

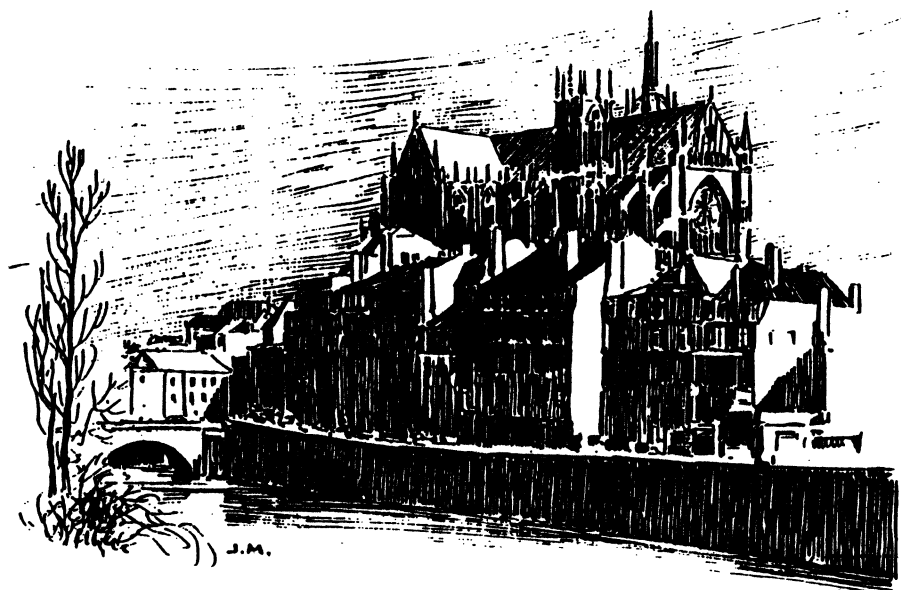
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# **LEGAL EDUCATION AND TRAINING IN TOMORROW'S EUROPE**



**SPAIN**



**UNIVERSITE DE METZ**

# LEGAL EDUCATION AND TRAINING

## IN TOMORROW'S EUROPE

***Spain***

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# 1. THE EDUCATION AND TRAINING OF JURISTS

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## 1.1. HIGHER EDUCATION

### 1.1.1. GENERAL EDUCATION<sup>1</sup>

#### 1.1.1.1. Contents

Having the title of Bachelor in Law – the study programme of which will be outlined in the following pages – is considered as a *sine qua non* condition to ply any legal trade in Spain (cf. 1.2.3.1.). The programme remained unchanged for nearly a century with the exception of minor amendments; it is only recently that it has been thoroughly revised and the former programme – in its 1953 version – is gradually disappearing from the scene.

The disciplines composing the programme of legal studies can be classified as follows :

- a) subjects considered as compulsory in all universities (*materias troncales*);
- b) subjects considered compulsory only in specific universities;
- c) subjects offered by some universities as optional;
- d) free choice subjects.

The title of Bachelor in Law is granted only to those who passed in all subjects a), b), c) et d) in proportions established legally as will be explained later.

The major novelties introduced into the system in place are :

- a) an introduction to "Institutions of Community Law" as a compulsory subject in all universities;
- b) the introduction of optional and elective beside compulsory subjects; and
- c) the introduction of a credit system (1 credit = 10 hours), with the necessity of obtaining a minimum of 300 credits to gain the title of Bachelor of Law (the number of credits to be obtained to receive the title is set by each University; it ranges between 350 and 400).

Subjects that have to be taught in all universities (*materias troncales*) are set by law and have a total value of 176 credits, i.e. 58.66 % of the minimum total of 300 credits to be obtained by students. We will now examine them in detail and provide information about their content and credit value. It should be noticed that no legal definition was provided for "practicums".

Administrative Law : Administrative judicial order. Basic structure and organisation of Public Administration. The Position of citizens and judicial tutelage. Examination of instruments, property and activities of Public Administration, with special consideration for the various branches of administrative activities (12 + 2 = 14)<sup>2</sup>

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<sup>1</sup> *Reales Decretos* 1497/1987, of November 27. 'General principles common to study programmes for the obtention of official degrees in Universities', and 1424/90 of October 26, 'Principles concerning the study programmes tending towards the obtention of title of bachelor in Law'

<sup>2</sup> in brackets : credits corresponding to theoretical and practical courses, and totals

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Civil Law: Private Law: Individual rights. Patrimonial Law. Property Law and rights. Real Estate Law and Land register Law. Contract Law. Tort Law. Family Law and Succession Law (18 + 3 = 21).

Constitutional Law : The Constitution and the legal system Constitutional organisation of the State. Rights and liberties. The Constitutional Court (6 + 1 = 7).

Public international Law. The International Community and the legal status of citizens. Creation and application of international regulations. Scope of competence. International liability, Peaceful settlement of differences and international conflicts (12 + 2 = 14).

Penal Law. Penal legal system : theory of offences and sanctions. Criminal liability. Examination of the various forms of crime/offences (5 + 1 = 6).

Roman Law. Law in Rome and its reception in Europe.

Political economics and Public Finance : The functioning of the market. Economic policy-making. Economic theory of Assets and Expenditures in Public Accountancy. Corporate economics and accountancy. Economic analysis of law (5 + 1 = 6).

History of Spanish Law . Basic structure and development of Law in Spain (5 + 1 = 6).

Community Law. EC legal system. Structure, Bodies and Powers of the Community. Relationships with the legal systems in existence in the Member States. Jurisdictional control of rights (5 + 1 = 6).

Procedural Law. Jurisdictional function. Judicial organisation. Procedure and its guiding principles. Civil procedure. Private arbitration. Penal procedure. Special forms of procedure (11 + 3 = 14).

Theory of Law. Law: organisation and normative system. The Science of Law. Theory of Law. The rule of Law and the legal system. Interpretation and application of Law. Basic concepts in Law. The issue of equity and the efficiency of Law (3 + 1 = 4).

The Law of Public Finance and Taxation Law. Public Finance. Budget Law. Law of public expenditure (12 + 2 = 14).

Private International Law. Ways to establish regulations and rulings. Jurisdiction and law applicable to private international relationships. Extra territorial applicability of foreign acts and rulings (6 + 1 = 7).

Commercial Law. Status of the Corporate Merchants. Individual Merchants. Corporate Law. Equities. Securities. Commercial Contracts. The Law of Competition. Industrial Property. Bankruptcy Law (12 + 2 = 14).

Labour law and Social Security. Industrial Relations. Labour contracts. Collective bargaining. Trade Union Law. Industrial disputes. Labour Jurisdiction. The Law of Social Security (3 + 1 = 4).

Philosophy of Law. The rationale of Law. Legal ontology and axiology. Basic issues related to the philosophy of Law (3 + 1 = 4).

Practicum.. Introduction to an integrated practice of law (14). The syllabus of this part of the programme has been defined in rather vague terms and Universities are still in the process of defining the content with greater precision, on the basis of two principles

a) interdisciplinarity; and

b) pragmatic dimension, though different from the spirit applying to 'practical work' classes

Moreover, the universities should offer courses in other disciplines to reach the total value of 300 credits as a minimum. The subjects that each university has to offer on top of mandatory subjects may in turn be declared compulsory or optional by the university itself. This also applies to all subjects freely elected by students among the programmes offered by the same university or another one, for a minimum of 10 % of the total time scheduled in the study programme offered by the university.

### **1.1.1.2. Course Structure**

#### **1.1.1.2.1. Structure**

The studies permitting to obtain the law degree are subdivided in two cycles. The first cycle is designed to provide basic education and general training, whereas the second cycle is conceived as a specialization and reinforcement of knowledge in the various areas of law, and as a preparation for some professional activity. It should be borne in mind that the first cycle of studies does not lead in itself to any academic degree or professional qualification in Spain.

The compulsory subjects taught in all universities as first cycle level are :

- Administrative law (The Administrative legal system. Structure and basic mode of operation of public administrative institutions. The position of citizens submitted to administration and judiciary tutelage)
- Civil law (Private law : Individual rights. Patrimonial Law. Property Law and rights. Real estate Law and land register Law. Contract.Law. Tort Law)
- Constitutional Law
- Public international law
- Criminal law
- Roman law
- Political Economy and Public Finance
- History of Spanish law
- Institutional Community law
- Procedural Law (4 credits corresponding to the following subjects : Jurisdictional Law. Judicial organisation. Procedure and its guiding principles; the remaining credits up to 14 should be obtained during cycle 2).
- Theory of law

The compulsory subjects taught in all universities for the second cycle programme are :

- Administrative law : (Examination of instruments. Property and activities of public administration, with special consideration for the various areas of administrative activity)
- Civil law (Family law and Succession law)
- Procedural Law (the 10 remaining credits correspond to the following subjects : Civil procedure. Civil arbitration. Criminal procedure. Special procedures.).
- Law of public finance and Taxation law
- Private international law

- Business law
- Labour Law and Social Security
- Philosophy of law
- *Practicum*

#### 1.1.1.2.2. Duration

The total duration of studies can be established as 4 or 5 years by the universities concerned. The first cycle must be at least 2 years long, whereas the second one should have a maximum duration of 2 years.

Out of a minimum total of 300 credits and a maximum of 450, each cycle should comprise of at least 120 credits. Each university can set the total number of credits within these limits, and also the number of credits necessary to begin the second cycle.

Each university year should offer between 60 and 90 credits (equivalent to 600 and 900 hours) distributed respectively among 20 and 30 hours per week, 15 hours of which may be devoted to theoretical teaching.

Finally, each university may set the number of times that a student can retake a course.

#### 1.1.1.2.3. Mode of evaluation

##### 1.1.1.2.3.1. Assessment of study programmes

The university study programmes receive approval from the university proper after previous approval from the *Consejo de las Universidades*. The latter approval can be obtained by tacit agreement (no word from the relevant department for 6 months). The *Ministerio de Educación y Ciencia* (= 'Ministry of Education and Science'), or its equivalent in the case of the Autonomous Communities, having power over universities, is solely responsible for new study programmes in the university in question, or when there is a financial issue. All universities have to have the programme published in the Official Journal, after which the programme can be implemented.

##### 1.1.1.2.3.2. Assessment of students

The assessment of students falls entirely within the scope of universities. Article 27-1 of the *Ley Orgánica* 11/1983 dated Aug. 25 on the *reforma universitaria* (= 'university reform') stipulated: "Studying is a right and a duty for university students. Universities are responsible for the assessment of their knowledge, the development of their intellectual abilities and their success".

Consequently, there is no compulsory final exam, neither cumulative, nor covering individual subjects.

#### 1.1.1.3. Impact of European Programmes

The experience that we have of EC programmes (specifically the Erasmus programme) is very positive. However, it is restricted to such students who took part in the programme

in its original form, which is currently being phased out. Considering that students can go and study in a foreign university only in the second cycle, the students joining the new programme will not be eligible until next year.

Consequently, universities and ICP (Interuniversity Cooperation Programmes) coordinators are left in expectation as for the next developments. As home universities have to accept and recognize credits earned abroad, the existence of free choice subjects will make it possible to implement a system of full recognition; at the same time, it is possible to initiate a greater cooperation on the basis of specific agreements or permissions granted by coordinators, in relation to the programme selected in the host university. It would be premature at present to envisage a dual validity diploma. It is nevertheless possible in certain cases, when closer cooperation already exists. The evolution towards the Socrates Programme will probably improve things for specific subjects. However, if we want to avoid that such programmes be accessible only to well-off students, public financing, most notably from EC sources, will have to be augmented.

### 1.1.2. POST-GRADUATE STUDIES<sup>3</sup>

After obtaining the law degree, two kind of legal provisions apply : those relating to postgraduate or doctoral studies, and those relating to other courses leading to the obtention of different degrees and diplomas. Doctoral studies are regulated by the government; they will be examined in greater detail under § 1.1.3. As for university studies other than those relating to the doctorate, they do not lead to the obtention of official titles and access is not limited to graduate students.

#### 1.1.2.1. Contents

The contents of *post-graduate* studies other than doctoral studies have been the object of Article 28-3 in the *Ley Orgánica* 11/1983, leaving to universities the liberty to organise them as they see fit. However, the *Real Decreto* 185/1985 of Jan. 23, concerning the title of Doctor and the other forms of *post-graduate* studies, makes a distinction between non-official post-degree titles and official titles for professional specialization.

The non-official post-degree programmes must be oriented either toward the areas of knowledge proper to the original curriculum, or toward multidisciplinary areas. In all cases, the law requires that such programmes aim at professional training.

The official titles of professional specialization are open to the various university diplomas and reserve the right to an official title of specialist. Such titles must be established by a Royal decree (*Real Decreto*) which must itself stipulate the conditions for access to studies, the relationship with the rest of the educational system and their impact.

#### 1.1.2.2. Course Structure

From the legal point of view, no other clarification is needed. In practice, in the past few years, post-degree courses in Spain lead increasingly to a title designated *master*, without any control, be it legislative or administrative. Universities, be they public or private, are in competition with other private institutions offering such courses and programmes

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<sup>3</sup> Arts. 31 and following and 28.3 *Lei Organica* 11/1983, August 26 of University reform, and *Real Decreto* 185/1985, January 23, modified repeatedly.

without any intervention on the part of the universities or public authorities. In universities proper, post-degree courses, be they called *master* or not, are often the same doctoral courses offered to those who do not intend to write a thesis.

Consequently, from the viewpoint of universities, *post-graduate* studies, whether they lead or not to the title of *master*, are either studies organised on an *ad hoc* basis, or the courses that are part of doctoral programmes, as explained below.

### 1.1.3. DOCTORAL STUDIES

Amongst *post-graduate* studies, only doctoral studies, constitute the third cycle of University studies. We will mention below the courses and seminars relating to the third cycle or to the doctorate, and not the original research that corresponds to the doctoral thesis to be drafted under the conditions mentioned below under § 1.1.3.2.3.2.

#### 1.1.3.1. Contents

The law does not provide for the contents of doctoral studies, except for their purpose, i.e. that students should specialize and acquire training in research techniques in a certain area of knowledge. Lectures and seminars are organised into doctoral programmes, following legal provisions, and are classified in three categories :

- a) lectures and seminars relating to methodology and training in research techniques;
- b) lectures and seminars on the basic contents of scientific fields to which the doctoral programme is devoted; and
- c) lectures or seminars dealing with related areas and bearing an interest for the projected doctoral thesis.

Doctoral programmes can also include the presentation of one or more research papers.

#### 1.1.3.2. Course Structure

##### 1.1.3.2.1. Structure.

Doctoral lectures and seminars are scheduled together into doctoral programmes under the responsibility of university departments and institutions that propose and coordinate them.

The various lectures and seminars in the programme are subdivided into mandatory and optional courses. The course can be taught by the organising department, another department in the same university, or by departments or organisations of another university or non-university institution (e.g. the *Consejo Superior de Investigaciones Cientificas* = 'High Council for Scientific Research').

The total number of credits to be obtained by students enrolled in the doctoral is a minimum of 32, of which 12 must correspond precisely to lectures or seminars on the basic contents of the scientific fields to which the programme is devoted. Among these 32 credits, a maximum of 5 can be obtained by taking lectures or seminars outside the programme with the prior permission of the thesis advisor. The research paper(s) that are part of the doctoral programme can contribute a maximum of 9 credits.



### 1.1.3.2.2. Duration

Doctoral programmes have a minimum duration of 2 years. But if the student has not succeeded in obtaining the 32 credits in the allotted time, there are means of prolonging the time period available.

### 1.1.3.2.3. Modes of assessment

#### 1.1.3.2.3.1. Assessment of doctoral programmes

Each university approves and publishes the doctoral programmes proposed by the departments and institutions for the following year, via the doctoral committee(s). These programmes, with information about the lectures and seminars, the credits allocated to each course, the department in charge, the maximum number of students to be enrolled and the academic calendar, are also submitted to the *Consejo de las Universidades* which distributes them to the other universities on an informational basis.

Doctoral lectures and seminars provide credits (in all cases : 1 credit = 10 hours) granted by the doctoral committee or one of the doctoral committees in the university to which the department in charge of the doctoral programme belongs.

#### 1.1.3.2.3.2. Assessment of students

Access to doctoral courses is subject to a control (for instance, we have to take into account the doctoral titles that can be obtained in the university where the doctoral programme is taken, normally in relation to the degree that can be awarded by the said university). The higher title is always necessary and the student should theoretically have access to the programmes offered by any university that are related to his/her curriculum; otherwise, it is up to the university doctoral commission to decide. In standard cases, the department in charge is responsible for admissions, here again following the evaluation criteria established by the university in question.

Then a tutor is appointed to provide guidance to the students. The tutor must hold a doctorate and be a member of the department in charge of the doctoral programme.

As following the lectures and seminars for the doctoral programme is necessary to submit a doctoral thesis, students who wish to prepare one and attain the title of doctor must in addition :

- a) obtain a Certificate of Competence issued by the department in charge of the doctoral programme to conduct research activities, and
- b) submit a thesis outline approved by the thesis director.

The student is allowed two years to submit the thesis (this time may be prolonged), which will be evaluated by a 5-member jury.

The title of doctor is required only to be a candidate for a position as university professor in the category *Professor(a) titular de Universidad* and *Catedrático(a) de Universidad*.

### 1.1.3.3. Impact of European Programmes

Full freedom concerning the organisation of programmes – even for the organisation of joint programmes – offers greater flexibility for the mobility of students (especially with the Erasmus Programme) and the recognition of studies conducted abroad.

Notwithstanding joint programmes in progress which allow for exchange of teaching staff and students, experience remains insufficient, and several problems, notably of economic nature, prevent the expansion of networks.

## 1.2. TRAINING

### 1.2.1. ADVOCATES<sup>4</sup>

#### 1.2.1.1. Initial training

The only conditions imposed for access to the profession of advocate in relation to his/her training are having an LLB degree and membership to a Bar. But there are no pre-existing conditions for access to a Bar, except, in practice, taking a course in Professional ethics offered by the Bar.

Consequently, there are no training periods to be completed in State institution, nor compulsory practical work to be made in a legal office (*pasantía*). In practice, graduates wishing to join the Bar have training periods in law firms and/or take professionally oriented courses in judicial practice schools sponsored by the Bars themselves.

This situation has been an issue for a long time and there are legislative plans to amend it. During the Fifth Congress of Spanish Advocates (Palma de Majorca, 1989, the last one that was held), it was decided, for the time being without any consequence on substantive law, that :

- 1) the law graduates should receive practical and technical training before exercising the profession of advocate;
- 2) the training could be completed, either by having a training period spent under the guidance of an experienced advocate and under the control of a judicial practice school, or through such a judicial practice school; in all cases with final assessment of acquired skills;
- 3) the graduate could be exempted from conditions under 2) by passing an exam; and
- 4) the conditions under 2) also apply to obtain the specialization in the various legal areas.

#### 1.2.1.2. Continued Training

There is no obligation to have continued training. In practice, bars offer many types of symposium, lectures, seminars, meetings, congresses, etc. on subjects of common interest in relation to the latest developments in legislation, practical problems, or simply to go into the detail of specific issues. None of the proceeding carries any official value. Some professionals have expressed the opinion that continued training should be made mandatory for advocates (Bernardo M. CREMADES, *La formacion continua de abogado*, *La Ley*, October 12, 1993)..

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<sup>4</sup> Arts.436 and 437 *Ley Organica* 6/1985, July 1, *Ley Organica del poder judicial* and *Real Decreto* 2090/1982, July 24 (cf *Real Decreto* 1665/1991, October 25, implementing Directive 89/48/EEC)

## 1.2.2. JUDGES

### 1.2.2.1. Initial Training

The description of the way to have access to the profession of magistrate (*Carrera judicial*) should be based on a distinction between the three categories of magistrates, considering that a law degree is necessary in all cases :

- a) *juez* ('judge');
- b) *magistrado* ('magistrate'); and
- c) *magistrado del Tribunal Supremo* ('Magistrate of the Supreme Court).

All judiciaries are covered by these three categories, including civil registrars in the Spanish territory. The *Jueces de Paz* (= 'justices of the peace') are appointed by the *Consejo del Poder Judicial* (= 'Council of the Judicial Power') upon proposal by the Municipal authorities; however, from the point of view of professional classification, they are neither judges nor magistrates, since a law degree is not required to become a *juez de paz*. Their function is restricted to petty civil and criminal cases in smaller municipalities wherever they exist.

a) To achieve the office of judge, you have to take a competitive exam that provide access to the *Centro de Estudios Judiciales*<sup>5</sup> (= 'Centre for Judicial Studies'); to take the courses and to take the exam organised by the *Centro de Estudios Judiciales*. One third of available places is however reserved for jurists who have been practising for at least 6 years; they are selected by means of a competition based on merit. Access to the *Centro de Estudios Judiciales* is then direct. The entrance exam is composed of three tests (two theoretical and one practical), failure in any of them leading to exclusion. The theoretical tests are designed on the basis of a programme including General Theory of law; Constitutional law; Civil law; Commercial law; Procedural law; Criminal law and Administrative law. The first test is a 6-hour essay without any supporting document, concerning 5 subjects belonging one to Administrative law, one to Commercial law, one to Labour law, and the last two to Procedural law. The second test has the form of an oral presentation lasting 75 minutes and dealing with 5 subjects drawn at random from among the subject groups relating to General theory of law, Civil law, Criminal law, and Constitutional law. The last test consists of the elaboration – in a maximum of 2 hours – of 2 opinions on cases in civil, commercial and criminal law, always in reference to Constitutional law and Procedural law. The competition for the places reserved to other jurists (one third of all places available) takes into account, among other elements, specialized courses taken by candidates. After passing the exam or being selected in the competition, it is necessary to take the course offered by the Centre and complete training periods in some jurisdictional body. It is only at this moment that the *Consejo del Poder Judicial* can award the title of judge.

b) The ways to have access to the status of magistrate are varied, and every four appointments are made in the following way : two by seniority among the judges, a third one by an exam among the judges (specialized according to the jurisdictional order); the last one by a competition among jurists with at least ten years of professional experience.

c) Finally, access to the status of Magistrate of the Supreme Court is also varied and appointment for every five places is made in the following way, in all cases upon proposal by the *Consejo del Poder Judicial*: : 2 among the magistrates recruited by exam, having 5 years of seniority and 15 years of experience in the *carrera judicial*; 2 among the

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<sup>5</sup> Art. 434 Ley Orgánica 6/1985, July 1 of the Poder Judicial.

other magistrates having 10 years of seniority and 20 years of experience in the *carrera judicial*; the last one among the remaining jurists with 20 years of professional experience, especially in the area of the *Sala* (= 'Chambre') of the Court where they will serve.

#### 1.2.2.2. Continued Training

The continued training of judges and magistrates is very actively organised by the *Consejo del Poder Judicial*<sup>6</sup>, on a decentralized basis, according to State, provincial and local training schemes, and according to the following principles : continued training is a right/duty of all members of the *carrera judicial*, the beneficiaries being all the members of the *carrera judicial*, and not only the junior ones. The training is adapted to the special requirements of members, on a voluntary basis. It is not only individual and is conducted with the assistance of professionals and specialists from other areas. The special needs of the members of the *carrera judicial* call for practical courses, and not only for updates concerning new developments in the judiciary.

The *Consejo del Poder Judicial* is convinced of the pedagogical advantages of collective training programmes. Consequently, with due consideration for the voluntary nature of continued training, the publishing and circulating of lectures and seminars of training programmes makes collective training more easily accessible to those who have not had the chance of attending them, for instance because they have not been selected.

The Static Training Scheme is a yearly programme including a few dozen three-day courses, seminars on the latest legislative developments, meetings to discuss papers, and a seminar on a subject of general interest about the current situation of the judiciary. The *Consejo* also organises activities with other institutions, with the *Comunidades autónomas* and even with certain foreign centres for the training of judges and magistrates.

#### 1.2.3. OTHER PROFESSIONS

##### 1.2.3.1. Professions for which a law degree is not required : *Corredores de comercio colegiados, gestores administrativos, graduados sociales, agentes de la propiedad inmobiliaria*

There is a certain number of professions closely related to law but which are not reserved to law graduates, not even to graduates in general. This concerns mostly :

The *corredores de comercio colegiados*<sup>7</sup> are public officers, independent like the notaries; they act in full independence (cf. *infra* 1.2.3.2.1.2.) and draft documents related to commercial law, notably security and banking law, excluding however whatever is connected to real estate, or, in general, all questions relating to documents calling for consultation of public records (civil, property, trade) In other words, again in comparison with the notaries, their task is centred around such operations that can be best standardized through legal practice, from the viewpoint of documentation; these tasks often require good mastery of certain mathematical knowledge. The *corredores* must have an academic title (usually a degree in law, economics or mathematics) and take a competitive exam for a limited number of posts. A deposit is required.

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<sup>6</sup> Art. 434 Ley Orgánica 6/1985, July 1, of the Poder Judicial.

<sup>7</sup> Reglamento de corredores de comercio (*Decreto* of February 14, 1947, last modified by the *Real Decreto* 2900/1981, November 13).

The *gestores administrativos*<sup>8</sup> are professionals who represent and act on behalf of the public before the Administration in all cases where an advocate is not required. As opposed to the *procuradores de los tribunales* (cf. *infra* 1.2.3.2.1.1.), resorting to a *gestor administrativo* is not compulsory. This profession has therefore emerged out of the increasing number of problems in relation to administrative law, including tax law. They must have an academic title (degree in law, economics, corporate management, or political science) and take an exam to obtain a professional title. A deposit is required.

The *graduados sociales*<sup>9</sup> are technicians in areas in relation to labour law and social security; they can give counsel and bring a case to court, just like advocates, courts and institutions specialized or competent in such matters. The professional title is the end result of an university degree obtained after 3 years, with a final exam or paper (by choice).

The *agentes de la propiedad inmobiliaria*<sup>10</sup> are intermediaries and brokers in the matter of sale, rental and loan contracts with a security on real estate. Their involvement is not compulsory. An academic title is not required but an exam is compulsory to obtain the professional title. A deposit is also required.

### 1.2.3.2. Professions requiring a law degree : *procuradores*, notaries, registrars, *fiscales*, *secretarios judiciales* ('Public Prosecutors')

#### 1.2.3.2.1. Initial training

##### 1.2.3.2.1.1. *Procuradores*<sup>11</sup>

The *Procuradores de los tribunales* are the representatives who must absolutely be involved in most civil and criminal cases but they have not public function.

The law degree and a deposit are the only conditions imposed to have access to the profession of *Procurador*.

##### 1.2.3.2.1.2. Notaries<sup>12</sup>

Access to the office of notary of the Latin type prevailing in Spain requires a law degree and passing a competitive exam, in order to be awarded a *Notaria*.

The exam is composed of three tests; failure in any of them leads to exclusion. The first test is an oral exam consisting in an hour-and-a-half presentation after a 10-minute preparation period, on ten topics belonging to substantive law, mostly private law, drawn at random (three on civil law – introduction, generalities, obligations, property, family

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<sup>8</sup> *Decreto* 424/1963, March 1, modified by the *Real Decreto* 606/1977, March 24, and by *Real Decreto* 1324/1979, April 4, (see *Real Decreto* 1665/1991, October 25, implementing Directive 89/48/EEC).

<sup>9</sup> Art. 1 *Orden* August 28, 1968, *Reales Decretos* 921/1980, May 3, 3549/1977, December 16, and 1524/1986, June 13. (see *Real Decreto* 1665/1991, October 25, implementing Directive 89/48/EEC).

<sup>10</sup> *Decreto* 3248/1969, December 4, modified repeatedly (see notably *Real Decreto* 1665/1991, October 25, implementing Directive 89/48/EEC).

<sup>11</sup> Art. 438 and following of the *Ley Orgánica* 6/1985, July 1, *Orgánica del Poder Judicial* and *Real Decreto* 2046/1982, June 30, *Estatuto general de los Procuradores de los Tribunales*. (see *Real Decreto* 1665/1991, October 25, implementing Directive 89/48/EEC).

<sup>12</sup> *Reglamento del notariado* (*Decreto* June 2, 1944, modified last by the *Real Decreto* 1728/1991 November 29).

law and successions law, and principles of private international law – two on commercial law; two on the law of the land register; one on notary law; one on tax law; the last can deal with either administrative law or procedural law). The second and third tests are written and then read by the candidate and each is 6 hours long. The second one consists of a presentation on a subject relating to civil law, commercial law, land register, notary law; the third one consists of the drafting of a deed, the liquidation of tax and a commentary on the judicial problems posed by the document.

The notaries are also asked to make a deposit as a guarantee of their professional responsibilities.

#### 1.2.3.2.1.3. Registrars<sup>13</sup>

Access to the status of registrar is possible for all members of the group of qualified candidates, meaning those who have passed a competitive exam and are to be entrusted with a registry. Holding a law degree is required to take the exam.

The exam is composed of four tests; failure in any of them leads to exclusion. The first test is an oral and consists of speaking for one hour after a 5-minute preparation period, on 5 subjects relating to substantive law drawn at random (three on civil law, one on commercial law; the last one can deal with either administrative law or procedural law). The second test is also oral and consists again of speaking for one hour after a 5-minute preparation period on 5 subjects relating to substantive law drawn at random (three on land registry law, one on tax law; the last one on notary law). The third and fourth tests are written and then read by the candidate, each of them being 6 hours long. The third one consists of drafting the qualification of a deed and the report for the motivation of the qualification. The last test consists of closing/settling tax accounts and making the corresponding entries.

The officers are required to make a deposit as a guarantee of their professional responsibilities.

#### 1.2.3.2.1.4. *Fiscales* ('Public Prosecutors')<sup>14</sup>

The office of *fiscales*, – who are members of the *Carrera Fiscal* – consists of upholding the law and ensuring justice by defending the rights of citizens, public interest, and assuring the independence of the courts. The conditions to have access to this office are the same as those described above concerning judges and magistrates (cf. *supra* 1.2.2.1.). The status of *Fiscales de Sala del Tribunal Supremo* is equivalent to that of the Magistrates of the Supreme Court, that of *Fiscales* to the magistrates, and that of *Abogados-fiscales* to the judges.

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<sup>13</sup> Title XI *Reglamento hipotecario* (Decreto of February 14, 1947, modified last by the *Real Decreto* 1728/1991, November 29) and art. 13 of the *Reglamento del Registro mercantil* (*Real Decreto* 1579/1989, December 29)

<sup>14</sup> Art. 435 *Ley Orgánica* 6/1985 July 1 of the *Poder Judicial* and art. 42 and following *Ley* 50/1981, December 30 of the *Estatuto orgánico del Ministerio Fiscal*.

#### 1.2.3.2.1.5. *Secretarios judiciales*

The *Secretarios judiciales* divided into three categories according to the court to which they will be appointed, are judicial civil servants who work as assistants to the judges and magistrates. They are also responsible for the management of the personnel working as court clerks and are responsible for the documents, property, deposits and guarantees. Access to the profession – still for the third category – is only open to those who have a law degree; candidates must also take an exam and take a course at the *Centro de Estudios Judiciales*.

#### 1.2.3.2.2. Continued training<sup>15</sup>

Continued training is not compulsory. In practice, most professional associations also organize conferences, lectures, seminars, meetings, congresses, etc. on subjects of general interest in relation to innovations in legislation, practical issues, or simply to go into greater detail about a specific subject. Such activities do not have official value, except in the case of merit-based appointment (e.g. for the positions as judges and magistrates reserved for other jurists). In the case of *fiscales*, continued training has just been legally revised<sup>16</sup> in a manner very similar to the one already examined as regards judges and magistrates (cf. *supra* 1.2.2.2.)

### 1.2.4. CORPORATE LAWYERS

Corporate lawyers do not correspond to a specific professional category. They are law graduates who are advocates and belong to a Bar. It should be underscored that the profession of advocate, which requires membership in a Bar, is the only one authorized, not only to bring cases to court, but also to give legal counseling.

### 1.2.5. CIVIL SERVICE

The A group of civil service is the highest category, i.e. that which is open to graduates in general, therefore to law graduates, though not exclusively. It is the case, for instance, with members of the foreign service, who also belong to notaries and registrars outside of the Spanish territory.

Only certain special bodies of the State Administration or other institutions are reserved to law graduates not belonging to a Bar. This applies to the body of the *Letrados del Tribunal Constitucional* (= 'advocates to the Constitutional Court'<sup>17</sup>), *Letrados de las Cortes* ('advocates of the Parliament'), even though each Regional Parliament holding sessions in the *Comunidades autónomas* is competent to issue regulations concerning its own civil servants<sup>18</sup>, the body of *Abogados del Estado* ('State advocates'<sup>19</sup>, including those who are advocates to the Constitutional Court as State advocates), and the body of *Abogados del Consejo de Estado* ('advocates of the

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<sup>15</sup> Arts. 472 and following *Ley orgánica* 6/1985, July 1, of the *Poder Judicial*.

<sup>16</sup> Instruction of the *Fiscalía General del Estado* of December 27, 1993

<sup>17</sup> Art. 97 *Ley Orgánica* 2/1979, October 3 of the Constitutional Court

<sup>18</sup> *Estatuto del personal de las Cortes* approved by Congress and the Senate, June 23, 1983 and modified repeatedly since.

<sup>19</sup> *Real Decreto* 849/1985, June 5, modified by *Real Decreto* 423/1988, April 29.

State Council')<sup>20</sup>. Access to these professions is gained by competitive and standard exams, but there is no provision for the training following the award of the university title beyond the accumulation of merits that can be required or taken into account upon promotion. For instance, the *Escola d'Administració Pública de Catalunya* is a public institution in charge of the training of civil servants in Catalonia, and its teaching reputation is highly prestigious.

No major difference can be observed concerning local administration and authorities, considering that there are uniform rules for access to and training for civil service as a constitutional office.

## **2. NEW NEEDS AS TO EDUCATION AND TRAINING**

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### **2.1. SHORTCOMINGS AND LACKS**

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

Considering that substantive law is an increasingly sophisticated instrument that develops and changes more rapidly than before, and is becoming more and more interdependent, the shortcomings and the gaps in current training programmes – partially compensated for by continued training, where it exists – are a direct consequence of it.

- a) First, the lack of balance between a rather thorough (but not specialized) training and the need to have full understanding of the legal system. For instance, how could take away time from the study of the Roman basis of the system to transfer to the study of recent changes and their transitional regime in the area of the international development of enterprises?
- b) There is a gap whenever this balance is tipped in favour of the comprehension of the system on the basis of a detailed examination of the traditional areas of law, at the expense of the time that would have been devoted to less standard areas. For instance, when the teaching of the principles on property law impinges on the time that could be devoted to the teaching of the limitations imposed by city planning regulations and related to the land register, or the teaching of Community projects on time-sharing.
- c) The interdependence between the various judicial areas that has been mentioned in the above example is not the only one to keep in mind : the interdependence between economics leads to a judicial interdependence of citizens and States that administer them, which, in turn, renders insufficient courses that would be centered exclusively on a single system.

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

The case of Community law provides a direct application of what has just been evoked : as we have seen above, Institutional Community law is a new compulsory subject in Spain, but it is not sure that – beyond the 60 mandatory hours – Community law is taught everywhere as law enforceable on the whole of the national territory with the same validity as Spanish law. It should be underscored that some professional organisations have favored the teaching of Community law : this holds true, in particular, for the

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<sup>20</sup> Art. 15 *Ley Orgánica 3/1980*, April 22, of the *Consejo de Estado* .



*Consejo del Poder Judicial* (course offered on a yearly basis with the University of Granada, course as a part of training programmes, study scholarships, collections and publications on the application of Community law), the Bar Association of Barcelona, and the *Escola d'Administració Pública de Catalunya* (which offer courses on a yearly basis).

Community law is often structured on the basis of national legal systems as they currently exist. The consequence is that changes in the national law, following the enacting of community regulations, cannot be understood unless we have sufficient understanding of the other national systems involved. Knowledge of foreign institutions is poor if the knowledge of the system to which it belongs is also too limited.

Studies in Comparative law have become part of the European legal culture that has become necessary within the Single Market. But it should be borne in mind that the study of foreign languages, whose mastery seems to be a prerequisite, in particular those of the Community, is generally not compulsory, except for access to certain professions (for instance members of the diplomatic corps, *Abogados del Estado*); and, in universities, foreign languages in legal studies are free choice subjects.

## 2.2. PERSPECTIVE

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

Bearing in mind that positive law is becoming an increasingly sophisticated and interdependent instrument, undergoing rapid evolution, law should be taught and learned in the following manner :

- a) general subjects : the teaching of these subjects should be oriented toward the knowledge of the national system and all its branches, and, as much as possible, of other systems. For instance, the history of law should not be limited, neither to private law, nor to the national system, otherwise other entire branches would remain without their historical base, and there would be a risk of misunderstanding of other legal systems.
- b) specific subjects : the teaching of these subjects should be oriented toward an updated knowledge of law. This does not mean that we should go into the detail of every recent reform, but to take into account the redistribution of the time that recent developments basically impose on subjects that have now become traditional, and the changes that these developments have introduced into the general theory of the specific subject. For instance, isn't the study of the European Economic Interest Grouping going to take time away from the study of another form of corporate structure and, at the same time, have an impact on the general theory of Corporate law ?

The problem raised by the development of law, taking its evolution and the degree of complexity of the legal domain into consideration, could not possibly be resolved by simply doubling the time devoted to training and specialization. We should think of solutions that are capable of shifting the core of the problem from passive knowledge of law to that of the construction of this law with a critical mind. Now if we aim at having jurists who have the necessary competence to influence the construction of law, we need scientific practitioners of law having comprehensive knowledge and still able to specialize both technically and on the level of professional practice. We do not need base specialists who are unaware of what is going on in other areas, unless we want to have an explosion of the system into constellations speeding away from one another, at which time it will have become impossible to talk about law any more, but at the utmost of separate laws.

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

The legal aspects of the European construction are part of the evolution of law and, consequently, that which was said above applies to them. The European construction demands that the jurists master the general aspects as well the specific or substantive aspects of Community law. The general aspects are already the object of a discipline of its own : Institutional Community law, the Community legal system and its relationships with the national legal systems. The specific aspects of Community law should be examined as part of the traditional disciplines, integrating the current developments of Community law. Just as Community law is an instrument of integration, the teaching of this law must be integrated into the national systems and should not be treated as a chapter of comparative law or solely from the general point of view to which the "institutional Community law" refers.

Other indications related to future perspectives have been provided under *supra* §§ 1.1.13 et 1.1.3.3.; we can summarize this point here by repeating the idea that legal interdependence, as reinforced in the European context, should be a means to avoid a fragmentation resulting specialization as a hasty response to the proliferation of rules of law. This is not a theoretical issue, but rather a practical demand for the practicability of law.

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

The evolution of professions is also marked by the lines of the evolution of law. Practitioners should be prepared to face the challenges of a rapidly developing law that is increasingly interdependent and in constant expansion. The practical needs of the application of law introduce here the notion of specialization. This specialization, that could be avoided in the degree programmes by a good balance between compulsory, optional and free choice subjects, has now become necessary and plays a primary role in professional training, because judicial professions are varied. Specialization is probably going in the direction where the professional jurist will practice, simultaneously moving away from the other legal areas. Nevertheless, we can recall that the interdependence of systems adds new needs that are common to all the legal professions, for instance Comparative law, whose foundations must be established well before entering the path of specialization.

## **2.3. QUESTIONING LEGAL "NATIONAL PROVINCIALISM"**

### **2.3.1. WHY ?**

Because interdependence imposes it already. This interdependence is progressing in two directions : first that of private relations, but also public ones, which are in contact with more than one legal system, and increasing in number; second that of European integration which is not unrelated to that which has just been said. Legal training within a single system is no longer conceivable if reality exposes the insufficiency of this traditional approach.

### **2.3.2. HOW ?**

Community law shows us the way : the multiplication of intra-Community exchanges, often beyond the range of competence of Community institutions, as in the case of

Family law or the Law of nationality, is one of the causes. Concerning the application of law, such cases are increasing in number by the day, and systems to be taken into account are, in turn, the national systems which are integrated or in the process of integration.

Questioning legal provincialism is a consequence of Community law and is applied through the teaching of substantive Community law and Comparative law of Member states.

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

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#### **3.1. MEASURES TO BE IMPLEMENTED IN UNIVERSITIES**

Universities should :

- a) make Comparative law a compulsory subject;
- b) make sure that Community law be taught as part of traditional courses, and, as the case may be, as an optional subjects;
- c) ensure an updating, non only of curricula, but also of the relative amount of time devoted to their teaching;
- d) guarantee that students acquire competence concerning the use of proper material for the acquisition of legal knowledge, including the most modern media available offered by data processing technology. Not only the data bases on jurisprudence and legislation, but also, for instance, information or guidelines on the present state of questions that were not examined in detail during studies for the obtention of the degree. All too often, the student believes that the scope of law is limited to the extent of his/her course notes and to the handbooks that supplement them.

The need to have common studies that take interdependence into consideration without shifting at an early stage toward specialization leads to a compromise among the members of the teaching staff. The balance between common and specialized studies can only be struck on the basis of a permanent redistribution of the curricula to be taught by the teaching staff. This would be a way to eliminate as many redundancies and gaps as possible.

Under such conditions, university studies could be improved in the following way : the latest curricula conceived under the new spirit of flexibility offer the possibility of a rational redistribution of course contents, completed by optional courses. This retribution should make possible the continuous assessment of the experience acquired during the implementation of the new curricula. The *Practicum* (introduction to the integrated practice of law) could then be a test for the university.

It is all too evident that the primary responsibility of the training of these law practitioners lies with the university, which gives rise to the occasion to regret the separation of the various "areas" of legal knowledge / education in Spain, which, moreover, has been encrusted in law. <sup>21</sup>. Universities should honor the name that they bear and the title that they award (law degrees, doctorates), by ensuring that the education

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<sup>21</sup> *Reales decretos* 1888/1984 September 26 and 2360/1984 December 12.

and training they provide are solid and just, without ignoring the requirements of the modern world and without becoming the victims of fads.

### 3.2. MEASURES TO BE TAKEN IN TRAINING ORGANISATIONS

The measures to be implemented require two stages :

a) a stage for specialization until entering the profession. This stage should be achieved without having to fill the gaps in university training and to limit itself to specialization toward the selected profession. From this point of view, each profession has its own requirements and problems, which excludes here any form of generalisation.

The shortcomings of the university system are often intermingled with the weaknesses of the specific training for the profession : this is especially the case of the training of advocates in Spain when, in order to question the need for an *ad hoc* professional training, the issue is reduced to the insufficiency of university education. Lawyers must have a specific training on top of the best possible university education, as is the case for magistrates and notaries, and we have seen that things are going this way in practice.

b) a stage for continued training. Here, doubt is permitted : no one questions the utility of organising conferences, seminars, congresses, etc. But it is permitted to question the fact that such a training is generally made compulsory. Making a course compulsory can be justified by the fact that the decision is made by a higher authority – as in the case of civil servants, or magistrates (whose situation has been examined in detail under § 1.2.2.2.), or lawyers who are employed in law firms. But making something compulsory – outside from hierarchical structures – can be accepted only if there a certain amount of doubt toward the degree of autonomy that the free professional has when deciding to do otherwise, on his/her own behalf, or without interaction with the organisers. The degree of responsibility for the updating process must have been determined and assessed at the university level and when joining the profession. Beyond that point, the issue is subject to civil or criminal responsibility.

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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.