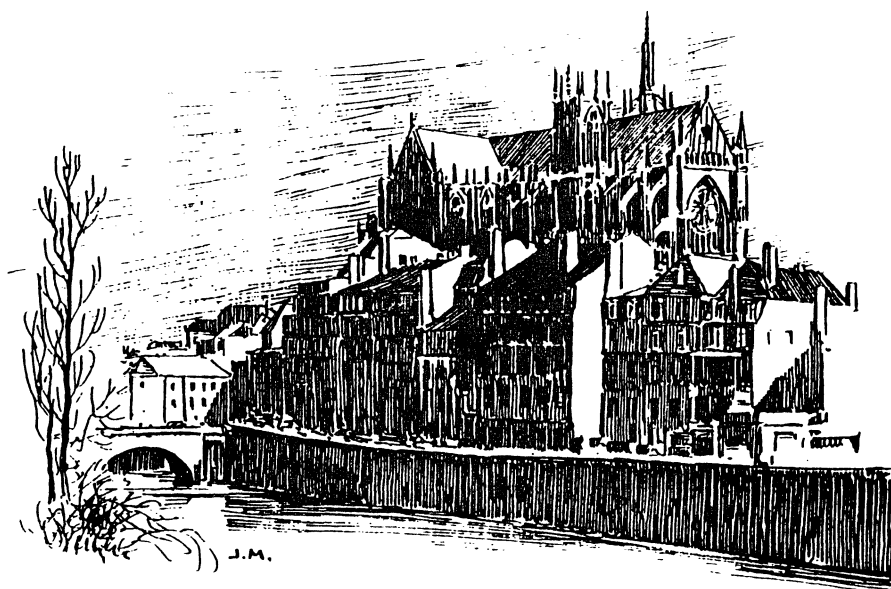


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LEGAL EDUCATION AND TRAINING IN TOMORROW'S EUROPE



LUXEMBOURG



UNIVERSITE DE METZ

LEGAL EDUCATION AND TRAINING

IN TOMORROW'S EUROPE

Luxembourg

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1. THE EDUCATION AND TRAINING OF JURISTS

There is no university as such in Luxembourg, but rather a *Centre Universitaire* founded in 1969¹ and run according to the provisions of the Act of Feb. 11, 1974². Before passing this act, Luxembourg was organising what was commonly called *Les Cours supérieurs*.

Legal education was structured by a Grand-ducal Ruling dated June 02, 1972, amended on many occasions³.

1.1. HIGHER EDUCATION

Luxembourg does not offer a full programme for legal education and training. Only first-year courses are taught in Luxembourg. Students are then supposed to go abroad – mostly in France and in Belgium – for a continuation of their legal education.

1.1.1. GENERAL

The Grand-ducal Ruling of June 02, 1972 with amendments stipulates that the *Département de Droit et de Sciences Économiques* (Department of Law and Economics) comprises a subdepartment of law itself in two parts :

- one for the students intending to go on studying in France
- one for the students intending to go on studying in Belgium.

1.1.1.1. Contents

The curriculum for first-year studies is similar to what exists in France or in Belgium.

Courses in the French subdivision are designed on the model of first-year courses offered in France for *DEUG* in Law, with a distinction between theoretical courses and practical work.

¹ Act of June 18, 1969 on Higher education and the certification of titles and degrees awarded by foreign academic institutions. *Memoria A.* 1969, p. 796

² Act of Feb. 11, 1974 about the status of the *Centre Universitaire de Luxembourg*, *Memorial A*, 1974 p. 122.

³ Grand-Ducal ruling dated June 02, 1972 about the scientific organisation of academic courses, curricula and regulations for exams. *Memorial A* 1972, p. 1076 amended by the Grand-ducal Ruling of Aug. 18, 1983, *Memorial A* 1983, p. 1565; Grand-ducal Ruling of Sept. 05, 1985, *Memorial A* 1985, p. 1064; Grand-ducal Ruling of Dec. 21, 1990, *Memorial A* 1990, p. 1552

The programme is as follows :

	Theoretical courses in hours	Practical work in hours
Compulsory courses		
- General introduction to law	75	20
- Public law (constitutional)	60	
- Luxembourg public law (Practical work in Public law)		20
Sociology and political institutions	75	
Political economy	90	
History of law	45	
Civil law	75	20
International institutions	40	20
Elective courses		
Complementary course in mathematics (compulsory for students having had languages as a specialty in secondary schooling)	15	

Source : *Structures et programmes - Année académique 1993 - 94*

The programme of the Belgian subdivision corresponds to the two years of *candidature en droit*; it has the following structure

	Theoretical courses in hours	Practical work in hours
Compulsory courses		
- General introduction to law	75	20
- Public law (constitutional)	60	
- Belgian constitutional law	45	20
History of law	45	
Roman law	45	30
Philosophy of law	15	
General philosophy	60	
Elective courses		
Civil law	75	

1.1.1.2. Course Structure

In both cases, legal studies are evaluated by a final exam.

As a rule, the French academic authorities validate the legal education received in Luxembourg and accept successful students as second-year *DEUG* students.

The Belgian authorities grant full equivalence with the Belgian diploma called *candidature* (a two-year course).

1.1.1.3. Impact of European Programmes

European programmes do not seem to be applicable as they can hardly be implemented as part of the first-year legal courses.

1.1.2. POST-GRADUATE STUDIES

The *Institut Universitaire International* in Luxembourg, founded by the Grand-ducal Decree of April 22, 1974, is an *établissement d'utilité publique* (institution of public interest) whose objective is to organise academic post-university education, including scientific research linked to this type of education.

The *Institut* has three departments, one of which is specialised in law studies under the denomination *Centre international d'études juridiques et de droit comparé*.

The scientific activities conducted by the *Institut* are meant to serve people with a general academic training.

The *Institut* organises courses and seminars which are generally two weeks long.

1.1.3. ÉTUDES DE DOCTORAT

There are no doctoral studies organised in Luxembourg. Before the act of June 18, 1969⁴, an Organic Act of Aug. 05, 1939 on the awarding of degrees⁵ provided for a doctorate in several disciplines, including law.

A draft bill is currently examined and due to be adopted in the near future⁶; where it is stipulated that the *Centre Universitaire de Luxembourg* will have the possibility of "participating in post-graduate studies and organise corresponding courses in case of need".

1.2. TRAINING

It should borne in mind that Luxembourg gives recognition to foreign degrees as the country does not award any degrees that are proper to them. All matters relating to this are regulated by the June 18, 1969 Act on Academic Education and the Validation of Titles and Decrees obtained abroad; this also applies to the legislation translating Community regulations on the recognition of professional training courses.

1.2.1. ADVOCATES

The Grand-ducal Ruling dated Jan. 21, 1978 as amended⁷ concerning the organisation of traineeships for legal training and regulating the access to the notary office provides for the training of advocates; notaries and magistrates.

The ruling stipulates that the condition to have access to the bench, the bar or notary profession is to have completed the training periods as provided for by this ruling.

These training periods also include a common programme consisting in a set of complementary courses. The trainees have then a specific training period related to their future career, to have access to the bench or the bar, or to the notary office.

The students applying for these complementary courses should have their academic degrees validated as they were obtained abroad in all cases.

⁴ Act of June 18, 1969 on Academic Education and the Validation of Academic Titles and Degrees obtained abroad, op. cit.

⁵ Act of Aug. 05, 1939, *Mémorial* 1939, p. 792

⁶ Draft bill about the Reformation of Academic Education, *Doc. Parl.* 3832.

⁷ Grand-ducal Ruling dated Jan. 21, 1978, *Mémorial A* 1978 p. 40 amended by the Grand-ducal Ruling dated Feb. 25, 1980, *Mémorial A* 1980 p. 197; and Grand-ducal Ruling dated Nov. 25 1983, *Mémorial A* 1983 p. 2586

The complementary courses are organised by the *Centre Universitaire* in Luxembourg.

The structure of courses is the responsibility of the Ministry of Education, upon advice from the Minister of Justice after consulting the *Procureur général d'État*, the bar associations and the academic staff.

The curriculum bears on the specific features of Luxembourg law, in particular the following disciplines :

- Constitutional law
- Civil law
- Business law
- Civil and Business procedures
- General criminal law
- Criminal procedure
- Judicial organisation

Moreover, a course is also provided on English and German legal terminology.

This course extends over three and a half months (Oct. 15 - Jan. 31) and are evaluated with a final exam giving right to a *certificat de formation complémentaire en droit luxembourgeois*. (= certificate for complementary training in Luxembourg law).

- *Stage judiciaire* (= training period in the judiciary)

Admission to the training period is granted upon production of the *certificat de formation complémentaire*. The trainees, after taking the oath, are registered on the list of candidates to the bar.

The training period is three years long. It includes theoretical and practical courses in the form of lectures and seminars on the enforcement and the specific features of Luxembourg law.

The candidates to the bar can attend hearings and have a part in the activities of the bench.

The training period leads to a final exam including written exams (in French and in German) and oral exams (a portion of these can be conducted in the national language).

The purpose of the training period is to equip the *avocats stagiaires* (= candidates to a lawyer office) with the skills necessary to become a magistrate or a lawyer. The training period is designed as a preparation to these two professions and no one can have access to the bench without having passed the *examen de fin de stage judiciaire* (final exam after the training period in the judiciary).

- *Stage notarial* (= training period for the notary office)

This training period is actually a special form of the training for the judiciary described above.

It is generally made during the first or second year of the *stage judiciaire* but can also be accomplished after taking the final exam at the end of training for the judiciary. It is designed as a full-time activity in a notary's office for eleven months. Theoretical and practical courses are also offered during the same period. They concern mostly the organisation of the notary profession, matters related to bankruptcies, partition of joint property and sharing out succession, legal provisions and regulations of special interest for the notary profession (types of antenuptial settlements, successions, donations/bequests, testaments, transcription of chattels real on tangible property, form of government for mortgages, joint ownership of houses subdivided in flats, rural consolidation, town-planning), corporate law, tax law (tax on common ownerships), stamp duty, registry fees, mortgage charges, succession duties and inheritance taxes, as far as they are related to the notary profession), book-keeping in a notary's office, and the drafting of deeds in French and German.

Candidates take an exam at the end of the training period, giving the diploma called *candidat /te notaire* (= candidate to the notary profession).

1.2.2. BAILIFFS

The act of Dec. 04, 1990⁸ on the organisation of the service to be provided by *huissiers de justice* (= bailiffs) makes provisions for the training of this profession.

Article 2 in the act lays down that the conditions to become a *huissier de justice* are :

- to have Luxembourg nationality
- to be at least 23 years old
- to produce a *certificat de moralité* (= 'certificate of good character') issued by the *Tribunal d'arrondissement*
- to have completed the training period
- to produce the *certificat de candidat /te huissier* (= certificate of a would-be bailiff); candidates can be exempted from the latter condition if they have obtained an academic degree from a foreign institution recognized by the Luxembourg authorities and hold a certificate giving evidence of the fact that they have completed the course in Luxembourg law and passed the corresponding exam.

The training period is three years long. At least half of this time should be spent in the office of a bailiff with at least five years of experience; the rest of this time should be spent in a lawyer's office. When the candidate holds all the above described diplomas, the length of the training period is reduced to 6 months and should be accomplished in a bailiff's office.

1.2.4. CORPORATE LAWYERS

There are no specific regulations concerning corporate lawyers. These are hired by private companies or public institutions on the basis of their academic degrees. Corporate lawyers generally do not hold degrees of a lower status than those of other lawyers, as the diplomas held by the former have the same value as those held by the latter.

Some corporate lawyers have had the necessary training to have access to the bar, which is often considered as a valuable asset by companies, considering that this is the only form of education concerning Luxembourg law (cf. § 1.2.1).

1.2.5. CIVIL SERVICE

The *Institut de Formation Administrative* was established by an act dated March 09, 1983⁹.

The objective of this institute is to provide training for the staff of State administrations and State institutions for them to have access to the senior positions of administration, the office of *rédauteur/trice* (= person in charge of drawing and wording documents) and of *expéditionnaire administratif* (= person drawing up administrative instruments)

Admission to the training period is granted on the basis of results obtained after taking a competitive exam.

⁸ Act of Dec. 04, 1990, *Mémorial A* 1990 p. 1248

⁹ Act of Mar. 09, 1983, *Mémorial A* 1983 p. 319, amended by the Act of Dec. 14, 1983, *Mémorial A* 1983, p. 2262

The training period is basically three years long. Exemptions are possible or the duration of this period can be cut for those who already hold specific diplomas or have completed the *stage judiciaire*. Lectures are offered during this period.

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

As we observed above, the development of law in Luxembourg seems to give an increasing importance to specifically Luxembourg forms of legislation.

The absence of post-graduate education in the Grand-Duchy is the major cause of the modesty of research work and the small number of publications concerning Luxembourg law, specifically in private law.

However, until the last few years, Luxembourg used to enact laws which were rather close to the corresponding regulations adopted in the same areas in the neighbouring countries, mostly Belgium and France.

These regulations were interpreted in reference to Belgian or French doctrine, according to the case.

This does not apply any longer, if we except the legislation established on the basis of Community law, Luxembourg has had a tendency in recent times to adopt regulations related to Luxembourg specificities and less and less founded on foreign legislations.

Concerning professional training, more specifically which applies to the training of lawyers and magistrates, it can be observed that the courses offered and the corresponding exams are designed on the lines of what could be termed the traditional lawyer training practice, in particular which concerns the rules of procedure, civil law, criminal law, administrative law and business law.

This type of training does not take into account the fact that lawyers have a monopoly on the provision of legal advice in Luxembourg and he/she is, as a consequence, supposed to give advice in matters which have never been a part of his/her training.

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

Not applicable.

2.2. PERSPECTIVE

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

As we observed above, law studies in Luxembourg seems to develop mostly toward a form of law that is proper to the nation.

2.2.2. FROM THE POINT OF VIEW OF THE BUILDING UP OF THE EUROPEAN UNION

Not applicable.

2.2.3. FROM THE POINT OF VIEW OF THE CHANGES IN THE PROFESSIONS

We cannot observe at the moment any clear change in judicial professions in Luxembourg. The study currently conducted by the European Community concerning the possibility of implementing inter-professional structures in the judiciary can hardly be reconciled with the Luxembourg legislation which is very severe concerning the possibility of having a plurality of offices. Moreover, the acts passed by Luxembourg for the regulation of judicial and juridical professions are generally rather recent and are, *a priori*, a reflection of the viewpoint currently held by the bars and associations representing the various juridical professions.

2.3. QUESTIONING JUDICIAL "NATIONAL PROVINCIALISM"

It does not seem to us that any questioning of the "national provincialism" can be considered at the moment. It can indeed be observed that Community law covers areas that are steadily growing, but, at the same time, national law goes on existing alongside this new legislation. Moreover, national law is at the same time a guarantee and the consequence of the existence of a sovereign and independent state. The law is different in all members states of the European Union; differences are even greater when it comes to examining the way the judicial professions conceive law, analyse judicial problems and reason about them. At the moment, the existence of Community law does affect the differences in conception inasmuch as, eventually, it is the judicial order of the Community which has the responsibility of interpreting it. Differences in the mode of conception also endure at the national level. This is probably the reason why, in the directive for the recognition of professional training periods of over three years, only legal training systems have not been recognised as having exactly the same value; recognition has on the contrary been submitted to some conditions such as complementary courses or at least to some control applying to adequate knowledge of the law in the host country. For all these motives, we have good reason to think that questioning "national provincialism" is not really a topical question and it will not be until a true federation of European nations has emerged.

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

The question of creating a full course of legal education in Luxembourg has been an object of debate on many occasions and it does not seem to be realistic to create such a course for various reasons.

On the one hand, from a practical viewpoint, the number of students is rather limited, considering that only Luxembourg students would be interested in studying the national law. Moreover, the lack of academic staff would be another problem and relying on foreign colleagues for the teaching of Luxembourg law would be illogical. At the present time, there is no full-time lecturer teaching the first-year course and only foreign professors and law practitioners are currently teaching a few hours each week at the *Centre Universitaire*.

On the other hand, the possible consequences of teaching Luxembourg law in Luxembourg should be borne in mind : it could entail a withdrawal into one's shell for Luxembourg people, whereas the current system is for them the opportunity to have an overture towards other countries and their conceptions of law and legal education, even if openings are in present times restricted to France and Belgium concerning judicial disciplines.

Anyway, it appears that a three and a half month complementary course is not sufficient to provide the necessary competence in Luxembourg law.

A possible solution could possibly be the creation of a post-graduate course on Luxembourg law. It could then be made compulsory for all students willing to have access to all forms of professional training required to practice a judicial or juridical profession in the

Grand-Duchy of Luxembourg. It would correspond to *cinquième année* (=fifth-year course) in France and could be compared to the form of education provided for a *DEA* in this country.

The situation in Luxembourg is particular inasmuch as the country does not offer any comprehensive course of legal education and no change is to be considered, at least in the short term. The only courses that could be taken into consideration are post-graduate diplomas in disciplines related to Community and International law, but EC member states already offer such courses.

The geographical position of Luxembourg and the fact that many EC institutions – the Court of Justice and the Tribunal – have their head offices there might create a new kind of relationship between the education provided on Community law and the EC institutions themselves and this probably deserves much attention.

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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.

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 re-writing, 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.

Dans certains cas, les traducteurs proposent – entre parenthèses – une traduction du terme original. Cette traduction est mise entre guillemets simples lorsqu'il s'agit d'une approximation plus ou moins grossière.

- certains éléments de la terminologie employée dans les traductions peut paraître artificiel. Il ne pouvait pas en être autrement. On citera comme exemple l'emploi systématique du mot *advocate* pour traduire *avocat*, alors que ce terme n'est pas le plus courant dans la pratique anglaise ou irlandaise.
- la table des matières est en principe identique pour tous les rapports. Il peut se faire que certaines rubriques, jugées sans objet par les rapporteurs, n'ont pas donné lieu à un quelconque texte. La numérotation peut alors présenter des lacunes. Certains rapporteurs ont ajouté des explications et des rubriques, généralement en introduction. Ces paragraphes ont été numérotés logiquement, en respectant la structure de base et en usant du Ø... lorsque cela était nécessaire. D'autres rapporteurs se sont éloignés du plan-type qui leur avait été proposé. L'équipe de traduction a pris la liberté de chercher à rapprocher les plans proposés du plan type en question.

In certain cases, the translators suggested – in parentheses – a translation of the original term. This suggestion is in single quotation marks when it is only a tentative approximation.

- some elements of the terminology used in translated texts may appear as artificial. But it could hardly be otherwise. A typical example is using the word *advocate* to translate the French *avocat*, even though this term is not so common in English or Irish practice.
- the table of contents is supposed to be identical for all reports. But it can happen that some items were deemed not applicable by rapporteurs and that there is no corresponding text. Consequently, there can be some gaps in the numbering sequence.

Certain rapporteurs provided some additional information and inserted new items, in most cases in the introduction. These paragraphs have been numbered in logical order, following the basic structure and using Ø... when necessary. Some other rapporteurs departed from the suggested outline, in which case the translation team took the liberty of making the proposed structures conform to this reference structure as closely as possible.