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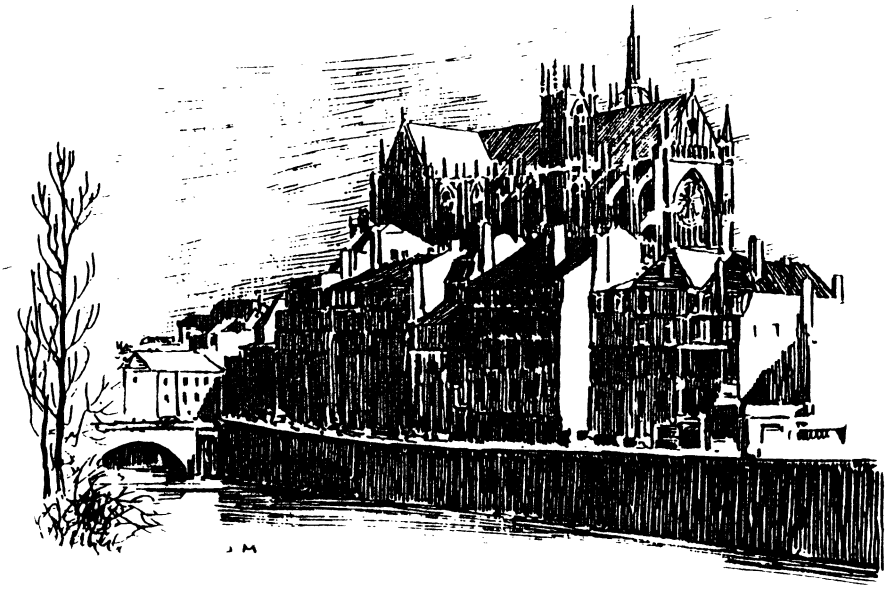
LEGAL EDUCATION AND TRAINING IN TOMORROW'S EUROPE



PORTUGAL

UNIVERSITE DE METZ

LEGAL EDUCATION AND TRAINING

IN TOMORROW'S EUROPE

Portugal

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Opening remark :

The opinions voiced by the author of the present report are of a personal nature and do not in any way bind the institution to which he belongs. The author wishes to thank all those who were kind enough to volunteer information on the different areas of this report, in particular Me Vasco Airão, lawyer at the Oporto Bar, for his thoughts concerning his personal experience (in particular the observations on the subject of international contracts appearing in § 2.2.2.)

Ø. INTRODUCTION

There is good cause and reason in the academic life of contemporary Portugal to raise questions about legal education and the necessity of reforming it. Parallel to the theoretical debate which has focused on a cluster of issues and problems around what has been termed the "law crisis" – the question of the way it should be taught being one of focal points – specific circumstances were a good incentive for a thorough re-examination of the curricula for legal studies and for a reconsideration of the type of education that law faculties and professional institutions related to legal activities should have to provide.

It could be noticed as early as the late 50s – due to pressure from events on the world scene, to which Portugal could hardly remain indifferent – that state legislative activity had developed dramatically. The emergence of new areas open to regulatory activity, the specialisation of some branches to make them better adapted to the needs of economic growth (banking, stock and capital, insurance) and to an inevitable transformation (social security, welfare) showed gradually that the traditional way of educating and training law practitioners – for whom the education received in law faculties was the only one they would ever have to see them through their professional life – did not adequately meet the requirements of an expanding job market.

But it was primarily following the April 1974 Revolution – in the wake of the thorough changes and reforms that applied to positive law which affected virtually all basic texts in the judicial order of the nation – that it became clear that the system for legal education was itself in a deep crisis and that lawyers were ill prepared – actually more from the viewpoint of an ideological analysis and understanding of texts than from the viewpoint of simple technical training – to become practitioners well-versed in the art of making and applying a kind of law which was first and foremost a warrant for the social reforms rather than just a tool that the political power was implementing .

The Portuguese judicial order, for a long time isolated from the influence of the thought and in particular of the socio-political practice specific to contemporary European culture – and that in spite of the existence of a very well informed academic legal culture sensitive to the more modern currents of dogmatics of law – was still founded on a set of basic legal texts corresponding to the main areas of traditional law, thus assuring the stability of a rigid social architecture and order, in which the exercise of authority eliminated conflicts and actions. The application of law, being predominantly syllogistic and formal, and supposed to be unbiased in the enforcement of social order, did not pose any major technical problems and imposed on practitioners no more than a thorough working knowledge and enforcement of legal and doctrinal material in their respective working areas. The difficulties raised by certain innovative texts, in which a break from tradition could hardly be overlooked – as was the case with the attempt to reform criminal law – showed how easily the whole system could be tipped off balance and "deterred" from any reformation of law studies. A curriculum based on a simplistic combination of preparatory courses and the "nobler" subjects of legal science considered indispensable for a proper legal education, was deemed sufficient to award a "master's degree".

The on-going changes that have affected positive law since 1974 represent a clear break from previous legal practice. If only to show that the reform of positive law must correspond to

a similar major change concerning the person who is to apply it, one can mention - just to refer to the classical subjects - what has occurred, for example:

- in the field of labour law, due to the new type of relationship established between social and economic forces leading to a change in labour relations and, above all, making workers aware that they are the major players in a process of industrial action– something that had been unheard of for many years – and that they could make use of legal means for voicing their claims, such as the right to strike
- in the field of family law, as a result of the restructuring of the rights of family members, now defined on a basis of equality between spouses, of a loosening of divorce laws and of the necessity to confront in situations of conflict, wherein the resolution does not proceed from a simple legal statement;
- in the field of criminal law, with the development of an entirely new code and the adoption of complementary legislation, in which an important place in given to questions of criminalisation and de-criminalisation, on the basis of a reformulation of areas inherent to penal protection, etc.

All the above indicated a profound change in the way law texts should be read and in the concept of their application which demanded wider powers in the appraisal of conflicts as well as an active and "creative" participation, not only in the technical sense, but also in a veritable social sense, of all involved in the legal profession.

Portugal's entry into the European Community as of January 1986, and the consequent acquisition at the internal level of a very important quantity of legal provisions, as well as the need to adapt and rethink national law in a European context, contributed to accentuation of the problems concerning the education of jurists and the difficulties encountered by legal professionals, for whom recourse to a course of studies beyond the "Master's degree" became necessary.

Twenty years after the April 25, 1974 Revolution and eight years after the entry into the institutional community system, one cannot say that law faculties show a great change in their method of functioning, and it is even difficult to perceive a new philosophy in the university education of their jurists. If there is anything to notice in this area – and which can be related to the idea of a specialised study – it is the reform of third-cycle programmes (formally known as the *mestrados*) the number of and the demand for which have increased each year. It must be admitted that, recently, law faculties have made an effort with a view to opening a certain number of specialised programs of study, concerning specific legal areas. Nevertheless, it should be noted that a large number of these "new study programmes" is the responsibility of professional organizations.

Nevertheless, it should not be forgotten that it was influences foreign to the debate concerning what a "legal education" should be – but very important for its restructuring (as, for example, the lack of teachers, the insufficient preparation of and the lack of technical and administrative staff) – which primarily conditioned all reform projects and, in a certain way, liberated law faculties from their obligation to operate any changes.

The creation, as of 1974, of a series of new law faculties, of a private or cooperative nature, does not represent a significant alteration – nor, for reasons which need not be dealt with in this report, a challenge for already existing institutions. In fact, apart from a few isolated innovations related to the creation of new courses, little has changed in the structure of the education of jurists, particularly in the area of the "Master's degree".

1. THE EDUCATION AND TRAINING OF JURISTS

1.1. HIGHER EDUCATION

The general education of jurists is the responsibility of the faculties of law, as organized university units of higher education. At present, nine universities – three of which are public (*Universidade de Coimbra, Universidade Clássica de Lisboã, Universidade do Minho*), *Universidade Católica Portuguesa* (whose status as a free autonomous university institution of public utility, recognised by the state of Portugal, results from provisions of the Concordat between Portugal and the Holy See) and five universities of a private or cooperative nature (*Universidade Autónoma de Lisboã "Luís de Camões", Universidade Internacional, Universidade Lusíada, Universidade Moderna* and *Universidade Portucalense Infante D. Henrique*) – can award the degree of *licenciatura*. Most recently, the creation of a faculty of law at the public university of Oporto was announced.

There is no law that outlines a single general curriculum for all the faculties of law, although each university institution is required to submit their own curriculum for the *licenciatura* to ministerial accreditation. This does not mean that it is impossible to recognize a certain uniformity; on the contrary – even the most recently established universities, whose curricula contain certain innovations – do not present substantial differences in the body of subjects they offer.

1.1.1. GENERAL

Before beginning an examination of the curriculum, two preliminary remarks are necessary.

The first concerns the presence of economic courses in the curriculum of the *licenciatura*. Previous to the faculties of economy becoming autonomous university units, the law faculties taught the fundamental notions of Economy and Public Finance were taught. This tradition left its marks in the present curricula of the law faculties and is thus a part of the general training of jurists.

The second remark concerns, not university education in its strictest sense (initial education), but rather continuing training. Even though the statutes or rulings of the faculties of law suggest the eventual need for this "social duty", the updating and enrichment of the level of knowledge required by all those who, as holders of a *licenciatura* in law, have already been integrated into professional life, is being implemented mostly through intensive short courses, seminars, congresses, colloquia, and other such punctual achievements, and are not, as a general rule, the result of a systematic programme of studies of university institutions responsible for the teaching of law. Therefore, one cannot refer to a policy (or even a practice) of continuing or recurrent education in the domain of law studies.

1.1.1.1. Contents

The *licenciatura* is equivalent to a second *cycle* (presently, the first *cycle*, which could been seen to correspond to the old degree of *bacharel*, has virtually no autonomy in the organizational framework of law studies). One is a *licenciado em direito* without any other special mention: only other formations or specialisations can determine specific qualifications. To be a holder of a *licenciatura* represents the possibility of access to professions that require a law studies degree, either as a degree or certification for the immediate entry into a professional area of expertise, or as minimum requirement for access to mandatory training or courses leading to different specialised professional titles (magistrate, lawyer, etc.).

But, if the *licenciatura* remains the fundamental grounding required for access to any of these professions or to positions of employment demanding legal knowledge, recently a sort of "depreciation" of the *licenciatura* is becoming apparent – perhaps due to the great demands that are put upon the minimal conditions for access to the professional world. More and more, candidates are selected, at another level, notably that of the *mestrados*.

The *licenciatura em direito* takes about five years to complete. As a general rule – this is the structure adopted by the majority of the Portuguese faculties of law – the *licenciatura* is composed of two parts:

a) A common core of compulsory courses for all students, taking up the first three or four years of the degree, the exact length of this first *cycle* varies according to the curriculum approved by each faculty; this common core contains the fundamental subject for the basic education of a jurist.

b) A second phase (which lasts one or two years, depending on the curriculum), in which the grouping of subjects that the student must take (or that he or she can, within certain limits, select) depends on the chosen field of study – but does not predetermine a future professional career.

The composition of a common core can vary in accordance with the curriculum approved by each faculty, but as a rule, the subjects are as follows:

- legal subjects : Introduction to the study of law, History of law, (Roman law, Portuguese law), Political science and Constitutional law, Civil law, (General theory of law, Contract law, Property law, Family law, Succession law), Civil procedure, Administrative law, Criminal law, Criminal procedure, International public law, Fiscal law, Commercial law (Corporate law, Letters of credit and cheques). There are faculties in which the common core also includes amongst other things, subjects such as Community law, Private International law, Labour law, Economic law or International Relations.
- economic subjects : Political economics, Public finance.

For the second part of the *licenciatura*, the subjects (compulsory or optional) are grouped into two distinctive areas (the nomenclature used varies in the different faculties):

1. the legal branch (Master's degree in "Private law / Criminal law") : Civil law, Civil procedure, Commercial law, Criminal law, Criminal rocedure, Criminology;

2. the legal branch (Master's degree in "Public law"): Administrative law, Constitutional law, International public law, Land management planning and Urban planning, Environmental law, Community law, European law, History of diplomacy;

3. the branch of economic legal sciences: Economy, Public finances, Business law, Economic law, Business law, Fiscal law, Labour law, Transport law, Industrial property law, Law of international affairs, Business criminal law.

There are subjects that can be considered common to all these branches (and even compulsory), as, for example, Philosophy of law, Theory of law, Sociology of law, History of legal thought, etc.

To conclude, it must be noted that very few faculties offer foreign language courses or computer training.

1.1.1.2. Course Structure

As for the teaching of these subjects, the lecture is the pedagogical norm (teaching assistants are in charge of practical courses); the existence of extremely large classes generally prevents the possibility of seminar teaching, even in the final years of the degree.

For each subject, assessment is accomplished by means of written exams (at the end of each academic year or each semester) and oral exams. The percentage of alternative modes of assessment (essays or other written assignments followed by discussion or debate, ongoing evaluation) is very low.

1.1.1.3. Impact of European Programmes

Concerning the Community programmes, it is difficult to chart the results obtained in the Portuguese faculties of law. In general, programmes that contribute to the mobility of students have an important function in their university education: the opportunity to become familiar with other university institutions, other teaching methods and curricula and especially the "discovery" of other subjects which are not normally taught in their native country, all these factors point to a very positive pedagogical experience.

Elsewhere, community funding – notably the Jean-Monnet Action, either by the grant of a "Jean Monnet Chair", or through permanent courses or research aids – has allowed (one can cite the example of Coimbra) the implementation of new subject matters in the general university curricula.

1.1.2. POST-GRADUATE STUDIES

Considering the courses offered to students who have previously obtained the degree of *licenciados*, a distinction can be made between specialisation studies which do not culminate in any particular degree (simply a diploma or certificate of approval) and the *mestrado* course, equivalent to a third *cycle*, which is the object of a very precise general set of regulations. It is only the *curso de mestrado* which grants a university title, of a superior level to that of the *licenciatura*. Recently, other specialised studies have gained importance, insofar as they contribute to the enrichment of a personal curriculum and result in professional portfolios that are more competitive in the job market.

1.1.2.1. Contents

According to the law, the university title of *mestre* certifies "an in-depth level of knowledge in a specific area and the capacity to conduct research".

The *mestrado* degree is not connected to any particular subject, but rather corresponds to a group of subjects in the same field (or connecting fields) of study and research.

The scientific *mestrado* fields – each faculty having the right to choose the main specific subjects each year – are, in general, the following: Private law (Civil law, Commercial law), Economic and Business law, Civil procedure, Criminal Sciences (Criminal law, Criminal procedure, Criminology, Penology), Public law and Political Sciences (encompassing Constitutional law, Administrative law and International law), Economics, Comparative law, Community law and European integration.

1.1.2.2. Course Structure

To obtain the diploma of *mestrado* – the first prerequisite being to have obtained the *licenciatura*, with at least, in principle, a final grade of 14 (over 20), which corresponds to the grade *Bom* – candidates must undertake a course of study which lasts four semesters, having a study programme that encompasses different subjects (taught in seminars) and requires the presentation of an original dissertation.

Each university institution sets up the curriculum of the *mestrado* in the framework of a general set of regulations established by law. The preparation of the thesis must be under the direction of a professor belonging to the institution which grants the *mestrado* degree. The thesis committee is composed of, besides the supervisor, two other professors, also specialised in the scientific field of the *mestrado* (one of the professors must belong to a university institution other than that which granted the degree). The final result will be "pass" or "fail" even though the law allows that, for accepted candidates, each faculty may take into consideration the grades *Bom, Bom com distinção* or *Muito Bom*.

1.1.2.3. Impact of Community programmes

Community funding – particularly in the framework of the Jean Monnet Action, in the guise of "European modules" or "permanent courses" – has allowed the teaching of new subjects in the third *cycle* curricula, in the area of European Integration and Community law.

1.1.3. DOCTORAL STUDIES

1.1.3.1. Contents

Differently from post-*licenciatura* studies, the Portuguese tradition (particularly in the area of legal studies) does not offer specialised courses which the candidates can follow in view of obtaining the title of *doutor em direito*. The *doutoramento* degree – which, as a general rule, is only taken by those who wish to pursue a university career in an institution of higher education – certifies, according to the law, "the undertaking of an innovative and original contribution towards the furthering of scientific knowledge, a high level of culture in the area of scholarship and the capacity to complete an independent scientific work ".

Even if, for the *doutor* degree, candidates should, in principle, mention a professor responsible for the supervision of their work, the preparation of the doctoral thesis is, in the tradition of Portuguese law faculties, a sort of everlasting exercise in "monastic solitude" which perpetuates, mostly because the majority of the candidates are teachers who for years have held office in their faculties as "assistants". This explains why the completion of the *doutor em direito* degree, in Portuguese universities, only occurs, in the majority of cases, fifteen or twenty years – if not more – after the completion of the *licenciatura* ! And even if the current tendency seems to be going the way of a reduction of the time of thesis preparation, it is always undeniably much longer than the normal period for the completion of the *doutoramentos* in other branches of university study, notably of those belonging to what has been called "sciences" as opposed to "humanities". This is one of the reasons for the rather reduced number of *doutores em direito* in Portugal – especially if we take into consideration the growth of the student population and the present number of law faculties.

We cannot therefore talk about the "content" of doctoral studies.

The principal areas of the *doutoramento em direito* (the "grouping" of subject matters relating to each specific area of the *doutoramento* should be established by each university) are – for example and to name only the most recent – History of law, Economic sciences (Economics, Public finance), Economic judicial sciences (encompassing Labour law, Fiscal law, Economic public law), Political judiciary sciences (encompassing Constitutional law, Administrative law, International public law), Private law (Civil law, Commercial law), Criminal Sciences (Criminal law, Criminal procedure, criminology), Civil procedure, Private international law, Philosophy of law (Theory and Methodology of law, Philosophy of law, History of legal thought).

1.1.3.2. Course Structure

Each faculty, establishes a regulation for the *doutoramento*.degree within the framework of the general law and statutes of the university. The candidate must :

a) hold a *mestrado* degree (third *cycle*) or, a *licenciatura* degree (second *cycle*) with a minimal final grade of 16 (over 20);

b) the law allows access to the *doutoramento* even if one is not *mestre* or *licenciado,* to all those who have a "scientific background, of university professional nature which testifies to the capacity for obtaining the *doutor* degree", depending on a preliminary assessment of the candidate by the Scientific Board of the Faculty.

Candidates must indicate the professor responsible for the supervision of their work – except in the case of a candidacy presented on the "sole responsibility" of the candidate. Each year, the professor who is responsible will inform the Scientific Board of the Faculty of the progress made towards the completion of the doctoral thesis, by way of a written report. In addition to the thesis, the regulations may require the presentation of supplementary work or an exam on

subject matter chosen by the Scientific Board related to the scientific field of the *doutoramento*. Only the holders of the *mestrado* degree (if it has been awarded by the same institution which is accepting the candidate for *doutoramento*) can be exempted from certain forms of assessment other than the public defense of the doctoral dissertation.

The defense of the thesis (and the supplementary dissertation or other exams, if there are any) is done before a jury of at least three professors, four if there is a professor responsible for the scientific supervision of the candidate, and presided over by the rector of the university.) All the professors must be *doutores em direito;* two, at least, must be professors from other university institutions, national or foreign. The final result will be "pass" or "fail", even if the law allows to distinguish accepted students with grades such as *Bom, Muito Bom, Muito Bom com distinção e louvor.*

1.1.3.3. Impact of European Programmes

Because the faculties of law do not have, properly speaking, doctoral studies, one cannot measure the impact of community programmes at the level of *doutoramento*.

1.2. TRAINING

1.2.1. ADVOCATES

The Bar Association (*Ordem dos Advogados*) is the institution representative of the holders of a *licenciatura em direito* who, in accordance with the law and the statute of the Bar Association, exercise the profession of lawyers. One cannot be a lawyer without being regularly registered in the Bar, this institution being responsible for granting the professional license and regulating the practice of the profession.

In order to be a licensed lawyer, one must participate in an internship which consists of exposure to each judiciary "district". The *doutores em direito* are exempted from any training, as are those who held, for a period of time equivalent to the professional advocate training, the post of judge or magistrate.

The professional training covers a period of 18 months and consists of two distinct phases. The first part, lasting three months, aims to broaden, essentially on a practical level, the knowledge acquired in university institutions and study of the specific subjects relating to the practice of the profession. The subjects treated during work sessions – organised by lawyer-instructors – are professional Code of conduct, Civil procedure and legal fees, Criminal procedure, Labour procedure, Administrative and Fiscal procedure, Law as applied by the *conservadores* and the notaries, Formalisation of legal documents, as well as information on Accountancy, Computers and the organisation of the services of a law office. At the end of this first phase, the candidates take a written exam (set on a national level). Only the candidates who have passed the exam may be admitted to the second phase of the internship.

During the second phase, which lasts 15 months, the candidates are put in direct contact with the daily experience of a law office, with the courts and other institutions or services connected with the administration of law.

During the first phase, the candidate may not, in principle, engage in any professional activity. During the second phase, and under the guidance of a lawyer, the candidates may engage in some limited professional activity (except when acting as court-appointed advocates) such as criminal affairs under the ruling of a single judge, in non-criminal affairs of a first resort and in affairs involving the jurisdiction of minors; he/she may also exercise the function of "legal consultant".

Once the training is completed – and subsequent to the justified opinion of the practising lawyer responsible for the supervision of the candidate during the second phase of the training and to the final appreciation of the competent services of the Bar – the candidate must enrol in the *Ordem dos Advogados* to be able to practice as an advocate.

1.2.2. JUDGES

The professional training of magistrates is directly under the responsibility of the *Centro de Estudos Judiciários,* an institution founded in 1979 and under the authority of the Ministry of Justice. Until that time, the training of magistrates was based on the fact that access to the legal magistrature presumed the previous exercise of the function as prosecutor / district attorney. Presently, the autonomy and independence of each of these two magistratures having been defined (articles 217°, no. 1 et 221°, no. 2 of the Constitution of the Portuguese Republic), a new system of training was instituted, modeled on the French magistrature.

Being responsible for the global supervision of the training of both types of magistrates, the *Centro* intervenes in the phases of the initial training and of the complementary training of candidates, as well as providing continued and recurrent training after the actual nomination of the magistrates.

a) Initial training – Holders of a *licenciatura em direito* are admitted to the initial training after having undergone a selection process of a cultural and technical nature (from which the *doutores* in law, as well as – if other conditions are met concerning the time of service, and the opinion of the respective professional organisations – the advocates, notaries, *conservadores,* and judiciary clerks holding a master's degree in law, are exempted).

aa) The first phase of study – that the candidates to the magistrature take as "auditors of justice" – has a duration of ten months and is common to both magistratures. Auditors establish contact with institutions such as courts, the police corps, prisons, and other similar institutions, etc., parallel to the theory courses taught by judges and prosecutors.

The subject matter of the theory courses relate to areas of specific competence in each of the different jurisdictions: Civil, Criminal, Labour, Juvenile, and Family. At the same time, courses on judiciary law incite reflection on the application of law, the status and social role magistrates and the interdisciplinary perspective of their activity.

Themes of diverse domains, for example, Legal sociology and Psychology, Criminology, Ethics and Codes of conduct, Methodology of the application of law, the Contribution of experts in courts, Motivation of judiciary decisions, Pleading or Execution of sentences are the object of the intervention of experts. Simulations of various legal situations, notably moots, based on real trials or drawn from situations in literary works, constitute another pedagogical method practised in the training of future magistrates.

During this first phase, auditors are submitted to continuous assessment which can result in elimination.

bb) The next phase consists in two periods of training : a initiatory training period of 8 months, followed by a supplementary course synopsis of two months and a "pre-appointment" of 8 months.

The initiatory training period takes place before judiciary courts, under the supervision of a judge or prosecutor, depending on which of the magistratures the auditor is candidate to. The auditors undergo a continuous assessment which can result in elimination.

Once admitted to the final "pre-appointment" period, magistrates in training will initiate the exercise of specific functions within each magistrature on their own responsibility, though they supervised by magistrate-trainers. Once the second phase has been completed, the auditors become entitled magistrates.

b) Complementary training – During the first five years after their appointment, magistrates will participate in compulsory complementary training activities concerning the most recent legislative reforms. The duration of these training activities is one month a year maximum, up to a total of 3 months maximum.

c) Continuing training – Each year the *Centro* organises work sessions, seminars, colloquia, meetings and other activities which aim at assuring access to information and the updating of knowledge. Participation in these activities is optional for magistrates.

It should be added that courses on Community law are a part of the initial training (length of course: 4 months) and of the continuing training (length: one week). The mastery of elementary

techniques of computer science and the knowledge of the profit that one can gain from using them in judicial activity are also important elements in the training of magistrates.

1.2.3. OTHERS

1.2.3.1. *Conservadores* and notaries

As far as "other professions" are concerned, a special mention must be made to the professional training of *notários* (= notaries) and *conservadores* (in charge of departments for registry of civil status, business registry, realty and the registration of motor vehicles).

The specialised training of this group of jurists was recently reformed. In effect, according to the terms of the legislative provisions passed in 1990, the professional training of *conservadores* and notaries consists currently of a specialised course and a training period. The Faculty of law of Coimbra – within the framework of an agreement signed between the Ministry of Justice and the University of Coimbra – is in charge of the organisation of the *Curso dos Registos e do Notariado*. Only those who have completed this course may progress to the training stage and then to the respective professional careers. The selection of candidates, after qualifying for admission, fall within the jurisdiction of the *Direcção-Geral dos Registos e do Notariado,* dependent on the Ministry of Justice and responsible for the direction of all departments of registry (civil, business, realty, etc.) and for the formalisation of extra-judiciary juridical acts (notary profession).

The training has a minimum duration of six months and its main object is the study of juridical matters which relate directly to the activity of *conservadores* and notaries, aiming at the adequate exercise of functions, taking into particular account the notion of "public faith" inherent to their activity and the importance of their social role as "legal counselors" qualified to deal with all those who consult this category of public service to formalize or register juridical acts.

The training programme addresses the following areas: Contracts, Individual rights, Property law, Corporate law, Succession law, Notary law and Notary practice, Law and Practice of civil status officers, Law and practice concerning real estate, Organisation and management of departments, and Data processing.

Once they have successfully completed this study programme, the candidates (*auditores*) must undergo a training period, under the supervision of a *conservador* or of a notary. The total duration of this training period is 10 months: two months in civil status services, four months in the services of the notary profession, four months in the service responsible for real estate.

The final exams take place in the 6 months subsequent to the training period. The law requires four written exams on practical matters relating to the notary profession, civil status registry, real estate or commercial law, and the statutory provisions that regulate the practice of the profession.

Short-term courses, colloquia, conferences or seminars are also mentioned in the text of the agreement signed by the Ministry of Justice and the University of Coimbra as a method of assuring a "continuing training".

1.2.3.2. Other professions

One encounters the same notion of an initial training period as the condition of access to professional practice in the statutes or the legal provisions regulating other professions for which legal knowledge is required, without a *licenciatura* in law being necessary: this is the case, for example, of the *solicitadores* (officers with a mandate for juridical acts on behalf of others, and under certain conditions even able to fulfill the proper functions of a "judiciary mandate") and the "chartered accountants".

1.2.4. CORPORATE LAWYERS

Even if the number of basic multi-disciplinary formations – combining law, economics and management – tends to increase at a level of higher education (in universities, but especially in non-university institutions of higher education), the juridical treatment of a large number of points which relate to business life is still fundamentally the responsibility of jurists. Those jurists may be either those employed as part of the staff of the company (particularly for matters relating to labour law and contract drafting, or the judiciary mandate), or the jurists – in general practising lawyers – possessing a recognized professional experience in the business world, who are either engaged as juridical counselors under the form of services offered, or from whom intervention is just simply solicited for individual cases. It is in this last category that one should maybe reserve the title of "corporate lawyers". In any case, one cannot talk about a specific professional training and, certainly not of any training offered in a systematic way, by institutions of higher education or even by professional associations. One need only add that the organisation of seminars or short-term courses on themes of particular interest to these "corporate lawyers" is currently becoming more and more frequent.

1.2.5. CIVIL SERVICE

There is no specialised education – at the level of the second cycle, or even of the third – directed towards the exercise of a juridical activity within the framework of the civil service.

It is true that the selection of certain subjects in the final year or years of the *licenciatura* may help to provide a more adequate basic grounding for those who will enter the civil service, but one cannot find a specific set of subjects in the university curricula which would give future "civil servants" a basic specialised education.

In any case, professional training in the area of the civil service is a concept whose importance has only just recently been recognised by the administration. Therefore, the degree of *licenciatura* is required for access to the "upper technical" career – a rule which applies to all national or territorial administration services. And the legislative text which regulates this professional career determines a mandatory training period, with specialised courses on subjects related to the functions that will be practiced by future civil servants.

For those who already have a permanent link to the civil service, specialised courses for the updating of knowledge are also provided for by law, either for initial training, or for continuing training (the concept and the fundamental principles of which have just been defined by the Decree of January 1994). The institutions responsible for the actions of professional training are the *Instituto de Administração Pública* (*INA*) for the national administration, and the *Centro de Formação Autárquica* (*CEFA*) for the territorial administration.

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

There is no substantial difference between the so-called "new" needs – in the juridical education of Portugal and that of other countries due to the internationalisation of situations, questions and regulations. The area of international commerce, banking, national and international stock markets; the defining of public and private sectors; the problems raised by international contracts, involving different national juridical rulings and constantly requiring a deeper knowledge of "comparative law", the study of which is no longer motivated, as in the recent past, uniquely by the occasional anticipation of legislative reforms; the juridical problems resulting from economic crises such as business recovery, or the functioning and management of community funds and their methods of application, finally, the "specialisation" in community law which covers a vast series of sectors where the competence of community institutions (whose goal is a certain standardisation) is determined – all this corresponds to a group of questions common to a lot of other countries in the same political and economic area. If there is

a difference, it undoubtedly resides in the fact that, since Portugal has only recently become a part of the union of European States, the gaps in training are probably more apparent, thus requiring a greater effort to update initial and supplementary education.

The great quantity of new areas of ruling, which may correspond to the same number of "special" juridical programmes, is evidently a problem that cannot be ignored. Nevertheless, it seems that it should be of more immediate interest to us, at the level of the organisation of research in law faculties, rather than at the level of the education (general or even supplementary) of a "jurist". By this I mean that when we place ourselves in the perspective of the structuring of the curricula and subjects content, the very meaning of the contemporary evolution of law and of the socio-juridical practices which push it into new directions is more important than the factor of the mere diversity of the new areas of regulation.

Two examples will, I think, help to illustrate that.

In the past few decades, there has been a tendency towards an "administrativisation" of law, both at the level of its production, and at the level of the resolution of conflicts. This phenomenon, which is becoming more pronounced every day, is characterised primarily by the inflation of "regulating" law encompassing everything and increasingly removed from a law defined as a mode of regulation of society founded on the liberty and autonomy of legal subjects. Social life is controlled by an infinity of "technical" texts, collected in numerous little "codes", forming closed micro-systems often containing hundreds of normative provisions, possibly devised or drawn up by expert technicians equipped with their own systems of guarantee and sanction provisions which themselves often refer to vague and imprecise criteria, as for example the "market interests". And even when these legislations and technical rulings refer to provisions taken from the "traditional" body of rules (such as the civil code or the penal code), the relation is of a fragmentary and accessory nature, which jeopardises the internal coherence of the body of juridical system.

A second example of the "denaturation" of classical law can be the tendency to abandon principles and rules of private law, and to resort to formulas and juridical practices foreign to our tradition; this tendency is a more recent phenomenon, but equally in evidence, particularly in the domain of contractual agreements. This is the case with international contracts (a subject to which I will return under § 2.2.2, when dealing with community law as a reference in the education and training of jurists), where the contractual freedom of the parties concerned neglects positive law, and where litigation procedure, besides being habitually remitted to jurisdictions of arbitration, draws on the principles of equity of an imprecise nature, but where one can easily recognize, once again, the weight of the specific interests of economic activity.

These examples show us to what degree the ancient structure of the juridical order, which has constituted to some degree the fixed core of the teaching of law, has been challenged. A "fragmented" law and a juridical practice where the place of the judiciary, at the convenience of situation and opportunity, is less and less central, and where the resolution of conflicts gets further and further away from the principles and the pre-juridical and meta-juridical values which have traditionally been associated with the idea and meaning of law – this then is the reality that law faculties must necessarily take into account today when planning the initial education of a jurist. An education whose duration is perhaps insufficient for a solid university preparation. (If the recommendations of international organizations concerning higher education are to be trusted, the tendency will be to reduce the period of initial education....)

What is then required of the faculties of law is to be able to teach the value of the rules and fundamental principles which guarantee the unity and coherence of the system, and, at the same time, not to silence (either by criticising or by justifying it) a social and juridical practice which often contradicts them.

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

Eight years after Portugal's entry into the European Community, the time necessary for evaluating how and to what degree the idea of a European Union has influenced the training of Portuguese jurists has been insufficient.

Besides the subject of "community law" which integrates at present the university curriculum for initial education – whose object is, primarily, the study of institutional aspects of the European Communities, the fundamental principles of the Community juridical order, and the relations of the latter with the juridical order of member states – it is important to mention the existence of different "European studies" courses (both at the level of the *mestrado* and at the level of simple post-graduate education).

But the true sense of "European education" – possibly even of a European reference in the teaching of law – will depend on community law being integrated into the different subjects of the various areas which compose the basic core of the teaching of law, as a structuring element of a new order of regulation in the juridical relations developing in the area where the authority of different state members is exercised – and in this matter, the results of any teaching reform are barely noticeable.

2.2. PERSPECTIVES

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

A common European area which must needs be grounded on an approximation of national juridical orders, with the consequent foreseeable hypertrophy of its own juridical system, defined by a politically unified order, intervening more and more in the relations between member states and in the relations between the public or private economic institutions of the European Community as well as between all those who live there and practise a professional activity, will hardly not lead to a progressive standardisation of the education and training of jurists. In this respect, the creation of one or several models of a "European jurist" could be justified, if we consider – and this temptation will certainly be felt by professionals in areas more sensitive to the demands of the job market – that the jurist must be exclusively – or first and foremost – a highly competent technician, capable of accomplishing specific functions in the framework of a general production designing and reserving to each their own place.

In any case, it would be a serious error – even taking into account the concept of "quality education" in an "open European space" – to conceive the education of a jurist only in the framework of competitiveness and to direct university studies to the sole goal of responding to the immediate needs resulting from economic mutations. It cannot be denied that, on a large scale, the profile of the "European jurist" will depend on the socio-political sense given to the building of "Tomorrow's Europe". But the object of community actions in the area of education – today revealed through the innovative provisions of the Maastricht Treaty – should not be perceived as pertaining to a logic of "functionality" subordinating the education of jurists to criteria of simple "technical" efficiency.

If it is true that the percentage of holders of a Master's degree in Law, whose professional future is in companies and in the civil service, increases every day – and in this sense the jurist is less and less "a man of law", a magistrate or a jurisconsult of liberal profession – it should be borne in mind that a number of those who play an important social role as "mediators" in the resolution of conflicts remains very high (80% is the present estimate of juridical conflicts in Portugal solved by agency of lawyers without recourse to judicial bodies).

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

The understanding of what we mean by the "building of Europe" as a reference to be taken into account in the evaluation of the education of jurists is also problematic. Even if the Community juridical order is imposed on all State members and serves as a guide to a national ruling for each of them, guaranteeing an articulated and coherent relation between diverse juridical orders which, although based on different cultural and historical foundations, converge in the sense of a "standardisation of the law", it is doubtful whether the models of regulation of juridical relations and the instruments for their application ultimately resort to "community order" as a predominant reference source

What is taking place on the subject of international contracts is a very revealing example. In reality, the elaboration of these contracts seems actually to ignore everything that continental law has long stipulated as the basis of juridical regulation. The Anglo-Saxon contractual technique (reinforced by the use of English in the drawing-up of agreements) has dismissed the classic "bond law" and its continental codifications, in all the known models; contracts are drawn-up by parties practically as if there did not exist any positive law in force and as if all the "law" of each contract was only that which parties "produced" in concluding their agreement. The formulas used are those of English and North American contracts; in order to find any traces of the theoretical reference of the concepts used, it is therefore necessary to look them up in English manuals of contract law. Parallel to this, and due to the clauses habitually used, contentious contract matter is taken away from ordinary jurisdictions and the resolution of litigation is remitted to tribunals or arbitration committees which, frequently – also because of contractual stipulations – must judge according to principles of the equity. Therefore, underlying the development of this new autonomous *lex mercatoria* in the framework of classic private law, there is the progressive influence of a culture and a practice foreign to national juridical tradition, even in contracts in which both parties are exclusively "continental" (and even for contracts drawn-up between citizens of the same State, namely financial contracts!). Moreover, the criteria of "equity" which rules over these decisions has a tendency to "adapt itself" to the specific interests of the economic activity and of the relations which are established therein (possibly even as far as to the interests of the activity connected to the contract): the judgment on what is correct or not, what is just or unjust, can, eventually, have no actual connection with the principles and values traditionally associated with the idea of law.

But – beside the fact that "English Law" and also "European Law" ! – are these "commercialisation" and "privatisation" in the domain of law the true questions in the perspective of the "building of Europe" ? Are they not ultimately the expression of a tendency towards standardisation and an approximation of systems, resulting in the application of a dominant "model" of social and political construction justified by economic interests, and which imposes itself on a much vaster territory than the European Union due to development and competitiveness needs which it is not an exclusive of Europe ?

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

How will the professions and the "juridical knowledge" required develop in the European future – is equally a question which depends on the political meaning given to the construction of "Tomorrow's Europe", taking into account the interests and pressures that will be active in the Community. Naturally, I am not referring to the classic professional situations, the judges or the attorneys, or of existing professional liberal lawyers, and civil service jurists – which will continue to exist. Nevertheless, one might ask this question for sectors or specialisations of activities which result from the intersection of different domains (law, economy, organisation of services, evaluation of estates, resources management, etc.), where the role of the jurist is reduced to providing a "technical" service, competing with other disciplines (such as economists and engineers, in the area of contract banking, for example). In this sense, the concept of "corporate lawyer" or other similar concepts, seems to encompass a diversity of situations for which the criteria of reference will probably be less and less juridical.

2.3. QUESTIONING JURIDICAL "NATIONAL PROVINCIALISM"

2.3.1. WHY ?

If we consider "national provincialism" or "parochialism", as an attitude of reserve or refusal of foreign experience, which denies the necessity of rethinking one's own experience, it would seem that the evolution towards European integration and a growing internationalisation of knowledge will leave but little space for these "nationalist" manifestations. Nevertheless it cannot be denied that, in the area of law education, there still remains a feeling of reticence and resistance about accepting the advantages that other systems can eventually offer, especially where the organization of juridical studies and the training programme of jurists are concerned (the experience of student mobility, in the framework of community programmes of inter-university cooperation, has shown how, for example, in the acceptance of grades, "parochialism" is in fact much more widespread than was thought...). It is obvious that Europe does not provide a homogeneous framework of socio-economic and cultural development and that the national realities, proper to each state are far from being equivalent. Reforms, even when they are truly desired, always have a very high economic cost, and Portuguese universities (for whom one of the drawbacks of their autonomy has been the depletion of their budget...) are not, generally speaking, in a position to create new structures for a reform in teaching.

It should also be added that, if the study and the teaching of law are indeed a necessary reflection of the juridical order which is their object, what one would be tempted to call "parochialism" could be, in essence, a respect of the originality and diversity of each of the national juridical systems the approximation and harmonisation of which – and even less so the unification as a consequence of a full integration – will certainly not be, in many areas, accomplished in the near future

2.3.2. HOW ?

Although the remedy of all parochialism cannot be achieved by a sector alone, if we limit ourselves to the organisation of juridical studies and the training of jurists, it seems that we do have the necessary conditions to reduce the distances that separate us and to eliminate the differences nourished by reciprocal distrust. One of the conditions necessary for establishing, in the future, a coordination of university teaching in Europe – grounded on a perfect knowledge of the functioning of different systems and the principles that guide them – will depend on the study of one or more types of curriculum structures (introductory subjects; compulsory core subjects; identification of specializations, optional subjects) and of the forms of assessment, which may work as a point of departure for a progressive approximation of teaching institutions and for a definition of methodologies to be followed in the education of jurists in the faculties of law, safeguarding the scientific autonomy which is one of the foundations of university institutions. In this area, the existing networks and the creation of new ones involving different universities cooperating in Community programmes for students' and teachers' exchange and mobility, could be one of the basic structures in this debate aiming at a definition of university teaching politics.

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

3.1. MEASURES TO BE IMPLEMENTED IN UNIVERSITIES

If it is obvious that it is not the sole responsibility of the universities (and, in this case, of the law faculties) to define overall teaching policies and even less so the professional "profiles" towards which one would be tempted to direct the education of the jurists, it is important to recognise that the teaching of law can never cease to be the reflection of a "synchronicity" with social reality, which does not mean that the university should sacrifice a part of its scientific autonomy or be forced to a certain type of technical return. The university's mission is not to

train simple technicians integrating the production chain, and besides, it should not abandon a critical vision of the interests that hope to influence, at a given time, a sense of social reality. But it cannot – precisely when dealing with law and its teaching – turn its back on this reality and ignore that there exists a demand for new knowledge and that there are professionals who are insufficiently prepared to apply it.

It must be recognised that, even in the framework of insufficient university structures (a type of difficulty that other countries may not have to complain about), one could optimise existing resources. It is true that law faculties cannot be held responsible for all the conditions that control the education of "modern" jurists. Strictly speaking, it must be admitted that it is not the responsibility of legal studies to propose the teaching of foreign languages or computer science, in the same way that law faculties cannot be held responsible for the cultural level (which is getting lower and lower) of the students entering higher education. Nevertheless, it is not enough to make a better use of the existing resources in the universities to allow law faculties to fulfill their function as real educational institutions of research and, especially, of teaching. The minimal structural conditions (updating of library resources, access to information sources, use of data banks, computerisation of services, etc.) are actually lacking and, in this respect, Community support could help to eliminate the essential asymmetries concerning the functioning of teaching institutions which impede all serious attempts of approximation to and dialogue with their foreign counterparts.

If we had to sum up in a few words what one should expect from law faculties and define their role in the education of the jurists, one could say that not only should they guarantee the initial training and complementary university education, at all levels, but they should also be able to collaborate on all professional training presupposing legal knowledge, not only in the sense of a "professional school", which law faculties should never be, but as a guarantee of the teaching of law, i.e. of all that is related to the idea and meaning of law, and that cannot be reduced to some sort of mechanism for the regulation of conflicts.

But in order to guarantee this cooperation of the university with the professional world and to assure a better articulation between initial and complementary education on the one hand, and professional specialisation on the other – in agreement with the evolution determined by the new Treaty on the European Political Union – it is absolutely necessary to multiply, close to the faculties of law, departments of specialised studies permitting ongoing independent research, but whose results may respond to the training needs in the areas of legal regulation.

3.2. MEASURES TO BE TAKEN IN TRAINING ORGANISATIONS

If law faculties can go further than they have done so far in the area of teaching, they should never try to replace professional organisations in the training of their members, even when the activity in question is very close to the institution responsible for initial education, as is the case, for example, with the magistrature. It should be the responsibility of professional organisations to guarantee the specialised training of future professionals – because there is a sense of the "specificity" of knowledge and professional practice which is impossible to learn outside the profession itself (there is good reason here to mention the importance of the rules and duties of deontological conduct).

In this context, and bearing in mind the specificity of each professional activity, the type of the training of the magistrates could well become a reference for other specialised trainings. In effect, the act which created the *Centro de Estudos Judiciários* and defined the basic outline for the preparation of magistrates emphasized the necessity of developing "methods of selection and training targeted to a genuine judiciary training, i.e. familiarising candidates with courts, by showing them that technique is not everything in an office which is not performed in a void but, on the contrary, in a field of human intervention, making them aware of the necessity of a permanent critical reflection, and of the need to be attentive and open to the evolution of man and society" (preamble to Decree no. 374-A/79, September 10).

Finally, it is important to think of the training of jurists – whatever their professions – as a cultural project, combining the expertise proper to each professional with the necessary critical vision that all must have of the object of their work.

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.

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

- certains éléments de la terminologie employée dans les traductions peut paraître artificial. 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 strucutres conform to this reference structure as closely as possible.