular intervals as to the progress of their work, and exchange views about the experience acquired in their lectures.

3.1.3.PROMOTION OF SPECIALISATION IN EUROPE-RELATED OPTIONAL SUBJECTS

The students wishing to acquire, beyond the simple basics, specialised knowledge in the transnational areas of law should be encouraged to take full advantage of the groups of optional subject.

It will be particularly important to assure that the results of examinations taken in these optional subjects as part of the first *Staatsprüfung* be evaluated to an appropriate degree in the overall grade. In view of the rather great amount of work the students must complete in order to master the subjects presented in the various groups of optional subject, the fraction of the final grade based on these subjects should not be less than one third.

Since, as experience has shown, the provision of appropriate exam subjects and, in part, the organisation of exams themselves, in the most diverse domains with foreign references causes serious work overload, we propose that specialists from other countries should participate in these exams, at least to a larger degree than is presently the case. In this way the special requests of the candidates could be more effectively handled. We are thinking about creating a European pool of examiners.

3.1.4.STUDENT EXCHANGE IN COMPLEMENTARY EUROPEAN COURSES

We recommend the existing special study courses with a European dimension and open to national and foreign students likewise as a model for further promotion of legal education. Indeed, in whatever form they are presented (for instance, the master's course *Magister legum Europæ* integrated into the normal curriculum in Hanover, the post-graduate studies leading to a *Magister* diploma in Saarbrücken or in Bremen, the possibility of achieving the title of doctor within the framework of a *Graduiertenkolleg* in Heidelberg), these programmes offer above all the welcome possibility of taking part in intensive legal discussions and laying down a solid base for future professional activities on an international level, to the young Europeans coming here together from different countries.

The opportunity to acquire a specific university degree, attesting the competence acquired to exercise a legal profession within a European framework, constitutes an essential component of these programmes and is one of the reasons for their attractivity. The degree helps in the search for employment and reinforces the European identity. It should be considered whether it would

not be possible to arrive at a harmonisation of the diplomas offered on this level by the various European countries, aiming at introducing a common degree of "Euro-jurist."

3.2. MEASURES TO BE TAKEN IN TRAINING ORGANISATIONS

3.2.1. CONTACT ADVOCATES FOR SPECIFIC LEGAL SYSTEMS

Concerning lawyers, the increasing mobility of citizens within Europe and the growing degree of economic and cross-border interdependence has led to an increasing number of cases of multinational dimension. Only very few advocates have the necessary competence to deal adequately with such cases. On the other hand, many people would appreciate to find without delay the right person in their own country who would be in a position to provide immediately reliable information on at least the important and relevant factors applying to the legal system concerned (where should a legal action be brought and against whom ? what kind of legal remedy is available ? which time limits are to be observed ?) and refer to a lawyer settled in the region and having all necessary competence and expertise to conduct the case adequately. Selecting, preparing and providing continued training to such lawyers who could indicate their competence by adding a supplementary denomination, e.g."contact advocate for Danish law", should be realised by organisations offering continued education programmes and also by international jurist associations.

3.2.2. JUDGES IN SPECIAL COURT DIVISIONS FOR CROSS-BORDER CASES

In order to guarantee a uniform application of law in the judicial treatment of cross-border cases, certain suits with international references should be conducted in special departments or divisions – as has already been done for instance in Hamburg. Special continued training programmes in relevant areas could then – perhaps in cooperation with foreign colleagues with similar activities – be offered to the judges concerned.

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1. THE EDUCATION AND TRAINING OF JURISTS 2

1.1. HIGHER EDUCATION 2

1.1.1. GENERAL 2

1.1.1.1. Contents 2

1.1.1.2. Course Structure 3

1.1.1.3. Impact of European Programmes 4

1.1.2. POST-GRADUATE STUDIES 6

1.1.3. DOCTORAL STUDIES 7

1.2. TRAINING 8

1.2.Ø. LEGAL PRACTICAL TRAINING 8

1.2.1. ADVOCATES 10

1.2.2. JUDGES AND PROSECUTORS 12

1.2.3. OTHERS 12

1.2.3.1. Notaries 12

1.2.3.2 *Gerichtsvollzieher* 13

1.2.3.3 *Rechtspfleger* 13

1.2.4. CORPORATE LAWYERS 13

1.2.5. CIVIL SERVICE 15

2. NEW NEEDS AS TO EDUCATION AND TRAINING 15

2.1. SHORTCOMINGS AND LACKS 15

2.1.1. FROM THE POINT OF VIEW OF THE CHANGES IN LAW 15

2.1.2.FROM THE POINT OF VIEW OF BUILDING UP THE EUROPEAN UNION 16

2.2. PERSPECTIVE 17

2.3. QUESTIONING JUDICIAL "NATIONAL PROVINCIALISM" 18

3. MEASURES TO BE TAKEN IN ORDER TO MEET THESE REQUIREMENTS 18

3.1. MEASURES TO BE IMPLEMENTED IN UNIVERSITIES 18

3.1.1. INTEGRATING EUROPEAN MODULES INTO THE MANDATORY COURSES 18

3.1.2. DEVELOPMENT OF EUROPEAN TEXT-BOOKS 19

3.1.3.PROMOTION OF SPECIALISATION IN EUROPE-RELATED OPTIONAL SUBJECTS 19

3.1.4.STUDENT EXCHANGE IN COMPLEMENTARY EUROPEAN COURSES 19

3.2. MEASURES TO BE TAKEN IN TRAINING ORGANISATIONS 20

3.2.1. CONTACT ADVOCATES FOR SPECIFIC LEGAL SYSTEMS 20

3.2.2. JUDGES IN SPECIAL COURT DIVISIONS FOR CROSS-BORDER CASES 20

Note pratique

Remarques générales

Conformément aux instructions données par le comité d'organisation et le comité scientifique, les rapports nationaux ont été soumis en anglais ou en français, à la seule exception du rapport allemand (présenté en allemand).

Certains rapports ont nécessité un travail plus ou moins conséquent de remise en forme ou même de réécriture, en particulier (mais pas seulement) lorsque la langue maternelle du rapporteur n'était pas l'une ou l'autre de ces langues. Dans tous les cas, les propositions de modifications ont été soumises aux auteurs qui ont donc pu valider les changements suggérés.

Toutes les versions traduites ont également été soumises aux rapporteurs pour validation avant impression.

Options retenues pour la traduction

L'équipe des traducteurs a pris les options suivantes dans son travail et les a appliquées de façon systématique à tous les rapports nationaux (textes originaux et traduits), dans un souci de cohérence et de bonne compréhension

- le premier terme des expressions désignant une discipline porte une capitale lorsqu'un s'agit de renvoyer au nom d'un enseignement (cours, modul, unité de valeur, etc.)
- les termes donnés dans la langue originale du rapporteur sont écrits en italiques; il s'agit essentiellement de désignations de diplômes, titres, ou encore d'institutions et d'organismes propres au pays. Les italiques sont également employés pour les mots pleins ou en abrégé repris du latin.
  En conséquence, un terme ou une expression pourra apparaître en italique même s'il s'agit, par exemple d'un mot français dans le rapport français ou belge.

Practical Note

General

Following the guidelines provided by the organising committee and the scientific committee, all national reports were submitted in English or French, with the sole exception of the German report (drafted in German).

Some reports required more or less extensive editorial work or even rewriting, especially –but not exclusively – when the rapporteur's mother tongue was neither of these two languages. In all cases, proposals for amendments were submitted to the corresponding authors who were thus given the opportunity to validate the suggestions for changes.

All translated versions were also submitted to rapporteurs for validation before printing.

Decisions made for the translation

The translation team made the following decisions for their work and then systematically applied them throughout the national reports (original and translated texts) for the sake of greater consistency and readability

- the first term of phrases referring to a specific discipline is capitalised whenever they identify a part of a curriculum (course, module, study unit, etc.)
- terms provided in the rapporteur's original language have been italicized. This holds true in particular for references to degrees and diplomas, or for the names of institutions and organisations proper to the country concerned. Full words or abbreviations in Latin have also been italicized.
  Consequently, a term of expression can be italicised even if, for instance, it is an English word found in the English or Irish report.