Legal Education and Judicial Training in Europe

Legal Education and Judicial Training in Europe

The Menu for Justice Project Report

Daniela Piana, Philip Langbroek, Tomas Berkmanas, Ole Hammerslev &
Otilia Pacurari (Project-Coordinators and Editors)

eleven
international publishing

Published, sold and distributed by Eleven International Publishing
P.O. Box 85576
2508 CG The Hague
The Netherlands
Tel.: +31 70 33 070 33
Fax: +31 70 33 070 30
e-mail: sales@budh.nl
www.elevenpub.com

Sold and distributed in USA and Canada
International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786, USA
Tel: 1-800-944-6190 (toll-free)
Fax: +1 503 280-8832
orders@isbs.com
www.isbs.com

Eleven International Publishing is an imprint of Boom uitgevers Den Haag.

ISBN 978-94-6236-055-6
ISBN 978-94-6094-752-0 (E-book)

Printed in The Netherlands

Table of Contents

Preface

The Menu for Justice Project can be unquestionably considered a choral enterprise. This book is the core presentation of its results and it shows that many contributed to it. We started in September 2009 and worked together for three and a half years. Thirty countries, legal, political, social scholars, different institutions and different cultural backgrounds. But Europe is also – mostly – like this.

We undertook our scientific and networking activities with a common topic in mind: searching and exploring the different experiences – in law and in practice – of legal and judicial training. The common question at the background was: "which role does legal and judicial training play in the European Union?"

This has been made possible by the Long Life Learning Programme, set up by the European Commission and managed by the European Agency for Culture and Audio Visual, which is responsible for those projects that are developed under the financial support supplied by the DG Education and Culture.

In our 42 months of collective work we visited the Court of Cassation of Rome in Italy, the Université Libre de Bruxelles in Belgium, the University College of London in the UK, the Center of Social Studies of Lisbon in Portugal, the University of Bucharest in Romania and the University of Utrecht in the Netherlands. Smaller groups such as the task forces created within the Menu for Justice network met in other countries, such as Spain (Barcelona), Hungary (Budapest), Denmark (Odense). Preliminary results out of the data set created throughout the project implementation have been presented and discussed in international conferences, such as the International Association Court Administration conference held in the Hague, the Netherlands, the European Group for Public Administration meeting hosted in Bergen, Norway, and in several judicial offices, where judges and prosecutors have been exposed to the policy discourse developed thereby.

As all scientific and cultural activities the end should be considered as a fresh new start. Data collected are available to the public at large. The chapters of this book provide the readers – policy makers, scholars, and practitioners – the information we have been able to produce and put it at their disposal.

We are very grateful to all our institutions, the administrative staff working in each partner university, to the institutions that accepted to host our meeting, to all those people who have kindly accepted our invitation to speak in our conferences and to interact with

the Menu for Justice Project. It is time now to go further, beyond the empirical knowledge we provided. This may lead to more European initiatives to enhance legal and judicial training in Europe as a part of further integration of the EU while respecting the national autonomy of justice administration and of higher education.

Daniela Piana
Philip Langbroek
Tomas Berkmanas
Ole Hammerslev
Otilia Pacurari

List of Participating Institutes

University of Bologna Department of Political Science	Italy
Irsig CNR	Italy
Institut des Hautes Etudes sur la Justice	France
Montaigne Centre, Utrecht University	The Netherlands
University College of London	
Faculty of Law London	UK
Central European University	Hungary
University Parthenope Naples	Italy
University Paris I Pantheon Sorbonne	France
Babes Bolyai University Cluj Napoca	Romania
Centre Perelman de Philosophie du Droit	Belgium
Istanbul Bilgi University	Turkey
University of Bucarest – Faculty political Sciences	Romania
CNRS – Centre de Theorie et d'Analyse du Droit (the Partner has withdrawn)	France
Centre d'etude de la vie politique – Universitè Libre de Bruxelles	Belgium
Institut d'etudes européennes	Belgium
University of Southern Denmark	Denmark
University Munster	Germany
University of Calabria – Faculty of Politics Sciences	Italy
Uniwersytet Szczeciński	Poland
Sofia University "St Kliment Ohridski"	Bulgaria
Universitat Autònoma de Barcelona – Institut de Drei i Tecnologia	Spain
University of Piemonte Orientale	Italy
Katholieke Universiteit Leuven – Public Management Institute	Belgium
National Institute of Magistracy	Romania
University of Orebro	Sweden
Centro de Estudos Sociais	Portugal
Universidad Complutense de Madrid	
Facultad de Derecho (the Partner has withdrawn)	Spain
Univesidad Carlos III	Spain

State Institution of Higher Professional Education	
Gorzow (the Partner has withdrawn)	Poland
Masaryk University	
Faculty of Law	Czech Rep
Tallinn University – Institute of Political Science and Governance	Estonia
National University of Ireland, Galway	Ireland
University of Cyprus	Cyprus
Riga Graduate School of Law	Latvia
Vytautas Magnus University Faculty of Law	Lithuania
University of Malta – Institute of Criminology	Malta
Supreme Court of Slovenia	Slovenia
Centre for European studies – Bifrost University	Island
University of Lapland	Finland
Vienna University of Administration and Business	Austria
Université du Luxembourg	Luxemburg
Comenius University in Bratislava	Slovak Rep
Arena Oslo	Norway
University of Palermo	Italy
University of Pavia – dipartimento di Studi Giuridici	Italy
University of Wroclaw – Faculty of Law	
Administration and Economics	Poland
Universidade de Lisboa – Instituto de Ciencias Sociais	Portugal
Faculty of Political Science and Public Administration – Athens	Greece
European University Institute	Italy
University of Catania	Italy

Participants

Alberto Revilla; Anastasia Soutiropoulou; Andrea Cerino; Antoine Garapon, Ana Maria Garofil; Antonio La Spina; Antonis Makridimitris; Arnaud van Waeyenberge; Benoit Frydman; Boguslaw Banaszak; Carlo Guarnieri; Cheryl Thomas; Christer Gulbrandsen; Christian Deprez; Cristina Dallara; Dacian Dragos; Daniel Smilov; Daniela Cavallini; Daniela Piana; David Hiez; Donatella Della Porta; Emilio Castorina; Emmanuel Jeuland; Evelien Cautaert; Fabien Wittreck; Francesca Zannotti; Francesco Contini; Gianina Radu; Giusy Passarelli; Guerino D'Ignazio; Harold Epineuse; Ian Cooper; Idil Elveris; Janusz Slugocki; Jasa Vrabec; Jean –Michel de Waele; Joao Paulo Dias; Jose Manuel Ruano De La Fuente; Kalev Leif; Laura Ervo; Laurent Pech; Luca Passanante; Luca Tomini; Lucia Mokra; Luigi Lepore; Luis Sousa; Marco Fabri; Marco Velicogna; Markku Kiikeri; Marta Poblet; Martin Mits; Massimo Fragola; Massimo Vogliotti; Michele Sapignoli; Ng Gar Yein; Nikitas Hatzimihail; Ole Hammerslev; Otilia Pacurari; Pasquale Policastro; Paula Fernando; Peter Hack; Philip Langbroek; Priscilla Serafini; Quirine Sluijs; Radu Carp; Ramona Coman; Raquel Lopez; Roman Puff; Rosanna Amato; Sandra Scicluna; Silvia Gabarro; Stanislav Kadecka; Tomas Berkmanas; Constantin Branzan; Laura Andrei.

List of the Contributors to this Volume

Rosanna Amato
Tomas Berkmanas
Radu Carp
Daniela Cavallini
Cristina Dallara
Dacian Dragoș
Laura Ervo
Ng Gar Yein
Carlo Guarnieri
Ole Hammerslev
Cristina Hăruță
Markku Kiikeri
Philip Langbroek
Luigi Lepore
Daniela Piana
Otilia Pacurari
Gianina Radu
Corina Rebegea
Michele Sapignoli
Sandra Scicluna
Quirine Sluijs
Anastasia Sotiropoulou

Part I
Menu for Justice Project: Origins and the Process

1 Menu for Justice: Towards a Discussion of Demands on Legal Learning and Judicial Expertise

Philip Langbroek and Daniela Piana

1.1 Introduction

Menu for Justice is an ambitious project which takes up a major issue in contemporary judicial politics: to what extent and by which means can legally relevant expertise be supported to ensure an efficient, effective, and legitimate judicial system? This, of course, is not only a matter of policies and of organization of judicial administrations. It is also a matter of how lawyers and, for more specific functions, judges, are trained considering the current, rapidly changing societal circumstances. Instead of describing strategic perspectives on legal and judicial learning based on our own ideas, we have sought to develop a perspective on legal and judicial learning based on experiences in thirty European countries. In this introductory chapter we describe the points of departure of this project, its organization and methodology, and also the current societal transformations and how they affect the legal professions and the courts.

1.2 Societal Transformations and the Legal Professions

There are several reasons for taking up this issue as a pivotal one for the daily life of citizens and businesses. The first stems from the internal development of the judiciary, both consisting of empowering and reshaping, experienced by courts facing an expanding and increasingly complex demand of justice.

The dominant issues here are the specialization and internationalization of law firms; the transnationalization of trade and human travel, the rapid expansion of European law in many areas of public administration; the need for international cooperation in law enforcement, pushed by innovation in organized crime, such as human trafficking, but also by crimes like identity fraud. It is about technological developments that open new vista's not only for procreation but also for genetic manipulation, and for forensics. The demands for timeliness of justice, and access to justice by means of ICT's, the increased

transparency of law enforcement and the courts, market completion regulations and so on. We have no pretence that this enumeration is complete, but what matters is how legal and judicial training institutes have adapted their courses to these changes.

Court administrators, ministries of justice and councils for the judiciary do react to the developments described. They know that the legitimacy of the courts also depends on the visible qualities of the judges. Courts are the weakest branch of government and therefore also the most vulnerable for criticism. Not the thousands of cases that are dealt with without a mistake, but incidental miscarriages of justice get full media attention. The same transparency makes it necessary that judges show their integrity and good skills every day.

Organization development, specialization and division of labour become unavoidable in the courts. That demands judicial training to stay up to date with legal developments that may affect judicial decision making, but also that courts are adaptable to societal needs. This means, for example, that sometimes it is not enough to give a decision to qualify a state of affairs legally. The courts may need to cooperate with other instances in order to help solving social problems. Juvenile courts or problem solving courts in a neighborhood centre are examples. And the criminal courts need to learn how to give good attention to victims of crime during hearing. The question is if they have done so.

The focus of legal training institutes in Europe is on training students in law. Knowing the law and the juridical application of the law are the main goals of legal training. Of course, when the law changes, law schools adapt the content of their programmes. European law has grown dramatically during the past twenty years. Law schools seem to be directed to training lawyers for legal practice primarily. But should it be about legal practice only? To date, one of the most urgent aims to achieve is a timely delivery of justice. It is also one of the aims that is most difficult to achieve. This not only affects the judicial work but also changes the roles of advocates. Cases are managed by the courts and rules of procedure have been adapted in such a way that advocates have to comply. Much more strain is therefore put on the preparation of the hearing by the parties and their advocates. ICTs also become much more important in legal infrastructures, and advocates and judges are increasingly confronted with social consequences of technological developments. The question is if law schools have adapted their programmes to those developments.

1.3 Organization Development in Court Administration

The transformations mentioned above ask courts to perform much more demanding functions than they were used to. For example the need to communicate and cooperate across national (legal) borders. The last reason, which is vested in our project with a priority value,

depends on deep transformation of the courts are going through as focal points in a rapidly changing society. This consists of a move from an internal procedure-focused approach towards a more user-oriented and community oriented approach. Such a move creates both demands and offers of know-how and expertise which should complement and integrate the knowledge of the law, which is traditionally handled by judicial staff and legal scholars.

1.4 Menu for Justice Organization, Participants

Menu for Justice refers and takes up these issues in a comprehensive and structured manner. First of all it sets up a network of higher education institutions and promotes a three-year cooperation scheme based on a three-step plan: a) mapping the state of the art; b) developing policy guidelines; c) pointing out best practices and successful stories in a comparative perspective.

The network is acting on this platform trying to select and describe the best practices out of the several differences existing among national judicial systems. These differences are then considered less of an obstacle and more as an opportunity for mutual learning.

1.5 Menu for Justice Methodology

Mapping the 'state of the art' means, in the context of Menu for Justice, setting up a data set covering thirty countries which are mirrored in national reports whose chapters focus on the regulative framework, the content, and the innovation rate of the legal and judicial training programmes and institutions. Here already the reader can spot the added value of Menu for Justice, which is reflected into an integrated approach to legal and judicial training, namely to the undergraduate, graduate, doctoral and vocational training of legal experts and judicial staff.

Then the analysis of the context of training programmes offers an unique opportunity to assess in a comparative perspective the offer of national systems in terms of non-legal expertise and knowledge, something which is strongly requested and needed in our contemporary world.

Finally, this comprehensive overview of thirty domestic systems is complemented and enriched by a number of surveys, focused on narrower issues, such as the relationship between law schools and universities, the gap between training needs and training programmes measured on the basis of critical cases covered by the media, the gap between training needs and training programmes in the EU law.

The bulk of knowledge worked out through three years of project incorporates a common cross national policy discourse, which has been developed by scholars and practitioners involved in the project. Meetings, seminars, web-based contacts and exchanges proved to be very effective in overcoming national differences and cultural barriers.

1.6 Summary of the Results

Menu for Justice leaves behind substantial knowledge and a method to address one of the most important and critical topics now on the European agenda: how legal expertise, the knowledge of the law, national and European, should be made into institutional and organizational practices with the support of managerial, communicational, psychological, knowledge – all this oriented to reach a final common goal, which is, in a nutshell "ensuring a fair, legitimate, accessible, and reliable trial" to all citizens all over the EU.

1.7 This Volume

In this volume we first describe project methodology more extensively. After that, we present the comparative reports on the different phases of legal and judicial education: initial (bachelor's degree), graduate (master's), Ph.D. and professional training. Furthermore, we present an assessment tool for judicial training, the results of a survey on accreditation of legal training programmes, a comparative report on problematic cases in eleven EU member states and a report on a survey into the relations between law schools and courts. We finalize this reporting book with an evaluation and discussion of the project results and a list of recommendations for policymakers.

2 Social Science and Judicial Studies: Lessons from the US and Europe

Carlo Guarnieri

The study of the administration of justice in the broadest meaning of the term is, at least in principle, interdisciplinary: it deals not only with legal rules, but also with behaviour, expectations and values. Its development in Europe has been relatively late, but the changing relationships between courts and the political system in the second part of the twentieth century and the present context of European unification offer an important chance for the future.

2.1 The Traditional Disregard for Judicial Studies in Europe

Traditionally, in continental Europe the study of the administration of justice has played a minor role, especially in the university. This disregard is related to the "mouth of the law" definition of the judicial role that, since the French Revolution and for a long time prevailed. In fact, following the Napoleonic reorganization and the reforms implemented in constitutional States during the nineteenth century, the role of the judge was defined in terms of a neutral applier of the law, as enacted by Parliament. In this way, also the independent position of the judge came out justified: independence from political power – *i.e.* from the executive – allowed him to faithfully implementing the will of the people, as represented by Parliament.

Therefore, since the judge was only applying the law, without any significant autonomous intervention, there was no real need to take into account its role. It was enough to consider the (positive) law. So, legal education concentrated on positive law – the statutes. The knowledge of the law – and of the legal techniques necessary in order to interpret the law and find the "right answer" to the case at hand – was considered to be the necessary and sufficient condition for the good lawyer and therefore also for the good judge.

2.2 United States: The Rise of Judicial Power and the Birth of Judicial Studies

The situation in the US was different in several significant aspects. First of all, almost since the establishment of the Constitution of 1787 the legislative power of American judges has

been recognized. At least since the well-known *Marbury v. Madison* case of 1803 formally introduced the judicial review of legislation into the American constitutional system. Since then, American judges have always played a significant, although variable, political role.

As Tocqueville remarked in 1832, "in the United States there is no political issue that sooner or later will not come before a court" (1981, 370). Judicial decisions played in increasingly important role in American politics: even in a negative way, as the *Dred Scott v. Sanford* case, decided in 1857, that paved the way to the Civil War (at least, this has been the opinion of several historians). One of the consequences of the political salience of courts was that judges were often appointed with a strong political background: from John Marshall to Roger Taney, many had filled important government or parliamentary positions before coming to the bench. In fact, since the autonomous contribution of judges to decisions was well known, their political orientation was taken into account in the process of appointment. As Abraham Lincoln put it, when appointing the Chief Justice of the Supreme Court, ". . . we must take a man whose opinions are known".[1]

Therefore, the myth of judicial neutrality was never strong in the American context and was definitively exploded, in the first decades of the twentieth century, by the Legal Realists, who pointed out the role judges played in courts' decision-making, criticizing the theory of "mechanical jurisprudence". This fact was well-known to a vast array of social and political actors trying to influence the appointing process, which in the US has always allowed wide room to political and social pressures. However, social and political influence on courts had also the consequence of negatively affecting their effectiveness: since the end of the nineteenth century, corruption and mismanagement characterized American courts, especially at the state level. The reaction was a movement aiming at introducing radical reforms. In that context the discipline of judicial administration took shape in the 1920s and 1930s. It was part of a broader movement aiming at reforming public administration, removing political and corrupting influences (considered to be strictly related) and improving organizational performance. The introduction of modern management techniques into the administration of justice was considered a way to entrust the management of courts to competent professionals and therefore to fight political clientelism, at the same time responding to citizens' demands for better justice.

Judicial studies expanded further after the World War II following the development of the social sciences, developing several fields of teaching and research. The already mentioned discipline of court management, devoted to the analysis of the judicial organization with a

1 Actually, in that case the choice came out to be, at least for Lincoln, a mistake (W.F. Murphy & J. Tanenhaus, *The Study of Public Law,* New York, Random House 1972, p. 99).

view at improving its performance, has been further supported by the growing influence of the law and economics approach. Other significant fields of inquiry are the law and society movement – aiming at putting the law in the social context, by analysing its social impact, on the one hand, and the way it is influenced by the social environment, on the other[2] – and the so-called "political jurisprudence", which considers the judges first of all as political actors, although with their specificity.[3] The last fifty years have seen an enormous growth of social science studies on law and courts: today, all prestigious universities have courses on courts' organization and politics, while almost all social sciences meetings devote several panels to similar subjects.

2.3 The European Changing Context

As we have already pointed out, in continental Europe judges tended to act in a subordinate way to the political branches and to the norms they enacted, a fact reflecting a historical interpretation of the separation of powers principle that assigns a privileged role to the legislature – since it represents the popular will – and excludes any form of judicial review of legislation. This subordinate interpretation of the judicial function was supported by a congruent organizational setting, according to which judges were organized as a special corps of the public bureaucracy. As a rule, they were – and most of them still are – recruited directly from university through some form of public examination, and with no requirement of previous professional experience. Successful candidates were – and often still are – appointed at the bottom of the career ladder, and professional training and socialization took place within the judiciary, with promotions usually granted on the basis of seniority and merit through formalized procedures managed by higher ranking judges. The professional skills of the judge had to be mostly acquired inside the judicial organization, through an informal process in which older and higher judges played a major part.

The second part of the twentieth century has been characterized by significant reforms of the institutional setting of the judicial system, with the consequence of a strong increase in the political significance of courts. The first of these reforms – at least diachronically – has been the introduction of forms of judicial review of legislation. Constitutional review developed much later in Europe than in the United States. After the *ancien régime*'s "negative" experience with the *Parléments*, constitutional review was not re-established until the twentieth century. After some experiment in Austria and Germany between the two World Wars, after 1945 constitutional review began to be adopted more widely in Europe through

2 L. M. Friedman, *The Legal System,* New York, Russell Sage 1975; T. Halliday, L. Karpik & M. Feeley, *Fighting for Political Freedom,* Oxford, Hart 2007.
3 M. Shapiro & A. Stone Sweet, *On Law, Politics and Judicialization*, Oxford, Oxford University Press 2002.

the establishment of separate constitutional courts. After the "first wave" of constitutional courts – instituted immediately after the war in Germany, Italy, Austria (and also France)[4] – another "wave" characterized, in the 1970s, the return to democracy in Southern Europe, while the 1990s have seen the spreading of constitutional review to former Communist countries in Central and East Europe.

The institution of judicial review of legislation has had a profound impact on the role of the judge, even if, following the model envisaged by Hans Kelsen, it has been concentrated on a separate, specialized court. For example, through "incidental" proceedings, litigants have the chance to challenge the constitutionality of the law applied in their case. If this occurs, an ordinary court must assess whether constitutional grounds exist to refer the case to the constitutional court. In this way, ordinary courts represent a necessary filter between the litigants and constitutional adjudication, and these courts exert a significant degree of influence over access to the constitutional court. In addition, often ordinary courts may raise constitutional issues on their own volition in the course of a particular case, and such proceedings can then become an instrument for furthering some form of judicial policy: asking for a constitutional court ruling can be a means of promoting the personal values of individual judges and even those of their reference groups. Consequently, the ordinary judiciary becomes an integral part of the process of constitutional review, even though this function is entrusted to a separate specialized court.

At any rate, it is clear that all constitutional courts do not bind themselves to what Kelsen described as "negatively legislating". Their task is not only to rule yes or no on a constitutional complaint. The decision-making procedures the courts have established also allow them to participate actively in the policy-making process. As it has been remarked, when constitutional courts "announce legally binding interpretations of statutory provisions, they rewrite or amend legislation, to the extent that the court's interpretation meaningfully differs from that of the government and parliament".[5]

This practice has had an impact on ordinary judges. They increasingly "use the techniques of constitutional law adjudication", in order, for example, to adapt parliamentary statutes to constitutional principles and values.[6] Thus, if, in comparison to their American counterparts, ordinary judges in continental Europe seem to play a lesser part in the process of constitutional review of legislation, since the final decision has been entrusted to special courts, the introduction of judicial review has had *per se* an impact on the way they define

4 Constitutional review in France was instituted in 1958, but with specific traits. Only later, especially since 1974, it has evolved, slowly assuming a judicial profile (Shapiro & Stone 2002).
5 A. Stone Sweet, *Governing with Judges,* Oxford, Oxford University Press 2000, p. 63.
6 *Ibid.*, pp. 128-129.

their role. The traditional deference toward legislation has been eroded and today judges tend to scrutinize in depth ordinary laws according to constitutional norms, with the result that judicial creativity has been substantially enlarged.[7]

This trend has been supported by the establishment and gradual expansion of supranational systems of justice, such as those created by the European Union and the European Convention of Human Rights. Ordinary courts have seen new areas of intervention opened and their discretionary powers extended. European Community law has become a system of supranational positive norms endowed with a large set of relatively coherent rules that limit the sovereignty of member states. For instance, as it is well-known, the European Court of Justice has developed the "direct effect" and the "supremacy" doctrines: the direct application of community law to member states, and subsequently its pre-eminence over national legislation, so that in case of conflict community law prevails over national. On the basis of this, the Court has also declared that ordinary national courts have the right and duty to directly enforce community law within their own legal systems. This creates the possibility that national norms deemed inconsistent with community law will be rejected and, as a result, creates a sort of diffuse constitutional review that is a novelty in the European context. This process has been furthered by the emergence of a set of legal principles often defined as the "European constitutional heritage",[8] which is exerting a growing influence on European and national judges. Moreover, this sort of supranational dimension has been strengthened by the trend toward network building that today relates many judicial – and quasi-judicial – bodies in Europe: constitutional and supreme courts meet on a regular basis in order to exchange information and points of views on legal matters, a fact that cannot but have an impact on the way these courts – and the national judiciaries – interpret the law.

If the introduction of judicial review of legislation in many European countries has increased judicial creativity – therefore, affecting the relationship of the judge to the (statutory) law – the creation of judicial self-governing bodies has considerably influenced another dimension of the relation between judges and the political system – that with the executive – and both developments have increased the political significance of the judiciary. The impact of the higher councils of the judiciary – collegiate bodies, composed in different ways of judges and lay members – in charge of administering the status of judges has been a more or less radical alteration of the organizational setting of bureaucratic judiciaries. In fact, one of the main consequences of the institution of a higher council of the judiciary is – rather obviously – an increase of the *external* independence of the judiciary, since the traditional

7 M. Cappelletti, *The Judicial Process in Comparative Perspective,* Oxford, Oxford University Press 1989, pp. 3-55.
8 A. Pizzorusso, *Il patrimonio costituzionale europeo,* Bologna, Il Mulino 2002.

power of the executive comes out circumscribed. But since no higher council is composed solely of judges, an important role remains for the institution in charge of appointing the non-judicial members. This is often assigned to Parliament, which allows political parties to bypass the minister of justice, whose powers tend to be weakened, and influence the judiciary directly. The creation of a self-governing body also has consequences for the *internal* independence of the judiciary. Entrusting promotion and appointment of judges to a collegial body where normally all judicial ranks are represented contradicts the traditional hierarchical principle, whereby only higher ranking judges are entitled to evaluate lower-ranking colleagues. In this way, the lower ranks acquire a new power, since they can participate in the process of choosing higher ranking judges.

The erosion of hierarchical links has a considerable impact on civil service-style judiciaries: for instance, higher councils have increased the role of a new significant actor, the judicial associations. The experience of Latin European countries suggests that the creation of judicial self-governing bodies is capable of producing a radical change in the judiciary's traditional hierarchy; this in turn can diversify the judiciary's reference group which is becoming more horizontal and, at least in part, placed outside the judiciary, as the growing significance of the relationships with the media shows.

The main consequence of all these changes has been an increase of the political significance of European courts. Although there are variations from case to case – with Latin countries seeming to exhibit more activist courts – the judicialization of politics has began to characterize also Europe. Moreover, the increase also of the internal dimension of independence allows more autonomy to single judges in their decisions: in other words, the role of the judge cannot be any longer understood as a mechanical applier of the parliamentary will. Traditional instruments for monitoring judicial performance – such as hierarchical supervision and control – are less and less available.

2.4 Some Lessons and Consequences

The expansion of judicial power that we have just described in broad terms is having a strong impact on our systems of courts. It has raised the expectations of the public regarding the administration of justice, a fact leading also to an increase of the number and quality of cases, since more power implies also more demands that power be used. So, in a very time of budget's constraints courts are urged to produce at the same time more and better decisions in reasonable time. In the meanwhile, the building of the European Judicial Space has increased the complexity of the legal system and the need of interacting with the legal actors (judges, prosecutors, lawyers…) of other European countries. This last aspect needs to be emphasized, since it does not regard only the highest courts.

All judges – in fact, all judicial actors – have to interact with their European counterparts. The judicial dialogue does not involve only the highest courts. A good example is the case of the European arrest warrant, where judges and prosecutors of the different member States have to deal one with another.

The lessons to draw from this situation are several. First of all, the demand for quality highlights the importance of court management. Judicial performance cannot be improved without adequate organizational diagnoses and the implementation of congruent prescriptions, that is prescriptions based on the development of an empirically based discipline. The recent decades have seen also in Europe the birth and the development of the discipline of court management: actually, several people here belong to research centres that have contributed to this development: the Istituto di Ricerca sui Sistemi Giudiziari of the National Research Council (CNR) in Bologna, the Institut des Hautes Etudes sur la Justice in Paris, the Montaigne Centre for Judicial Administration and Conflict Resolution at Utrecht University, the Centre of Empirical Legal Studies at the University College in London.

Inside the judicial organization, the main actor is, of course, the judge. As we have seen, her behaviour cannot any longer be defined in simple, mechanical terms, with the consequence of increasing her role in the judicial system and, therefore, the significance of judicial education. It is not by chance that in recent decades most European countries – and the process is not limited to Europe – have instituted judicial schools and that the European Judicial Training Network is one of the most active. The complexity of judicial tasks today implies that the process of judicial education cannot limit itself to the teaching of positive law. Space should be reserved also to theoretical or philosophical disciplines.

More, as a recent survey has pointed out,[9] a good judge is in need of several additional skills, besides the traditional mastering of substantive law:

- Knowledge of the social context of law and the judicial process;
- Specific skills related to court activity, such as opinion writing, dealing with expert evidence, vulnerable witnesses, unrepresented litigants, and the use of mediation and alternative dispute resolution techniques;
- Judicial ethics: *e.g.* avoiding bias in judging or conflicts of interests;
- Judicial skills – an expanding field: managing courts and staff, interacting with the public and the media, using new technologies.

9 C. Thomas, *Judicial Training and Education in Other Jurisdictions*, London, Judicial Studies Board 2006.

Moreover, we cannot disregard the fact that "the training of the judge … will help in some degree to emancipate him from the suggestive power of individual dislikes and prepossessions. It will help to broaden the group to which his subconscious loyalties are due".[10]

Thus, judicial education should be understood also as a way to check in a physiological way the new power judges are enjoying.

We can add that judges are not only lawyers but they continuously interact with other lawyers. So, what we have said of judicial education regards, to a large extent, also the education of lawyers. In any case, the beneficial effects of a common education of the legal professions, and especially of those whose main task is more or less related to courts, should be recognized.

Therefore, the analysis, evaluation and – possibly – reform of the systems of legal and judicial education are a way – an effective way, I think – to help the administration of justice to cope with an increasing array of tasks. The answer to the questions we are going to pose in this project could become an important step in the process of designing an effective system of legal and judicial education.

10 B.N. Cardozo, *The Nature of the Judicial Process,* New Haven, Yale University Press 1921, p. 176.

3 Empirical Field and Methodology

Ole Hammerslev and Daniela Piana

The Menu for Justice Project is framed within a comprehensive European financial programme, the Lifelong Learning Programme, which "aims at enabling people at all stages of their lives to take part in stimulating learning experiences, as well as helping to develop the education and training sector across Europe".[1] Therefore, Menu for Justice should be considered a teaching supporting project in its own nature. This said, however, one should not overlook the research activities entailed by the project. In short, Menu for Justice covers a large spectrum of activities, ranging from networking, collecting and analyzing data, framing data against the current literature on both European studies, socio-legal and legal studies, and spreading of knowledge drawn from these data.

From the organizational point of view, Menu for Justice is an academic network of fifty partners. Leading European universities participate in the development of a comprehensive reflection on the field of "judicial studies", on the current offer of programmes and methods of teaching in law and legal matters, and on the organization of the judicial schools. Menu for Justice relied on a broad network of members, covering all social sciences and including judicial institutions.

Partners were located in all EU and associated countries. Among the fifty members, Menu for Justice includes the Supreme court of Slovenia, and one of the most innovative and pro-active judicial schools, the Romanian National Institute for Magistracy. We have 31 law faculties and departments, one centre specialized in Comparative judicial systems, six departments of sociology and political science, eight research centres among which one specialized in European studies.

Such an interdisciplinary partnership can cast an innovative eye on the nature of law, what law is and how law is and should be taught. The participation of political scientists is key to cover also a policy-oriented approach, which goes hand-in-hand with a theoretical reflection upon the very nature of law.

1 The programme funds a range of actions, including exchanges, study visits and networking activities. Projects are intended not only for individual students and learners, but also for teachers, trainers and all others involved in education and training.

The partnership presents also a highly integrated research agenda and therefore a common core of expertise. Despite their various research backgrounds with specific interests in administrative law, EU law, legal philosophy, sociology of law, European integration, and European competition law, the scholars involved in Menu for Justice share scientific interests and teaching experiences. Some of them are specifically involved in European masters and therefore have an extremely valuable know-how of working out a template of a *curriculum studiorum* in judicial studies.

More than 100 scholars are involved in the project. They give a path-breaking contribution to set up a truly speaking European approach in law scholarship (law in the books) and in the ways law relates to society (law in action).

The project has lasted three and a half years and includes a high number of face-to-face meetings, hosted in eight different European countries. Moreover, smaller task forces have met at online meetings and in different European countries. The project aimed at targeting the entire constellation of institutional actors involved in judicial training in EU, not only seen as national institutions such as national judicial training centres, court administrative bodies and universities, but also seen as European transnational institutions such as the European Network of Judicial Training, the DG Justice, the Parliamentary Committee on Constitutional Affairs.

3.1 Background

European integration is deemed to be a challenging process for domestic social and political structures as far as it touches more or less directly upon the specific culturally connoted aspects of institutions. In fact, the national institutions have to confront and adjust to a new and more complex reality, requiring the development of new knowledge and the updating of old practices. In this context, a well-functioning and integrated judicial space is due to play a significant role in the achievement of a fully fledged European legal area, but the building of the European judicial space needs capable institutions staffed by capable professionals. Therefore, updating the competence of all legal professionals at all levels involved in this process should be one of the priorities of the EU and member states' policies. In this process, providing competence at the beginning of a professional career is not enough. Contemporary societies move fast and get more complex, law even more so.[2] The competence of legal professionals should be continuously adjusted to new tasks, adequate training should be provided and effective instruments to assess training needs should be in place.

2 U. Beck, *Risikogesellschaft. Auf dem Weg in eine andere Moderne*. Suhrkamp Verlag 1986; K.H. Ladeur (ed.), *Public Governance in the Age of Globalization*, Aldershot, Ashgate 2004; G. Teubner, *Constitutional Fragments. Societal Constitutionalism,* Oxford, Oxford University Press, 2012.

Therefore, lifelong programmes of professional development are heavily needed in an institutional context that undergoes a deep and everlasting process of change, just as the EU itself. Legal professionals should have the opportunity not only to access a broad range of programmes of initial and in service training, but also to be provided with crucial instruments of self-awareness in terms of needs of learning. These elements have to be considered a key condition for a successful performance.

A variety of studies have examined the impact of legal education on the legal profession and law. Since it would be out of the scope of this project to review it all, we will only mention a few basic lines of the studies.

Most famous might be the studies of Max Weber,[3] who showed the emergence of the legal profession in the West and its impact on the development of capitalism and the modern states. The western legal profession, on the European continent, was educated at the universities in formal rational law. The formal rational law, the legal profession, the bureaucracy and modes of legal reasoning became preconditions for the development of the modern Western states and capitalism.

Also Marxism has discussed legal education. In general, Marxism has seen legal education as a way of reproducing the dominant societal structures through a transmission of societal categories to the professions, including the legal profession.[4] Power structures of legal education and education in genreal are still examined by a number of scholars.[5]

3 M. Weber, *Economy and Society*, Berkeley, University of California Press, 1978.

4 M. Cain & A. Hunt, *Marx and Engels on Law*, London, Academic Press 1979; O. Hammerslev, 'Convergence and conflict perspectives in Scandinavian studies of the legal profession' 17 *International Journal of the Legal Profession* 2, pp. 135-152 (available from: <www.informaworld.com/10.1080/09695958.2010.530874>); for an overview of studies of professions see *e.g.* K.M. Macdonald, *The Sociology of the Professions*, London, Sage Publications 1995.

5 See *e.g.* M. Börjesson & D. Broady, 'The Social Profile of Swedish Law Students: National Divisions and Transnational Strategies', 29 Retfærd. *Nordic Legal Journal* 3/114, 2006, pp. 80-107; P. Bourdieu, *The State Nobility. Elite Schools in the Field of Power*, Cambridge, Policy Press 1996; N. Kauppi & T. Erkkilä, 'The Struggle Over Global Higher Education: Actors, Institutions, and Practices' 5 *International Political Sociology* 3, 2011, pp. 314-326 (available from: http://dx.doi.org/10.1111/j.1749-5687.2011.00136.x). A number of different areas of legal educational research exist. Mertz has, for instance, examined how law professors employ the Socratic method to get students to think like lawyers in a legal language (E. Mertz, *The Language of Law School: Learning to 'Think Like a Lawyer'*, Oxford, Oxford University Press 2007). Literature on legal educational export is also quite significant. See, for instance, R.A. Brand & W.D. Rist, *Export of Legal Education Farnham*, Aldershot, Ashgate 2009; Y. Dezalay & B.G. Garth, *The Internationalization of Palaces War: Lawyers, Economists, and the Contest to Transform Latin American States*, Chicago, University of Chicago Press 2002; J.A. Gardner, *Legal Imperialism: American Lawyers and Foreign Aid in Latin America*, Madison, The University of Wisconsin Press 1980.

In the great comparative study on the legal profession edited by Abel and Lewis,[6] some chapters and sections are devoted to legal education. Neave (1989) discusses various aspects of legal education with specific focus on the move towards mass education in the 1960s and 1970s and its reasons and impact on society. Moreover, based on comparative statistics Neave discusses access to legal education and the background of university students in a comparative light. In the period between 1960 and 1990, legal education was often discussed in terms of the transformation of the role of legal education, admission of law students and the students' backgrounds.[7] Other and some more recent studies, discusses the content and teaching methods in legal education based on the new patterns of trade and foreign investments in an internationalized world.[8] One central area in the discussion is whether law is fundamentally a national discipline and should be taught as such, or if the paradigm for teaching law should be international. Another central theme is whether the law should be taught as practical training.[9] Based on a comparative study of the US, Japan and Germany, Maxeiner,[10] *e.g.*, discusses whether and how practical training should be included in legal education.[11]

Menu for Justice differentiates itself in a number of ways from these studies. Menu for Justice is the first European project that takes seriously the issue of the way young generations should be trained in judicial matters and how the prospective experts of law and courts should be provided with new skills and competences to effectively face the challenges of

6 R.L. Abel & P.S.C.E. Lewis, *Lawyers in Society: An Overview*, Berkeley, University of California Press 1995; R.L. Abel & P.S.C.E. Lewis, *Lawyers in Society. The Civil Law World*, Berkeley, University of California Press 1988a; R.L. Abel & P.S.C.E. Lewis, *Lawyers in Society*. *The Common Law,* World Berkeley, University of California Press 1988b; R.L. Abel & P.S.C.E. Lewis, *Lawyers in Society*. *Comparative Theories*, Berkeley, University of California Press 1989.

7 R.L. Abel, 'United States: The Contradictions of Professionalism', *in* R.L. Abel & P. Lewis, (eds.), *Lawyers in Society: The Common Law World*, Berkeley: University of California Press 1988 (pp.186-243); H.W. Arthurs, R. Weisman, & F.H. Zemans, 'Canadian Lawyers: A Peculiar Professionalism', in R.L. Abel & P. Lewis (eds.), *Lawyers in Society: The Common Law World*, Berkeley: University of California Press 1988 (pp. 123-185); V. Aubert, 'The Changing Role of Law and Lawyers in Nineteenth- and Twentieth-Century Norwegian Society,' *in* D.N. MacCormick (ed.) *Lawyers in Their Social Setting*, Edinburgh 1976 (pp. 1-17); A.A. Paterson, 'The Legal Profession in Scotland: An Endangered Species or a Problem Case for Market Theory?,' *in* R.L. Abel & P. Lewis (eds.), *Lawyers in Society: The Common Law World*, Berkeley, University of California Press 1988 (pp. 76-122).

8 C. Grossman, 'Building the World Community Through Legal Education', *in* J. Klabbers & M. Sellers (eds.), *The Internationalization of Law and Legal Education* (2nd edn), Springer Netherlands 2008 (pp. 21-35); M.W. Reisman, 'Designing Law Curricula for a Transnational Industrial and Science-Based Civilization', 46 *Journal of Legal Education*, 1996, p. 322; R. Stevens, *Law School: Legal Education in America from the 1850s to the 1980s*, The University of North Carolina Press 1987; W.O. Weyrauch, 'Fact Consciousness', 46 *Journal of Legal Education* 2, 1996, p. 263.

9 See also A. Bradney & F. Cownie, ′Transformative Visions of Legal Education',1 *Journal of Law and Society,* 1998.

10 J.R. Maxeiner, 'Integrating Practical Training and Professional Legal Education,' *in* J. Klabbers & M. Sellers (eds.), *Integrating Practical Training and Professional Legal Education. Ius Gentium: Comparative Perspectives on Law and Justice* 2, 2008 (pp. 37–48).

11 Other European-based networks have existed on legal education, see *e.g.* the UK Centre for Legal Education.

a common European judicial space. By devoting three years of common work among fifty partners in Europe, the project aimed at assessing the main shortcomings of present legal education as well as pointing out similarities and differences in legal education. This has been seen in relation to legal education from bachelor level to vocational training as lifelong education. The project has developed a discourse on possible building blocks for a more adequate and filling approach in teaching legal scholars and judicial staff. Thus Menu for Justice offers the EU and the European public basic guidelines to monitor the way legal and judicial training are changing in the EU, all over the different cycles of education from undergraduate to graduate, Ph.D. programmes and vocational learning. In addition, Menu for Justice intends to offer an overview of the regulative barriers that European countries are confronted with when it comes to the reform of legal and judicial training programmes. The project intends to work out a critical review of the contents of training. Legal scholars and judicial actors will be particularly affected by choices concerning what to learn and how to teach them.

More specifically, the project set up a comprehensive data set on legal education and judicial training in the EU and it drew from this a series of recommendations and policy guidelines to address both national and supranational institutions involved in the judicial policy sector. The project is broadly framed in the current debate concerning the impact that education may have (and should have) on the well-being of a developed democratic society and focuses this crucial aspect of contemporary life by paying particular attention to the role that legal and judicial education plays in European societies. Within the EU, legal and judicial education performs an even more important role as legal scholars and judicial professionals are pivotal actors in the processes of legal harmonization and judicial cooperation. By providing young generations with an innovative and rich offer of training in legal and judicial matters, European training institutions may impact deeply and permanently upon the pace and the path of the process of EU integration. Judicial systems and legal expertise are deemed to be increasingly important in contemporary societies. The European Union exhibits these features in a peculiar way. Some member States have already undergone a process of judicialization of domestic politics, with the consequence of furthering the significance of the judicial system. However, judicial coordination and legal harmonization proved to be in the last decade – at least since the European Council held in Helsinki in 1999 – a challenging and at the same time inescapable issue of the process of European integration. Among the aspects mentioned in a huge variety of official documents issued by European institutions in the field of judicial cooperation with the view of enhancing mutual trust among the member States, judicial training and the socialization of legal elites to a core of common principles came out as prioritized issues of the European agenda. For instance, in the communication adopted by the European Commission

in June 2006 judicial training is emphasized as a domain in which European actions should be boosted and enhanced.[12]

Despite the institutional attention given to this matter, at least so far, the contents offered by educational institutions within the member States have not developed accordingly: as a rule, judicial governance is not properly analyzed within the curricula offered by most universities and even a preliminary study of the similarities and differences that are exhibited by the member States as for their own systems of legal education and judicial training is still missing. Although several national judicial schools have to some extent developed courses and programmes that take into account the European as well as the domestic dimensions of justice administration, the same cannot be said for most training centres, especially at the university level.

Furthermore Menu for Justice adheres to the spirit of the Bologna Declaration. It seeks to support the creation of a common European answer to common European problems, fully taking into account valuable differences among European higher education systems and at the same time the need to set down the pillars of a common grammar for the EU higher education area. The project has revealed a very differentiated situation in the policy sector analyzed. EU countries have ended with preserving a large part of their specificities. However, this does not in itself jeopardize the possibility of building a common discourse and common arenas where policy-makers and scholars, together with practitioners, can debate issues related to legal education and judicial training. This is a key outcome of this project.

3.2 The Design of the Menu for Justice Project

Generally the key questions addressed by this project can be worded as questioning which knowledge is requested by a well-functioning judicial function placed within the context of the European integrated space (both legal and judicial). The concept of "knowledge" entails already a high number of complexities and layers. By "knowledge" we understand know-how, know that, legal knowledge, but also all other types of knowledge and theoretical and practical skills that are fairly often implicitly considered as reliable preconditions to perform a judicial function.

Then, the very concept of teaching – and the strictly related concept of learning – is also loaded with a high density of meanings.

12 For an overview see D. Piana, *Judicial accountabilities in new Europe*, Aldershot, Ashgate 2010.

We decided to focus on three dimensions of the empirical field we had in front of us at the start of the project: the regulative framework whereby the legal and judicial training programmes are delivered; the contents of those programmes; the innovations introduced in the teaching methods and in the programmes.

3.3 Organization of the Project

The project was organized in different work packages (WP) organized along four main levels: undergraduate education, graduate education, Ph.D. programmes in legal topics and finally professional training for judges and legal professions (initial and continuous training). The WP were carried out by four task forces (TF) – created during a kick off meeting – each one focusing more deeply on one of the four levels of legal education. It has an intrinsic *interdisciplinary* approach. Coordinators of the TFs are from different disciplinary fields. The aim of the WP is to map the main high legal education experiences and practices implemented in the different countries and to make a preliminary evaluation of the quality of legal training programmes, pointing out the key components of the domestic training curricula and their efficacy with regard to educational and professional needs.

Task Force 1: collection and analysis of data about the undergraduate programmes adopted by the different law faculties and departments, with particular reference to the autonomy of the universities from the state and other bodies in the administration, development and content of the legal programmes, the curricula of the programmes, activities organized for students (*i.e.* stage, collaborations, etc.), features of the final examination and/or dissertation.

Task Force 2: collection and analysis of data about the graduate programmes adopted by the most different law faculties and departments, with particular reference to the autonomy of the universities from the state and other bodies in the administration, development and content of the legal programmes, the curricula of the programmes, activities organized for students (*i.e.* stage, collaborations, etc.), features of the final examination and/or dissertation.

Task Force 3: collection and analysis of data about the Ph.D. programmes in legal matters and interactions between Ph.D. training and research in the legal field. Specific attention has been paid also to: common training programmes (involving both future lawyers and magistrates), experiences intended to build concrete professional skills and exchange programmes with other countries, where existing.

Task Force 4: collection and analysis of data about initial and continuous training for judicial and legal professions. It has analyzed the following elements: organizations charged with the training; programmes adopted; duration and features of the training (mandatory, elective); exchange programmes.

This organizational format is to support the implementation of the Menu for Justice programme, conceived as a wide range of activities supporting innovation in teaching method and programmes in legal and judicial training. This consists of four macro-products:

- *Data set.* The country-based data set offers to the broad public and to the faculties and departments of law an overview of regulative frameworks issued in the high education field and the main axes of the training programmes developed by the European universities in legal affairs. It also covers judicial training programmes and maps the institutions which devote their energies to train judges and prosecutors as well as the legal professions.
- *Training needs assessment.* This is an outcome targeting the approach in the design of the legal and judicial programmes. It casts an eye on the demand-side of the process of training and puts emphasis on the lifelong learning process. Training needs are changing over the years and may be readapted depending on the workplace and the social and cultural conditions each European citizen is going to face.
- *Virtual space* to debate issues related to legal and judicial training. The involvement of legal experts targeted by legal and judicial training is key to the development of a sustainable offer in both higher education and vocational training systems. Menu for Justice is the first network that offers a space to address legal professions with an open, inclusive, and cross-cultural approach.
- *Curriculum studiorum in judicial studies.* A prospective path to train judicial professions will be a highly valuable contribution to the further development of a fully fledged European judicial space.
- *A map of legal faculties and departments throughout Europe can be found at* <https://legaleducationineurope.crowdmap.com/>. An important factor for the project was to identify the institutions legal education is conducted from and map it virtually so future collaboration and exchange between researchers and students become easier.

Practically speaking, we proceeded in the following manner. First we collected the data and we completed the data set thereby put up with parallel data collection processes, surveying the relationship between law schools and judicial training, skills requested and skills offered to judges and legal experts, the diffusion of EU law courses, and the accreditation method.

This empirical basis was then cross-checked through a review process, involving non-MFJ experts and scholars. We asked their feedback first on the country reports drafted on the basis of the data. Then, MFJ's task forces drew from the data a set of recommendations, which again have been submitted to practitioners and scholars for feedback and comments.

The four task forces worked in parallel on the four tracks of the legal education and judicial training cycle and singled out those aspects that might be innovated to fill the gap between skills needed and skills offered by the legal and judicial programmes.

All the recommendations have been worded on the basis of the Bologna Declaration principles. First, partners involved into it will systematically reflect upon the possibility of a common framework in which modularity and flexibility will be combined together with the need of providing legal scholars with a common "grammar". This latter has been conceived as a policy discourse developed along three axes, which mirror the expertise of the consortium: judicial administration and ICT; European judicial cooperation; judicial governance and constitutional settings. These disciplinary axes are intertwined at the three levels of the Bologna cycle.

Drawing inspiration from an empirical basis of comprehensive knowledge, MFJ unpacked what is European and what is domestic in legal education and tried to propose an advanced and innovative solution to keep the local and the supranational faces of the legal education programmes together. Complementarities that exist between legal disciplines and other human and social sciences have been in depth analyzed.

MFJ dealt with the differential legacies, practices and regulatory environments that a possible implementation process of the curriculum studiorum would face in each EU country. First, implementation entailed a balanced assessment of the contexts (educational, cultural, and regulative) in which the curriculum should be embodied and then a comprehensive discussion among the partners, each of whom brought to the table their own experience in teaching, was promising for a large-impact project. Accordingly, MFJ's work addressed barriers, resources, capacities that influence the implementation process of the curriculum studiorum in the four tracks of the legal education and judicial training cycle.

Our approach includes the development of a Training and Education Assessment Tool (TEAT) that identifies key factors individual countries need to consider in assessing their current judicial training programme, future judicial training needs and the most effective means of delivering judicial training. TEAT does not assess judicial training in European countries on a hierarchical basis. Instead, it takes an issue-based approach to judicial training. The objective is to develop an assessment tool that will provide any individual country with the building blocks for advancing their judicial training programme. Using

the building blocks, each country can then develop its own individual training plan designed to provide the most efficient training programme.

On the basis of the data of the project and the knowledge of the participants Menu for Justice network worked out a number of recommendations for future legal and judicial training.

However, in order to carry out an in-depth analysis of the sustainability, the transferability, and the adaptability of the innovations, a more focused approach is required. The questionnaire of Menu for Justice has paved the way to a more detailed analysis that might be carried on by means of future programmes.

3.4 Prospects for the Future

In particular, we are considering to follow up Menu for Justice alongside two parallel strategies.

The first strategy consists in fundraising. Specifically, we want to elaborate a more focused proposal aiming at measuring, comparing, and assessing the innovations that have been introduced locally – within the universities or in some cases within specific programmes. This will be realized by means of a comparative research design, which wants to disentangle the facilitating conditions to organizational innovation, the role of change agents, and the weight of organizational legacies, and traditions within different countries and within different higher education institutions belonging to the same country.

Such a research activity will be key not only for the development of specific scholarship on convergent/divergent trends within the legal and judicial training field. It will be also very functional to the policy learning process at the European level. Once we know which conditions hinder or rather facilitate the innovation, we can rely on this knowledge and use these conditions as leverage in supporting culturally and financially innovation in legal and judicial training.

The second strategy consists in connection with other networks within the European Union – cross-functional integration of networks – and outside the EU – horizontal integration. Cross-functional integration aims at creating a systemic and integrated approach to legal and judicial training. The latter should not take place in vacuum, isolated from the rest of the social systems in which they are rooted. A system of sound and effective education in legal affairs depends on the virtuous combination of many components, such as the training of trainers, IT-based learning, linguistic competences, interdisciplinarity, etc. Within

the EU there exist networks that focus on each of these components. We want to play as a catalysist in cross-functional communication initiatives.

Menu for Justice is an interdisciplinary programme of networking and policy-oriented action aiming at supporting a fully fledged European approach in legal and judicial training. It takes fully inspiration from the following European policy mainstreaming ideas:

- Knowledge-based society: MFJ took seriously the challenge of a more competitive European Union and wants to offer academic experiences to improve the lifelong learning process which is nowadays compelling in a more integrated labour market.
- Partnership: MFJ represented a unique opportunity for higher education institutions and research-oriented organizations to meet political institutions and judicial institutions. These latter need staffing their departments and units with practitioners trained in law but at the same time with the capacity to think in a truly speaking European fashion.
- Sustainability: MFJ wanted to start up more advanced projects triggering the production of policy-oriented know-how to coordinate universities and higher education programmes.
- There are several policy fields targeted by MFJ. First of all, MFJ will impact upon the Bologna process, to which it adheres completely. Second, it will positively impact upon the judicial cooperation policy field, since judicial training is key to the enhancement of the coordination of courts and prosecutor offices across the domestic borders.

Third, it will have a positive impact upon the regulative style of the EU as a whole. As a matter of fact, legal experts contribute on a daily basis to the well-functioning of the EU regulation. A more interdisciplinary approach in legal training will provide legal experts with a more open and policy oriented approach in their way of reasoning and consequently will help better regulation be put in place.

Part II
Legal Education in Europe: General Analyses

4 The Map of Legal Education in Europe

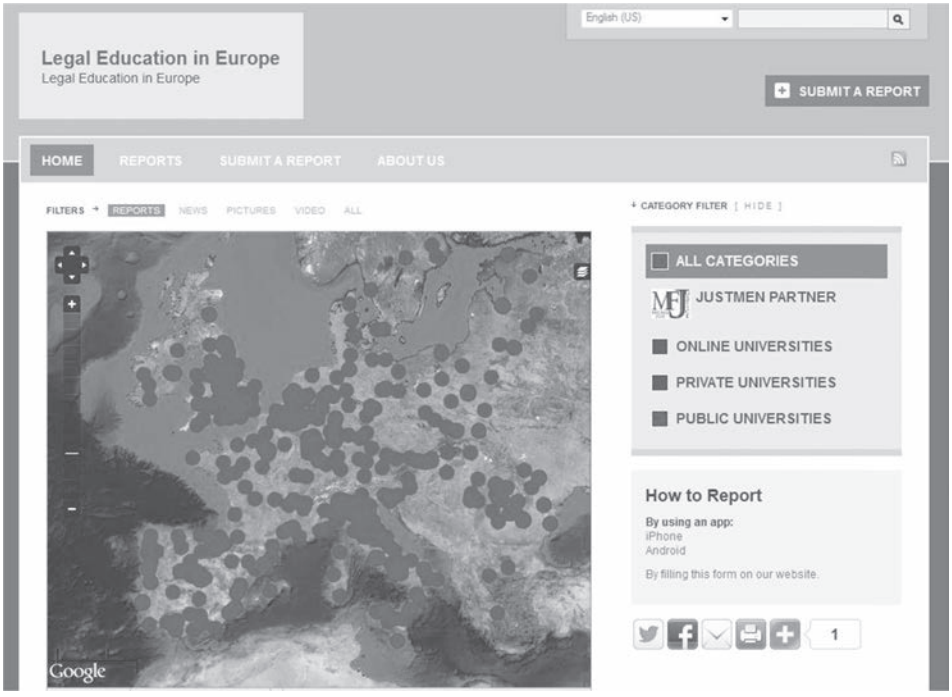
Marta Poblet and Michele Sapignoli

4.1 The Map

The Map of Legal Education in Europe is one of the most visible outcomes of TF1. The map was initially proposed by the Institute of Law and Technology (IDT-UAB) at the TF1 meeting in Barcelona (September 2010) and from then onwards has been jointly managed by the IDT and the University of Bologna.

The first official presentation of the map was in Brussels (November 2011), where all the MFJ members were invited to supply information on legal education institutions for their respective countries.

Figure 4.1 Legal Education in Europe: <https://legaleducationineurope.crowdmap.com/>



The goal of the map is to provide aggregated, geolocated information on the public, private, and online education institutions all over Europe.

The use of the crowdmap platform allows MFJ partners to upload reports containing basic information (name of the institution, brief description, link to the official website, etc.). The managing team reviews these reports and if no information is missing approves them for publication (that is, visualization on the map). Non-MFJ partners can also submit information on legal education institutions by filling the online form provided in the site. As a result, final users can zoom in the map to search which institutions are located where and how they can be contacted. The map database can also be exported to other applications in different formats.

We expect the map to be an initial step towards a comprehensive European open data set of legal education institutions useful to both institutions and citizens.

Table 4.1 Reports Uploaded

Country	Reports	Country	Reports
Austria	7	Lithuania	3
Belgium	13	Luxembourg	1
Denmark	4	Malta	2
Estonia	3	The Netherlands	11
Finland	4	Poland	21
France	56	Portugal	26
Germany	41	Romania	43
Greece	3	Slovakia	6
Hungary	9	Slovenia	3
Iceland	4	Spain	69
Ireland	8	Sweden	6
Italy	70	United Kingdom	89
Latvia	12		
Total			514

4.2 The Reports

At the end of the project (September 2012), the map contains 514 reports. Table 4.1 shows these reports by country.

The reports were added to the map in four different points in time: Spanish reports were added first, in November and December 2011; then in early March 2012 we uploaded Italian cases; finally the other reports were uploaded in the May-July 2012 period. About 90% of the 514 cases were on the map by the end of June 2012; the remaining 10% were added in August and September 2012.

Countries with a high number of reports concerning universities providing legal education are the United Kingdom (89 legal education institutions), Italy (70 programme), Spain (69), and France (56). Romania and Germany present around 40 reports each, while Poland and Portugal show about twenty legal education programme each.

Eighty-one reports (16% of our 514 reports) are referred to Menu for Justice partners, while more than 430 report information about universities that did not participate in our project. Almost 80% of the institutions included in the map are public universities; the others are private schools. The online universities mapped are 16 out of 514.

5 Cooperation Between Law Schools and Courts, Comparative Analysis

Markku Kiikeri, Philip Langbroek and Quirine Sluijs

5.1 Introduction

The Justmen project investigates the way legal and judicial training has been organized in EU member states and associated countries. In law schools students are taught that courts and judges are central to the application of the law in any legal system. The Justmen project also investigates how innovative legal and judicial training is, considering the rapid changes in law and society. Departing from those presumptions we considered that interaction between judges and law schools could be an indicator for the societal integration laws schools and courts try to achieve.

In the following we try to name and evaluate the different kinds of interaction and integration between law schools and courts.This conclusion is not based on a representative sample; therefore the outcomes should be seen as indicative only.

The country reports are summarized in a table at the end of this chapter.

5.2 Relations Between Law Schools and Courts

The majority of the participating countries in this survey do have some kind of relationship between law schools and courts. Usually, they do not only have relationships with courts, they also do maintain relationships with law firms.

There are some new projects presented in the last couple of years. For instance: since 2010 the University of Bergamo (Italy) and the Tribunal of Bergamo have a cooperative project which involves cooperation amongst students working at the Tribunal. Also the first instance court of Milano has a project where a law student can do an internship at the court. Since 2011 the Superior Council of Magistracy and several Law Faculties in Romania have Collaboration Protocols for the duration of five years. In Slovenia, more and more attention to the integration and interaction is paid. In the Netherlands, there is a quite intensive and mutual cooperation between law schools and the (district) courts, and this is facilitated by the Council for the Judiciary.

5.3 Participation of Judges in Teaching

In almost every participating country of this survey, it seems to be very normal for judges to participate in teaching every now and then. In general this happens on a case-to-case basis. The teaching by judges usually takes place in the setting of moot courts and seminars arranged by the law schools. A very good example is the Moot Court for students organized by the Riga Graduate School of Law (Latvia) where over the last three years different judges of *inter alia* the European Court of Human Rights haven taken seat in the judicial panel.

By teaching, judges stay involved in the education of new jurists. Next to this, by participating in (research)seminars, the knowledge of judges is also made to good use for research purposes. Judicial teaching on a case-to-case basis seems to be the main part of the interaction between law schools and courts. In the Netherlands, district court judges take part in the curricula and scholars give lectures in the courts. In Luxembourg this participation seems to be quite regular because of the international character of the programme of the University which requires participation of ECJ judges. In France, a good example is the colloquium at the Court of Cassation organized by Paris University 1. During the colloquium each subject of research is co-presented by a judge and a law professor.

5.4 Law Professors Educating (Future) Judges

Law professors do participate in curricula for judges in most countries. This happens both via national training institutes and via local initiatives. This way interaction is established between law professors and future judges.

5.5 Combining the Position of a Judge with a Law Professor Position

Another form of interaction between law schools and courts is the possibility of judges to combine their profession with that of a law professor. This is possible in most countries but in some it happens more often than in others. In some countries, *inter alia*, Lithuania, Latvia, Poland, Belgium, Malta, Romania, the Netherlands, France and Slovenia, it is possible and also common to be a professor as well as a judge at the same time. In the Netherlands, on proposal of the Council for the Judiciary, universities appoint judges as extraordinary (part-time) professors. Judges being law professors and therefore actively taking part in the education of law students can be assumed to have a considerable amount of influence on the knowledge of students with respect to the judiciary and the daily work of judges. This contributes to the practical knowledge of the students and of course it also enhances the interaction of contacts between judges and scholars.

5.6 The Concept of Substitute Judges

Apart from the Netherlands and probably Poland, in most countries it is unusual or even impossible for law professors to be a substitute judge. This seems to be an unacceptable combination of practices in those countries.

5.7 Formal Cooperation Between Law Schools and Courts

On *formal* cooperation between law schools and courts, we can state that it is clear that there is cooperation in different guises. The meaning of "formal" in this context is vague, however. In many countries law schools have cooperative projects or protocols with courts. Several examples can be given.

As mentioned above, in Italy some projects between courts and law faculties are organized. The Faculty of Law of the University of Malta organizes a two-year part-time education on Procedural Law for court employees. Mentioned above is also the cooperation between the Superior Council of Magistracy and several Law Faculties in Romania. In Portugal the University of Lisbon has drafted a programme that allows law students to be present in the court audience and discuss the proceedings with the judge in charge. A bit different is the cooperation between the University of Bordeaux in France and the National School of Magistracy, the training institute for judges in France. Here the cooperation is not with courts but with a training centre for judges. In Slovenia there is a gentlemen's agreement between the Dean of the Law Faculty at the University of Ljubljana and the president of the Supreme Court intended to foster cooperation. In the Netherlands, most law schools have a close cooperation with their local district court, this concerns teaching, research and the organization of seminars.

Next to these examples it can be added that in nearly every participating country except for Finland and Portugal, it is possible for law students to do an internship at a court. All these protocols, projects and activities facilitate the interaction between the law schools and courts.

5.8 Cooperation in Research

It can be stated that the participation of judges in research, seminars and conferences on legal matters is not quite normal in most countries. There are considerable differences between the participating countries concerning the question whether the Council for the Judiciary and/or the Minister of Justice do commission research to law schools, though.

Important to notice is that this question in the survey is not understood properly by many respondents. To commission research means: to give an assignment for research and to pay the law school for the research.

The countries for which it is indicated that research is commissioned to law schools are Italy Finland, Luxembourg, the Netherlands, Slovenia, France and sometimes Latvia. It also happens in Belgium. In the Netherlands, for instance, it is quite common for universities to do research for the Ministry of Justice and the Council for the Judiciary. The same applies for Luxembourg and Finland. In France there is the Mission de Recherche Droit et Justice which does commission research by offering grants by competition in the justice field. In the Netherlands the research commissioned often is of a multidisciplinary nature. In Slovenia research is regularly committed via the so called 'Target Research Programmes'. On the other hand, in Latvia, it only very rarely happens that research is being commissioned.

For Lithuania, Malta, Romania, Portugal and Germany it is indicated that no research – as far is known – is commissioned by the Ministry of Justice or the Council for the Judiciary to law schools. The important question in this situation is: why not? And does this mean that there is no research carried out commissioned by those institutes at all, or just not by the law schools? We did not receive enough information in order to be more precise.

In the case of research being commissioned, it is not established that judges are involved or interviewed in this research concerning their area of law or concerning their work.

In Finland, Luxembourg and Slovenia it is said to be common to use several methods including interviewing judges and others. Interviewing judges is also quite common for research in the Netherlands and in Latvia. It depends on the research design and the assignment if and how judges will be involved in the research.

The other countries participating in this survey have not stated anything concerning the involvement of judges in research. One could conclude that this means that in those countries it is common to involve and interview judges as a part of research.

5.9 Influence of Judges and Court Administrators on the Curricula of Law Schools

In most countries the Council for the Judiciary and the Minister of Justice do not have or have minimal formal influence on the curricula of the law schools. In some cases

there is some practical influence, however. This mostly is the case with judges that are law professors too: in their capacity as law professors they have a say in the curriculum of their law school. This happens, *inter alia*, in Malta and Romania. A more official influence is the possibility for judges or staff of the Ministry of Justice to participate in a scientific committee that establishes the curriculum. This happens, *inter alia*, in Romania and Luxembourg.

The Ministry of Justice has no influence on the content of the curricula of the University of Luxembourg. The programme is defined by the scientific consultative commission of the university. This commission is composed of equal numbers of teachers from Luxembourg and persons chosen for their skills. Every programme is approved by a steering committee composed of academics, judges and lawyers. In this way the judiciary has some influence on the content of the curricula of the university.

5.10 Conclusion

Taking together all the information we received about the interaction between law schools and courts in these different fields of cooperation, we can show the differences between the different countries. The answers to the questions of the survey are shown in the tables below. Romania appears to have the most intensive interaction and cooperation between law schools and courts and their administrators. In this country a judge can be a part-time professor. Good formal cooperation projects and internships at courts are obligatory.

In many countries, cooperation between the courts and law schools could be developed further on. We think it can be advantageous for law schools and courts to use each other's experience and knowledge. Research may be commissioned and judges may be involved in the research and in teaching.

5.11 Discussion

Cooperation between law schools and Ministries of Justice, Courts and a Council for the Judiciary can take very different shapes. The involvement of judges in law school curricula, the involvement of scholars in curricula for judges – in training and in lifelong learning programmes – is not self-evident everywhere. A lot of this cooperation is not standardized and certainly not centralized on the national level.

We, as scholars, are in favour of such cooperation in teaching and also in research. Judiciaries usually are not always accessible and cooperative in research, and there are

mutual benefits possible and desirable, as both courts and law schools are knowledge-intensive organizations.

The way this cooperation can be organized is a subject separate from the experience that exchanges between law schools and organizations where legal professions work (law firms, courts, and public prosecutions offices) can be mutually beneficial.

For policymakers in the field of legal education and of training of legal professionals this is not so easy. Often legal knowledge as such is not the real problem, although new fields of law emerge that require training, also for experienced professionals. Training needs to evolve also around *e.g.* being able to understand statistics and outcomes of forensic research. Training needs for judiciary are not only focused on law. The question then becomes how law schools can position themselves in this field of training of professionals. Curricula that comprise (much) more than the usual transfer of knowledge of positive law and training of skills to apply law to cases seem to be necessary. Otherwise they will lose territory to other disciplines like economics, sociology and psychology.

For research in the field of the practices of the legal professions, *e.g.* policy evaluations, evaluation of new legislation or contributions to development of legislation *e.g.*, in administrative law or on ICT's etc. There also can be mutual benefits for the researchers to keep their knowledge of the field up to date, for *e.g.*, the courts to get some external feedback assembled by researchers. This, however, presupposes that legal researchers are willing to adapt their research methods beyond the usual analysis of legislation, doctrine and jurisprudence.

Especially for judges it sometimes seems difficult to cooperate with law schools and to participate in curricula and in research. Eventually, everybody can become a judge's client and becoming involved in professional groups beyond the courts may bring the risks of jeopardizing judicial impartiality. We think this is not a real risk, provided courts and judges show some flexibility in case allocation when an undesirable combination of interests occurs in a case. Not all judges of all courts need to engage in cooperation with law schools. Cooperation between courts and law schools eventually also depends on the capacity of the court to organize participation of its judges without jeopardizing future judicial impartiality.

In short, the least problematic forms of cooperation seem to be:

- judges participating in teaching,
- scholars give courses for judges,
- involve courts and judges in seminars and research by law schools,
- organize internships for law students at courts.

Table 5.1 Cooperation Between Law Schools and Courts

Countries/Questions	Romania	Luxemburg	The Netherlands	Latvia	Poland	Slovenia
1A Do judges participate in teaching	+/−	+	+	++	+	+
1B Are some law professors substitute judges	−	−	+	−	+?	?
1C Do teachers give courses for judges	+	−	+	+	+	+
1D Are judges part-time law professors?	++	+/−	+	++	++	+
1E Is there any formal relationship or cooperation between law schools and courts	++	−	+	−	+/−	+
1F Do law students have internships at courts?	++	++	+	+	+	+/−
2. Do judges sometimes participate in research seminars and conferences on legal subjects, organized by law schools?	+	++	+	+	+	+
3. Does the Council for the Judiciary/Ministry of Justice commission research to law schools, and does the research occasionally also involve interviewing or observing judges?	−/?	++	+	+/−	?	++
4. Do courts/Council for the Judiciary/Ministry of justice have any influence on the content of curricula in law schools (except for the legal provisions on civil effect and what is needed to graduate as master in law). *E.g.,* are representatives part of an advisory board in a law school? Do judges participate in course development? etc.	+	+	+	−	?	−
5. Is there an ongoing discourse in law schools in your country on judicial knowledge and skills? If so can you briefly summarize it?	+	=	+	+/−	?	+/−

Table 5.1 Cooperation Between Law Schools and Courts

Countries/Questions	Malta	Finland	France	Sweden	Lithuania	Germany	Belgium	Portugal	Italy
1A Do judges participate in teaching?	++	+	+	+	+	++	+	+	+
1B Are some law professors substitute judges?	–	–	+	+/–	–	+/–	?	–	–
1C Do teachers give courses for judges?	+	+	+	+	+	–	+/–	+	+
1D Are judges part-time law professors?	+	+/–	+	+/–	+/–	+/–	++	+/–	+/–
1E Is there any formal relationship or cooperation between law schools and courts?	+	+/–	+/–	+/–	?	–	+/–	+	+
1F Do law students have internships at courts?	+	?	+	+	+	+	?	+	–/+
2. Do judges sometimes participate in research seminars and conferences on legal subjects, organized by law schools?	+	+	+	+	+	+	+	+	+
3. Does the Council for the Judiciary/Ministry of Justice commission research to law schools, and does the research occasionally also involve interviewing or observing judges?	+	++	+	?	?	–/?	+	?	+
4. Do courts/Council for the Judiciary/Ministry of Justice have any influence on the content of curricula in law schools (except for the legal provisions on civil effect and what is needed to graduate as master in law). *E.g.* are representatives part of an advisory board in a law school? Do judges participate in course development? etc.	+/–	+/–	–	–	+/–	–/?	?	–	–
5 Is there an ongoing discourse in law schools in your country on judicial knowledge and skills? If so can you briefly summarize it?	–/+	?	+	+		+		+	+

Part III
Task Force 1 Undergraduate Legal Studies in Europe: Comparative Analyses

6 Autonomy of Universities and Barriers to Change Legal Education

Ole Hammerslev and Sandra Scicluna

6.1 Autonomy and Barriers

This part will deal with two aspects of legal education at undergraduate level. The first will be "Autonomy" of the teaching institutions, while the second will be "Barriers to Change". Autonomy is found in most institutions to some degree. We can find countries which have total autonomy to total autonomy with some informal influence by the legal profession to countries where the curriculum is decided by the government. When we look at barriers to changing the law course curriculum in Europe, we see a variety of situations spanning from none to normative resistance to bar examinations to state barriers. We give a summary of the various European countries that participated in this study. The examples have been arbitrarily chosen.

6.2 Autonomy

Taking a cursory overview of the answers received by the various partners of Menu for Justice, one can conclude that the universities with legal BA degrees in most of the European countries have autonomy in deciding the curriculum of the law course. This is balanced by the fact that in most nation states there is a bar exam which lawyers have to do. For example we find total autonomy to decide the curriculum for the universities in Belgium, but accreditation is at the regional level. In Belgium regulatory power regarding education is situated at the regional level (the "communities"). There is a general framework which is outlined by decrees which allows universities and other institutions to develop their programme content.

Universities in Denmark, England and Wales, France, Germany, Italy, Ireland, Malta, Portugal, Rumania, Slovenia, Spain and the Netherlands have total autonomy but again in most of these countries there is some form of scrutiny at the entrance in the profession. In Denmark law faculties are free to determine the specific courses. The Academic Study Board at the universities, consisting of students and researchers from the specific university, has substantial influence on the structure and the general framework for the standards in connection with the course study programme. The Academic Study Board is

bound by the curriculum and the internal guidelines of the university. Moreover, with a change in the University Act of 2007, the universities should set up external recruitment panels and the different educations should be accredited in the Accreditation Institution. The recruitment panels, which were set up in different tempi at the various legal educations, advise the universities on matters about teaching forms, curriculum, exam forms, etc. The accreditation does not focus on the curriculum but on alignment in the educations, on the ways they are evaluated, on whether the single courses in the end meet the final competence descriptions of the education, etc.

In England and Wales, universities have autonomy over the curriculum; higher education (HE) is provided by different institutions: universities, university colleges and publicly designated and autonomous institutions. All universities and many colleges have the power to develop their own courses and award their own degrees, as well as determine the conditions on which they are awarded. From 2005, institutions that award only taught degrees ("first" and "second cycle") and meet certain numerical criteria, may also use the title "university". Institutions that award only taught degrees but do not meet such criteria may apply to use the title "university college". Degrees and other HE qualifications are legally owned by the awarding institution, not by the state. Qualification descriptors were developed with the HE sector by the Quality Assurance Agency for Higher Education.

French institutions are highly autonomous. They have independent regulation of internal organization and operations by statute in accordance with the law with faculties determining the specific courses offered in undergraduate law degree programmes.

On the other hand, German law degrees are regulated in a four-storeyed structure (federal level, state level, university level, constitutional level). The curriculum is the result of top-down decisions of the federal Parliament (DRiG), the state Parliaments (JAG), and the universities/faculties. In general, the curriculum of the state examinations is determined mainly by the central authority, while the universities are comparatively free to sculpt the curriculum of the matter of choice or university examination. It is interesting to note that in Germany the results obtained in the course are often ignored by employers.

Italian universities also have some autonomy to define the content of degree courses (the articulation of curricula, the methods of undertaking the thesis dissertation, the examinations, the evaluation of initial preparation of the student and the guidance services for students) in accordance with the law.

Ireland has a set of over ten law schools: seven in universities, two in professional schools and several in institutes of technology and private colleges. The colleges linked to

professional careers also have law schools. Universities have the authority to set the content of their courses, to decide the methods of student assessment, to certify the awards given and to confer their own certificates, diplomas and degrees which are recognized by the State. There are general requirements for law schools, provided by the Higher Education Authority. Two are relevant: a valid Bachelor's degree in law must be 60 ECTS per year (180 ECTS minimum in total over the three years); professional legal bodies (like the Law Society of Ireland for those considering practising as solicitors and the King's Inns for those considering practising as barristers) will recognize qualifications subject to their fulfilling certain requirements for professional recognition.

In Malta the university is autonomous and independent. It operates according to legal notices passed by Parliament after they are approved by university's senate and council.

In Norway only three universities are accredited to provide master's degree in law; they can decide which degrees to provide and the content of them; however, in order to be accredited, they must comply with quality standards set by NOKUT (Norwegian Agency for Quality Assurance in Education). Furthermore the Government decides which degrees and professional studies an institution can offer, the normal time for such studies and the title the degree confers. The ministry of knowledge can issue regulations on national frameworks. The structure of the programmes differ between the three institutions, both in form and content, although graduate students are all considered to be equally competent.

The Hungarian Committee of Accreditation (MAB) is the central organ of administering and controlling the curricula and programmes of HE in Hungary. It decides on the questions of professorship, accreditation of faculties and all credit questions and gives certificates for the university. MAB has strong authority to measure the universities' merits. The ministry of education determines the basic elements of education, the min/max credits required and some proposals of the different kinds of knowledge that are required. State decrees do not go into details, as this is left in the hands of the universities that have the autonomy on what to teach.

A new law, adopted by Parliament on April 2009 in Lithuania, regulates the sphere of higher education. Other acts issued by the Ministry of Education and Science regulate the general requirements for the undergraduate studies, including the credit amounts of the undergraduate studies and its parts, the general parts of the studies and so on. Another act (Description of the Study Field of Law, at draft version) should very specifically regulate the aims, the structural framework, the acquired knowledge and skills and the contents (by subject spheres or subjects) of undergraduate legal studies. Until it is not adopted,

higher education institutions remain rather autonomous in this respect, although some requirements are already fixed by the decision of the Constitutional Court of Lithuania.

6.3 Barriers to Change

Countries like Belgium, Finland, France, Norway, Rumania, and Spain have no barriers to change, with total autonomy. In Belgium the formal barriers to reforming undergraduate law degree programmes are limited. Faculties can modify programmes. Yet, they do need to account for their programmes to the accrediting bodies every eigth years and need to stay within the general framework as outlined in the decrees. Alternatively in Finland, judges, prosecutors and advocates must have the "national" degree, to be appointed to their respective posts. This is also regulated by EU legislation.

In Norway we find that each academic institution is entrusted with a very high degree of autonomy in defining the contents of subjects taught. Apart from general guidelines regulating teaching, examination and so on, each institution is self-governing and issues its own regulations, programme plans and curricula. From a bottom-up perspective, reform is relatively easy (and can be made at faculty level). Although NOKUT stresses internationalization in its evaluations, the institutions are highly autonomous to structure the content of legal education. On the contrary, change from a top-down perspective is more difficult: although it is possible for the government to legislate on the content and structure of legal education, this would encounter resistance from institutions and it usually can be done as part of general reforms, such as those that came through the Bologna process.

In Romania the Presidential Commission for the Analysis and Development of Education proposes some lines of action to modernize the educational system: differentiating universities and concentrating resources; giving complete university autonomy in defining teaching and research needs.

In Denmark it is the executive order which sets the general frames for the standards in connection with the legal study programme. There are also internal informal reservations in the legal setting which means that it is possible for the universities to do as they would like to as long as the university act is followed. In Hungary the most important issue is what is special and competitive compared to others curricula. Unfortunately, internal informal university structures can hinder the process. They have no pressure to specialize the curricula. Placing pressure on the law faculties is very difficult as they have very strong autonomy to form their own curriculum. There is a list of obligatory subjects to teach

in every university. There are nine law faculties, and the teaching system in each is very similar with small differences. Therefore there is strong resistance by leaders to change.

Other countries such as Ireland, Malta, Portugal and the Netherlands have university autonomy; therefore, technically speaking there are no actual barriers to change. However entry to the legal profession depends on a bar examination, which naturally influences the content of the university degrees.

In Ireland there is large academic freedom in the design of the curricula. No guidelines exist regarding a minimum common curriculum for tertiary level. Once courses are established, academic departments have the authority to adapt and refine them. However, the content of the curriculum is largely determined by the requirements of the professional legal bodies. For solicitors, eight law subjects are required by the Law Society (Company Law, Constitutional Law, Criminal Law, Equity and Trusts, European Union Law, Law of Contract, Law of Tort and Real Property). For barristers, the King's Inns require a certain number of subjects (Administrative Law, Company Law, Equity and Trusts, Jurisprudence, Land Law and Succession, Law of the European Union).

In Malta, theoretically there are no barriers to change. However, prospective lawyers have to pass the bar examination set by the state. To change the content of the course this needs to pass through APQRU (Academic Programmes Quality and Resources Unit) and the Senate. The course regulations have to pass through Parliament.

The same situation exists in Portugal, where there are no legal barriers or constraints to reform law degree programmes; however, the fact that the Bar Association chooses a fixed range of subjects for the initial training can be a barrier to their innovation; moreover, the practice of academic institutions to choose a certain range of subjects as mandatory tends to restrain innovation by other institutions.

In the Netherlands regulatory powers are shared among the Minister of Education, the Accreditation Organization for the Netherlands and Flanders (NVAO) and the individual universities. Universities present their balance sheet and a justification for how they spent their money to the minister, who can withdraw subsidies and revoke a university's competence to grant degrees. The curriculum is not determined by a central authority. Every law faculty can decide which specific courses are offered. Most faculties offer the same courses, and the differences are mainly in terms of which courses are compulsory, how many optional courses a student can take and in which year which course needs to be taken. In general every student gets thirty credits (out of 180, so a half-year) to do optional courses (*i.e.* courses he or she can choose).

In England and Wales again we find a situation where the university is autonomous, but the Government makes certain rules and regulations that have to be reflected in the law degree curriculum. The Training Regulations 2009 (rules that govern all aspects of qualifying as a solicitor), deserve a mention. They set out The Joint Statement on Qualifying Law Degrees (prepared by the Law Society and the Bar Council, which sets out the conditions a law degree course must meet in order to be termed a "qualifying law degree") and the Joint Academic Stage Board (Guidance on the determination of learning resources for recognized law programmes).

The situation for Italy and Slovenia are slightly different. In Italy the universities are autonomous, however, the approval by the ministry in charge of universities is required to change degree courses in law. It is mandatory that the opinion of the CUN (National University Council) and subsequent approval by the Ministry. Activation of courses shall also be subject to the inclusion in the database of training of the Ministry.

In Slovenia autonomy exists for minor changes but there is the need for approval from the National Agency for Quality in Higher Education for major changes which are compulsory in the curriculum. The least autonomous of the countries seems to be Lithuania where the curriculum is determined by the constitutional court. According to the constitutional court, the core curriculum for lawyers include: legal theory, history of law, constitutional law, administrative law and administrative procedure law, finance law, criminal law and criminal procedure law, civil law and civil procedure law, labour law, international public law; European Union law. Additional legal disciplines can be, for example, Roman law, comparative legal science, international private law, ecology law, agrarian law, criminology etc. If the first model is chosen, the enumerated subjects must be taught at the undergraduate level. Moreover, it is worth mentioning "The qualification requirements of higher education in law for the persons who wish to hold the position of a judge", which provides what subjects must be learned to hold the position of a judge and the credit amount of each.

7 Composition of Curriculum for European students of Law Faculty: "State of the Art"

Luigi Lepore

7.1 "Non-Legal" Disciplines, Interdisciplinarity and International Subjects: The "State of the Art"

Legal subjects are the core of the undergraduate law degree in Europe, but the presence of "non-legal" subjects is important in many countries. Often these studies are provided as mandatory in the curriculum and/or as optional. The following graphs show that in the 62% of the countries analyzed some "non-legal" studies are mandatory for the students, while in the 81% of the countries students have the opportunity to choose some "non-legal" studies as optional.

Figure 7.1 "Non-Legal" Discipline (Mandatory and Optional) in Law Degree

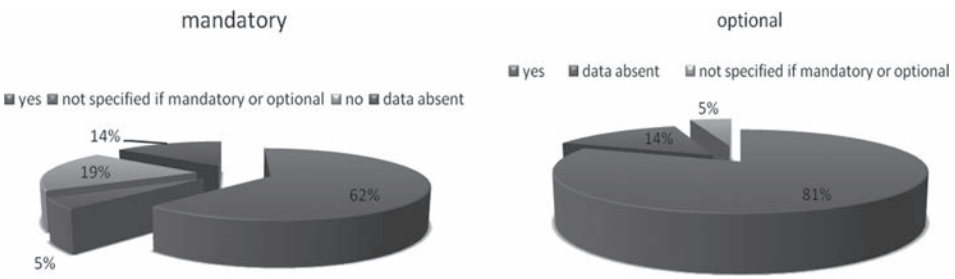


Figure 7.2 Interdisciplinary Courses (Mandatory and Optional) in Law Degree

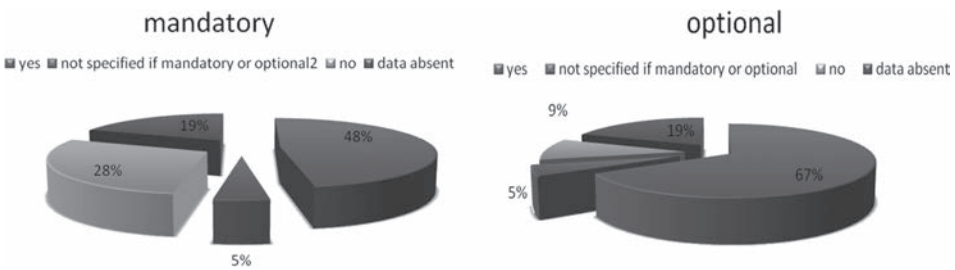


Table 7.1 Traditional and Innovative "Non-legal" Discipline in Law Degree

Traditional or common	Innovative
"Economics"	"Sociology"
"Political science"	"Accounting"
"History"	"Public Management"
"Foreign language"	"Public Administration"
"Philosophy and ethics"	"Management and organizations of judicial system"
"Medicine"	
"Research method"	

"Non-legal" disciplines are also present in the interdisciplinary courses. Following graphs show that in 48% of the countries analyzed there are mandatory courses that combine another discipline with law. In the 67% of the sample this kind of courses are present as optional.

According to the data obtained by the questionnaires, we can identify 17 "non-legal" disciplines that we can collocate in two groups:[1]

- *traditional non-legal discipline,*
- *innovative non-legal discipline*

Regardless of nature (mandatory or optional), we can collocate in the first group disciplines that are present in the majority of law degree courses of the countries surveyed. It is the case of "Economics", "Political science", "History", "Foreign language", "Research Method", "Medicine", and "Philosophy and Ethics".

We can collocate, instead, in the second group disciplines that are present only in some countries, for example "Sociology", "Accounting", "Public Management", "Public Administration", and "Management and organizations of judicial system".

The following table shows in a more analytic way the different "non-legal" disciplines that compose the curriculum in European law faculty.

1 There are also other "non-legal" disciplines, but we have decided to consider in this analysis also the most commons.

Table 7.2 "Non-Legal" Disciplines Taught in European Law Faculties

Country	PS	EC	Soc	His	FL	Acc	P&E	PA	PM	Psy	S&M	M&OJS	Ant	Med	RM	Comm	EP
Austria	O	M		O	M	O	O			O			O	O	M	M	O
Belgium	O	M	M	O	M		M	O	O	M	O				O		
Denmark			M/O		O		M										
England and Wales	O	O		O	O		O				O		O	O	O	O	O
Finland (not complete)																	
France	M	M		O	M		O								M		
Germany		O			M	O				O				O	O		
Hungary	M	M		M			M				M			O		O	
Italy	M	M	O	M	M	M/O	O	M/O	O	O	O	O	O	M/O	O	O	
Iceland				O	O					O			O	O			O
Ireland	O	O			O					O							
Latvia	M/O				M/O									O	M		
Lithuania	M	M		M	M		M			M			O	O	O	O	O
Malta	O	O		O	M		M			O	O		M	O	O	O	M

Table 7.2 "Non-Legal" Disciplines Taught in European Law Faculties

Country	PS	EC	Soc	His	FL	Acc	P&E	PA	PM	Psy	S&M	M&OJS	Ant	Med	RM	Comm	EP
Norway (not complete)																	
Portugal (not complete)																	
Romania							M					O					
Slovenia		M		M/O	M									O	O		M/O
Spain	O	M															
The Netherlands	O	M/O		O	O		O			O	O		M	M	M	M	M
Turkey	M/O	M/O		M/O	M/O		M/O			O	M/O		M	M	M/O	M	M
Total M & O (n. of times that the discipline is present)	13	14	3	12	15	3	12	2	2	10	7	2	8	12	12	8	8

Label of the disciplines	**Label of the type of courses**
Political Sciences	PS
Economics	EC
Sociology	Soc
History	His
Foreing Language	FL
Accounting	Acc
Philosopy and Ethics	P&E
Public Administration	PA
Public Management	PM
Psychology	Psy
Statistics and Mathematics	S&M
Management and Organizations of Judicial System	M&O JS
Anthropology	Ant
Medicine	Med
Research Method	RM
Communication	Comm
Environmental policy	EP
M	Mandatory
O	Optional
M/O	Mandatory and optional, depending on the university
Label of frequency	
Disciplines more frequent	*
Disciplines less frequent	**

Observing the data we see that in the "innovative non-legal disciplines" there are, for example, course of:

- "Accounting", which is present as optional discipline in *Austria*, *Germany* and *Italy* (in some universities);
- "Management and Organizations of Judicial System" which is taught in *Romania*;
- "Public Management" and "Public Administration" are present as optional in *Italian* and *Belgian universities*;
- "Communication" is taught as mandatory discipline in *Austria*, *the Netherlands* and *Turkey* and as an optional in *England and Wales*, *Hungary*, *Italy*, *Lithuania*, and *Malta*.

When "non-legal" courses are present in the curriculum, the percentage of "non-legal" credits that students have to take (mandatory) or are allowed to take (optional) is limited in a range that vary in each university. The same is true for interdisciplinary credits.

It is impossible to define a precise or average percentage of "non-legal" and interdisciplinary credits that are mandatory or optional for European law students because of two causes: the lack of quantitative data in the data set and the variety of these percentage in each university. For example:

- in *Denmark* the "non-legal" optional credits vary from university to university. In general it is possible to take 10-20 credits of non-legal topics;
- in *Italy* the percentage of interdisciplinary credits that students have to take is limited. The limit, for example, is six credits in Bologna University and Federico II University; the limit is fifteen credits in Parthenope university. Also the percentage of "non-legal" credits in Italy varies by university and course;
- in *England and Wales* is the same: the percentage of interdisciplinary and "non-legal" credits varies by university and course;
- in *Lithuania* there is no limit to the percentage of optional interdisciplinary credits, but it varies by university and course;
- in *the Netherlands* at most universities only one to two interdisciplinary courses are compulsory and if a student wants to take other interdisciplinary courses, that should be done in the free part of the programme of thirty credits;
- in *Turkey* very few universities offer interdisciplinary courses; in Ireland there is no limit as such for interdisciplinary credits, but where degrees include a higher number of "non-law" subjects, the likelihood is greater that students will complete another law degree before seeking entry into the professions;
- in *Hungary* "non-legal" part is one third of the whole legal degree of 300 credits.

Regarding the international subjects, Table 7.3 shows a synthesis of the different international disciplines mandatory and optional that compose the curriculum in European law faculties:

– "European law" is present as mandatory in fourteen countries (*Austria*, *Belgium*, *Denmark*, *Germany*, *France*, *Italy*, *Iceland*, *Ireland*, *Lithuania*, *Latvia*, *Malta*, *Slovenia*, *Spain* and *the Netherlands*) and as optional in three countries (*Turkey*, *England and Wales*);

Table 7.3 International Subjects Taught in European Law Faculties

Country	Comparative law	European law	European law and proceedings	International law
Austria	O	M	M	O
Belgium	M	M	M	M
Denmark	O	M	O	M/O
England and Wales	O	O	O	O
Finland (not complete)				
France	O	M		O
Germany	O	M	M	O
Hungary				
Italy	M	M		M
Iceland	O	M	O	O
Ireland	O	M	M	O
Latvia	M/O	M		M
Lithuania	O	M	O	M
Malta	O	M	M	M
Norway (not complete)				
Portugal (not complete)				
Romania				
Slovenia	M	M		M
Spain		M		M
The Netherlands	M/O	M	M	M
Turkey	O	O	O	M

Label of the type of courses	
Mandatory	M
Optional	O
Mandatory and optional, depending on the university	M/O

– "Comparative law" is present as mandatory in three countries (*Belgium*, *Slovenia* and *Italy*) and as optional in ten countries (*France*, *England and Wales*, *Germany*, *Iceland*, *Ireland*, *Lithuania*, *Denmark*, *Malta*, *Turkey* and *Austria*). There are also two countries (*Latvia* and *the Netherlands*) where it is mandatory in some universities and optional in some others;
– "European law and proceedings" is present as mandatory in seven countries and as optional in four countries;
– "International law" is present as mandatory in nine countries and as optional in six countries.

7.2 "Non-legal" Disciplines, Interdisciplinarity and International Subjects

From the data obtained in the questionnaire it is possible to see that there is a common orientation in the countries surveyed about some "non-legal" disciplines, that are the disciplines that we have included in the group *traditional non-legal discipline.* About the percentage of "non-legal" credits that students have to take (mandatory) or are allowed to take (optional), it is important to note that the situation is very different in European countries. The same is true for interdisciplinary credits.

Regarding the International subjects, the analysis conducted show that there is convergence around the idea that some international subjects are necessary for undergraduate law students. Course of Comparative law, European law, European law and proceedings and International law are considered useful in the vast majority of the country.

7.2.1 Some Interesting Cases

The Case of Law Faculty of Parthenope University – Italy
The Law Faculty of Parthenope University in Naples is offering a wide and comprehensive programme of higher education that comprise an innovative discipline for law students that is a mix of Public management and Business administration.

The Law Faculty of Parthenope University was founded in 1999. Now it has about 6,000 students and comprises a large number of scientists who work in different areas not only related to the traditional disciplines of law faculties. There are, in fact, professors and researchers of Public Management, Business Administration, Public Administration, Organization, Human Resource Management, etc.

For some years, these researchers focused their interests particularly on Judicial Administration topics and Court Management and its instruments (planning instruments, accounting systems and information systems) applicable in Italian Courts. In other words, they have studied the judicial systems in the perspective of Public Management. Their main research themes include: performance measurement of courts and judicial systems; efficiency, effectiveness and equity of courts and the judicial system; economic dimension of the activity of courts; accountability and accounting systems; organization; e-justice; information systems and organizational change in judicial system; information systems performance evaluation; etc.

The development of innovative research on these issues has stimulated innovation in education as well. In fact, as mentioned above, today the law degree courses offered by the Parthenope University include a discipline named *economia aziendale* that can be described as a mix of public management and business administration which aims to provide students with lessons on management and organizational aspects related to the judicial system as a whole and to its individual institutions (*e.g.* courts).

Within the course of *economia aziendale* (nine credits – 72 hours) students gain insight into issues such as accountability and independence of the judiciary; efficiency, effectiveness and equity relative to the entire judicial system, courts and people (judges and administrative staff); performance measurement; organization; accounting systems; the economic dimension of the activity of courts: analysis of costs and revenue/income.

The course also addressed issues relating to the judicial reform process initiated by the legislator for several years, exploring the themes of autonomy, responsibility and control of/in the judicial system.

The topics mentioned above are addressed in both a theoretical and practical perspective. For example, issues of efficiency and effectiveness, as well as that of performance measurement, are addressed by providing students with theoretical knowledge (definitions, etc.), but also by analyzing the instruments for measuring these dimensions (performance measurement system and accounting system). In this sense, the judicial system as a whole, as well as individual courts, are regarded as non-profit organizations whose performance must be analyzed for improvement.

We must emphasize, however, that the contents of this course are particularly complex and therefore should not be taught in the first year of the degree course, but in the last. Moreover, it would then need a further deepening of these issues in postgraduate courses. For this reason, the idea of dean of Parthenope University in respect of this course is to move to the fourth year, or leave it in the first year for six credits and put a similar one in the last year for six credits.

Considering the pressure exerted by the CEPEJ (European Commission for the Efficiency of Justice) about the improvement of the quality of European judicial systems and their services, and considering the consequent pressure exerted in the same direction by national legislator of every European country, we believe that the case of Parthenope University of Naples is an important one that should be considered in the possible reforms of the curriculum for European law students.

The Case of Germany

Numerous international subjects are part of the legal education in Germany. For example, International Law and Comparative Law are optional, while European Law and European Law and Proceedings are mandatory.

Due to the division of the "First Examination" into a state part and an university part (cf. § 5 DRiG and § 2 section I JAG NRW) one has to differ between those parts with respect to the number and range of international subjects and the classification as mandatory or non-mandatory subjects.

a. State examination (example: North Rhine-Westphalia):

aa. Pursuant to § 11 section I and II JAG NRW the state examination comprises the required subjects (*Pflichtfächer*) which are specified in section II. § 11 section II No. 2 and 11 JAG NRW determine that International Private Law and EU Law are such required subjects that will be part of the state examination *im Überblick*. Thus detailed knowledge of the respective case law and legal literature is not required. The examination in these subjects is rather aimed at assessing the understanding of the structure of the relevant law. Furthermore the examination includes the German law subjects with reference to the particular interaction and relation between national law and EU law. Accordingly the study regulations of the universities (*e.g.* § 16 study regulations of the law faculty of the University of Münster) and the corresponding curricula provide for a lecture about these two subjects. However, the successful completion of these two courses is not necessarily required for passing the intermediate examinations.

bb) Other international subject: International Private Law (cf. § 11 section II No. 2 JAG NRW)

b) University examination:

aa) In most universities the matter of choice examination offers at least one "focal point" dealing with European and International law. The exact regulation and organization of the study mode differs among the universities. According to the curriculum for the "focal point" "International Law, European Law, International Private Law" offered at the law faculty of the University of Münster the students are obliged to successfully complete three courses out of a list of required courses (*Pflichtveranstaltung*) and three other courses out of a list of required electives (*Wahlpflichtveranstaltung*).

bb) Other international subjects (example: of University of Münster law school):

There are numerous other subjects offered at the University of Münster that involve international subjects. The following list shows an extract of courses that are offered as either mandatory courses or required electives depending on the curriculum of the respective "focal point":

- Fundamental Rights of the EU,
- European Corporate Law,
- European Private Law,
- Public International Law I and II,
- International Criminal Law,
- International Investment Arbitration,
- European Tariff Law,
- International Civil Procedure Law,
- European Contract Law and the United Nations Convention on Contracts for the International Sale of Goods (CISG),
- Antitrust Law,
- Law of the World Trade Organization.

These courses are non-mandatory for students who decide to complete a "focal point" of a non-international character.

Addendum: Bachelor programmes (example: University of Münster law school):

In their final year of study (semester 5 and 6) students complete five required electives (*Wahlpflicht*). Among the options offered are international subjects, such as European Law Advanced, Public International Law, European and International Employment and Social Security Law, the German Basic Law and the International Legal Order.

Addendum: Foreign language programme for jurists (*Fachspezifische Fremdsprachenausbildung* – FFA):

The FFA programme is a voluntary four-semester study programme offered in English (Common Law), in French (*Droit Français*) and in Spanish (*Derecho Espanol*), resulting in a certificate (an additional Russian FFA is in preparation). The successful completion of the programme requires the students to take law and language classes (nine classes in total). In addition to these classroom requirements, students must undertake a three-week internship in an office or organization where English (or French, Spanish) is spoken, and which primarily deals with legal issues. Upon their return, students must submit oral and written reports on their experiences. These reports form part of the end of study examinations currently in place. There are both compulsory and optional classes as part of the FFA programme. The compulsory (introductory) subjects are: The Common Law Legal System, Constitutional Law (of the US, UK, or Australia), The Common Law of Torts, The Common Law of Contract, and three legal language classes provided by the language centre of the university.

The language classes are provided to complement the legal modules, by focusing on legal translation and terminology. Parallel classes are offered on the French course and on the Spanish course. The electives offered within the FFA include: Company Law, The Law of War, European Law, Constitutional Developments in the EU and the UK, International Dispute Resolution and International Business Transactions.

Albeit voluntary, the FFA is heavily recommended by the faculty and completed by about 80% of the students.

The First Examination consists of the required subjects as listed in §11 JAG NRW taking into account the particular philosophical, historical and social fundamentals. The intermediate examination (years 1 and 2 of study) requires the students to successfully complete two courses about the basic principles of law; one of them dealing with the historical basics of law, the other dealing with the philosophical-social basics of law. The university matter of choice examination requires the completion of one course about the philosophical, historical or social fundamentals of law (cf. §17 study regulations of the law faculty of the University of Münster). The subjects offered in this regard generally combine another discipline with law and are thus interdisciplinary in terms of the definition. Furthermore, it is possible to write the required assignment while taking part in a seminary on, *e.g.* Legal Philosophy or History of Law.

The completion of those kind of courses is mandatory. However, the universities offer a number of different subjects. As a result the students can choose the exact course that is completed as long as the requirements stated in the regulations are met.

The courses offered at the University of Münster law school include:

- Accounting,
- Financial Principles of Tax Law,
- Sociology of Law (separate courses for beginners and advanced students),
- Philosophy of Law (separate courses for beginners and advanced students),
- Criminology,
- History of Criminal Law,
- Legal History,
- Legal Theory,
- Law of Obligations in Roman law.

Numerous disciplines that are outside the scope of legal subjects are part of the legal education in Germany, as mandatory or optional, *e.g.* Economics, Medicine, Psychology, Foreign languages, Research Methods.

The completion of two courses about the basic principles of law is obligatory for the intermediate examination (years 1 and 2 of study). One course must deal with the historical basics of law, the other must deal with the philosophical-social basics of law. The university matter of choice examination requires the completion of one course about the philosophical, historical or social fundamentals of law. However, the universities offer a number of different subjects. Students can choose the exact course that is completed as long as the requirements stated in the regulations are met.

7.3 Practical Experience in the Legal/Judicial Field and Final Dissertation: The "State of the Art"

Regarding the practical experience in the legal/judicial field, the following charts shows that it is mandatory for students taking undergraduate law degrees in five countries of the sample (*England and Wales*, *Germany*, *Hungary*, *Lithuania* and *Spain*), while it is optional in twelve countries (*Austria*, *Belgium*, *Denmark*, *England and Wales*, *France*, *Germany*, *Italy*, *Iceland*, *Ireland*, *Latvia*, *Slovenia* and *the Netherlands*). There is also a country (*Turkey*) in which the internship is present as optional, but only in one private university.

Regarding the dissertation, the following figures show that students have to prepare and discuss a final dissertation in twelve countries (*Austria*, *Denmark*, *England and Wales*, *France*, *Germany*, *Hungary*, *Italy*, *Latvia*, *Lithuania*, *Slovenia*, *Spain* and *the Netherlands*), in one country (*Malta*) the dissertation is not needed. Data are absent for seven countries.

Figure 7.3 Practical Experience

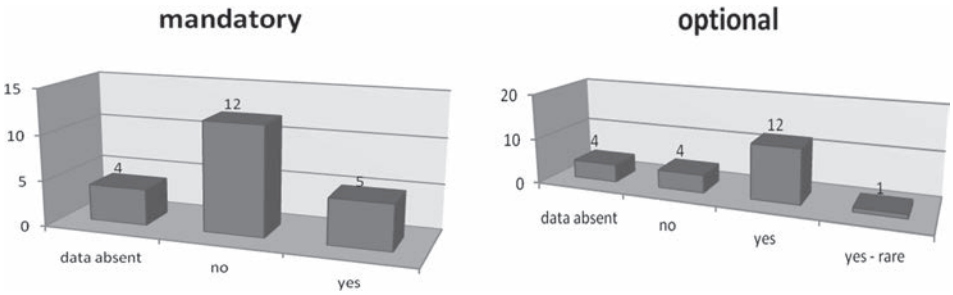
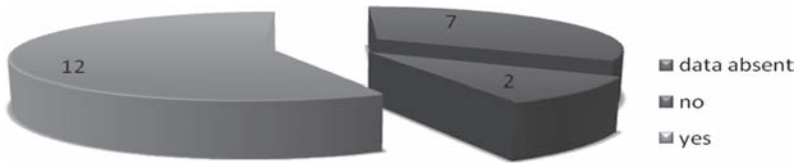


Figure 7.4 Final Dissertation



7.4 Proposals, Suggestions and Guidelines About Practical Experience and Final Dissertation

From the data obtained by the questionnaire it is possible to see that there is not a common orientation in the countries surveyed about the choice to include some practical experience/internship in the legal/judicial field. There are in fact only five countries in which practical experience are mandatory. In other twelve countries it is optional.

These results show that today there is no common consideration on the importance of some internship or practical experience for students in the place (*e.g.* the court) where they will go to work as a judge or as a lawyer.

There are, however, some countries where universities give the right importance to this kind of experience, *e.g.* the case of Germany below.

7.4.1 Some Interesting Cases

The Case of Germany

A practical experience of three months is required. This is fulfilled by way of two internships to be completed during the semester break. The internship generally consists of a placement with a lawyer/company and with an administrative body; it can also be completed

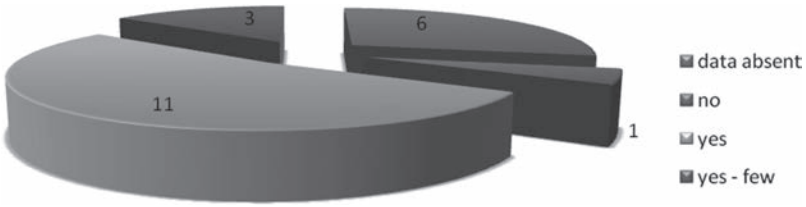
at a supranational institution or a foreign administrative agency or a foreign lawyer. A twelve-week internship is mandatory for students taking the bachelor programmes.

A mandatory internship is required for the admission to the state part of the First Examination. There are no restrictions set up with regard to optional internships. Students are encouraged to gain as much practical experience as possible.

7.5 Courses in Foreign Languages and Language Requirements: The "State of the Art"

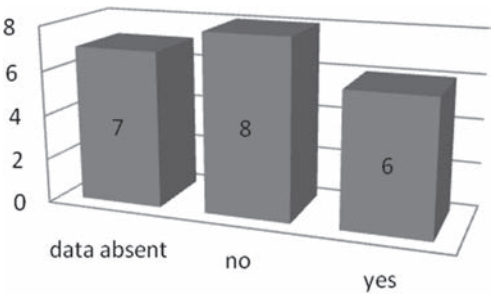
The following figure shows that some courses are normally taught in foreign languages in 11 countries (*Austria*, *Belgium*, *Denmark*, *France*, *Germany*, *Italy*, *Ireland*, *Latvia*, *Spain*, *the Netherlands* and *Turkey*), while in other three countries (*England and Wales*, *Lithuania* and *Slovenia*) a few courses may be taught in foreign languages occasionally.

Figure 7.5 Courses in Foreign Languages



In six countries (*Denmark*, *England and Wales*, *Germany*, *Latvia*, *Malta* and *the Netherlands*), as shown below, students need language requirements to be admitted to undergraduate law courses; in eight countries it is not needed. Data are absent for seven countries.

Figure 7.6 Language Requirements to Be Admitted to an Undergraduate Law Course



7.6 About Courses in Foreign Languages and Language Requirements

Regarding the language requirements and the use of English in teaching activities, the analysis of the data acquired by the questionnaires shows that in eleven countries it common to use English as a foreign language to teach some disciplines, while there are only seven countries where there are language requirement to be admitted to undergraduate law course.

In several European countries the idea that degree courses should provide students a formation that allows them to work in an international context is now consolidated.

7.6.1 Some Interesting Cases

The Case of The Netherlands
Courses are taught either in Dutch or English (Dutch is the rule, English the exception); the use of a foreign language is allowed when the course is on acquiring that language; it is a guest lecture; the quality and international profile of the course require it and it is in accordance with a guideline of the Governing Board of the university.

At most universities nearly all of the obligatory courses are in Dutch, whereas optional courses with an international character are often in English. In Utrecht students need to take at least two English courses: European law and a course on comparative law of their choice.

The Case of Germany
One of the requirements for admission to the state part of the First Examination is the successful completion of a foreign-language law course or a language course dealing with legal matters and terminology. Thus such courses are on offer at the North Rhine-Westphalia universities. Universities offer several law courses in a foreign language, mainly within the matter of choice examination. In the bachelor programme Law & Politics students are required to successfully complete at least two modules in a foreign language (English).

The Case of Latvia
The law imposes restrictions on teaching in foreign languages in public universities, while it does not limit private universities. The University of Latvia (public) offers a few courses in foreign languages as electives that are offered by visiting professors on external funding (*e.g.* Fulbright, DAAD, etc.). In contrast, undergraduate programmes in the Riga Graduate School of Law are taught exclusively in English. The knowledge of English as certified by TOEFL, IELTS or other comparable test is a prerequisite for being admitted for studies at Riga Graduate School of Law.

8 Innovation in Undergraduate Law Studies in Europe: "State of the Art"

Anastasia Sotiropoulou

8.1 Innovative Methods

Innovative teaching methods mainly include moot courts, legal clinics, legal cases solving and multimedia.

A *moot court* competition is an extracurricular course in which participants take part in simulated court proceedings. Students act as counselor to the "parties" on the basis of a case, which may be real or fictional. The work comprises both preparation of a written memorandum for each party as well as oral argumentation. Participation requires hard and sustained work by the entire team, who are coached by university staff. Moot court competitions offer the opportunity for law students to develop written and oral advocacy skills and apply legal strategies. These moot court competitions may be organized at local, national or international level, such as Philip C. Jessup International Law Moot Court Competition, European Law Moot Court, The International Roman Law Moot Court Competition and Willem C. Vis International Commercial Arbitration Moot Court. Therefore, they provide the occasion for law students to compete with other students from the same university, or other national or international universities, and to meet practitioners and jurists in their chosen field of law.

In Austria, Belgium, the UK, Denmark, France, Germany, Hungary, Italy, Ireland, Slovenia, and Latvia students can participate in such competitions. However, even in these countries this opportunity is not offered by all universities.

Another innovative teaching method consists of "legal clinics", used at English, Irish, Dutch, German and some Austrian, Belgian, Latvian, Turkish and some Slovenian universities. Legal clinics involve placements of students (externships in the North American model) with government agencies and bodies, European and international institutions, courts, prisons, non-governmental and charitable organizations and practising lawyers. The primary goal of these placements is to equip the students with practical experience. Instead of learning by attending traditional lectures, students learn by "doing". They determine the scope of the client's problem and work for its solution. Therefore

they simultaneously acquire and apply knowledge. However, legal clinics are not only a knowledge-learning mechanism. They also help students develop certain skills, such as research and communication skills, interviewing, counseling, drafting, negotiating, problem-solving as well as interpersonal and organizational skills. Nevertheless, the benefits resulting from clinical legal education imply high costs. Regarding that the students must be individually supervised, clinical education becomes much more expensive compared to the traditional classes of large groups.

Another way to make students more familiar with law in practice is to form small group courses that teach students explicitly how to solve a case or how to make comments on a court decision. Legal problem solving is a common method used in all law faculties. However, the problem is that although cases have a central place in legal education, many teachers neither teach students the meaning of cases nor do they explain how to solve a case or to comment a court decision. This way of teaching is the dominant model at French universities where traditional lectures are always combined with this type of small group courses which are called *travaux dirigés*. In Germany, the apparent problems to cope with the special German style of presenting cases (*Gutachtenstil*) have prompted the institution of writing or exercise workshops, where senior assistants give individual advice to students. Also in the Netherlands, most courses involve exercises in solving cases in an interactive fashion. Students learn to interpret and apply the law in concrete cases and thus are trained in syllogistic reasoning, based on legislation and jurisprudence.

Lastly, innovative methods of teaching include the use of *multimedia*. Multimedia presentations create a learning experience beyond traditional lectures. These presentations include a variety of sources. The multimedia may include projections of films and documentaries that stimulate the interest of students in legal issues, the employment of computer technology in teaching and learning (*i.e.* use of PowerPoint presentations, the provision of material and information via the universities' homepage, use of internet to search for knowledge), and the delivery of a quality educational experience to distant students (e-learning). The use of multimedia is common in the majority of participant countries and it takes different forms. For example, since 2008 some Italian universities have established a programme named "MovieLab" that offers professors the opportunity to project movies in-class in order to explain some content of the course. Moreover, in Lithuania the distance learning/teaching methodology is more commonly used (Moodle programme). A recent new e-learning method has also been developed within the Faculty of Law of the K.U. Leuven, which is the project "JURIMATIC". Undergraduate students are offered legal cases, which they have to solve in the existing electronic learning platform called 'Toledo.' Since the programme can detect whether

necessary keywords are included in the answer of the student, students receive customized feedback.

Nevertheless, in most countries the use of multimedia is not a common practice but depends on the initiative of the teaching staff.

Table 8.1 summarizes the adoption of various innovative methods of teaching by various European countries, based on input from consortium partners.

Table 8.1 Innovative Methods

Country	Moot Court	Legal "clinics"	Legal problem-solving	Multimedia (e-learning, "MovieLab" etc.)
Austria	**X**	**X**		**X**
Belgium	X	X	X	X
England and Wales	X	X	X	X
Denmark	X		X	X
France	X		X	X
Germany	X	X	X	X
Hungary	X			X
Italy	X			X
Iceland			X	X
Ireland	X	X		X
Latvia	X	X		X
Lithuania				X
Malta				
Romania				
Slovenia	X	X		
Spain				X
The Netherlands	X	X	X	X
Turkey	X	X		X

8.2 Innovative Content

Regarding innovative content of courses, legal methods and research, written/oral communication and persuasion skills are taught at many law faculties. Nevertheless, more advanced law practice skills (*e.g.* law office management, client interviewing etc.) are absent from the curriculum, although some law schools in Germany offer courses in alternative dispute resolution, professional law of lawyers and negotiation strategies.

In some faculties in Italy, Belgium and the UK, emphasis is given to subjects from the field of Economics (*e.g.* Business Economics and Business Administration, Financial Statements, Accounting Principles). Particularly interesting is the attention given to Court Management within the course of business economics/business administration. The goal is to make students understand the need for a management of the court oriented towards efficiency and cost-effectiveness. In Turkey innovative undergraduate studies offer courses in e-commerce, sports and cyber law. Finally in France, University Paris I offers for special courses to foreign students that aim at helping them better integrate into the undergraduate studies programme.

Table 8.2 summarizes the application of innovative content in various European countries, based on input from consortium partners.

Table 8.2 Innovative Content

	Court management, public management, accounting	**Written, oral communication, professional law of lawyers, negotiation practices, alternative dispute resolution**	**Integration courses for foreign students**
Austria			
Belgium	X	X	
Denmark		X	
England and Wales	X	X	
France		X	X
Germany		X	
Hungary		X	
Italy	X	X	
Iceland		X	

Table 8.2 Innovative Content

Ireland		X
Latvia		X
Lithuania		
Malta		
Romania	X	
Slovenia		
Spain		
The Netherlands		X
Turkey		X

8.3 Innovative Programmes

Almost all participating universities have established exchange programmes that offer the opportunity for students to spend time studying in another country. The Erasmus scheme of the EU is a key example. The exchanges take place for a semester or a full academic year but do not allow the final qualification to be obtained or the studies to be completed at the destination university. Erasmus exchange programmes are offered by almost all participant countries. Other countries have set up exchange programmes on a regional basis, such as the *NordPlus* programme.

Other types of exchange programmes, which are not very common, permit graduation by both universities. Students can therefore gain two degrees while studying at both universities in their particular language, *e.g.* the double diploma in law of the University Paris I and King's College in London or the double diploma of the University of Münster and the University of Turin.

Some faculties from different countries organize joint seminars on specific topics in which students make presentations and exchange their ideas. For example the University of Maribor in Slovenia organizes a joint seminar on harmonization operated by EU law – with the Faculty of Law in Graz (Austria), and in Zagreb (Croatia) – where students from all three universities meet at seminars in all three cities and discuss selected topics of EU law.

Furthermore, some faculties offer programmes that include visits to European institutions, such as the European Court of Justice in Luxembourg, the European Parliament

and the European Human Rights Court in Strasbourg, and the European Central Bank in Frankfurt.

Finally, it is worth mentioning that the Irish approach is increasingly drawing more upon the UK experience, where "law in practice" courses are widespread. While mooting is well-established in Ireland, other forms of law in practice are emerging. For example, the University College Dublin offers a new four-year law degree with the aim of deepening student understanding of how law works in practice from a critically informed perspective. It builds on existing modules such as criminal procedure and civil procedure, and offers new modules, such as one on regulatory enforcement, drawing on SIMPLE (simulated professional learning environment). Clinical Legal Education (CLE) programmes are also well-established at some law schools, and plans are afoot to implement them at others. These programmes are either full-time (students receive one year's academic credit for their participation as part of a denominated clinical law degree programme) or part-time (students receive the equivalent of one course's worth of academic credit).

Table 8.3 summarizes the establishment of innovative programmes in various European countries, based on input from consortium partners.

Table 8.3 Innovative Programmes

Country	Erasmus, exchange programmes, visit programmes	"Law and practice" programmes
Austria	X	
Belgium	X	
Denmark	X	X
England and Wales	X	X
France	X	
Germany	X	
Hungary	X	
Italy	X	
Iceland	X	
Ireland	X	X
Latvia	X	

Table 8.3 Innovative Programmes

Lithuania	X
Malta	X
Romania	X
Slovenia	X
Spain	X
The Netherlands	X
Turkey	X

9 The "Bologna Model" and the Italian Reform of Laurea Magistrale

Daniela Cavallini

9.1 The "Bologna Model" and the Italian Reform of Laurea Magistrale

In most of the countries analyzed in the project, the structure of the university courses follows the so-called "Bologna model" which is based on two cycles (undergraduate and graduate degree, usually 3+2 years) and a system of credits. Its main purpose is to promote a European dimension in higher education (through comparable and compatible degrees, free movement of students, teachers, researchers and staff) and to increase employability throughout Europe.[1]

More specifically, the Bologna model is adopted in: Austria, Belgium, Denmark, France, Ireland, Italy (until 2007, see below), Latvia, Lithuania, Luxembourg, Malta, Romania, Slovenia, Spain and the Netherlands. Some variations however exist with regard to the cycles' length. In Malta, for example, the duration is 3+1+2 to become a lawyer and 3+1 to become a notary; in Romania is four years + a master programme of 1-2 years; in Slovenia is 3+2 or 4+1. In Austria, Lithuania and Spain, moreover, the Bologna model coexists with other "traditional courses". In Lithuania, for instance, also a one-stage-integrated model is possible (where first and second cycle are not separated). In Spain, the Spanish model has been gradually replaced by the Bologna model, so students have only this second option since 2008.

The Bologna model is not adopted in Germany, Hungary and Norway. In Germany university studies last four years, to be completed by a first examination, including a state (70%) and a university part (matter of choice examination, 30%). An intermediate examination is to be completed after two years of study; it is prerequisite to begin with the

1 <http://ec.europa.eu/education/higher-education/doc1290_en.htm>. Even if the degree systems may become more similar, the specific nature of every higher education system should be preserved (see <www.coe.int/t/dg4/highereducation/ehea2010/bolognapedestrians_en.asp>). Different studies were conducted on the implementation of the Bologna process; an in-depth comparative analysis is offered by Euridice "The Impact of the Bologna process" (<http://eacea.ec.europa.eu/education/eurydice/documents/thematic_reports/122EN.pdf>).

matter of choice examination (one year of study; the fourth year is reserved for examination preparation. The bachelor programmes offered at some German universities do not qualify for admission in the postgraduate judicial service training. In Norway, there is an integrated five-year master's programme (there are no undergraduate programmes in law that lead to a graduate one; only Lillehammer University teaches a bachelor's programme that can be merged with the integrated programmes in Bergen and Oslo).

A very peculiar case is represented by Italy: the Italian law faculties recently shifted from the Bologna model to an integrated one cycle curriculum of five years. The Bologna model was introduced in 1999 and implemented in the academic year 2000-2001. It was adopted in order to conform to the European university system and to grant a faster access to the labour market, with a minimum set of knowledge. The professional function of University studies was increased, moving from a mainly theoretic and cultural approach to a more practical and professional one (especially in the second cycle of study).

In practice, however, the 3+2 system did not really fit with the specific features and functions of the faculty of law, in particular as concerned employment perspectives at the end of the first level course. The first level degree was conceived to be immediately spendable in the labour market: the problem was that employment chances for the three-year graduates were uncertain if not non-existent. A clear contradiction existed, therefore, between the professional function of the first level course and a lack of reference points as concerned the professional figures to train for. The vast majority of first level graduates[2] did not even try to immediately enter the labour market, but stepped on to the two-year courses.[3]

As a matter of fact, from 2007, a new order of the faculty of law has been operative. University courses aimed at the legal professions have been organized in a five-year curriculum (*Laurea magistrale a ciclo unico*), where the first year is common for all the students and the following four may be diversified from one university to the other. Substantially, there is now an integrated degree in law (like before the 3+2 reform), with one more curricular year, a more limited number of exams than in the 3+2 model, more central control over the minimum credits for each scientific area. The minister gave a very rigid list of subjects and credits, leaving rather limited autonomy to the faculties. This is surely a reaction to some excesses of the 3+2 experience, but it is hard to understand and to accept some of the choices made at the national level. The new unitary course should make it possible to

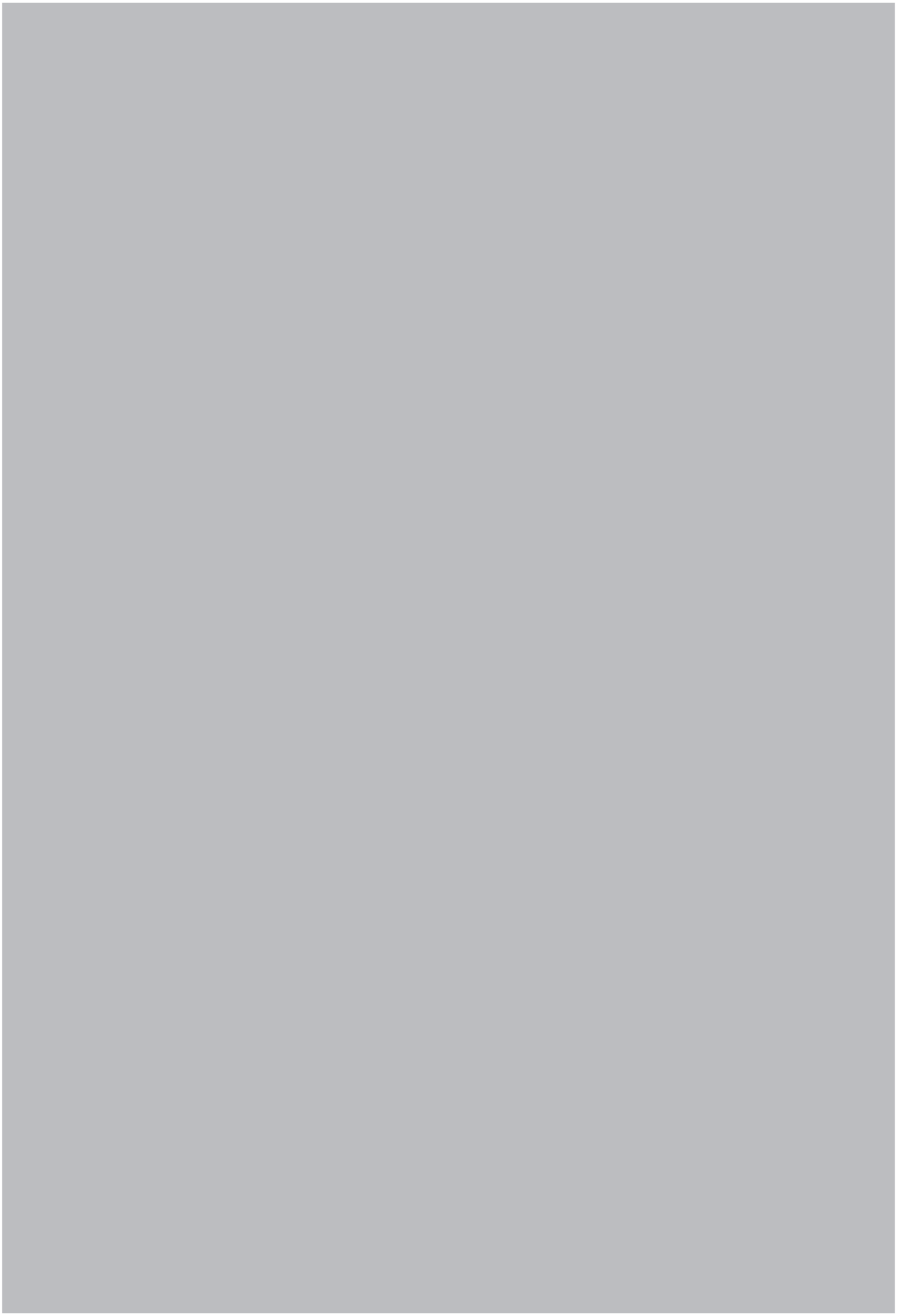
2 An average of at least 70-75% of first-level graduates moved on to the second level of studies.

3 "The organization of the Faculty of Law in Italy", report presented by Prof. Lupoi at Menu for Justice Lisbon meeting (26-27 April 2012).

provide more rational and compact teachings, while the students should have the chance to study in a not too hasty schedule, without the "interruption" of the first-level degree, which, most often, was only a necessary step to the next curricular phase. The "target student" of this new curriculum will remain somehow uncertain, like in the past. There is reason to believe, in fact, that the new course, expressly aimed at the training for the legal professions, will continue to be chosen also (if not mainly) by students who have rather different plans for their life, sometimes have very little interest in law.[4]

4 *Ibid.*

Part IV
Task Force 2 Graduate Legal Studies in Europe: Comparative Analyses and Lessons Learned



10 Autonomy: Institutional Scope to Innovate

Cristina Hăruță and Dacian Dragoș

10.1 Legislation Regulating the Graduate Education (Main Focus on Graduate Law Degrees) and Regulatory Authorities in Graduate Education

According to the information that was extracted from the questionnaires, it is rather certain that a similar meaning and pattern of university autonomy can be attributed to a limited number of countries. According to the data mentioned in the questionnaires, the array of legislation regulating the graduate degrees in law can vary from general education acts (*e.g.* England and Wales, France, Hungary, Lithuania, Malta, the Netherlands, Norway, Portugal, Romania, Slovenia and Turkey), federal and national laws (*e.g.* Belgium and Germany), executive orders or ministerial decisions enacted by the government or the ministry responsible for higher education (*e.g.* Denmark, Finland, Greece, Hungary, Italy and the Netherlands), royal charters (England and Wales, and Spain), university charters (*e.g.* Finland, Germany, Greece and Malta), the Constitution (Germany), the decisions of the Constitutional Court (*e.g.* Lithuania), to various frameworks belonging to secondary regulatory authorities establishing higher education quality standards and qualifications (*e.g.* Belgium, England and Wales, Greece, Ireland, Norway and Slovenia).

10.2 Autonomy Entrusted to Academic Institutions to Determine the Scope of Graduate Law Degrees

Based on the data provided by 23 participating countries, the following issues related to university autonomy are considered as having an impact on the innovation potential of the institutions providing graduate education programmes in legal and judicial studies.

It can be highlighted that the degree of university autonomy is determined by the administrative structure of the state. As a consequence this aspect is conclusive in terms of the institution or administrative tier to which the power of granting or limiting university autonomy will belong to (*e.g.* Belgium and Germany). For instance, in Belgium, the quality of higher education in French and Flemish communities is ensured by two distinct institutions. In addition to that, the extent of university autonomy depends on whether the

universities are publicly funded or not (*e.g.* Greece and Belgium; the Netherlands implements a system of performance-based funded universities).

Generally speaking, each institution which is entitled to elaborate its own programmes and issues its own diplomas, must prior to that obtain the approval of some superior body, be it the senate of the university, an institution for higher education accreditation, the ministry, the government, the Parliament or the constitutional court. In such situations, the degrees of autonomy and control vary as much as in the previous cases. The governing bodies can supervise universities in numerous aspects such as the costs of the programme and numbers of students to be enrolled in the graduate programme, criteria for student admissions and appointments of staff, examination methods, ECTS system compliance, as well as the overall quality of programmes. Some programmes can be rejected if considered "unlawful"; others are verified if they meet the general outlines of the legislation and the accreditation procedures.

Related to regulatory bodies, the respondents to the questionnaire reported about institutions or agencies which carry on higher education accreditation prerogatives. These types of agencies watch over the quality of the education and were listed in Belgium, England and Wales, Hungary, the Netherlands, Norway, Portugal, Romania, Spain, Slovenia and Czech Republic. It has to be emphasized that these agencies appear to have the greatest role of all in restricting the autonomy of the universities to establish the structure and content of the programmes, curriculum.

All or some of the above-mentioned factors can impose evident or latent barriers to the innovation and advancement of legal and judicial studies, which in certain cases can represent unintended by-products of an excessively controlled higher education system.

Based on a rough numerical analysis of the information offered in the questionnaires it can be assessed that academic institutions in twelve countries have full or broad autonomy over graduate law degree programmes; five countries have provided information according to which universities have limited or slightly less autonomy in determining the scope of graduate law degrees; and the remaining six states have indicated that the academic institutions entitled to deliver graduate education services have very limited or basically no autonomy in outlining the curriculum of the graduate law degrees. Of particular interest are the following cases. In Germany, the curriculum is the result of a top-down decision of three entities which share responsibilities: the federal Parliament, the state Parliaments and the universities/faculties. In Malta, the content of a course has to be validated first by the Senate of the University of Malta and by the Academic Programmes Quality and Resources Unit (APQRU), while the course regulations have to be approved

by the highest legislative assembly – the Parliament. The constitutional court plays a crucial role in the manner in which the curriculum is framed in Lithuania since the curriculum of graduate legal studies is very generally determined by this central authority.

However, in a majority of cases, the universities can be considered autonomous institutions that can determine the structure and the content of the legal education programmes themselves. Ultimately, it can be assessed that a significant extent of autonomy rests with the universities/faculties. University autonomy *per se* does not appear to be significantly affected, regardless the institutional arrangements in each of the countries analyzed, which fact does not impose particular barriers to reforms and changes in graduate law degree programmes.

Finally, given the objectives of the Menu for Justice Project and the criteria for university autonomy over graduate law programmes, it can be assumed that a pan-European academic curriculum with common guidelines for all participating countries can be attained because the vast majority of states allow for the determination of the curriculum and scope of graduate law degrees by the universities.

11 Barriers to Advancing Legal and Judicial Studies

Radu Carp and Corina Rebegea

Out of thirty countries covered by the survey, there are seven states (Bulgaria, Cyprus, Estonia, Iceland, Latvia, Luxemburg and Poland) for which no information on the current status of legal and judicial studies is available. From the available data it is not discernible what the meaning of legal judicial studies is and whether there is an agreement in the countries that were surveyed on what they should include or address.

From the remaining 23 states, universities in eleven countries benefit from autonomy over the legal and judicial studies programme, while the others enjoy different models of limited autonomy (*e.g.* in Norway only three universities are autonomous), the main provider of educational policies being the Ministry of Education or some sort of other independent institutional or institutional arrangement. Most countries, irrespective of how autonomous universities are, have introduced some sort of regulation with respect to legal studies, be it for the length and content, access to these programmes (*e.g.* certain legal professions are bound to have national degrees or to also follow an MA programme) or type of certification (*e.g.* in the Czech Republic there is an Accreditation Commission, while in France any programme change must be approved by the Sorbonne Law School). Surprisingly enough, in only four countries the judicial studies programmes have an accreditation from the legal profession (Austria, Belgium, England and Wales and Ireland).

All countries (sixteen in total) for which data has been provided offer different types of graduate legal studies, out of which fourteen also allow for an interdisciplinary or non-legal programme. Furthermore, out of these sixteen countries, in eleven of them there is a core non-legal mandatory curriculum for those doing legal and judicial studies. However, in three of this latter group of countries (Czech Republic, Malta and Sweden) there is no optional set of non-legal disciplines, although there is such a mandatory curriculum in the respective universities.

When it comes to practical experience being mandatory, this is so only in three countries but not at all universities offering legal and judicial studies programmes (in the Netherlands, for instance, only Leiden and Amsterdam universities for their MAs in Corporate Law). Similarly, in nine countries practical experience is optional, but it takes different shapes, from moot competitions to internships at law firms, public bodies and

courts, and placements offered by the university. From the available data it is not clear whether practical experience is a precondition to join a judicial studies programme or it becomes mandatory over its course, which is very relevant for defining the target and accessibility of such programmes.

A graduation thesis is rather widely required in all of the countries for which available data exists, except for Austria and the Czech Republic. As regards innovation, generally speaking, not too many countries focus on out-of-the-box methods (such as moots, distance learning, problem-solving, legal clinics etc.), only two offer innovative content and few are involved in international exchange programmes, mainly Erasmus.

Based on the information above, several assumptions can be made:

- While it is not directly obvious that autonomy can stimulate innovation and the development of judicial studies programmes, more leverage given to universities in deciding both the content and methods of teaching law can increase universities' need for competitiveness and advance judicial studies;
- Information on the level and extent of accreditation of judicial studies by legal professions is very limited. However, one would assume that a demand from the legal professions for targeted legal and judicial studies programmes, as well as the recognition or endorsement thereof would stimulate the development of such programmes. Moreover, fine-tuning the needs of established professions with the legal teaching would increase the popularity of legal and judicial studies;
- When it comes to regulations envisaging the content, access to studies and length, there is an obvious limit that future legal professionals study national law. This however should not necessarily have an impact on the type of educational experience that is offered in terms of methods and practical elements. This exigency is also likely to influence the types of international elements or international exchanges;
- Increasing the attractiveness of legal and judicial studies may also prove to be dependent on the variety of non-legal disciplines taught in the programme, as well as their relevance for understanding law or other social or human phenomena connected to it. Furthermore, another stimulating factor can be the novelty of the teaching methods and the emphasis on practical training;
- In relation with the previous point is the issue of qualified professors who can develop and teach in such programmes. There is no information provided on this matter, but it is of high importance for the quality, competitiveness and reputation of legal and judicial studies programmes;
- Also absent from the collected data is information about students (how many are enrolled so far, what is their level of experience, and what is the rate of success in finding a job after graduation).

12 Institutional Autonomy, Barriers to Change and Innovation and Innovative Methods in Graduate Legal Studies: Lessons Learned*

Laura Ervo

12.1 Background and Summary

The surveys described are based on national reports written by scholars. Students have not been interviewed. Therefore, the perspective is only from one point of view. This basic attitude can be one reason for lacking innovation. The most important actors in the play are not represented. I am, of course, referring to the students who are the most central focus in studies.

For example in Finland, students participate in decision making at the universities including the educational matters. They have one-third representation in administrative bodies at the law faculties and they participate actively in decision making on contents and methods of legal education included graduate studies.

On the one hand, it might be true that they do not have legal or pedagogical expertise to review the methods of their studies, but on the other hand, they are the main subjects in this context and from this point of view, they are the best experts in their own case. This void in the study is an important starting point and it may tell a lot about our attitudes. Perhaps we are not ready for real change and we do not want a real change. We are traditional, conservative scholars and afraid of new things and we feel uncertain if confronted with a real educational revolution. This summary is both based on my own views as well as on the national reports summarized in Sections 12.2 and 12.3 of this report. What shows prominently from the analyses so far is that in many country reports there are in fact no barriers or no serious limits for changing legal education programmes, but no change has been made yet. The underlying message and more or less even the overt message was the

* This part is partly based on the earlier summary written by Tomas Bermanas, Radu Carp, Dragos Dacian, Cristina Haruta and Cheryl Thomas, with assistance from Laura Ervo, Stanislav Kedecka and Laurent Pech.

attitude of scholars in the legal training institutes described. The real hunger appears to be failing. The other reason can be that we are just feeling too lazy for the big changes. It is easier to follow old habits and old tracks. Therefore, the most important thing would be a European discussion on the topic. What do we want with legal and judicial training and why? What are the most important aims in legal education? This is – of course – one of our aims in this project, but we should alert the general audience at universities, all decision makers and course designers before we can realize a change in teaching and training methods.

The other basic problem may be that pedagogical merits are not appreciated at all universities and therefore staff will not concentrate on pedagogical matters and in pedagogics-based education. Scholars may have a fix on research and academic matters because they are not compensated or remunerated based on educational efforts.

For instance in Sweden, at some universities teachers with deep, wide and many-sided pedagogical merits are compensated by a special title "pedagogically very merited teacher", which means also remuneration by a permanent increase in salary. In addition, this nomination means the obligation to put effort in pedagogical matters even in the future at the university and the obligation to develop teaching methods etc. This model is a good example on a practical tool how to go on in this field.

Supervision of universities happens more often more or less behind the lines than directly.[1] The tools for factual supervision are, for example, the costs of the programme and numbers of students to be enrolled in the graduate programme, criteria for student

1 Based on a rough numerical analysis of the information offered in the questionnaires, it can be assessed that academic institutions in twelve countries have full or broad autonomy over graduate law degree programmes; five countries have provided information according to which universities have limited or slightly less autonomy in determining the scope of graduate law degrees; and the remaining six states have indicated that the academic institutions entitled to deliver graduate education services have very limited or basically no autonomy in outlining the curriculum of the graduate law degrees.

From the remaining 23 states, universities in eleven countries benefit from autonomy over the judicial studies programme, while the others enjoy different models of limited autonomy (*e.g.* in Norway only three universities are autonomous), the main provider of educational policies being the Ministry of Education or some sort of other independent institutional or institutional arrangement. Most countries, irrespective of how autonomous universities are, have introduced some sort of regulation with respect to legal studies, be it for the length and content, access to these programmes (*e.g.* certain legal professions are bound to have national degrees or to also follow an MA programme) or type of certification (*e.g.* in the Czech Republic there is an Accreditation Commission, while in France any programme change must be approved by Sorbonne Law School).

Surprisingly enough, according to the data available, in only four countries the judicial studies programmes have an accreditation from the legal profession (Austria, Belgium, England & Wales and Ireland).

admissions and appointments of staff. However, more direct supervision exists in some countries in the form of examination methods, ECTS system compliance as well as the overall quality of programmes. In some cases, programmes can even be rejected if considered "unlawful"; others are verified if they meet the general outlines of the legislation and the accreditation procedures. In such situations, there are real barriers for innovative methods in the cases, where the supervisor does not agree. However, in most cases, the autonomy was wide enough to develop methods, and as a matter of fact, barriers where somewhere else, like in attitudes or in passivity of scholars and teachers , and not in the lack of autonomy.

For instance, the entrance exam exists in Finland at all law schools and it is very difficult to get admission to a faculty of law in Finland, which means that the numerous clauses principle exists and is followed. Based on this the motivation of students is very high indeed and interruptions in the studies are very rare or non-existent. However, the problem can be that the quality of students and their individual characteristics do not follow the needs of legal profession in practice. There has been a discussion in Finland; what kind of entrance exam should be taken and what kind of students should be allowed admission into law faculties. Now the entrance exam favours students who have a good memory and who can study hard and even memorize easily. These characteristics do not always match the characteristics needed in the legal profession. A reason for absence of innovation therefore can be not only the unwillingness to change but also the structure of the whole institutional infrastructure of legal education. In that case, it does not even help to have students involved in decision-making.

The other example covers Sweden where the entrance exams do not exist and the students are taken into universities based on their grades at the school. It is easier to get the place at the university and students are not always very motivated or not even sure that they wanted to study law and not anything else. Because of this, the interruptions and delays in studies exist more than compared, for instance, with Finland. The lack of motivation is reflected in learning and is further reflected in the limited success of applying creative learning methods. If students do not have an intellectual learning attitude and if they are not very motivated, it is a challenge to develop creative methods, even if in such a situation there is a huge need for better teaching methods. With the motivated, clever and talented students it is easier and more rewarding to develop methods, and to reach results. Therefore selection of highly motivated and talented students potentially can become a self-sustaining system of legal education.

Where the innovative methods are concerned, some hands-on exercises, moot courts and e-learning were mentioned in the responses, but the findings were rather sparse. Generally

speaking, not too many countries focus on out-of-the-box methods (such as moots, distance learning, problem-solving, legal clinics etc.). Only two offer innovative content, and few are involved in international exchange programmes, such as the Erasmus programme.

Information on the level and extent of accreditation of legal and judicial studies by legal professions is very limited. This can be one latent barrier for lack in innovations. The more varying the planning and decision-making, the more innovative it usually becomes. More brain-storming and more cooperation and discussion with the representatives of different groups of legal professions are needed in order to guarantee the quality of legal education from the practitioners' point of view. There should be a correspondence between legal professions and their practical needs with the academic legal studies. Therefore, the permanent discussion and the form of cooperation between law schools and the representatives of legal professions are needed. However, we have to be careful and develop this model in such a way that it does not become a barrier in itself and a danger for autonomy of law faculties. Still, this kind of co-operation could be one tool and method to educate students as well. Sometimes students do not understand what kind of expertise is needed in legal professions and as an academic it can be difficult to convince them. When there are professionals who say the same, the results reached can be much better, since the professional examples can function as a motivator for students.

All or some of the above-mentioned factors can impose evident or latent barriers to the innovation and advancement of legal and judicial studies, which in certain cases can represent unintended by-products of an excessively controlled higher education system.

12.2 Selected Good and Bad Examples Based on National Reports

12.2.1 Austria

Although there are exceptions to the rule, teaching law is not a very innovative field in Austria. Usually, teachers are university professors or lecturers, but in some cases practitioners like judges (but – in my opinion – rather from European courts or the Austrian Constitutional Court or the Austrian Administrative Court) teach. But if this is the case, it is founded on personal relations between the respective university and the respective practitioner in an effort to provide innovative teaching. Use of records of actual legal proceedings (national, European, and international) on the other hand is very common in all Austrian universities, but is also dependent on the teacher.

This seems to be a more common trend in the Europe. Too much is based on the responsibility and enthusiasm of single individuals.

12.2.2 Belgium

The Université de Liège offers an optional course on "Legislative drafting" in its master degree programme.[3] The Universiteit Gent holds a mandatory course on "Practical Skills" aiming at the development of written and oral juridical skills. Furthermore, the Universiteit Gent provides the possibility of participating in simulations, *e.g.* the International Moot Arbitration Competition on International Sales Law as well as on other subjects such as a Moot Court on International Public Law. Moot court simulations are equally foreseen in the framework of the *Master complémentaire en droit européen* of the Académie Wallonie-Bruxelles (ULB, UMons).

The Université de Liège, in the framework of its *Master complémentaire en droit européen – droit de la concurrence et de la propriété intellectuelle*, holds a mandatory "Legal Writing Seminary" in English. As for the *Master complémentaire en droit économique* organized by the *Académie Wallonie-Bruxelles* (ULB, UMons), the lectures are mostly given by practitioners in the field. The same is true with regard to the *Master complémentaire en notariat* within the same institution. Similarly, the Vrije Universiteit Brussel offers courses held by practicioners in its LL.M. in International and European Law (PILC), *e.g.* from the European institutions. The European Master in Human Rights and Democratization of the Katholieke Universiteit Leuven provides field trips.

12.2.3 Denmark

Some judges, prosecutors and practising lawyers teach part-time at the higher levels of legal training. There is no training for the teachers, but there is an obligatory evaluation and quality control of the teachers. *A similar situation is typical for Finland and Sweden. Some practitioners teach which can be deemed positive. At the same time, academics have no criteria for pedagogical education at all or only very little. Too often the pedagogical education is based on the interests of single teachers, when the younger generation as well as teachers, who are in every case interested in developing their teaching skills, participate more in pedagogical education compared with colleagues who would need it most.*

12.2.4 Finland

In the Finnish national report was mentioned that the innovative teaching methods are not very developed and is dependent on teachers. *This is a common barrier for innovation*

3 The same method is used at least at the University of Örebro, Sweden.

in legal education in Europe. The situation and the development is based too often on the innovative methods, effort and creativeness of single individuals, whereas the more institutionally organized and established model is failing.

12.2.5 Germany

JuraForum: An annual symposium, organized by students, which gives law students the opportunity to deal with socially meaningful matters of law in an interdisciplinary way and to enter into dialogue with practitioners and scientists of that specific subject area. Furthermore several universities in Germany offer law clinics, *e.g.* Refugee Law Clinic at the University of Gießen (<www.recht.uni-giessen.de/wps/fb01/home/RLC/>); Humboldt Law Clinic with a focus on human rights and anti-discrimination law at the Law and Society Institute Berlin – LSI Berlin ("Institut fuer interdisziplinaere Rechtsforschung an der Berliner Humboldt-Universitaet"; <www.lsi-berlin.org/humboldt-law-clinic>); Legal Clinic at the University of Hannover (<www.jura.uni-hannover.de/legalclinic.html?&L=1>).

12.2.6 Latvia

One of the barriers to innovation in legal studies is the language of studies. According to Article 56 of the Law on Institutions of Higher Education, the studies in public academic institutions can take place only in the official language – the Latvian language. Exceptions are made for master's programmes intended for foreign students and for master's programmes related to language studies.

The way to use foreign languages at the legal studies can be a more common barrier in the Europe as well.

12.2.7 Lithuania

One of the main legal barriers to change graduate legal studies is, as of today, the Constitutional Court of the Republic of Lithuania. This court has disqualified the American (and only graduate) model of legal education and diminished the other form of only-graduate legal education (*i.e.* without undergraduate legal education) to the level of the provision of "graduate/master education only of the narrower area of law". As a consequence the graduate legal training in Lithuania is insufficient to train students for work in the main legal professions.

12.2.8 Slovak Republic

A very positive and innovative aspect about legal education in this country is that usually young teachers are also practising attorneys and they can bring practical elements into theoretical education. Especially in private law schools judges are involved in the educational process, with courses like legal clinics or practising procedures before the court. At public universities it is more complicated because they usually do not have additional financial resources for innovation of teaching methods and lectures/seminars.

12.2.9 Sweden

Teaching methods at law faculties are based on the PBL (problem based learning) at the universities of Umeå and Uppsala in Sweden. The whole law programme is organized according to this model. However, not all students like it and some of them have changed their study place for instance to Stockholm to avoid this system of education. It might be also interesting to know that Umeå University is small and young, whereas the University of Uppsala is the most traditional in Sweden and very famous for its theoretical points of view at the law faculty, and the University of Stockholm is famous for its very practical approach to law studies and its very good relationship to practice in the field of law.

At the University of Örebro, students organize a legal fair every year where students can meet and discuss with academics from other universities and with legal practitioners. This is a wonderful forum for discussions and exchanging experiences from different points of legal views.

In addition, the students organize a national competition between students from different law schools each year which is based on moot court competition arranged at district courts, where the students are playing advocates and clients etc., and their professors as well as local judges, advocates etc. are judging the competition. After these local competitions, the best teams will meet and compete at the national level.

13 Innovative and Interdisciplinary Contents and Programmes in Graduate Legal Studies: Lessons Learned

Tomas Berkmanas

13.1 Summary of Data

On the basis of the data gathered on interdisciplinarity in graduate legal studies, this summary generalization could be made – *interdisciplinarity in graduate legal studies in Europe is a wide-spread phenomenon*.

Out of thirty participating countries, 22 (*i.e.* more than 2/3) provided information on the respective issue (it reflects the data collected until the end of October 2011). Seventeen answered that interdisciplinary/non-legal study is allowed at this level; four (Czech Republic, Italy, the Netherlands, and Turkey) – that interdisciplinary/non-legal study is limited/rare/very little or provided no clear answer; and only one (Sweden) answered that there is no interdisciplinary/non-legal study at the graduate level of legal education; however, this answer is not clear as some interdisciplinary courses (as legal history or legal philosophy) were mentioned.

It should be stated that while answering to the questions what non-legal subjects are mandatory/optional, in many cases no distinction between interdisciplinarity and being outside the scope of law was made; especially interdisciplinary subjects were also counted as non-legal. Accordingly, the gathered data provides information not about what non-legal subjects are mandatory/optional in graduate legal studies, but more general information – *what fields that are outside purely legal studies are covered by either interdisciplinary or non-legal studies at the graduate level* as a part of mandatory or optional curriculum. The following information about the respective fields was gathered: Political Sciences: five [countries] mandatory, nine optional; Economics: nine mandatory, ten optional; Anthropology: zero mandatory, seven optional; Foreign Languages: eight mandatory, seven optional; Medicine: one mandatory, eleven optional; Research Methods: five mandatory, seven optional; Psychology: two mandatory, eleven optional; History: two mandatory,

eight optional; Philosophy & Ethics: eight mandatory, seven optional; Communications: one mandatory, four optional; Environmental Policy: two mandatory, five optional; Statistics: one mandatory, four optional. From the non-enumerated subjects, Sociology was mentioned three times, and some other subjects – occasionally. The mostly popular fields are: Economics (mentioned nineteen times), Foreign Languages (fifteen times), and Philosophy & Ethics (fifteen times). The composition of curricula also diverged considerably in different countries.

Notably, the result is dependent on the status of graduate studies in respective countries/jurisdictions, *i.e.* whether graduate studies are a part of *basic/fundamental* legal training, or whether they are studies with the purpose to *widen* (specialize) the expertise into the other field(s). If the latter is the case, interdisciplinarity is abundant and the enumeration of fields is complicated and relevant/dependant on the programme. For example, to the question whether interdisciplinary/non-law subjects are mandatory/optional, Spain in both cases provided a general answer – yes, they are, but they depend on the master's. The same situation is in Lithuania – there were many mandatory subjects/fields enumerated; however, that is also dependent on the programme (*i.e.* in some programmes some specific subjects are mandatory, in other programmes – other subjects).

Also, there were rare concrete answers to the questions, what is the scope/limits of interdisciplinary/non-legal credits? Only three countries (*i.e.* Austria, Belgium and Sweden) provided some data in percentages or, in some instances, limits in credits were provided (Finland and Slovenia). A frequent answer was that there are no (clear) limits in this respect. Therefore, no generalization is possible here, apart from that there is no clear overall vision/groups of visions of the limits of interdisciplinarity at the graduate level.

To summarize, the data collected in this project essentially reveals *the lack of more or less uniform and clear model/models of the implementation of interdisciplinarity in legal training at the graduate and, in some respects, wider (*i.e. *covering other circles of training) legal education in Europe*.

Further the analysis proceeds with the overview of the notable experiences of different countries with the corresponding generalization at the end.

13.1.1 Austria

Austria has a relative abundance of interdisciplinarity in graduate legal studies. All subjects that were enlisted in the list of the questionnaire (2.3 (b)) were ticked as either mandatory or optional.

Although practical experience is not mandatory, Austria has to offer a specific model of implementation of the optional practical experience – "WU Vienna organizes legal traineeships with private and public actors as an incentive for high performing students. Like in all other universities this is dependent on the initiative of the teaching staff".

Interesting is the discrepancy of academic institutions in the promotion of the studies abroad: "for Viennese students it is rather usual to spend some time (in most cases one semester) studying abroad, whereas for many students of the 'provincial' universities this is still quite unusual. Some universities (*e.g.* the University of Vienna and WU Vienna) actively promote studying abroad, and provide for fixed rules of mutual recognition of courses with a large variety of international partner universities, etc."

Also it was generalized that "EU law is of minor importance in the 'old' (Magister iuris) study cycles, that rather focus on Austrian law and classical international subjects like public international law, international commerce law, etc. Things are slightly better in the WU Vienna LL.M.-programme, but also here, EU law is a minor subject compared to Austrian law issues".

13.1.2 Belgium

Belgium is distinct by the relative abundance of the types of graduate degrees. First of all, there is general division into two types of master's degrees in Belgium: "a) master degree programmes (two years) for which admission is granted after the successful completion of a bachelor's degree (three years); and b) programmes for the degree of a *master complémentaire/Master na master* (advanced master's), which correspond to a LL.M. degree, to be obtained after the completion of a master degree and lasting one or two years (*master complémentaire/Master na master* 60 or 120)."

Especially in the LL.M. programmes provide an abundance of the possibilities of the specialization in various kinds of legal subjects. Examples of specialization: Master of Laws in Energy and Environmental Law, Master of Laws in European and International Taxation, European master in Human Rights and Democratization, Advanced master's (LL.M.) in International and European Law, and even master's in Notariat Law, etc. The interdisciplinarity, of course, is widespread in the LL.M. programmes, but also relevantly high in the master's degree programmes. In some LL.M. programmes semesters or trips to foreign countries or institutions are organized. Notably "the advanced master programmes offer lectures by an international teaching staff. For an essential part, the lectures in the advanced master's programmes are held in English and French".

13.1.3 Denmark

Denmark is distinct for the elaborate use of Moot Courts as the method of gaining practical experience during legal education: "Students can take internships and they can choose from a variety of Moot courts". The format of the Moot Court is also interesting in itself: "Students have the opportunity to participate in a variety of Moot Courts where the student is doing the initial work in Denmark and then go to another country where the proceeding competition is conducted in English, and against other foreign students." The possibilities of the internship abroad also interestingly vary: "it is also possible to take an internship at an embassy, for example, at the UN or the EU institutions, which replaces a course at the university."

The fields of elective courses with an international touch also are of interest: one of the courses is called 'Introduction to Russian law and Administration', where the "20 hours are taught in Odense (on one of the universities) before departure to Petrosavodsk. In Petrosavodsk the rest of the classes are taught". Also, in the field of EU law education some points of interest could be noted: "One of the possible courses which include an international aspect is called The 'Old' and 'New' EU, the European Union before and after the enlargement."

13.1.4 Finland

In Finland 50% of students participate in exchange programmes and study abroad: "all studies abroad easily compensated, even for obligatory studies". In the field of the EU law, some interesting forms of studies and teaching were noted as "European law studies so that they may be made by having a study group solving a practical 'European establishment case' in interaction between other European universities".

13.1.5 Germany

Germany has not implemented the Bologna model into its system of legal education what concerns separation of first (undergraduate) and second (graduate) circle: "As Germany has not introduced the Bologna scheme into the legal education, the distinction of undergraduate/graduate programmes is not applicable. … The study at a German university completed with the First Examination is not divided into bachelor and master studies. There is no specific graduate study available in Germany that is required for working as a judge or a lawyer."

However, Germany is distinct by the special approach to master studies outside integrated-non-Bologna model of general legal education, where some forms of the hybridization of master and vocational studies is possible: "Other 'Master' programmes offered at German universities – partly leading to a M.A., partly completed by a LL.M. – are not to be regarded as graduate degrees for legal studies in Germany. Those programmes must rather be classified as vocational training at university level, *e.g.* LL.M. or EMBA in Mergers & Acquisitions, Real Estate Law, Tax Law …, Law of Insurance …, Private Wealth Management or Health Care Law offered at the University of Muenster." Even though it is supposed in the questionnaire that they are more to be regarded as vocational studies, the sole fact that they are ended up by the acquisition of M.A. or LL.M. degrees show that they are some instances of hybridization of the two forms of legal education and continuous training.

Also, notably, internationalization of legal studies is widespread and essentially bi-directional. First of all, "students are encouraged to study abroad for the duration of one or more semesters"; "students can take part in the voluntary Foreign Language Programme for Jurists – FFA Programme … [which] is a voluntary four-semester study programme offered in English (Common Law), in French (Droit Français) and in Spanish (Derecho Espanol) resulting in a certificate"; "the obligatory internship can also be completed with a supranational, an intergovernmental or a foreign institution or a foreign lawyer"; some cooperations between German and foreign universities allow "to gain two degrees while studying at both universities in the particular language". Secondly, "most universities offer a Master in German Law ('Deutsches Recht') which is a graduate degree for foreign lawyers"; in itself this possibly is also very special form of the hybridization of graduate and vocational studies.

Some universities in Germany provide with the possibilities to participate in the specialized or international moot competitions to enhance their practical experience acquisition: "Several universities in Germany give students the opportunity to participate in a moot court competition such as the 'Willem C. Vis International Commercial Arbitration Moot Court', the 'Philip C. Jessup International Law Moot Court Competition' (in the area of Public International Law), the 'BFH-Moot Court' (in the area of Tax Law), the 'European Law Moot Court', the 'The International Roman Law Moot Court Competition' and the 'Frankfurt Investment Arbitration Moot Court'." However, essentially they are totally optional and not counted into the studies (having in mind integrated general legal studies).

In the integrated general legal studies (non-Bologna model) considerable attention is given to the provision of the general socio-humanitarian background to the students at the initial stages of the studies: "The First Examination consists of the required

subjects … taking into account the particular philosophical, historical and social fundamentals. The intermediate examination (years 1 and 2 of study) requires the students to successfully complete two courses about the basic principles of law, one of them dealing with the historical basics of law, the other dealing with the philosophical-social basics of law. The university matter of choice examination requires the completion of one course about the philosophical, historical or social fundamentals of law. Beyond that students are encouraged to complete further courses about the fundamentals of law as additional voluntary courses … [as, for example,] Accounting, Financial Principles of Tax Law, Sociology of Law …, Philosophy of Law …, Criminology, History of Criminal Law, Legal History, Law of Obligations in Roman law and Psychology."

International, European and the EU law is taught at length in either mandatory or optional format, covering such subjects as Fundamental Rights of the EU, European Corporate Law, European Private Law, Public International Law I and II, International Criminal Law, International Investment Arbitration, European Tariff Law, International Civil Procedure Law, European Contract Law and the United Nations Convention on Contracts for the International Sale of Goods (CISG), Law of the World Trade Organization and International Arbitration Law.

13.1.6 Hungary

Hungary also is not participating in the Bologna model and has no plans to do so: "There is no undergraduate level legal education: it is under 1 unified master's programme. Hungary has not signed up to participate in the Bologna system. Furthermore, there are no plans (yet) to become part of the Bologna process."

Hungary is also distinct by the fact that inter-disciplinary or non-legal education takes a very large part of the main integrated legal studies, *i.e.* one-third of all the studies: "Non-legal part 1/3: the so called specialized legal curriculum: (törzs)."

The problem noted in relation to Hungary is that of the lack of the overall development of writing and reading skills in legal education, which becomes evident and poses some kind of separate problem in the context of the requirement of the rather long master's thesis/dissertation: "[the master thesis takes] a miminum of 50 pages, for 30 credits.… They need to make it more seriously than they do. One of the problems is that writing/communication skills are limited for law students during their degree. They only write 2 papers plus the thesis. In some classes they get extra writing. Everything is problematic. No writing skills developed at school level, some schools do, but it's rare. The same problem applies also to reading skills."

13.1.7 Iceland

In Iceland one university (Reykjavik University) offers the master's programme, which, under the description, is more akin to the Ph.D. programme: "The studies are in large part based on independent student work under the guidance of instructors with special emphasis placed on research and project work."

Also, as a form of gaining of practical experience, not only moot court and internship were mentioned, but also the participation in the journal activities: "Student law review is optional".

13.1.8 Italy

Italy is distinct not by non-implementation of the Bologna model in its system of legal education, but by the recent (*i.e.* as of 2005) abandonment of this model and turning to the integrated model of legal education: "We are referring to the Ministerial Decree adopted on November, 25th, 2005…. Such Decree establishes the *laurea magistrale a ciclo unico in giurisprudenza LMG/01* (Magisterial Degree in Law: MDL) which lasts five years altogether (not 3+2 anymore) and amounts to 300 credits." What is left of the Bologna model is that "many universities still offer 'lauree triennali di primo livello in scienze dei servizi giuridici' (three years BA in sciences of the legal services), which are meant to train company lawyers, counsellors for industrial relations, civil servants, court clerks."

13.1.9 Latvia

Latvia offers distinct approach to the interdisciplinary teaching technique, *i.e.* interdisciplinary teaching may be conducted by offering courses where some parts, related to specific disciplinary fields, are taught by different professors/experts of respective fields: "there are courses consisting of two components taught by two professors with different backgrounds, *e.g.* international law system and human rights: theory and development – legal part taught by a lawyer, philosophy part taught by a philosopher, business and human rights – lawyer and corporate expert."

It is also notable that master's (LL.M.) programmes and degrees are usually specialized therein; such programmes are possible as: "LL.M in Public International law and Human Rights, LL.M in EU Law and Policy, LL.M in Transborder Commercial Law", etc.

13.1.10 Lithuania

Lithuania is distinct also by the form of a reluctance to fully implement the Bologna model in legal education. In this country, from the three universities that conduct legal studies, only one has a studies model akin to the Bologna one; however, the form is not 3+2 (undergraduate and graduate), but 4+2 (undergraduate and graduate). Other two universities use so called integrated model of legal education, where first and second circle are not separated and the studies are finalized with a master's degree; they take five years. It is also notable that one university (Vytautas Magnus University) had the unique experience of implementing the American model of legal education, where legal studies were conducted only at the graduate (second circle) level and were three years long.

Master's programmes, where they are conducted separately from the bachelor programmes, usually offer some kind of specialization in various fields; such programmes are possible as: Law and Management, Administrative Law, EU Law, Boilaw, Business Law, etc.

One university, conducting integrated legal studies, as the form of gaining practical experience provides students with the opportunity to participate in the editorial work of the law review journal. Participation in international moot courts (as Jessup) is also conducted in Lithuania.

13.1.11 Malta

Malta was on the few (if not the one) countries that mentioned the part of the process of legal education usually associated with and called "Legal Clinics". It was mentioned as the form of innovative teaching contents: students acquire "Advocacy skills when working on live cases under supervision". So-called *clinical skills development* in the overall legal education is very useful tool to provide students with practical experience.

13.1.12 The Netherlands

Graduate level in the Netherlands also is partly used to provide with the specialized and *ipso facto* interdisciplinary education. This happens when LL.M. programmes are as follows: European Law, Law and Economics, Tax Law, Public International Law. Interdisciplinarity as an optional matter is widespread therein, but taking into account essentially only specialized master programmes. Moot courts are frequently used at the bachelor and master levels, involving judges and advocates. Law faculties in the Netherlands

maintain excellent working relationships with courts, law firms and other institutional legal stakeholders.

The studies in foreign (European) countries are also promoted in the Netherlands: "it is highly recommended by the universities to spend some time studying in another country"; however, it is more usual and easier for the student to go abroad in the undergraduate studies using the Erasmus programme.

13.1.13 Slovak Republic

The Slovak Republic is distinct by the fact that not only interdisciplinary, but also non-legal and that of a general kind teaching is widespread in legal education at the master level: "Within all of graduate law degrees in the Slovak republic are involved also non-legal disciplines, mainly in the form of elective courses which can help to spread the vision and information of the graduate. As example: … Civil society and the political participation in the Slovak republic, Introduction to Political Science, English/French/German/Latin language, Pathology (to Criminal law), Introduction to Economics, Philosophy and Ethics." Although, either interdisciplinary, or non-legal teaching is clearly limited up to one-fifth of the contents of the entire master's programme.

The gaining of practical experience through traineeships is possible and already used by employing Erasmus and Leonardo programmes.

Teaching in European and the EU law is rather widespread and also, in the form of some specific course, obligatory: "The EU law is the obligatory course in the form of Introduction to EU law. Then every course deals with special issues of EU law, like courses European Labour Law, Constitutional Law of the European Union, European International Private Law, European Criminal Law, European Administrative Law etc."

13.1.14 Slovenia

Slovenia provided the examples of a distinct and advanced approach to the EU and the European law teaching, with a special focus on the European Human Rights protection system; all that is abundant in the process of legal education in Slovenia. First of all, parts of courses in some universities in this country are conducted in one or another form in the highest European courts: "European human rights law is an optional subject in the second, third and fourth years of study. Trips to the ECHR in Strasbourg and the EU Court in Luxemburg have been going on as part of this course for the last ten years." Also

"in relation to this subject a competition takes place in the presentation of the judgements of the ECHR, under which students presented so far (in the last six years) about 150 judgements of the ECHR". Moreover, "Teaching about European judicial institutions is not problematic … since the lecturers are well informed of the institutions' organization and functions. They have all visited the institutions and have contacts with the judges and other employees at the Court of Justice of the EU and thus have insight into its activities and procedures. Moreover, judges of the Court of Justice of the EU and other staff of the EU institutions (*e.g.* members of the judges' and AG's cabinets, agents of the European Commission) are invited to lecture".

13.1.15 Sweden

Sweden was the only country that mentioned *NordPlus* programme used for the student exchange and internationalization of studies and teaching. *NordPlus* programme is very similar to Erasmus; however, it covers the specific region – Nordic and Baltic countries (*i.e.* Sweden, Finland, Norway, Denmark, Estonia, Latvia, and Lithuania): <www.nordplusonline.org/>.

Courses on the EU and international law are mandatory and the corresponding education is well implemented in Sweden. For example, such 30 ECTS worth blocks/modules as "the Europe and the world" are included and mandatory in one university.

13.2 Summary of the Experiences

Probably one of the most outstanding experiences evidenced in the project is related to the Bologna model – some countries have not implemented this model at all (Germany, Hungary), have not implemented it all over the country (Lithuania), or even abandoned it recently (Italy). It shows that the discussion on the viability and universal applicability of this model in the field of law still remains relevant.

The issue of the Bologna problem is directly related to graduate legal studies – what is their function and place in the overall higher legal education if we make the separate second circle therein (*structural dimension*)? In this context many countries (as Belgium, Latvia, Lithuania, the Netherlands) would support the idea that the graduate education as such should be used to the spread of interdisciplinary and more universal teaching in legal education, especially if the form of LL.M. (as advanced master's, studied after regular master's; *e.g.* Belgium) is implemented or offered. Even though legal studies are professional studies in the university, they are still considered to be the part of *university* education and should provide *universal* scope of expertise and understanding. This thesis is reaffirmed by the

necessities related to the contemporary requirements and expectations from the legal profession and, especially, judiciary. The experiences of the countries show that the graduate level is the perfect place for this widening of the scope of the future lawyer.

However, we should agree that interdisciplinarity as such is important in the *overall* legal education and should be made the continuous facet of this process. Especially if integrated model of general legal studies is used (as in Germany, Hungary, etc.) the initial stages of legal education may be used or even are used (as in Lithuania) for the provision of general socio-humanitarian background for the future lawyers. At the later stages, and especially the graduate level, the widening of the scope may be combined with the specialization both having the interdisciplinary dimension, as, for example, making the graduate programmes on *Administration and Law* or *Finances and Law*.

On the other hand, as some countries indicate (Hungary), it might be necessary to consider what should be overall limits of the interdisciplinarization of legal studies; *i.e.* not only the lower limit is the problem for consideration, but also the upper limit.

Finally, what concerns the structural dimension of this analysis, some countries offer rather unique examples in this respect. First of all, the possible technique of conducting interdisciplinary education in the field of law could be the one where the teaching of different specialists/professors of respective different fields is combined in one course (example of Latvia). Also, the German example of the hybridization of master (graduate) and vocational studies is of particular interest and uniqueness; it is advisable to consider it as an example at least to test it in other European jurisdictions.

The international facet of the contemporary law and legal education was also very much emphasized in the project (*spatial dimension*). First of all, being the part of Europe and, especially, the part of the EU was reflected a lot. Many countries (as Austria, Slovak Republic, Slovenia, Sweden) indicated that considerable focus should be devoted to the EU law in legal education, up to making it generally required in education, at least by listing some obligatory courses (as EU Institutional Law, EU Material Law, etc.). Also some countries (as Slovenia) stressed the importance of the study of the European Human Rights protection system. However, in this context it should be noted that, at least in some countries (as in the Netherlands), learning of the EU law has become a completely integrated part of regular legal education; for example, learning of the regular *Procedural Law* subject covers both procedural law of the local and of the EU courts.

Secondly, many countries stressed the importance of the studies of subjects having general international and comparative dimension (Germany, Slovak Republic, Sweden, Denmark

and Finland) which is definitely the necessity in the contemporary globalized world and the context of the influences of globalization to law.

Thirdly, a lot of attention was devoted to the mobility of students. Finland and the Netherlands indicate that studies abroad at the graduate level should be of particular importance, if possible, bringing into this process up to the half of all the students. In this context Austria provided with the interesting insight that studying abroad in "provincial" universities still might be unusual; therefore, it might be possible to consider the relative universalization of the studies-abroad requirement in European jurisdictions, especially for the graduate level. Of course, the Erasmus programme was also touched upon. Following the example of the Slovak Republic it could be noted that this widely used programme should be promoted for the implementation not only for the student exchange in the field of general studies, but also in the field of traineeship. Also, based on the experiences of Nordic and Baltic countries, it might be advisable to institute and develop other more regional programmes of the similar form and substance; *NordPlus* is a perfect example here.

Finally, in the context of the spatial dimension of the analysis, the special forms of the internationalization of legal studies met in Germany might be of the particular interest, as, for example, FFA Programme or Master in German Law programme for foreign lawyers.

The third block of the experiences gathered in the project is related to the necessities of the development of practical skills of the future lawyer (*practical dimension*). First of all, many countries (Germany, Lithuania, Denmark) evidenced the experience of the development of students' skills by the organization of moot courts or participation in more or less known special or international moot court competitions (as Jessup).

The traineeship is a self evident method of development of the practical skill in almost every country. However, here also some unique approaches are possible related to the more flexible methodologies in this field. For example, the experience of Austria shows that special traineeships could be organized for the high performing students.

Although none of the countries have specifically mentioned legal clinics as the tool to develop practical skills (only Malta, but indirectly; Poland, actually, widely uses this tool), it should be considered as an effective technique in the overall legal education to help students effectively gain practical experience.

Finally, the development of writing and reading skills is an issue to consider: how, in what courses, and under what methodologies and approaches it should be done? Some jurisdictions (Hungary or Lithuania) show that there might be some misbalances and

relative *lacunae* in legal education in this sphere. As one of the solutions in this sphere it could be considered the students' participation in the activities of academic journals. It is common practice in the US and evidenced by some countries represented in the project (Iceland, Lithuania). It might advisable to also offer it as an optional form of gaining practical experience or just making student more academically active during their studies.

Part V
Task Force 3 Ph.D. Legal Studies in Europe: Comparative Analysis

14 Comparative Analysis of Ph.D. Studies for Legal and Judicial Education

Gar Yein Ng and Philip Langbroek

14.1 Legislation and Regulations

All countries have some form of regulation or legislation at a centralized level, but it covers forms of higher education in general, and mostly deals with accreditation issues. Some countries have "independent" accreditation bodies, which are made up of people from the universities themselves, and or external professionals and bureaucrats (Lithuania, Portugal, Spain and Hungary). Occasionally there are also national boards which come together to create "guidelines" (Ireland), probably based on "best practices": this is possibly in reaction to becoming more attractive in competition with other countries within the EU and to fit better within the Bologna processes. However, sometimes, as expressed in Hungary, these boards can be a barrier to change. Otherwise, legislation and regulations set out only the procedures and minimum requirements to attain a Ph.D. qualification, for which universities are completely autonomous (England and Wales, Finland, Norway, Germany, France Poland, the Netherlands, Belgium, Malta and Romania).

14.2 Institutions Entitled to Issue Ph.D. Programmes. The Degree of Legal Autonomy Entrusted to Each University to Determine the Scope of Ph.D. Programmes

The universities all have academic freedom to fill the content of syllabi, but must fulfil the requirements of accreditation required by regulations and law (academic freedom and accountability). The Bologna process has centralized and influenced a lot of programmes: reducing autonomy in some ways, but increasing it in others (Portugal, Spain, Hungary and France). Basically a Ph.D. trajectory is based on a master-pupil relationship everywhere. Nonetheless, in several countries accreditation for a Ph.D. trajectory is mandatory; in other countries (Finland) minimum requirements are set by the government, but essentially universities are at liberty to fill their programmes as they think necessary to develop scholars and scholarships.

In several countries universities have Ph.D. training programmes, meaning that Ph.D.s have to follow certain courses while working on their Ph.D. research (the Netherlands, Belgium, Portugal). But this is not the case everywhere.

So it is also questionable whether a Ph.D. on its own merits can contribute to the quality of court work.

A Ph.D. is considered a test of scholarship everywhere. Attaining a Ph.D. degree is first and foremost a *sine qua non* to get a job at a university as a teacher or researcher. In some countries, having attained a Ph.D. degree in law, opens the possibility to become a judge without passing a specific examination.

14.3 Constraints/Barriers to Reform and Changes Ph.D. Programmes

In terms of legal constraints, outside of accreditation considerations, there are none for all of these countries. However, internally, the experience with Hungarian universities is that it is difficult to change the more conservative nature of the universities' control over the programmes. To a certain extent, there is also a competition to attract the best Ph.D students.

14.4 Formal Relation Between Achieving a Ph.D. and Judicial Appointments

In most countries, there is no connection between having a Ph.D. and becoming a judge. The exceptions are Spain, Lithuania, Germany, Slovenia and Portugal; but even then, it is rare. The conditions for becoming a judge are that one should be a lawyer with civil effect, practically meaning to have a master degree in law. In England and Wales and Ireland this comes together with a long-standing experience as a barrister for professional judges. Practical experience is also required in Norway and Denmark, where judges often should be assistant judge for a very long time before being appointed as a judge.

It is remarkable that practical legal experience for lawyers can lead to a judicial position in countries like Slovenia and the Netherlands. At least about half of the judges are recruited in that way.

One can imagine that a Ph.D. degree in law may be an asset for a court, but the quality of judges depends more on knowledge and skills than being able to write a dissertation.

Juridical knowledge ages very fast. The skills necessary to write a doctoral thesis are different from the skills necessary to be a good judge.

A Ph.D. in law can be considered a positive asset, but is not a *conditio sine qua non* for becoming a judge. A good judge does not necessarily have a Ph.D. Also at the highest courts, the judges form a mixed group of experienced practitioners (advocates, judges) and persons with an academic career background.

14.5 Innovations

In Italy there is a debate about making Ph.D. studies more practice-oriented. The relation between Ph.D. studies and the judiciary is not made explicit, however. We do think that the administration of courts and judges could profit from developing an academic discipline of judicial administration next to Public Administration. Furthermore, judiciaries are increasingly in need of knowledge management.

This presupposes an organization that monitors the need for specific knowledge and skills for judges and other people who work in the courts and that in one way or another facilitates judges and their helpers with courses. The idea that pulling Ph.D.s in a legal subject into the judiciary would increase the content quality of the judiciary does not seem to be based on any practice. We can imagine that also judiciaries need specialists, but the law is changing fast so a specialist also needs to keep track of changes. This presupposes at least that in court administration sufficient time is left for judges to take courses in order to keep themselves up to date contentwise.

In some countries there are contacts between law faculties and the legal profession. Law firms advocates and judges can be university teachers, they can participate in moot-court activities. This happens in England, Ireland, Germany, Belgium and Finland. In the Netherlands law schools have cooperation agreements with local courts. Lecturers can give courses or do some research for the courts; judges participate in law school courses. The Council for the Judiciary finances several special professsorship, where judges (with a Ph.D. degree) have been appointed on part-time and temporary positions in law schools. Also successful law firms finance special professorships. Of course it is possible that a Ministry of Justice or a central court administration wants to finance specific research projects, but this also never concerns a Ph.D. study. Occasionally, it does happen that law firms finance a Ph.D. study, *e.g.* by giving one of their advocates the time to prepare a Ph.D. or by engaging in a special contract with a law school to make certain that the favour is returned contentwise.

Most of those interrelations, however, have a focus on bachelor and master students and not on post academic education and training, let alone Ph.D. studies.

14.6 Conclusion

The relation between Ph.D. studies and the legal professions is very thin in general.

part VI
Task Force 4 Vocational Legal and Judicial Training in Europe: Comparative Analyses and Research Reports

15 Vocational and Continuous Training of Judges and Prosecutors: A Comparative Analysis

Gianina Radu and Otilia Pacurari

15.1 Introduction

This report is based on the information delivered by 23 participant countries out of the 27 countries that were initially involved in the research. For the validity of the report it should be stated that

- 21 countries completed the answers regarding judges and prosecutors (from which Norway only regarding judges);
- Luxembourg and France were initially not included in the comparative analysis of the information gathered from the questionnaires filled out in January 2012, although we decided to include the insights in this report;
- fifteen of the respondent countries had special legislation or a separate section in legislation regulating the national judiciary systems;
- six countries did not have special laws regulating initial training;
- Iceland has only provided a link to national legislation (we cannot find an English translation);
- a special situation occurs in England and Wales (and the UK generally) and Ireland where it does not make sense to distinguish between initial training and in-service training, particularly when it comes to judges. It also does not make sense to distinguish between training of prosecutors and advocates – the distinction to be drawn is between solicitors and barristers.

For Task Force 4, the outcomes of the research concerning the training of the judges and prosecutors were viewed synthetically. Two key aspects were targeted both for initial and continuous training. These are the *regulation and the context of the training* and the *content of the pre-service and in-service training.*

15.2 Initial Training, Current State of the Art

15.2.1 Do Initial Judicial Training Institutions Operate at a National, Centralized Level or at a Decentralized Level?

One of the main points of focus in terms of regulation and training programmes was aimed at the way in which the vocational training sector is organized. The research questions targeted modes in which the institutions operated, *i.e.* at national or decentralized level, taking into account whether there is a monopoly or a free/regulated market for initial training. The answers are diverse. There were 23 countries that responded to the question (from which Norway only concerns judges), as follows.

Malta does not have any initial training institution for future judges and prosecutors, the Faculty of Law of the University of Malta organizes the LL.B. and the LL.D. courses for advocates (due to the fact that it requires a period of seven and twelve years experience as an advocate before being accepted as candidate judge or prosecutor).

In Lithuania two institutions at the national level organize the short-term initial training of the assistants of judges – the Judicial Council and the Ministry of Justice (the Centre within the Ministry also organizes the theoretical training for judges and often for prosecutors) – and the practical training is offered at a decentralized level by the courts and prosecutor offices. For prosecutors the practical training is conducted in the district prosecutor offices or territorial prosecutor's offices or in the Office of the Prosecutor General, and organized by the Chief Prosecutor of the territorial prosecutor's office or the Chief Prosecutor of the Methodical Department of Training of the Office of the Prosecutor General. The theoretical training of the trainees is conducted and organized by the Office of the Prosecutor General.

In Luxembourg the training for judges and prosecutors is mainly done at the national level, except for a few weeks in the *Ecole Nationale de Magistrature* (ENM) in Bordeaux (France). Initial training in the two stages is placed under the authority of the Luxembourg Ministry of Justice.

The UK and Ireland (two countries) have initial training institutions for judges operating at the national level, but regarding the prosecutors, they did not distinguish between prosecutors and advocates – the distinction is between solicitors and barristers that have a national institution that operates at the national level.

Belgium, Czech Republic, France, Italy, the Netherlands, Poland, Portugal, Romania and Turkey (nine countries) have similar training institutions for judges and prosecutors; these

institutions operate at the national level and they also coordinate, at different degrees of competence, the training activities at a decentralized level, at the level of the courts or prosecutors institutions.

From September 2012 onwards, the Italian School for the Judiciary (*Scuola Superiore della Magistratura*) will be fully established and the School will be responsible for initial and continuous training of judges and prosecutors, withdrawing these competencies from the responsibility of the Superior Council for Magistracy.

In Austria, Slovenia and Sweden (three countries), the decentralized training is done by the courts and prosecutor offices (special departments are within these institutions) and the training is coordinated by ministries or other institutions established at the national level, institutions that are not training institutions *per se*.

Denmark, Finland, Germany and Norway (four countries) operate the decentralized training at the level of the courts and prosecutors offices but every institution is free to organize the training or courtships.

Latvia and Spain (two countries) have different training institutions for judges and prosecutors. For judges, there are judicial training centres that operate at the national level and they are responsible for the organization of the judicial training in the country. For prosecutors, there are special departments within broader institutions and they operate at the national level.

A set of fundamental features have been identified for each country, therefore, and a number of descriptions per country are inventoried below.

15.3 Description per Country: Centralization or Decentralization of the Organization of Judicial Training

15.3.1 Austria

In Austria the actual training is done at a decentralized, regional level. There is no initial training institution, but the Ministry of Justice, through a special department, approves the programmes proposed by the regional courts. There are four judicial districts of higher regional courts in charge of the initial training of judges, and the training programmes between these districts differ considerably.

The Austrian understanding of "initial training" is "training on the job" and lasts four years. Hence, the legislation stipulates minimum and maximum periods to be spent in the

various levels of the Austrian court system and administration, respectively. Training with an advocate is also possible, at least in theory. Regulations regarding theoretical training are very general; the law only stipulates that the courts have to provide courses enabling the candidates to present and decide cases in oral and written form. Practically, the candidates can – and do – take part in many of the courses that are offered under the in-service training scheme. Nevertheless, the Ministry of Justice has a monopoly on the provision of trainings because the funds are approved at a centralized level.

15.3.2 Belgium

The Institute for Judicial Training operates at the federal level – common for judges and prosecutors. In Belgium, a new law was adopted in January 2007 concerning judicial training and the Institute for Judicial Training. The law entered into force in 2008 and the Institute for Judicial Training started its activities in 2009. Initial training is organized at the federal level. The exams giving access to the profession and judicial training (including initial training, in-service training and career guidance) are set at the federal level.

The professional training is, therefore, a federal matter. The Superior Council of Justice is also a new institution. It establishes the guidelines (the aims to be reached) in terms of training of judges, while the Public Federal Service for Justice (former Ministry of Justice) establishes the guidelines for the training of the prosecutors. The Institute for Judicial Training is in charge with the implementation of the training programmes, with the support of a Scientific Committee. The establishment and the implementation of the judicial training for magistrates (judges and prosecutors) and junior magistrates is the exclusive competence of the Institute for Judicial Training. The main task of the institute is to ensure higher quality training (vocational and in service). Only the training for master's of law is considered an exclusive competence of the Communities.

15.3.3 Czech Republic

The Judicial Academy (JA) is a unique state body in the Czech Republic responsible for training all target groups in the Czech judiciary since it took over the Judicial School in 2005 – common for judges and prosecutors. The JA is the central institution of the justice sector for the training of judges, state prosecutors and other target groups. For judges, the training of the candidates, a court's employee, is provided by a specific training programme at court (decentralized level). The prosecutor candidate is a public prosecutor's office employee who receives a specific training at the public prosecutor's office (decentralized level).

15.3.4 Denmark

Judicial training is decentralized and there is no initial training institution. There is an initial training period of three years that takes place in the courts, where students specialize and are guided by other judges. There is a three-year initial training that takes place in the police offices, where students specialize and are guided by other prosecutors.

15.3.5 England and Wales

For judges, the Judicial College operates at the national level overseeing the training of magistrates (lay judges serving in Magistrates Courts) and members of tribunals. The Judicial College (before 2011 called the Studies Board) is directly responsible for training full (salaried) and part-time (fee-paid) *judges* in England and Wales, and for overseeing the training of magistrates (lay judges serving in Magistrates Courts) and members of tribunals. An essential element of the philosophy of the Judicial College is that the training of judges and magistrates is under judicial control and direction. In April 2006, the Lord Chief Justice of England and Wales took over responsibility for the Judicial Studies Board (now the Judicial College). The Judicial College is an independent judicial body and part of The Directorate of Judicial Offices for England and Wales. It draws its funds, staff and much of its corporate support directly from the Ministry of Justice. The Board of the Judicial College is the governing body, with responsibility for strategy, planning and delivery.

As regarding the prosecutors/advocates (they are the same: barristers and solicitors), the initial training institutions are operating at national level – for barristers there is the Bar Standards Board and for solicitors there is the Solicitors Regulatory Authority.

15.3.6 France

In France, the vocational training is organized by the National School for the Judiciary (*Ecole Nationale de la Magistrature*), which is an independent, national public administrative body supervised by the Ministry of Justice.

15.3.7 Finland

Training of judges is decentralized; there is no central initial training institution. At the level of the municipal courts and prosecutor institution, special departments are in charge with initial training with their own system of vocational training. Municipal courts are

responsible for the initial training of the future judges. However, one may be elected as a judge without having the "career" of being a judge (*e.g.* advocates). There is cooperation between universities and private training systems. The prosecutors institution is autonomous in this regard with its own system of vocational training, so there is a monopoly of the state in this sense. There are situations when someone could be elected on the basis of having been an advocate, judge etc.

15.3.8 Germany

Training of judges takes place at a decentralized level, within the court administration agencies; at the level of the states there are special departments. There is nothing like a "National Judges School" in Germany. Newly appointed judges get a kind of a "crash course" organized by their court administration agency. Afterwards, they learn on the job. The same applies to the other professions. Apart from the postgraduate judicial service training, there is no formalized initial training (also to hold for prosecutors and attorneys). Initial training is loosely organized on the state or even local level (*e.g.* the districts of the superior courts). Apart from books or other published material, there is a monopoly of the court administration agencies. Only the state of North Rhine-Westphalia has its own Judges Academy in Recklinghausen, used for initial as well as vocational training. Initial training consists of three short courses (three days each).

15.3.9 Ireland

The Judicial Studies Institute organizes training, seminars and study visits for the judges. In Ireland, there is no equivalent of salaried officials entitled "public prosecutors" as in the case of the CPS in England. The practising barristers or solicitors with at least ten years experience can be appointed a judge of a first instance court only after they participate in the training organized by the Judicial Studies Institute.

The Irish situation of prosecutors presents a peculiarity: In Ireland, there is no equivalent of salaried officials named "public prosecutors" as in the case of the CPS in England. There are only advocates/lawyers: The term "advocate/lawyer" is understood here in its wider sense as meaning a professional person authorized to practice law that is to initiate lawsuits and provide legal advice.

There are two types of "advocates" in Ireland – solicitors and barristers. The Solicitors (Ireland) Act 1898 established for the first time that the Incorporated Law Society of Ireland was to have control over the education of students wishing to become solicitors. The Society, which was renamed the Law Society of Ireland in 1994, exercises statutory functions under

the Solicitors Acts 1954 to 2008 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. The Honourable Society of King's Inns was established in Dublin in 1541, and it remains the body which provides postgraduate legal training for those who wish to practice at the Bar, in a system parallel to the Law Society.

15.3.10 Italy

Until September 2012, a Judges' School did not exist – the Superior Council of the Magistracy coordinated at national level the initial training activities for judges and prosecutors (there was a special department within the Superior Council of the Magistracy – the "IX sezione" – which "directed, coordinated and controlled" initial training). Initial training for judges and prosecutors was organized at the national and local levels (level of the Court of Appeal) and it was in the exclusive competence of the Superior Council of the Magistracy (CSM) with the assistance of the district judicial councils and the collaboration of a series of other subjects that operate both at local and national levels.

From 24 September 2012 onwards, the new School for the Judiciary established by legislative Decree no. 26 from 30 January 2006 has started its activities. Its location is in Scandicci, near Florence (Villa Castelpulci). The school is in charge of initial and continuous training of judges and prosecutors, depriving the CSM of its previous competences. It is an independent entity with legal personality and it is the sole agency competent with regard to professional training of the judiciary. In adopting or amending its annual training programme the school takes account of the guidelines regarding judicial training it receives from the CSM and the Minister of Justice, as well as the proposals it receives from the National Bar Council (CNF) and the National University Council (CUN).

15.3.11 Latvia

For judges, the Latvian Judicial Training Centre provides centralized training. The initial training for prosecutors is organized irregularly only for prosecutors candidates and it is financed by the General Prosecutors Office – special department. The Latvian Judicial Training Centre is contracted by the Court Administration which is responsible for the organization of the judicial training in the country for judges.

15.3.12 Lithuania

For judges, there is no school for training – but there are two institutions of the national level that organize initial training: the Centre of Education (special department within

the Ministry of Justice) and the Judicial Council (through special departments at the level of district and regional courts). Initial training of prosecutors is called traineeship and is coordinated by Chief Prosecutor of the Methodical Department of Training of the Office of the Prosecutor General and conducted at a decentralized level by the territorial prosecutor's office, and also, the Centre of Education (special department within the Ministry of Justice) organizes theoretical training for prosecutor.

The initial training of judges is organized throughout two forms of initial training. *First form* is the obligatory short initial training (not less than one month) just before the person starts working in a judge position in the district court, being the court of the lowest instance. Two institutions of the national level organize the short-term initial training of the assistants of judges – the Judicial Council and the Ministry of Justice, but they themselves are not training institutions. The training institutions are the district and regional courts (the training in the courts may be called *practical training*), and the Centre of Education of the Ministry of Justice (hereinafter – the Centre) (the training in the Centre may be called *theoretical training*).

Three weeks of this training is being conducted in the corresponding district court; one week, in the regional court (being the court of the higher-appellate instance) to which the district court belong and during one year the trained judge shall attend the special training programme conducted in the Centre. Secondly, the initial training may have the form of practising as an assistant of a judge, but it is not obligatory. One of the conditions to be eligible to the position of a judge is at least five years of working in the legal profession. One of the forms of this profession, besides attorneys, prosecutors, assistants to the attorneys etc. (there is the special List of Legal Professions, approved by the Government of the Republic of Lithuania for this purpose), is the assistant of the judge. Assistants of judges are organized in an Association of the Assistants of Judges.

The practice of the assistant of a judge itself could be considered the form of an initial training (as practical training), and it also usually contains the training in the forms of seminars/lectures or the like (as theoretical training), which could be organized by the Centre of Education of the Ministry of Justice (one of its purposes is the training of the assistant of judges) or other institutions, including the Association of the Assistants of Judges itself or the National Courts Administration (for example, recently both those institutions cooperated in organizing seminars for the assistants of judges). This theoretical training may be conducted jointly with the in-service training (*i.e.* in the form of the same seminars/lectures or the like for judges and their assistants).

Initial training of prosecutors is called traineeship. The traineeship could be considered analogous to the practice of the assistant of attorney or judge, only the traineeship, as a

long-term training, is obligatory (in the case of judges and attorneys, experience as an assistant of a judge or an attorney is not obligatory before being accepted to the service of a judge or an attorney; other forms of working in a legal profession are also possible). The trained person is already considered being in the position of the prosecutor, and his traineeship lasts, as a general rule, two years (with some exceptions; to compare – for an attorney, two years in the practice of an assistant of attorney is also the sufficient to satisfy of the initial training/practice requirement). The trainee has the supervisor, who is the elder prosecutor, having the long experience of work in the prosecutor's office.

This traineeship, as a practical training, is conducted in the district prosecutor offices or territorial prosecutor offices or the Office of the Prosecutor General, and organized by the Chief Prosecutor of the territorial prosecutor's office or the Chief Prosecutor of the Methodical Department of Training of the Office of the Prosecutor General. The theoretical training of the trainees is called the training of trainees and is organized by the Office of the Prosecutor General. The trainees in the position of prosecutors may be redirected to the training programmes conducted by the Centre of Education of the Ministry of Justice (one of the functions of this Centre is the training of prosecutors), and this training may be conducted jointly with the in-service training (*i.e.* in the form of the same lectures/seminars for trainees and other prosecutors).

15.3.13 Luxembourg

There is no training institution – the initial training is coordinated by the Ministry of Justice. The persons wanting to become judges and prosecutors have to follow a two-year period as trainee lawyers. The first stage of training for judges and prosecutors is the same as the one followed by lawyers: it combines a theoretical intensive training named the *Cours complémentaires en droit luxembourgeois* (CCDL) which is entirely done in Luxembourg, followed by a traineeship in a law firm. The entire training lasts two years and the participants are considered as trainees when they start the CCDL. For the sake of consistency, the entire training will be named hereinafter "initial training", even though these two years and the two stages in fact represents the complete training in order to become an attorney.

During the *first stage*, the so-called CCDL, the choice regarding the quality and attractiveness of the training is rendered in total independence, even if the members of the steering committee are appointed by the Ministry of Justice (attorneys, notary and bailiff). However, the Ministry of Justice has the final say. During the *second stage* (two-year professional training), the responsibility of the training still falls under the jurisdiction of the Ministry of Justice, but professional organizations are closely associated with the content and the course of the training.

After accomplishing this initial training, which is similar to the initial training of attorneys, and after passing the final exam, a selection is made between the persons who are willing and who are eligible (*i.e.* Luxembourgish nationality is required) to pursue their career as judges and prosecutors. The selected persons start an additional one-year training as *attachés de justice* (this one-year training will be named hereinafter "additional training"). This additional training also falls under the jurisdiction of the Ministry of Justice and is coordinated and organized by the *Procureur général* (public prosecutor in the Court of Appeal and Supreme Court) and a specialized committee of judges. During this period, three weeks must spent in the *Ecole Nationale de Magistrature* (ENM), in Bordeaux (France). Once they have finalized their additional training, a second selection is made in order to define the hierarchical order as judges.

15.3.14 Malta

There is no training institution; training is done within the universities. Training is given by the University of Malta through the LL.D. course. Depending on the availability of lecturers, credit is allocated for the final year of studies that gives students an idea of legal practice. However, this is by no means a substitute of the on-the-job training that is required for the warrant exam. There is no vocational training organized specifically as such; there are only one-day seminars or conferences and talks occasionally organized by the Chamber of Advocates largely for lawyers, although the judiciary is free to attend. As a very recent initiative of the current Chief Justice, the Judicial Studies Committee was set up for the purpose of organizing ongoing skills training and professional development of the judiciary. For the prosecutors, apart from an academic background, training is largely obtained through the practice leading up to the warrant exam and on-the-job training.

15.3.15 The Netherlands

The training is done on the national level by the Study Centre for the Judiciary (SSR) – similar for judges and prosecutors. The SSR is owned and financed by the Council for the Judiciary and the College of Procurators General (the highest power in the Dutch Public Prosecutions Office). These two institutions obtain their money from the Ministry of Justice. Candidates do not need to pay for their training.

15.3.16 Norway

The training of judges is very decentralized and fragmented. The legislation on judges' qualifications is broad and general. The appointment of assistant judges is left to head

judges' discretion and professional judgement, and the appointment of judges is based on a host of different informal and formal criteria that come together in a highly discretionary evaluation. In other words, the training of judges is very decentralized and fragmented. A judge does not need to come from a position as an assistant judge, but can also have experience as an advocate or prosecutor, professor etc. There is little legislation and experience needed to become a judge can be gained in a variety of ways.

15.3.17 Poland

The Polish National School of Judiciary and Public Prosecution operates only at the national level. The Polish National School of Judiciary and Public Prosecution is an independent institution, although it is under the coordination of the Ministry of Justice. It is not a part of the Ministry of Justice, but when the Training Centre was opened, there were suspicions that the Ministry of Justice would become too powerful. It is impossible to judge yet. In the regional councils and chambers there is usually a trainee coordinator in charge of the administration of the training. The training usually consists of organizing the practice in courts and other activities for trainees. The training school for judges and prosecutors has several centres around Poland (buildings and service fall under the responsibility of the Ministry of Justice). There are also trainings organized by higher-level courts, usually appellate courts, but this is an extraordinary situation. Some judges are invited for international trainings. Sometimes the court organizes foreign language courses for employees (also judges).

15.3.18 Portugal

The Centre for Judicial Studies is the only institution selecting and training judges and public prosecutors; the Centre operates at the national and centralized level – similar for judges and prosecutors. The Centre for Judicial Studies has legal personality and administrative autonomy and is falls under the supervision of the Justice Minister. The second phase of initial training is operated at courts and can therefore take place in any part of the country under the supervision of the Centre for Judicial studies, which has regional delegations.

15.3.19 Romania

Initial training of future judges and prosecutors is exclusively provided by the National Institute of Magistracy (NIM) and it is organized and coordinated at a national

level – similar for judges and prosecutors. Admission into the body of magistrates and initial professional training that is obligatory in order to become a judge or prosecutor are entirely conducted by the National Council for Magistracy. NIM is a public institution with legal capacity, placed under the coordination of the Superior Council of Magistracy. The second year of initial training takes place in courts and can therefore take place in any part of the country under the supervision of the NIM. There are also some modules of training given at NIM. For magistrates entering magistracy by an extraordinary exam for admission into magistracy and who become fully qualified judges/prosecutors, the NIM has asked all the heads of courts/prosecutors' offices where these magistrates work to designate training period coordinators. The coordinators will offer support and guidance during the training period, alternating with seminars organized by and at the NIM. From 2012 onwards, the two exams are organized with the same duration, the same recruitment procedures and phase of exams.

15.3.20 Slovenia

Slovenia is a special case since initial training is compulsory in order to accede the legal state exam and after this national exam there also is a mandatory three-year training period required to be performed in courts or prosecutors' offices. The programme of the so-called "judicial trainee" is set by the President of the High Court in collaboration with the Judicial Training Centre, which is part of the Ministry of Justice and the Expert Council at the state Prosecutor's office. The Judicial Training Centre is in charge of the organization and execution of the obligatory forms of training which is performed by judges, prosecutors and state attorneys but there are also other institutions where the trainees can complete their initial compulsory training (courts, state prosecutor's office etc.) in order to accede to a legal state exam.

No general information about the institutions involved can be given, since there are many options for accessing the legal state exam. Furthermore, beside the Judicial Training Centre, there is a number of private companies that offer preparatory courses for the legal state exam. It is up to the candidate to choose the appropriate way taking into consideration the obligatory parts of training in the domain of the Centre. The situation after the legal state exam differs for different professions. According to the Judicial Service Act, a person can become a judge (not younger than thirty years of age together with other general conditions) after three years of practice at a legal position after passing the legal state exam. There are different periods of practice required for different levels of judges. However, there are no restrictions regarding the institutions – the law only states that the practice has to be done at a legal position. The situation is similar for prosecutors – the State Prosecutor Act states that a person can become district prosecutor if he fulfils the criteria

for a district judge (*i.e.* six years of legal practice after the legal state exam or three years of practice as a local court judge) or after three years of being deputy district prosecutor.

15.3.21 Spain

The training system is different for judges and prosecutors: initial training is organized and coordinated at the national level by the Judicial School. For prosecutors, the initial training is coordinated at the national level by a special department within the Ministry of Justice, but organized at decentralized level. For judges, the training is organized by the governing board of the judiciary, throughout the Judicial School under the General Council of the Judiciary, and operates at the national level. For prosecutors, the training is organized by the Ministry of Justice special department and operates at the national level throughout the Schools of Legal Practice.

15.3.22 Sweden

Initial training for future judges and prosecutors is given by universities and at this basic level there are no other institutions. The two-year courtship period is needed in order to accede to the profession. For judges there are no initial training institutions which operate as a monopoly. For prosecutors, the National Prosecutor Authority organizes, after appointment, the training at the national level. After university graduation, it is very common that the young lawyer takes the title "trained on the bench". This means that he worked for two years at courts or other authorities. However, this is not a formal requirement. Also, the Academy for Judges arranges courses for young lawyers and it can be considered as an institute for initial training. It works at the national level and it has a monopoly. However, this basic training is not a formal requirement and therefore the temporary appointment as an adjunctive judge is possible without this vocational training.

The prosecutor should have a master's degree in law and in addition he has to complete a two-year training programme, usually at the district court or at the administrative court. After that he receives the title "trained on the bench". It is also possible to work for six months as a trainee prosecutor and this period can be included in the training programme mentioned above. After receiving the title "trained on the bench", he can try to obtain the status of prosecutor candidate. In case he will be appointed, he will get the temporary post for nine to twelve months. During that period, he will work together with the supervisor and further education and training is provided. After this period, he will continue training as an assistant prosecutor. During this period of two years, he will still get further supervision and training with education. Finally, after this period he is evaluated to see

if he is suitable and can get appointed as prosecutor. In case the candidate already has practical experience, *e.g.* working as an attorney, bailiff, judge and so on, he can be appointed directly to an extra prosecutor for a six to twelve month period and after that he can be appointed as a prosecutor with an exceptional permit. After the appointment, the prosecutor has to follow the programme of further education organized by the National Prosecutor Authority.

15.3.23 Turkey

Vocational training for judges and prosecutors is given at the national level either by the Justice Academy or by the Education Division of the Ministry of Justice.

The Justice Academy is autonomous and organizes similar initial training for judges and prosecutors. The Education Division of the Ministry of Justice also has some responsibilities in initial training programmes.

15.4 Monopoly or a Free Regulated Market for the Initial Training of the Judges and Prosecutors?

The states regulate or control the access into the judicial professions (at national or local level), so we can call a monopoly of the state in providing training, with exceptions (*e.g.* Malta, where the initial training is not organized at all, as in most countries), but even in this case there are rules in the legislation of the country stipulating under which conditions a candidate can become judge or prosecutors. As presented above, Malta, Denmark and Sweden are special cases where initial training is not institutionalized and it can be regarded as a regulated market by the national states, since there are different institutions offering training for future judges and prosecutors (before or after taking a state exam to accede into the profession or any other form of selection).

15.5 Is the Initial Training Institution an Autonomous/Independent Body or a Special Service of a Broader Institution?

Another item investigated was the status of initial training institutions. A distinction was made between the autonomy of the institutions and their potential status of service provider of other broader institutions.

– Denmark, Finland, Germany, Malta and Norway have neither training institutions nor special services in a broader institution;

- in Latvia, Spain and Sweden, initial training institutions are different for judges and prosecutors;
- Belgium, Czech Republic, France, Italy, the Netherlands, Poland, Portugal, Romania, and Turkey have common initial training institutions providing training for both judges and prosecutors within an autonomous institution;
- the Czech Republic also has, at the level of courts and prosecutors offices, special departments for initial training;
- in Turkey, besides the Academy (similar for judges and prosecutors), there is also a department within the Ministry of Justice in charge of some attributions regarding professional training for magistrates.

The examination of only initial training for *judges* produced the following the findings.

In Belgium, Czech Republic, England and Wales, France, Ireland, Latvia, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and Turkey initial training institutions are autonomous bodies in charge of initial training of future judges.

If we examine only the *prosecutors*' initial training, we can conclude that in Belgium, Czech Republic, Poland, Portugal, Romania, Spain, and Turkey initial training is provided for future prosecutors by an autonomous body .

In Austria, Czech Republic, Latvia, Lithuania, Luxembourg, Slovenia, Spain and Sweden initial training is organized by a special service in a broader institution.

In Slovenia mandatory initial training before the Legal State Exam is provided by the same institution, regardless of the future specialization, because a person can become district prosecutor, if he fulfils the criteria for a district judge (*i.e.* six years of legal practice after the legal state exam or three years of practice as a local court judge) or after three years of being deputy district prosecutor.

15.6 Conditions for and Organization of Access to Initial Judicial Training

The aspects concerning the formal options to accede to the profession of a judge and prosecutor in terms of examination, competition, selection based on a record, etc. were clarified. Reference has also been made to the qualifications requested from candidates (university degrees, previous professional experience).

The recruitment of the future magistrates in most of the countries is carried out at a national level in a multiphase procedural examination (with the exception of Austria, where the first phase of selection is made at a regional level).

Austria, Belgium, Italy, Latvia, Portugal, Poland, Romania and Slovenia (eight countries) have a written examination phase within a multiphase recruitment process of selection to become candidate judges and prosecutors. Exceptions are in the case of long experienced professionals (in the case of Belgium only an oral examination is required and in Spain, where the procedure is called "competitive selection", based on record). In Romania the written test is eliminatory, but in most of the other countries the results of the written tests are part of the final ranking.

Austria, Belgium, Italy, Portugal, Poland and Slovenia (six countries) have an oral theoretical examination of the candidates.

The Romanian candidates have to take a critical thinking test (with the logical reasoning, analytical reasoning and reading comprehension as components)

Austria has an admission interview phase sustained by the candidate with the president of the respective Higher Regional Court.

Romanian candidates have to sustain an interview consisting in the oral questioning of the candidates in order to identify their aptitudes, motivation and ethics specific to the profession of magistrate.

In Austria, Belgium, Portugal and Romania (four countries), the candidate has to pass a psychological aptitude test. Also, in Austria and Romania the candidate has to pass a medical examination.

In France there are three alternative entrance examinations in order to accede to magistracy. There is an *external examination* for university students, open to students with a master's degree or equivalent diploma, who are not older than 31 years (in 2011 they represented 63.04% of the respective class).

There is an *internal examination* which is open to civil servants with four years of service, not older than 46 years and five months on 1 January of the year of examination (in 2011 they represented 10.14% of the respective category).

There is *a third examination* open to persons with eight years of professional experience in the private sector, local elected office or service as a non-professional judge, and not older than forty (in 2011 they represented 2.90% of the respective category).

Candidates may take each of the three entrance examinations three times.

Recruiting can also be based on qualifications (in 2011 they represented 23.91% of the category).

Trainees aged between 31 and 40 can be recruited by the Admissions Commission on the basis of a file drawn up by the Public Prosecutor of the Court of Appeal of the candidate's place of residence. These persons must hold a Ph.D. in law or obtain a master's degree in law and have a four-year experience in the legal, economic or social field.

Persons with a master's diploma and professional experience qualifying them particularly for judicial functions may apply for direct admission without taking the examinations or studying at the ENM. This experience must be seven years to enter the second grade (minimum age required: 35) and at least seventeen years to join the first grade.

In Luxembourg, in order to be accepted to the first stage of the initial training (CCDL), students need to obtain the homologation of foreign diploma's in law in accordance with the grand-ducal decree dated 10 September 2004, stating the homologation criteria of titles and degree in law, either having obtained a master's in law from the University of Luxembourg.

The CCDL is sanctioned by an exam in all the studied topics. In order to get the certificate, the trainee must obtain minimum 10 out of 20. Once they get the certificate, they can start their two-year training period. At the end of this training period, the trainees must pass the final exam of the initial training. A ranking is performed on this final exam, on which the selection for the futures *attachés de justice* is based. Once they have finalized their additional training as *attachés de justice* (one year), a further selection is made in order to define their hierarchical order as judges.

The evaluation on which this second selection is based takes into account their results during the CCDL, their results after the exam following their two-year training period, their results during their foreign training at the *Ecole Nationale de Magistrature in Bordeaux* (ENM) and finally the assessment of the person in charge of their professional training as judges. Once they get the certificate, they can start their two-year training period.

Finally, in order to access additional training, persons willing and eligible to become judges or prosecutors are selected on their evaluation during the two stages of the initial training and the best of them can integrate the additional training as *attachés de justice.* Luxembourg nationality is a condition of eligibility for judges and prosecutors.

In Sweden, the judges are appointed on the basis of a selection based on a record procedures system and also based on previous professional experience. For the prosecutors, the

selection begins after the completion of the competence requirements. The recruitment proceedings are as follows: 1) the first interview, 2) the psychological tests, 3) the deep interview, 4) recommendations and 5) the appointment.

In England a person can become a judge by application to the Judicial Appointments Commission (JAC) after the required number of years in practice (varies depending on the judicial post). The attendance of the initial training institution programme is not mandatory in order to accede to the profession because, in general, one has to be a barrister or solicitor in order to compete for a judge's position, and these two professions imply the initial training period within institutions, court practice and final examination before becoming a solicitor or barrister. Also, for becoming judges, the candidates have to go through a complicate selection procedure (see the explanation below).

In Germany, whoever concludes his legal studies at a university by passing the first state examination as well as a subsequent period of preparatory training by passing the second state examination shall be qualified to hold judicial office; the first state examination comprises a university examination covering areas of specialization and a state examination covering compulsory subjects.

In Ireland, with regard to judges, the Government decides in most cases who to appoint as a judge after it has been advised by the Judicial Appointments Advisory Board. This Board identifies and informs the Government about suitable barristers and solicitors who have applied for the job. Candidates for judgeships must have at least ten years experience as a barrister or solicitor and usually they have many more years of experience before they are appointed. There is no way to become a solicitor or barrister other than to gain entry to pay the fees at and pass the courses offered by the professional schools. In other jurisdictions, this is not the case, and the Irish Competition Authority has recommended that the present regime be changed, but for now at any rate, the professions control entry.

In Poland, since 2009, there are two ways to enter into magistracy. A person has to take a two-phase contest and to complete a training programme within the Polish National School of Judiciary and Public Prosecution. Another way is to have previous professional experience in order to accede to the contests for the vacant position of judge.

15.7 Description per Country of Admission to Judicial Training

15.7.1 Austria

Persons wishing to become judges must apply for one of the established posts for candidate judges. Vacancies are advertised by the president of a court of appeal. The Federal Minister of Justice appoints the candidate judge upon proposal by the president of a court

of appeal. Having completed one's university studies, Austrian citizenship, *aptitude regarding subject matter and character*, as well as *physical fitness* for the profession of judge, and a *nine-month traineeship at court* are the prerequisites for being admitted to the preparatory service period of judges. When deciding on an admission, the training judges and the director of the courses for trainees are also heard.

Since 1986 a *written examination* and a *psychological aptitude test*, conducted by an independent psychologist, are also among the prerequisites. With the appointment as a candidate judge, the future judges are admitted to the preparatory trainee period for judges. It generally lasts four years. The traineeship at court is included in this training period. The training period is spent at a district court and a court of first instance, with an office for public prosecution, in a prison, as well as with a lawyer or notary or at the Financial Procurator's Office. The *judge's examination comes at the end of the training period*. It is a *written* and an *oral examination* and an *admission interview* with the president of the respective Higher Regional Court. After having passed the examination and completed four years of legal practice, candidates may apply for a vacant established post for judges. Upon proposal by the competent staff panels, applicants are appointed as judges for an indefinite period of time. The appointment is reserved to the Federal President, who has delegated this privilege to the Federal Minister of Justice for most of the judges' positions.

Only judges or former judges who continue to meet the requirements for being appointed as professional judges may become public prosecutors. Just as the established posts for judges, the established posts for public prosecutors are also advertised publicly to applicants. The Federal President appoints public prosecutors upon proposal by the staff commission. However, for most established public prosecutor posts he has delegated the right of appointment to the Federal Minister of Justice.

15.7.2 Czech Republic

The judge candidate is a court's employee who is receiving a specific training at court that is three years vocational training period and final examination, almost binding is result of the psychological test. For prosecutors, though, there is a three-year vocational training period and final examination. The attendance of the initial training institution programme is mandatory but it is interchangeable. The initial training period is sanctioned by a final examination

15.7.3 Denmark

The duration of the initial training for judges and prosecutors is of eight years: undergraduate education (three years); graduate education (two years); junior attorney (three years). The first five years of training takes place at the universities.

Judges: The newly qualified lawyers are employed by the courts and work for them for three years where they will specialize. The last three years of training takes place in the courts, where students specialize and are guided by other judges.

Prosecutors: The newly qualified lawyers are employed by the police and are working for them for three years where they will specialize. The last three years of training take place in the police force, where students specialize and are guided by other prosecutors.

15.7.4 England and Wales

For the judges, the recruitment phases are: 1) vacancy request; 2) advertising on website, email newsletter and in national and specialist media; 3) filing the published application form for each selection exercise and submitting to JAC electronically; 4) checking if the candidate meets the entry requirements and also, an assessment of good character; 5) shortlisting – it is either undertaken on the basis of a test or by a paper sifts; 6) paper sift – undertaken by the selection panel for the exercise and based on written evidence, including the candidate's self-assessment and references; 7) tests – can be written papers, designed to assess the candidate's ability to perform in a judicial role, by analysing description per country, identifying issues and applying the law; tests are the preferred method for making shortlisting decisions in the majority of exercises; 8) references – depending on the shortlisting method used by the JAC, referees are approached either before the paper sift, or after the qualifying test; 9) candidate selection day – if shortlisted, candidates are invited to a selection day, which may consist of a panel interview, interview and role-play, interview and presentation or interview and situational questioning; 10) panel report – panel members assess all the information about each candidate and agree which candidates best meet the required qualities. The Panel Chair then completes a report providing an overall panel assessment. This forms part of the information presented to the Commission; 11) statutory consultation – the Commission must, as part of the selection process, consult the Lord Chief Justice and another person who has held the post, or has relevant experience of the post, about those candidates the Commission is minded to select; the Commission will consider the responses, together with other information about a candidate; 12) selection decisions – the Commission considers all the information gathered about candidates to select those it recommends to the Lord Chancellor for appointment; 13) report to Lord Chancellor – when reporting its final selections to the Lord Chancellor, the Commission must say what the consultees' comments were and whether it followed them or not, and give reasons.

15.7.5 Germany

If one considers the postgraduate judicial service training as such "initial training", it is sanctioned by the second state examination. Whatever initial training is offered on the

job has no formalized examination (save the regular evaluation of judges and prosecutors by their superiors; advocates are subject to the special rule of their law firms). Judges and prosecutors undergo a period of probationary employment which may last as long as five years (three years minimum); during this time, they may be removed from office due to lacking capacity (which is rare). The tutoring is not formalized and depends on the state, the court district and ultimately the single court or even the chairman of the single chamber or senate; many young German judges complain about being left alone with their problems. Generally, probationary judges are expected to work at a couple of courts and also as public prosecutors.

15.7.6 Ireland

To be appointed a judge of a first-instance court, one must have been a practising barrister or solicitor for at least ten years. Generally speaking, formal minimum qualifications vary according to the Court to which a person is to be appointed. Only after that you have to participate in the training organized by the Judicial Studies Institute.

The peculiarity of the Irish situation regarding prosecutors: The Prosecution of Offences Act, 1974 established the office of Director of Public Prosecutions as an independent office. The Director makes decisions independently of all other bodies and institutions, including both the Government and the *Garda Síochána*, and decisions are taken free from political or other influence. In Ireland, there is no equivalent of salaried officials entitled "public prosecutors" as in the case of the CPS in England. Work is done, in practice, by barristers in private practice rather than by barristers in the paid employment of the State. Advocates/lawyers: The term "advocate/lawyer" is understood here in its wider sense as meaning a professional person authorized to practice law, that is to initiate lawsuits and provide legal advice. There are two types of "advocates" in Ireland – solicitors and barristers.

15.7.7 Latvia

In Latvia candidates should fulfil the requirements for the first-instance *judge* (higher legal education and qualification of a "lawyer", experience of a legal work for five years or experience as an assistant to a judge for five years). There are additional requirements for candidates to appeal and cassation courts. Selection procedure consists of two parts – 1) interview and 2) test and essay writing.

Judges' Qualification Board suggests the time of internship for the candidate receiving the highest score. Internship can be done in public administration institution, court or land

registry. Initial training that is three weeks long does not conclude with any examination, but at the end of the internship a candidate receives an overall evaluation and only then the qualification examination can be taken. Upon finishing the internship (and, also a positive evaluation) the candidate is allowed to take oral qualification examination. It consists of two questions and a case study in accordance with the area of specialization. If the qualification examination is passed, the candidate will be appointed as a judge by the Parliament.

Requirements for becoming a prosecutor are Latvian citizenship, higher legal education and completing an internship programme at the Prosecutor's Office and qualification examination passed. A person has to pass first a test of general and legal knowledge (persons who have passed qualification exams as prosecutors, judges or advocates are exempted). Prosecutor General, on the basis of a report from the Attestation Commission, appoints the person as a candidate to the position of a prosecutor. Then the candidate has internship at the Prosecutors Office for a period of five months. After that Prosecutors Qualification Commission decides whether the candidate may take the qualification examination. The examination consists of two parts: a test and three questions related to criminal law, criminal procedure law and any other field of law. On the basis of the results of both exams and evaluation of internship the Attestation Commission makes its recommendation about suitability of the candidate, but the decision about appointing the candidate as a prosecutor is taken by the Prosecutor General.

15.7.8 Lithuania

Judges: the post of a district court (the court of the lowest instance) judge may be filled by a national of the Republic of Lithuania of good repute, having a university degree in law – the academic title of bachelor in law and a master's degree in law or the lawyer's professional academic title (one-cycle university education in law), having a record of at least five years of work in the legal profession and passing the examination for candidates to judges. A person having Doctor or Habil Doctor of Social Sciences (Law) degree, also a person of at least five years' standing as a judge and if not more than five years have lapsed since he last held that position, shall be exempt from sitting for the candidate examination.

A person who meets the requirements for a judicial office and who has passed the examination shall be entered in the list of candidates to judicial vacancies of a district court, and may be appointed by the President of the Republic of Lithuania to its office completing the initial training period organized by the two institutions of a national level – Judicial Council and the Ministry of Justice – that coordinate the district and regional courts (the training in the courts may be called practical training). A three-week training

is conducted in the corresponding district court, one week – in the regional court (being the court of the higher appellate instance) to which the district court belongs. The training done within the Centre of Education of the Ministry of Justice may be called theoretical training and during one year the trained judge shall attend the special training programme conducted in the Centre.

As for the prosecutors, a person may be admitted to service at the prosecutor's office and appointed to the post of prosecutor provided that he is a national of the Republic of Lithuania with high moral character, has a university degree in law and MA in law or a professional lawyer's qualification degree, that he or she has passed an examination for candidates and has the recommendation of the Selection Commission. The legislation provides for exceptions to the requirement of the passing of an examination. The Selection Commission has discretion to select/recommend the candidates to the list of the candidates to the position of a prosecutor, based on various criteria (working experience, its length and place, the examination results of the candidate, personal qualities of the candidate, etc.). The initial training of prosecutors is called the traineeship. The trained person is already considered being in the position of the prosecutor, and his traineeship lasts, as a general rule, for two years (with some exceptions; to compare – for an attorney, two years in the practice of an assistant of attorney is also the sufficient term to satisfy of the initial training/practice requirement).

15.7.9 Malta

In the case of Malta, judges are appointed by the President of Malta (as head of the Executive) acting in accordance with the advice of the Prime Minister. Therefore, in order to be appointed to the judiciary, a person has to have been a graduate of the Doctor of Laws (LL.D.) course from the University of Malta, obtain the warrant and be admitted to the bar, practice for at least twelve years in the courts of Malta and Gozo, and be selected by the Prime Minister for judicial appointment. The same applies to the appointment of Magistrates, only that the timeframe required is seven years, not twelve.

In the case of the Prosecutors there are two types of prosecutors in the courts of Malta and Gozo – police officers and civilians, who are fully qualified lawyers. Police officers operate specifically in the Magistrates' Courts of a Criminal Judicature and are not required to have an LL.D. and a lawyer's warrant. As prosecutors, the police are treated as officers of the court just as much as any lawyer. The role of police prosecutors is largely historical, having originated from the division of what was once an amalgamated role of Judicial Police and Executive Police in the early years of British rule, especially up to mid-19th century when the first codes of law were being drawn up. The Judicial Police then developed

into the Judiciary as we know it today. The second type of prosecutors consists of *civilians*, as in persons who are not members of the Police, who are either employees of the Attorney General's Office or lawyers coming from a private practice who fill in vacancies offered by the Courts of Malta in roles of prosecutors in the different forms of Tribunals. Those lawyers attached with the Attorney General's Office prosecute exclusively in the Superior Courts of Criminal Judicature, that is, during trials by jury (and trials where the accused waives the right to have a jury). In both cases, these prosecutors are fully-fledged lawyers who are LL.D. graduates and hold the necessary lawyer's warrant.

15.7.10 Poland

In Poland, recruitment for the general training scheme is conducted in the form of a two-stage contest:

1. a written test to check knowledge in particular branches of law;
2. an essay to check the ability to present legal arguments, methods of interpretation and classification of case facts.

Once the contest has been completed, the contest commission shall present the Director of the Polish National School a classification list of applicants for the general postgraduate training, hereafter referred to as "classification list". A person placed on the list shall submit, within fourteen days after receiving the information, a written declaration of the will to undertake the general postgraduate training. Having conducted the contest and established the list of candidates admitted to the general postgraduate training, the Director of the Polish National School shall inquire in the National Criminal Register on each person placed on the list and apply to appropriate Provincial Police Commander to send information on each applicant including data essential to establish the unblemished reputation, *i.e.* information on: behaviour giving evidence of legal order violation; contacts with criminal organizations or groups of social pathology and the nature of those contacts; circumstances pertaining to addiction to alcohol, intoxicants or psychoactive substances.

The general postgraduate training lasts for twelve months. During the course of general training the trainees attend classes in the Polish National School of Judiciary and Public Prosecution, and an apprenticeship scheme in accordance with the curriculum and each trainee has a mentor-coordinator to serve with substantial aid and to supervise and coordinate the proper course of apprenticeship. The assessment reports and grades will constitute the basis of the mentor-coordinator's final assessment review drafted together with a cumulative assessment of the course of all apprenticeship schemes attended by the trainee. A classification list of all trainees is published by the Director of the Polish National School

in the Public Information Bulletin after the postgraduate training is completed. The list includes the total number of points gained by each trainee during the general training as well as the ordinal number pointing to their position on the list.

A person who has successfully completed the general training and fulfils the legal requirements may apply to the Director of the Polish National School of Judiciary and Public Prosecution to continue training on the judge's or prosecutor's scheme. Applicants to the judge's or prosecutor's post-graduate training shall additionally present a document certifying their capability to perform duties of a judge, or of a prosecutor. The decision to admit candidates to the judge's or prosecutor's post-graduate training will be taken by the Director of the Polish National School according to the order in which they are positioned in the classification list, up to the admission limit.

The judge's post-graduate training lasts 54 months. Within the framework of postgraduate training for judges, participants attend a 30-month-long course in the Polish National School and an apprenticeship scheme in accordance with the curriculum as well as serve a 24-month-long internship on the positions of assistant judge and a court clerk, in accordance with the curriculum. During the internship, the trainee judge shall be employed on the position of assistant judge under a contract of employment for a specified period of time, and subsequently on the position of court clerk for an unspecified period of time.

Trainee judges take judiciary examination in the thirtieth month of training that consists of a written and oral part. Within thirty days after a successful judiciary examination, the Director of the Polish National School shall delegate the trainee to serve their internship, as assistant judge and court clerk accordingly. Within fourteen days after successful completion of the internship, the Director of the Polish National School shall award the trainee with a judge's postgraduate diploma.

During the course of prosecutor's training the trainees attend classes in the Polish National School and an apprenticeship programme in accordance with the curriculum. A prosecutor trainee will take prosecutor's examination in the last month of training. Within fourteen days after the prosecutor's examination is completed, the Director of the Polish National School will draft and submit to the Minister of Justice a classification list of examined trainee prosecutors, hereinafter referred to as "list of examined trainees". Only trainees who have successfully completed the prosecutor's examination shall be placed on the list. The Minister of Justice shall present the tested trainees with a proposal of work on the associate position in a public organizational unit of a prosecutor's office or a military organizational unit of a prosecutor's office according to the order on the list of examined trainees.

15.7.11 Slovenia

In Slovenia the first alternative to accede the legal state exam is to finish a judicial traineeship period. The judicial traineeship lasts two years and during that period the trainee signs an employment contract with one of the four higher courts or with the office of the state prosecutor. On the other hand, the trainee can have an employment contract with another employer and be only appointed to the court to do the obligatory eight months of practice in court. The third option is the so-called voluntary traineeship, where the trainee is not in an employment relationship.

Therefore, the change in the law introduced the possibility for university graduate lawyers or masters of law to be able to access the legal state examination directly without the traineeship, on the following conditions: they must fulfil the same conditions as the candidates for judicial trainees (university graduate lawyers or masters of law), they must pass some obligatory forms of training provided by the Judicial Training Centre and they must have a certain period of working experience after graduation in the legal field. After passing the legal state exam the candidates who concluded the employment contract with the courts are obliged to work in courts or another state institution set by the Ministry of Justice for the same period of time as they were trainees. In case that there are no needs for new employees, the candidates are free of this obligation. In case they do not stay and work where requested, they have to return the wages of the whole traineeship period.

According to the Judicial Service Act, a person can become a judge (if at least thirty years of age together with other general conditions) after three years of practice at a legal position after passing the exam. There are different periods of practice required for different levels of judges. However, there are no restrictions regarding the institutions – the law only states that the practice has to be done at a legal position. The situation is similar for prosecutors – the State Prosecutor Act states that a person can become district prosecutor, if he or she fulfils the criteria for a district judge (meaning six years of legal practice after the legal state exam or three years of practice as a local court judge) or after three years of being deputy district prosecutor.

15.7.12 Turkey

If the legal conditions are met, the candidate must first take an exam and pass an interview. The person is then a candidate judge or prosecutor. After the internship period of two years, he or she is accepted to the profession upon a successful completion of training.

15.8 Description per Country on Required Qualifications of Candidates for Initial Judicial Training

15.8.1 Austria

In Austria, any law degree graduate can accede to the first phase of the multiphase procedural examination in order to become a trainee. Usually, a graduate has to finish a traineeship period at courts as legal trainee for a minimum period of nine months. Only after the court practice the person interested in a professional career as a judge/prosecutor is admitted to take the written and oral examinations.

15.8.2 Belgium

Regardless of further ways to accede into magistracy, the candidate must have the following professional experience: one year Bar internship or in another judicial institution, or the candidate must be an experienced judicial specialists, or the candidate must be a lawyer with twenty years' experience.

15.8.3 Czech Republic

For judges, the selection is based on recommendation and the requirements for this selection are: university master's degree in law, three years vocational training period and final examination, almost binding is the result of the psychological test. For prosecutors the selection is based on recommendation and the requirements for this selection are: university master's degree in law, three-year vocational training period and examination.

15.8.4 England and Wales

One can accede to the profession of judge by application to the Judicial Appointments Commission (JAC) after the required number of years in practice (varying on the judicial post they come from, barristers or solicitors). For most posts you will need to have possessed the relevant legal qualification for either five or seven years, and while holding that qualification to have been gaining legal experience.

15.8.5 Finland

The following qualifications are required for appointment to a position in the judiciary: the applicant must be a righteous Finnish citizen who has earned a master's degree in law

and who, by his or her previous activity in a court of law or elsewhere, has demonstrated the professional competence and the personal characteristics necessary for successful performance of the duties inherent in the position. Separate provisions may be enacted on the required qualifications for positions where special expertise is necessary.

Before making its appointment proposal, the Judicial Appointments Board will request an opinion on the applicants from the court that has advertised the position as vacant and, for the applicants to a position as district judge, also from the district court where the position is vacant.

The Board may obtain also other opinions and statements, as well as interview the applicants and hear experts. Before the appointment proposal is made, an applicant will be given an opportunity to express his or her view of the opinions and statements obtained during the preparation of the appointment. Separate provisions apply to the language proficiency required for appointment to a position in the judiciary.

15.8.6 France

In order to accede to magistracy, students who are no more than 31 years old and with a master's degree or equivalent diploma may take the external examination. The second way to enter is to take an internal examination which is open to civil servants with four years of service, aged not more than 46 years and five months on the 1 January of the year of examination. And the third way is to take an examination open to persons with eight years of professional experience in the private sector, local elected office or service as a non professional judge, and aged not more than forty (In 2011 they represented 2.90% of the promotion).

Recruiting can also be based on qualifications – Trainees aged between 31 and 40 years can be recruited by the Admissions Commission on the basis of a file drawn up by the Public Prosecutor of the Court of Appeal of the candidate's place of residence. These persons must hold a Ph.D. in law or obtain a master's degree in law and have four years' experience in the legal, economic or social field.

Persons with a master's-level diploma and professional experience qualifying them particularly for judicial functions may apply for direct admission without taking the examinations or studying at the ENM. This experience must be of seven years to enter the second grade (minimum age required: 35) and at least seventeen years to join the first grade.

15.8.7 Germany

University studies last for four years; this period may be of a shorter duration in so far as the requisite attainments for admission to the university examination covering areas of specialization and to the state examination covering compulsory subjects are demonstrated. Not less than two years will be spent on studies at a university. The course of studies comprises compulsory subjects and areas of specialization with elective subjects. In addition, proof is required of the successful completion of a law course in a foreign language or a language course geared specifically to law; provision may be made under land law that proof of foreign language skills can be provided in another manner. Compulsory subjects will comprise the core areas of civil law, criminal law, public law and the law of procedure, including the links with European law, the methodology of legal science and the philosophical, historical and social foundations.

The areas of specialization serve to supplement university studies, to deepen knowledge of the compulsory subjects to which they relate, and to impart the interdisciplinary and international bearing of the law. During the period when lectures are not held, time is spent on practical studies for a total of not less than three months. Land law may provide that the time taken for practical studies can be spent at one agency continuously.

The period of preparatory training lasts for two years. Training is given by the following compulsory agencies:

1. a court of ordinary jurisdiction in civil matters,
2. a public prosecutor's office or at a court with jurisdiction in criminal matters,
3. an administrative authority, and
4. with counsel;

and by one or more optional agencies where proper training is guaranteed.

Training in a compulsory agency will last for not less than three months; compulsory training with counsel lasts for nine months. Land law may provide that the training may be undertaken for up to three months with a public notary, a company, an association or at another training agency where appropriate training in the provision of legal advice is ensured. Preparatory training may be extended in individual cases for compelling reasons but not, however, on account of inadequate performance. During training, provision may be made for training courses for a total period of three months.

Successfully completed training for the higher intermediate judicial administration service and for the higher intermediate non-technical administrative service may, on application

being made and for a period not exceeding eighteen months, be taken into account in respect of the length of training. However, not more than six months may be taken into account in respect of preparatory training.

The state and university examinations shall relate to the practice in court adjudication, in the administration and in legal advice, including the key qualifications. Standardization of examination requirements and achievement rating must be ensured. The Federal Minister of Justice shall be authorized with the approval of the *Bundesrat* to lay down by legal ordinance a scale of marks and points for the individual and overall marks for all examinations.

The syllabus for the university examination covering areas of specialization and for the state examination covering compulsory subjects shall be so designed as to enable university studies to be completed after four-and-a-half years of study. The university examination covering areas of specialization must include at least one written assignment. The state examination covering compulsory subjects must comprise both written assignments and oral examinations; land law may provide that examinations can be taken during the course of studies, though not before the end of two-and-a-half years of study. The first state examination certificate shall list the results of the university examination covering areas of specialization which has been taken and of the state examination covering compulsory subjects which have been passed, as well as the overall mark, to which the result of the state examination covering compulsory subjects contributes 70% and the result of the university examination covering areas of specialization contributes 30%; the certificate is issued by that Land in which the state examination covering compulsory subjects was passed.

The written examinations forming the second state examination may be taken in the eighteenth month of training at the earliest, and in the twenty-first month of training at the latest. They shall at least relate to the training undergone in the compulsory agencies. Where Land law stipulates that a home assignment shall be performed in addition to assignments performed under invigilation, provision may be made to the effect that such assignment shall be performed after completion of the last compulsory agency. The oral examinations shall relate to the entire period of training.

15.8.8 Italy

The candidate without a master's degree must alternatively be an administrative or accounting magistrate, be a State lawyer, be qualified as a director in specific sectors of the public administration, be a university professor in legal topics, be a practising lawyer, have performed as non-professional magistrate for at least six years, have a Ph.D. in legal matters, have a diploma of the schools of specialization for the legal professions or

a specialization diploma in a post lauream school (after a two-year training programme) established at the Universities.

15.8.9 Latvia

In order to become a judge, the candidate needs five years of experience as a lawyer or assistant judge. No previous experience is need to become prosecutor.

15.8.10 Lithuania

The post of a district court (the court of the lowest instance) judge may be filled by a national of the Republic of Lithuania of good repute, having a university degree in law – the academic title of bachelor in law and master's degree in law or the lawyer's professional academic title (one-cycle university education in law), having a record of at least five years of work in the legal profession and passing the examination for candidates to judges. A person having Doctor's or Habil Doctor of Social Sciences (Law) degree, also a person of at least five years standing as a judge, if not more than five years have lapsed since he last held that position, shall be exempt from sitting for the candidate examination. A person who meets the requirements for a judicial office and who has passed the examination will be entered in the list of candidates to judicial vacancies of a district court and may be appointed by the President of the Republic of Lithuania to its office.

A person may be admitted to service at the prosecutor's office and appointed to the post of the prosecutor provided that he is a national of the Republic of Lithuania of high moral character, has a university degree in law and master's degree in law or a professional lawyer's qualification degree, has passed an examination for candidates and has the recommendation of the Selection Commission. The Selection Commission has discretion to select/recommend the candidates to the list of the candidates to the position of a prosecutor, based on various criteria (working experience, its length and place, the examination results of the candidate, personal qualities of the candidate, etc.). The functions/procedures of the Commission are regulated by the special Regulation, adopted by the Prosecutor General.

15.8.11 Luxembourg

In order to be accepted to the first stage of the Initial training (CCDL), students need:

– either to have obtained the homologation of foreign diplomas in law in accordance with the grand-ducal decree dated 10 September 2004 stating the homologation criteria of titles and grade in law.

It implies that the diploma be delivered following the accomplishment of a complete cycle in a law school full-time for a minimum of four years, eight semesters or twelve trimesters, or part-time, and that the teaching of law must encompass at least the following subjects of study: civil law, commercial law, criminal law, private international law or public administrative law. Civil law must have been taught for at least two years, four semesters or six quarters. The law taught in this perspective must also match fundamental general principles of Luxembourg legal system.

– or to have obtained a master's degree in law from the University of Luxembourg.

Once they get the certificate, they can start their two-years' training period provided that:

– they have found an attorney having a minimum five years bar practice willing to become their supervisor during the training,
– they can provide guarantee of honorability,
– they have the nationality of one of the member state or European Union, and
– they speak the three official languages (Luxembourgish, French and German).

Finally, in order access the additional training, the persons who are willing and are eligible to become judges or prosecutors are selected on their evaluation during the two stages of the Initial training and the best of them can integrate the Additional training as *attachés de justice.* Luxembourg nationality is a condition of eligibility for judges and prosecutors.

15.8.12 Malta

In order to be appointed to the judiciary, a person has to have been a graduate of the Doctor of Laws (LL.D.) course from the University of Malta, obtain the certificate and be admitted to the bar, practice for at least twelve years in the Courts of Malta and Gozo, and be selected by the Prime Minister for judicial appointment. The same applies to the appointment of Magistrates, only that the timeframe required is seven years, not twelve. This is regulated through Article 100 of the Constitution.

There are two types of prosecutors in the courts of Malta and Gozo – police officers and civilians, who are fully-qualified lawyers. Police officers operate specifically in the Magistrates' Courts of a Criminal Judicature and are not required to have an LL.D. and a lawyer's warrant. The role of police prosecutors is largely historical, having originated from division of what was once an amalgamated role of Judicial Police and Executive Police in the early years of British rule, especially up to mid-19th century when the first codes of law were being drawn up. The Judicial Police then developed into the Judiciary as we know it today.

The second type of prosecutors consists of civilians, as in persons who are not members of the Police, who are either employees of the Attorney General's Office or lawyers coming from a private practice who fill in vacancies offered by the courts of Malta in roles of prosecutors in the different forms of Tribunals. Those lawyers attached with the Attorney General's Office prosecute exclusively in the Superior Courts of Criminal Judicature, that is, during trials by jury (and trials where the accused waives his/her right to have a jury). In both cases, these prosecutors are fully-fledged lawyers who are LL.D. graduates and hold the necessary lawyer's warrant. Apart from the academic background, training is largely obtained through the practice leading up to the warrant exam and on-the-job training.

15.8.13 The Netherlands

A person needs to have a master's degree in law with obligatory courses on civil, administrative and criminal law, both substantive and procedural. The selection procedure for judges and prosecutors is the same. It starts with an analytical test. Then a first interview is held with two people. This interview focuses on basic skills and personality characteristics. The next step is an assessment: an extensive investigation into personal qualities and motivation. The final step is two interviews with two members of the Judiciary Selection Committee.

This Selection Committee is composed of judges, one member of the Ministry of Justice and one external member (*e.g.* an advocate or journalist). The chair is the president of a district court or a chief public prosecutor. Before these interviews to the candidate needs to write a legal essay and this essay will be discussed during the interview. It is a strict selection, around 100 persons make it to the assessment and only sixty of them are in the end selected to do the training programme. This is somewhat different for legal practitioners who already have six years or more of practical experience. They apply for a vacancy at a court. When they are selected by the court, they follow a concise training programme at the Study centre for the judiciary.

15.8.14 Portugal

One possible way to accede the magistracy is for the candidates with master's or Ph.D. or legal equivalent degree – this requirement was introduced with the implementation of the Bologna reform as a way to compensate for the shortage of knowledge created by the removal of one academic year from the law degree course. As an exception, candidates with at least five years' experience in court-related areas (relevant to the exercise of the functions of magistrate) are not required to hold a master's or Ph.D. degree, and are not

required to pass the oral tests and have different written tests. 25% of vacant positions are reserved for the people with at least five years' experience.

15.8.15 Poland

Starting from 2009 the law graduate must graduate the school (it takes five and a half years – lectures and practice as judge assistant or clerk); then there are contests for the vacant position of a judge. But in this contest also attorneys, legal advisors, prosecutors, and candidates who finished apprenticeship on pre-2009 conditions and passed judge exam with practice as a judge assistant or clerk can take part.

From 2009 the law graduate must have graduated the school (it takes three and a half years – lectures and practice as prosecutor assistant); then there are contests for the vacant position of prosecutor assessor. After the assessor practice with a duration of three-fourth years, they are appointed by the Minister of Justice as prosecutors. But also attorneys, legal advisors, judges, and candidates who finished apprenticeship on pre-2009 conditions and passed exam with practice can become prosecutors.

15.8.16 Romania

In Romania, there are two ways to enter the magistracy. In the regular way to accede to magistracy the candidates to competitive examination at NIM are not requested to have any previous professional experience. The second way to enter the magistracy is by competitive examination to magistracy, organized in exceptional circumstances when a deficit is found out in the number of sitting magistrates. The law on the statute of magistrates stipulates the appointment to magistracy – based on participation in a competitive examination – of legal experts/counsellors assimilated to magistracy, of lawyers, notaries, judicial assistants, legal advisers, and legal staff working with the Parliament, Presidential Administration, Government, Constitutional Court, Ombudsman, Court of Auditors or Legislative Council with minimum five-year seniority.

15.8.17 Norway

After completing a five-year master's degree, there are several routes to becoming a lawyer or judge, and they are intermingled. The head judge at a court can appoint assistant judges for two years, with a maximal extension of one year. An assistant judge has to be above the age of 21, and to have a law degree or a master's in law. There are no binding regulations on the initial training of judges. However, the appointment of judges (not assistant

judges) is done based on a report by a permanent appointment committee consisting of three judges, an advocate, a legal professional from the public sector and two lay members.

Finally, another criterion states that judges should be recruited among legal professionals from a varied professional background, and the appointment committee's memorandum shares this understanding in its section 3 on qualifications. There are no other instances of initial training for judges as such. Also, most judges are, according to the aforementioned memorandum, appointed after eight to ten years of legal practice of some sort.

15.8.18 Slovenia

After the Bologna reform, the newly graduated lawyers have to finish the master's for judicial traineeship in order to be accepted to take the legal state exam (the three- or four-year undergraduate degree is not sufficient). Therefore, the change in the law introduced the possibility for university graduate lawyers or masters of law to be able to accede the legal state examination directly without the traineeship, on the following conditions: they must fulfil the same conditions as the candidates for judicial trainees (university graduate lawyers or masters of law), they must pass some obligatory forms of training provided by the Judicial Training Centre, they must have a certain period of working experience after graduation in the legal field, and they must have had a fulltime contract at one of the following institutions for at least 32 months: Judicial Council, court, state prosecutor's office, state attorney's office, lawyer, notary, free legal aid office, Ministry of Justice or at one of the following institutions for at least 48 months: the Constitutional court, the Parliament, in state administration and in local administration offices, in a law faculty or higher law school or in a legal department of a legal person.

15.8.19 Spain

In the case of judges there is a collateral access by competitive selection based on previous professional experience, but figures are very low.

15.8.20 Sweden

The judge needs a degree in law. In that field the universities are "the initial training institutions" and at this basic level there are no other institutions. After that it is very common that the young lawyer takes a title "trained on the bench" (*tingsmeritering*). This means that he or she works two years at courts or other authorities. However, this is not a formal

requirement. Also the Academy for Judges (*domarakademin*) arranges courses for young lawyers and it can be named as an institute for initial training. It is working at the national level and it has a monopoly. However, this basic training is neither a formal requirement and therefore the temporary appointment as an adjunctive judge is possible without this vocational training.

For the prosecutors, the recruitment proceedings are as follows: 1) the first interview, 2) the psychological tests, 3) the deep interview, 4) recommendations and 5) the appointment. The prosecutor should have a master's degree in law, and in addition he or she has to have done the two-year training programme usually at the district court or at the administrative court. After that he or she gets the title "trained on the bench". It is also possible to work for six months as a trainee prosecutor and this period can be included into the training programme mentioned above. After getting the title "trained on the bench" he or she can try to get the status of the prosecutor candidate. In case he or she will be appointed, he or she will get the temporal post of nine to twelve months. During that time period, he or she will work together with the supervisor and further education and training is provided. After this period, he or she will continue the training as an assistant prosecutor. During these of two years, he or she will still get further supervision and training with education. Finally, after this period, the person is assessed whether if he or she is a suitable and can get the appointment for prosecutor.

In case the candidate has already practical experience working as an attorney, bailiff, judge and so on, he or she can be appointed directly to an extra prosecutor. This period is of six to twelve months and after that he or she can be appointed as a prosecutor with an exceptional permit. After the appointment, the prosecutor has to attend the programme of further education organized by the national prosecutor authority. The national prosecutor authority organizes this training at the national level.

15.8.21 Turkey

First there are certain conditions that candidates have to fulfil. These conditions are: to be a Turkish citizen; not older than thirty years of age for those who have a graduate or undergraduate degree in law; for those in civil judiciary, to have a law degree and for those in administrative judiciary, to have graduated school of law or political science, administrative sciences, economics or finance if these have a significant level of law in their curriculum; and to fulfil some ethical and physical conditions. If these conditions are met, the candidate must first take an exam and pass an interview. The person is then a candidate judge or prosecutor. After the internship period of two years, he or she is accepted to the profession upon successful completion of an exam.

15.9 Mandatory Participation in Initial Judicial Training Programmes?

For most of the countries, the initial training programmes (within a specialized institution or at the court level) combine periods of theoretical training with the traineeships period within courts of first instance and/or prosecutor's offices).

- In seventeen countries (Austria, Belgium, Czech Republic, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherland, Poland, Portugal, Romania, Slovenia, Spain, Sweden and Turkey) the recruitment for acceding to the professions is followed by a mandatory initial training period (theoretical and/or practical in courts) within a specialized institution of training organized at national level and/or decentralized level.
- *France* – A person with a masters'-level diploma and professional experience qualifying them particularly for judicial functions may apply for direct admission without taking the examinations or studying at the ENM. This experience must be of seven years in order to enter the second grade (minimum age required: 35) and at least seventeen years to join the first grade.
- The initial training period is not required for the following countries: Denmark, Finland (where the attendance to the initial training is not compulsory, but in practice it is), Germany, Norway and Malta; in the case of England and Wales the attendance of initial training it is not compulsory for the judges.
- *Poland* – after the reform in 2009 the initial training in order to accede the contest is mandatory but the candidates who finished apprenticeship on pre-2009 conditions and passed a judge exam with practice as judge assistant or clerk can be admitted to the contests for vacant positions.

15.10 Country Description: Organization of Exiting Initial Judicial Training

Was there any formalized exit contest, any structured way of ranking the participants? Again, the different countries show different approaches in ranking and final exams.

15.10.1 Austria

There is a final examination but no ranking.

15.10.2 Belgium

The initial training ends by a final evaluation.

15.10.3 Czech Republic

Judges – selection based on recommendation after a three-year vocational training period and examination, almost binding is the result of the psychological test; prosecutors – selection based on recommendation, after a three-year vocational training period and examination.

15.10.4 Denmark

In this country, to become a judge or a prosecutor, a person has to have a three-year undergraduate education, a two-year graduate education and has to be a junior attorney for three years. There seems to be a sort of recommendation appointment procedure based on professional record.

15.10.5 England and Wales

For judges, the initial training period is not sanctioned by any final examination because the attendance of the initial training is not compulsory. In the case of prosecutors/advocates (they are the same – named barristers and solicitors) the initial training period ends with an *exam*.

15.10.6 Finland

There is not an initial training period compulsory for judges, so there is not any form of final examination. Regarding the prosecutors, there are autonomous criteria but a final examination or evaluation is not common.

15.10.7 France

The initial training ends by a final evaluation. There are nine examinations to validate the training:

- three written exams taken at the end of the period of studies (professional techniques in civil and criminal functions and a general exam);
- three exams at the end of the court internship (presiding over a criminal court hearing, summing up in criminal courts, holding a civil hearing in a judges office);
- three final exams (interview with the board of examiners, writing a civil judgment, writing a final application).

There is also a foreign language test.The board of examiners is independent of the school and chaired by a judge or prosecutor of the Court of Cassation. At the end of the evaluation the examiners may reject students, demand that they repeat their court internship or limit their access to certain functions.

The final examination gives rise to a ranking of the trainees, which permits them to choose their first position from a list established by the Ministry of Justice according to the order of their ranking.

15.10.8 Germany

If one considers the postgraduate judicial service training as such "initial training", it is sanctioned by the *second state examination*. Whatever initial training is offered on the job has no formalized examination (save the *regular evaluation* of judges and prosecutors by their superiors).

15.10.9 Ireland

As regards judges, in most cases, there is a selection based on recommendation; the government decides who to appoint as a judge after it has been advised by the Judicial Appointments Advisory Board. This Board identifies and informs the government about suitable barristers and solicitors who have applied for the job. Candidates for judgeships must have at least ten years' experience as a barrister or solicitor and usually they have many more years of experience before they are appointed.

15.10.10 Italy

The magistrates are evaluated at the end of both periods of initial training. Such evaluations are made by the CSM on the basis of the report of the Board of Directors of the School for the Judiciary, the reports and advisory opinions of the magistrates that at the local level have been in charge of the on-the-job training of the heads of the offices attended, of the local district council. In case of negative evaluations the magistrate has to undergo an additional period of training at the end of which a new evaluation is made. In case of a new negative evaluation the CSM dismisses him/her. In case of positive evaluations, magistrates are finally conferred judicial functions, on the basis of a ranking that takes into considerations merits, personal wishes and other elements fixed by CSM (children, residence, particular requirements of judicial offices). The recent reform stipulates that magistrates at the end of the training cannot perform the functions of a prosecutor,

a criminal single judge, a pre-trial investigation judge and a preliminary hearing judge before they undergo their first professional evaluation, four years after their appointment.

15.10.11 Latvia

Judges – initial training that is three weeks long does not conclude with any examination but at the end of the internship a candidate receives an overall evaluation and only then the qualification examination can be taken; prosecutors – internship concludes with an overall evaluation.

15.10.12 Lithuania

For the judges: the chairmen of the corresponding courts write a preliminary conclusion about the initial training of a judge; the examination of the acquired knowledge of the trained judge is conducted in the Supreme Court of Lithuania; there, the examination is conducted by a judge, appointed for this purpose by the Chairman of the Supreme Court; prosecutors – upon the expiry of the traineeship period, the prosecutors' performance is evaluated by the Performance Evaluation Commission and they receive a qualification rank.

15.10.13 Malta

Here the *judges* undergo no final evaluation (judges are appointed by the President of Malta acting in accordance with the advice of the Prime Minister; there is no Judicial Appointments Board or Committee in Malta, and the Prime Minister is not obliged to consult anyone before advising the President); for *prosecutors* there is a ranking that is only done when there is the public call for employment.

15.10.14 The Netherlands

After the internships (criminal law, civil law, administrative law, public prosecution) the candidate gets a mark; if it is not good enough, he must do that internship again. There is no final examination.

15.10.15 Norway

One becomes a judge by appointment of the King (Government) to the position, following the report from the appointment committee.

15.10.16 Poland

Upon the completion of the mandatory initial training period or the apprenticeship period (considered as previous professional experience) there is need to pass the judiciary exam (contests for vacant position of judge or prosecutors are free for all candidates).

15.10.17 Portugal

Upon completion of the period of theoretical and practical activities, the CEJ's pedagogical council grades the *auditores de justiça* on a scale of 0 to 20 based on the continuous assessment of their progress. Those receiving a mark below 10 points are excluded whilst all others are considered apt to begin the probationary period and are classified according to their grades. After being graded, *auditores de justiça* must officially opt to become either judges or public prosecutors (where a disproportionate number of openings are available, those with the highest grades take preference). They are then appointed as trainee judges or prosecutors by the Superior Council for the Judiciary or the Superior Council for the Public Prosecution, respectively.

The probationary period begins on the 15 September, following the termination of the theoretical and practical phase, and usually ends on the 15 July. Trainee judges and prosecutors perform their respective functions with the assistance of supervisors, but with full responsibility for their acts, and are subject to the respective rights, duties and limitations. After the probationary period, the judges and prosecutors are granted tenure. If there are no openings, they are placed as assistants until one becomes available.

15.10.18 Romania

After completing the two-year period of training courses within the National Institute of Magistracy, the auditors of justice have to pass a graduation theoretical and practical exam, by which it is verified whether the knowledge necessary for fulfilling the charges of the office of judge or prosecutor was acquired. The auditors of justice who pass the exam are to be appointed, according to the law, as a rule, in the profession (judge/prosecutor) they chose after the first year of study within the National Institute of Magistracy. The auditors of justice who do not succeed in the graduation examination may sit for it once more in the next session held by the National Institute of Magistracy.

If the auditors of justice unjustifiably fail to appear for the examination or in case they do not pass the examination in the second session, they cannot be appointed as judge or prosecutor

and shall be obliged to reimburse the scholarship and the tuition expenses. Debutant/Junior judges and prosecutors shall be appointed by the Superior Council of Magistracy, based on their general average marks obtained by summing up the three average marks from the end of each year of study and from the examination for graduation of the National Institute of Magistracy. The length of probation/traineeship is one year. After completing the probation period, debutant judges and prosecutors are obliged to sit for the capacity examination.

15.10.19 Slovenia

The initial training period is concluded by the legal state exam. The exam consists of the written part and of the oral part. After passing the legal state exam every future judge and prosecutor had to perform a specific period of practice after the exam before entering the profession.

15.10.20 Spain

The initial training period for *judges* is sanctioned by a final examination and there is a ranking of candidates. Regarding the *prosecutors*, a *final examination* is compulsory after the initial training period.

15.10.21 Sweden

In Sweden there is no such exam.

15.10.22 Turkey

The initial training period for judges and prosecutors is sanctioned by a final examination, a completion of an exam.

15.11 Complementary Training and Tutoring

As the first years of practise are very important for the young practitioner, there was also analysis of the possibility of having a complementary training period or some tutoring. The item that obtained the following responses is: *Is there a complementary training period or any tutoring organized during the first years of practice? If so, please specify the ways, and if necessary, the status of the young practitioner.* The situation is the following:

– Five countries (Belgium, UK, the Netherlands, Portugal and Slovenia) have some different complementary training or tutoring organized during the first year of practice

after finalizing the initial training period within the specialized training institutions or at the levels of the courts.

- Fifteen countries (Austria, Czech Republic, Denmark, France, Ireland, Italy, Lithuania, Luxembourg, Malta, Norway, Poland, Romania, Spain, Sweden and Turkey) do not have any complementary training or tutoring in the first years of practice.
- In some of the countries (such as Finland, Germany and Latvia) there are some forms of tutoring or training but it is not mandatory and every institution is free to decide whether there is need for such a period.

15.11.1 The Content of Initial Judicial Training

Where the first section of the questionnaire referred to the regulations and context of the initial training, the second section dealt with the content of the initial training. The first aspect we referred to is the duration of initial training

15.11.2 The Duration of the Initial Training

Austria: courses at the level of the four regional courts within the four-year period of practice, the programme being approved by the Ministry of Justice that is paying for the activities.

Belgium: theoretical activities are organized within the period of internship by the Institute for Judicial Training coordinated at a national level.

Czech Republic: the JA is the responsible institution in the justice sector for the training of judges, state prosecutors and other target groups and the length of the initial training period is six months.

Finland: For judges, the attendance of the initial training institution programme is not mandatory in order to accede to the profession, but in practice almost all candidates have to follow initial training. For the future prosecutors, the attendance to initial training is compulsory

France: The duration of the initial compulsory training is 31 months. It includes a general phase (25 months) common to all students and then a phase to prepare them to take up their first position (six months).

Italy: The initial training period is of eighteen months, but this is not a theoretical training and it is done as an internship. During the first year of the initial training the trainees have to follow the different activities that judges and prosecutors have to deal with (for example, they observe magistrates during a trial, write judgments and other procedural acts). This kind of training becomes more specialized over the last six months (for judges or prosecutors). In addition to this training, trainees have to attend courses, seminars and workshops organized at a national level (by the School for the Judiciary) and at a local level. Study visits are occasionally organized to the scientific police.

Latvia: Only for judges – compulsory three-week initial training activities are organized at the national level by Latvian Judicial Training Centre.

Lithuania: Only for the judges there is a short initial training (not less than one month) that is mandatory and the initial training shall be intended for persons who have been appointed judges to the district court for the first time, with a view to expanding their knowledge and building professional skills. Initial training for judges lasts at least a month before the judge assumes the duties of the judicial office. Also, as already stated, the five years of practice in a legal profession is necessary before becoming a judge.

Luxembourg: The duration of the initial training is three years. Two years for the initial training programme and an additional year in the framework of the Additional training for judges.

The Netherlands: The initial training is the same for judges and prosecutors and takes 38 months. In those 38 months, four internships need to be covered (criminal law, civil law, administrative law, public prosecution). After each internship the candidate gets a mark. If it is not good enough, he must repeat that internship. There is no final examination. A new judge will first work for six months at the criminal law section of a district court, then for ten months at the civil law section of a district court and for ten months at the administrative law section of a district court. The last part is for twelve months at the Public Prosecution Office. For judges who already have six years or more practical experience, the duration of the training is one year, but it is still mandatory.

Portugal: Initial training lasts ten months and is organized by the Centre for Judicial Studies at the national level.

Poland: The general postgraduate training lasts twelve months. The judge's postgraduate training lasts 54 months. Within the framework of postgraduate training for judges, participants attend a 30-month-long course in the Polish National School and an apprenticeship

scheme in accordance with the curriculum as well as serve a 24-month-long internship on the positions of assistant judge and a court clerk, in accordance with the curriculum.

For prosecutors postgraduate training shall last 42 months. Within the framework of postgraduate training for judges, the trainees shall attend classes in the Polish National School and an apprenticeship programme in accordance with the curriculum. After the assessor practice (3/4 years) they are appointed by the Minister of Justice as prosecutors.

Romania: One-year initial training within NIM for the justice auditors that also combine visits to legal institutions. Also, in the second year that is so-called "practical", there are theoretical modules of study organized at NIM. For the trainees with at least five years of experience, NIM organizes one-month intensive training – all activities are organized at the national level.

In *Slovenia*, the situation is different. As we pointed before, the Judicial Training Centre has the monopoly at the national level in delivering the mandatory training for the people that want to be admitted at the Legal State Exam. After the exam there are different ways to become judges and prosecutors, but theoretical training is not required.

Spain: For judges there is one-year initial training within the Judicial School that combines theoretical training, together with some short visits to legal institutions; for prosecutors the School of Legal Practice coordinates at the national level one-year combined internships in different legal institutions.

Sweden: *Judges* – The Academy for Judges arranges courses for young lawyers and it can be named as an institute for initial training. However, this basic training is neither a formal requirement and therefore the temporary appointment as an adjunctive judge is possible without this vocational training. Trained on the bench-title is based on practical experience at courts as a clerk. Even the Academy for Judges organizes the initial training. *Prosecutors* – The initial training is carried out in two periods. The first training period is a probationary period and lasts until the prosecution aspirant becomes an assistant prosecutor, at least nine months. The probationary period consists of hands-on training and education in a public prosecution office. During the second training period, the theoretical and centrally driven education is carried out. It consists of a total of 15 weeks of training in residential form. Meanwhile, the practical training continues at the Public Prosecution Office. The theoretical basic education is divided into four classes.

Turkey: The initial training lasts two years. The programme is divided into three stages: preparatory stage, internship stage and last education stage. The theoretical first and the last stages are to be completed in the Justice Academy in Ankara each in four months.

15.12 Country Descriptions of Court Internships

Another aspect researched was about *different experiences in court internships.* A large diversity of practises was revealed.

15.12.1 Austria

The future magistrates have to practice four years in the regional courts.

15.12.2 Belgium

Thirty-six months for judges and eighteen months for prosecutors who have previous professional experience and twelve months for the trainee with professional experience.

15.12.3 Denmark

The first five years of training takes place at the universities. The last three years takes place in the courts, where students specialize and are guided by other judges. The newly qualified lawyers are employed by the courts and are working for them for three years where they will specialize. For the prosecutors the first five years of training take place at the universities. The last three years takes place in the police, where students specialize and are guided by other prosecutors. The newly qualified lawyers are employed by the police and are working for them for three years where they will specialize.

15.12.4 France

The *general phase* comprises 25 months of multidisciplinary training. More precisely, it includes:

- an induction phase (four weeks) at the ENM in Bordeaux, followed by an introductory internship in a Regional Court, which aims at identifying the role of each of the players in criminal and civil proceedings, as well as the handling of files in theory and in practice;
- an internship with a lawyer (21 weeks) which aims at familiarizing trainees with Bar practice in all courts;
- a period of studies (27 weeks) at the ENM in Bordeaux, where the fundamental skills of the profession of judge or prosecutor (decision-making, written and oral expression for judicial purposes) are taught;

- an internship with a police department (two weeks) that provides training in the various stages of criminal investigations (filing complaints, handling the public, questioning, writing reports, files, searches, police custody etc.);
- An internship in a remand prison (two weeks) which provides experience of daily life in prison and insight into the organization, work and role of the different stakeholders;
- a court internship (36 weeks) in a regional and district court;
- a penitentiary internship (one week) in the community which provides experience of integration and probation work;
- an internship (one week) working with minors in danger and delinquents;
- an internship (five weeks) outside the judicial system with a local state department, local authority, association or company;
- an internship in a foreign, European or international court, an international institution, an embassy or within a liaison judge.

The *preparatory phase* for the first position begins at the ENM at Bordeaux with a six-week theoretical preparation, which aims at developing the professional skills of the position that trainees have chosen. It ends with a ten-week preparatory internship for the first position that each trainee has chosen.

15.12.5 Italy

Eigtheen months (divided in two: thirteen months and five months): *ordinary training* lasts for "no less than *thirteen months*" and is intended both to widen the technical knowledge and to familiarize the new magistrate with the actual judicial work through various experiences of on-the-job training: six months in the civil sector and seven months in the criminal sector (four months in criminal jurisdiction and three months in a prosecutor's office). At the end of the "ordinary training" the CSM assigns each magistrate to a specific function in a specific judicial office (either as a judge or as a prosecutor) and "*specific training*" *five months* the magistrates are then destined to a programme of on-the-job training in the specific functions of their first destination as judges or prosecutors.

15.12.6 Lithuania

Only for *prosecutors* a person who has been admitted to service at the prosecutor's office and has passed an examination for candidates for the prosecutors' positions will be appointed, according to the prosecutors' traineeship regulations, on an individual two-year traineeship programme approved by order of the Prosecutor General, while the person exempt from the examination will be a trainee for up to six months.

15.12.7 Luxembourg

In the initial training period of two years the trainees have to do *their internship* in a law firm; also, they have the possibility (not compulsory) to do part of their professional training (between three and six months) in a law firm of the EU.

The additional training year includes practical aspects such as jail, hospital, laboratories etc. visits, Description per country, judgment drafting and trial simulation. This training takes place eight weeks in Luxembourg and three weeks in *Ecole Nationale du Barreau* (ENM) in France and both French and Luxembourg practitioners are involved in the teaching. In addition to that, the trainees have to follow a specific training in the following services (prosecutor office, police, civil and commercial court division etc.).

15.12.8 The Netherlands

After the initial training programme, there are 34 months of in-service training. When that part is finished, the young practitioner starts to work as a judge. The in-service training consists of three parts. After the obligatory part of the training, which is the same for judges and public prosecutors, candidates choose between becoming a judge or a public prosecutor. If they choose to become a judge, they have to do another internship of ten months in a sector of their choice of a district court. In this internship, however, they are (in theory) much more independent. The second part is an internship of two years outside the judiciary. During this internship, also a few courses need to be taken. When these two parts are completed, the candidate becomes a judge. There is, however, a third part of in-service training: permanent education. In this part, a judge needs to keep his knowledge and skills up to date by taking certain courses. The first part is done at a district court; the second part is usually done at a law firm. The Study Centre of the judiciary is, however, responsible for the candidate during this first and second part. For the third part (permanent education) the responsibility for the training lies with the relevant district court and not any longer with the Study Centre for the Judiciary. The courses the judges take in this part are usually given by the Study Centre for the Judiciary.

15.12.9 Norway

There is no mandatory training for judges after obtaining a degree in law. Becoming an assistant judge may be an advantage for someone wanting to become a judge, but it is not necessary. According to the appointment committee, it is desirable to have experience in the court room, but this is not an absolute criterion. The Courts of Law Act states that the

head judge at a court can appoint assistant judges for two years, with a maximal extension of one year. The legislation requires that assistant judges be above the age of 21, and have a law degree or a master's in law, and the law authorizes the Ministry of Justice to regulate more specifically, but the Ministry has so far refrained from doing this. The law stipulates that "judge" in the law means anyone who participates in passing judgment in courts; assistant judges are ordinarily under the same requirements as ordinary judges. Also, they must be Norwegian citizens, solvent and have the right to vote. They should be subject to high expectations of their professional and personal qualifications, and need to perform their duties independently, impartially and in a way commanding the respect and trust of the public. Apart from this, assistant judges are also covered by the Civil Servants' Act etc. that apply to all employed by the government.

Apart from these very general guidelines, there are no binding regulations on the initial training of judges. However, the appointment of judges (not assistant judges) is done by the King (Government) based on a report by a permanent appointment committee, consisting of three judges, an advocate, a legal professional from the public sector and two lay members. In 2007, this committee developed a memorandum on policy and practice, laying down informal guidelines for the appointment process and qualifications. These guidelines give an indication of what is desired of a judge. Most of these deal with qualitative criteria, but the desired exam results are described as preferably equivalent to A or B (*i.e.* on the ECTS-scale). However, it is not a binding guideline, not even for appointing judges, and head judges are formally free to evaluate applicants for positions as assistant judges. Finally, another criterion in the Courts of Law Act is important, and it states that judges should be recruited among legal professionals from a varied professional background, and the appointment committee's memorandum shares this understanding. There are no other instances of initial training for judges as such. However, assistant judges who wish to become licensed advocates need to take the advocates' course as well. Also, most judges are, according to the aforementioned memorandum, appointed after eight to ten years of legal practice of some sort.

15.12.10 Portugal

Regardless of their previous professional experience, the trainees had to perform ten months' initial training at courts coordinated by Centre for Judicial Studies.

15.12.11 Poland

During the training there is the same part of practice in courts and prosecutor offices around Poland. The trainees are judge/prosecutor assistant or clerk.

15.12.12 Romania

After an initial year of theoretical training, trainees are assigned for one-year court internship coordinated and conducted by NIM; also, NIM is coordinating the mandatory five months court internship for people with previous professional experience.

15.12.13 Slovenia

After passing the legal state exam future *judges* have to work at least three years in a legal position; a person can become a district prosecutor, if he or she fulfils the criteria for a district judge (meaning six years of legal practice after the legal state exam or three years of practice as a local court judge) or after three years of being deputy district prosecutor.

15.12.14 Spain

Prosecutors have to cover internships in different legal institutions within the one-year initial training.

15.12.15 Sweden

Judges – The judge needs a degree in law. In that field the universities are "the initial training institutions" and at this basic level there are no other institutions. After that it is very common that the young lawyer takes a title "trained on the bench". This means that he or she works for two years at courts or other authorities. However, this is not a formal requirement. Also the Academy for Judges arranges courses for young lawyers and it can be named as an institute for initial training. It is working at the national level and it has a monopoly. However, this basic training is neither a formal requirement and therefore the temporary appointment as an adjunctive judge is possible without this vocational training. Trained on the bench-title is based on practical experience at courts as a clerk. Even the Academy for Judges organizes the initial training. *Prosecutors* – The prosecutor should have a master's degree in law and in addition he or she has to cover the two-year training programme usually at the district court or at the administrative court. After that he or she gets the title "trained on the bench". It is also possible to work for *six months as a trainee prosecutor* and this period can be included into the training programme mentioned above. After getting the title "trained on the bench" he or she can try to get the status of the prosecutor candidate. In case he or she is be appointed, he or she will get the temporal post of nine to twelve months.

During that time period, he or she will work together with the supervisor and further education and training are provided. After this period, he or she will continue the training as an assistant prosecutor. During this period of two years, he or she will still get further supervision and training with education. Finally, after this period, it is estimated, if he or she is a suitable and can get the appointment for prosecutor. In the case, the candidate has already practical experience, like he or she has to have been working as an attorney, bailiff, judge and so on, he or she can be appointed directly to an extra prosecutor. This period is six to twelve months and after that he or she can be appointed as a prosecutor with an exceptional permit.

After the appointment, the prosecutor has to follow the programme of further education organized by the national prosecutor authority. It takes two years to take the title "trained on the bench". The initial training is carried out in two periods. The first training period is a probationary period and lasts until prosecution aspirant becomes an assistant prosecutor, at least nine months. Probationary period consists of hands-on training and education in a public prosecution office. During this time the aspirant also gets the opportunity to do a long practice with the police. After the probationary period the supervisor will be more like a mentor. During the second training period, the theoretical and centrally driven education is carried out. It consists of a total of fifteen weeks of training in residential form. Meanwhile, the practical training continues at the Public Prosecution Office. The theoretical basic education is divided into four classes.

15.12.15 Turkey

Within the two-year initial training the second stage, of four months long, it is an internship stage at courts.

15.13 Standard Rationale in Judicial Training Programmes

The curricular aspects were also exploited in order to find out, whether beyond content, there is a certain standard rationale in building a training programme. It can be summed up that the most common theoretical initial training programmes combine the courses with seminars or workshops. Usually, the trainees had mandatory curriculum of study, but some countries, especially those countries where there are schools for magistrates offer some facultative courses or lectures. Basically, all the states make efforts to finance study visits and internships for the trainees. Also, every country, at some point, offers the trainees different training programmes, according to the specialization (judge or prosecutor). In two countries (England and Latvia) there are some e-learning facilities provided.

15.14 Description per Country of Standard Rationales in Judicial Training Programmes

15.14.1 Austria

Since the Austrian understanding of "initial training" is – *cum grano salis* – "training on the job", this is difficult to say. The training-on-the-job-phase lasts – as outlined above – four years; also training with an advocate is possible, at least in theory. Regulations regarding theoretical training are very general, only stipulates that the courts have to provide courses enabling the candidates to present and decide cases in oral and written forms. Practically, the candidates can – and do – take part in many of the courses that are offered under the in-service training scheme.

15.14.2 Belgium

The training activity provided by the Institute implies "internal training" and "external training". The second one is provided by another institution, which could be a university, a Bar association etc. Some of these "external trainings" are recognized by the Institute. In 2009, the Institute recognized 389 external trainings. The training programme provides seminars, courses, workshops but also study visits. However, in 2009, the non-legal training (meaning training in other fields than law) represents less than 10% of the programme offered by the Institute. The international dimension is also important. In 2009, 42 magistrates took part in the seminars organized abroad. Magistrates have also the possibility to apply for an internship in an institution of another country (two trainees in 2009). In this respect, it is important to notice that the Belgium Institute of judicial training is represented within the European Judicial Training Network. Magistrates and personnel of the judiciary have the possibility to choose among the training activities proposed by the Institute. The exchange of professional experience is also privileged.

15.14.3 England and Wales

Lectures, workshops, seminars, study visits, internships, e-learning and audiovisual facilities.

15.14.4 Ireland

For judges there is a mandatory requirement that candidates for judicial appointment agree to undertake any course of training or education as may be required by the Chief Justice or the President of the court to which the person is appointed. Such training or continuing legal education is not compulsory for those appointed prior to 1996. For barristers and solicitors: as

regarding the solicitors, the training programme is of two years in duration and consists of two elements: an in-office training period and completion of a professional practice course (one being conditional on the other because applicants must secure a training contract before they can apply for a place on the professional practice course). The professional practice course is a full-time course run by the Law Society and phased in two blocks over the 24 months period. Having passed the entry examination, aspiring barristers proceed to the vocational stage of training, consisting of a one-year full-time course (or two-year part-time) in the King's Inns leading to the degree of Barrister-at-Law. Before being allowed to practice on their own, barristers are required to do a pupillage (commonly called "devilling" or on-the-job training) with a suitably qualified barrister in an established practice for a period of twelve months.

15.14.5 Italy

During the first year of their initial training, the trainees have to follow the different activities that judges and prosecutors have to deal with (for example, they observe magistrates during a trial, write judgments and other procedural acts). This kind of training becomes more specialized over the last six months (for judges or prosecutors).

In addition to this training, trainees have to attend courses, seminars and workshops organized at a national level and at a local level. Study visits are occasionally organized to the scientific police.

15.14.6 Latvia

Judges – most of the training consists of seminars with interactive participation; some *e-learning* tools are used. Prosecutors – only lectures and practical training.

15.14.7 Lithuania

For judges there is a form of training similar to seminars, although usually they are some kind of the hybrid of the lectures and seminars, which rather usually may be ended with some form of the workshop (practical session).

15.14.8 Luxembourg

During the first stage of the CCDL, the focus is on the Luxembourg law, and the training provides the trainees a complete view of the Luxembourg law, including practical

aspects. The courses take place from 1 October to the end of February and cover 242 to 250 hours of lectures (depending on the chosen tracks). These lectures are part of the professional training. During the second stage of the initial training, the seminars and the 36 hours of course are also mandatory. During the additional training for judges, the programme is adapted every year depending on the needs, but last year, the training covers around 260 hours.

15.14.9 The Netherlands

The initial training programme is mostly built on internships. More theoretical courses are also given in this part of the training programme. These courses focus both on substantive law and procedural skills, *e.g.* communicative skills and drafting a judgment. In every internship, there are around 6-10 of these theoretical courses, most of which take four or five days each.

15.14.10 Poland

Judges – From 2009 the law graduate must finish the School (it takes five and a half years – lectures and practice as judge assistant or clerk or four and a half years as prosecutor's assistant or clerk). Trainees attend the legal training courses at the National School of Judiciary and Public Prosecution in Krakow. Meanwhile, they will complete the legal apprenticeship in courts, prosecutor's offices and other institutions associated with the functioning of the judiciary.

15.14.11 Portugal

The initial training of magistrates is divided into two phases (theoretical and practical) and an internship. The first phase consists of class attendance on various subjects; the second phase consists of working at a court, with the guidance of magistrates. The attending of all subjects established by the Centre for Judicial Studies is mandatory except for Competition Law and Economic Regulation, Administrative Law and Judicial Sociology since these subjects are not considered essential in the context of initial training of magistrates and due to their weak statistical application in the judicial praxis.

15.14.12 Romania

The initial training teaching methods comprise courses (mainly for fundamental disciplines – 15%) and seminars/debates (85%), extracurricular projects and conferences,

study visits abroad (to the European Court of Human Rights, the Court of Justice of the European Union, to other European schools or institutions having responsibilities in the field of training), bilateral exchange programmes, internships to various national and international institutions relevant for the profession, academic debates, internal and international competitions and contests addressed to trainees etc. The NIM provides a general training within the first year for all auditors of justice that is *mandatory*, but also the trainees can attend some *facultative modules of training*. At the end of their first year, they choose for the profession they would like to follow (judge or prosecutor) and their training during the second year at NIM is specialized according to this aspect only and is done as courtship and module of theoretical.

15.14.13 Slovenia

The obligatory part of the initial training includes seminars – lectures on nine specific subjects (two from the field of criminal law and seven from the field of civil law) and two colloquia – two written exams, where the candidates have to write a judgment (one criminal, one civil). For the candidates that are not judicial trainees, there are some additional requirements regarding the attendance of hearings. There are no study visits included and, for the moment, no e-learning.

15.14.14 Spain

Judges – "the 'case study method' and teaching through the study of real problems with the objective of showing the Judge under training to 'think as a jurist', training him in argument faculties, teaching him how to analyze and give arguments to reach the right decision according to the facts on trial. The aim is to make an effort in using IT, not only as the standard environment for work, but also as an instrument for training and the updating of knowledge". The methodology is based on classes with small groups (between 20 and 25 students), in order to develop the students' skills to solve practical issues. The students, either individually or in group, carry out the case study, case which is "neither produced nor fictitious", but is selected among real cases. Every student has to provide a scheme or summary of the case history, the relevant judiciary facts, as well as applicable rules and principles, making a synthesis of factual and legal arguments that have led to the decision of the case.

Prosecutors – As of 2009, prosecutors enrolled in initial training complete a total of 190 hours of theoretical training, 122 practical sessions (mock trials), 19 hours for workshops, 62 hours of foreign languages, and 64 hours in visits to legal institutions.

15.14.15 Sweden

Judges are 'trained on the bench' – the title is based on practical experience at courts as a clerk. Even the Academy for Judges organizes the initial training.

There are plenty of courses which are always based on the practical needs of the employees. The focus is on such teaching methods as seminars, workshops in large and small groups, mock trials and tutorials. Also pure role-playing and interactive theatre can be included as part of teaching. Even excursions are possible. Prosecutors: The initial training is carried out in two periods. The first training period is a probationary period and lasts until a prosecution aspirant becomes an assistant prosecutor, at least nine months. Probationary period consists of hands-on training and education in a public prosecution office. During this time the aspirant also gets the opportunity to do a long practice with the police. After the probationary period the supervisor will be more like a mentor. During the second training period, the theoretical and centrally driven education is carried out. It consists of a total of 15 weeks of training in residential form. Meanwhile, the practical training continues at the Public Prosecution Office.

15.14.16 Turkey

The law says that the courses are to be taught in lectures, seminars, symposia, conferences and similar activities. 50% of the courses are taught in seminar-like fashion while 30% is taught more interactively like moot courts. 10% is taught in symposia and conferences. The remaining 10% is self-taught by encouraging candidate judges and prosecutors to make presentation in a subject they like to develop their skills of speaking in public, build confidence and use IT tools such as Powerpoint. Therefore, in the last four month phase of the Academy, a judge can concentrate on matters important for judges while a prosecutor can do the same for him/her.

15.15 Qualifications for Teaching Staff in Judicial Training Programmes

Concerning the staff who is eligible to deliver the training programme in all the countries, the trainers are usually judges, former judges, prosecutors, advocates or legal academics. In the countries where there are training institutions there is a core of trainers that are coordinating the elaboration of training programmes. Usually, trainers are parttime judges, prosecutors, advocates, academics and experts, but some countries have fulltime-detached judges or prosecutors acting as trainers within the institutions' staff.

15.16 Description per Country of Subjects Taught in Judicial Training Programmes

The description per country reveal the heterogeneous dimension of this field of interest.

15.16.1 Austria

Training of judges and prosecutors practically consists completely of legal subjects to prepare the candidates for their final exams (national legislation). About 35 to 40% are non-legal disciplines. Further on it is laid down that the candidate will be allowed to practice in certain judicial techniques, like, *e.g.* hearing of witnesses etc. under supervision of "his" or "her" judge.

15.16.2 Belgium

Besides the disciplines pointed out in the previous table, in 2009, the initial training covered the following activities: place of the victim in the criminal system; alternative punishments and measures; the police services; international collaboration in criminal and police issues; the processing of police information; initial training for judges in commercial courts; initial training for the councillors and judges in social matters; the arms legislation drawing up judgments; characterization of criminal offences and the drawing-up of final requisitions.

15.16.3 France

Other courses are in criminology, psychiatry, forensic.

15.16.4 Lithuania

The courses in this training, as conducted by the Centre, are usually of the general and legal nature. The above enumerated courses/spheres (that are marked) are touched upon rather rudimentary. For the year 2011, the programme adopted for the initial training consists of three parts: 1) Civil Procedure (26 academic hours, divided into 8 thematic sections, devoted to specific aspects of civil procedure, as starting of the case, court process, peculiarities of the judicial decisions and rulings, appellate procedure, etc.), 2) Criminal Law and Criminal Procedure (24 academic hours, divided into 6 thematic sections, devoted to peculiarities of the court process, evidences, aspects of the imposition of criminal

liability, etc.), and 3) Strengthening of the General Skills (sixteen academic hours, divided into four thematic sections, the first related to the legal ethics, the second related to some aspects of psychology as relevant for the judge (self-regulation and coping with the stress), the third related to the aspects of communication as related to courts' activities and the fourth related to the peculiarities of the usage of language in legal profession).

15.16.5 Italy

As regards judges, some aspects regarding non-legal disciplines are narrow and linked to some specific topics that have an interdisciplinary nature: scientific evidence, forensic psychology, budget analysis. These margins are slightly wider as regards prosecutors' specific training. With the new School of the Judiciary, as reported by our partners, the programmes might change.

15.16.6 Latvia

The initial training programme is organized in the following way – about 80% has legal content and about 20% covers non-legal subjects. One or two days (about eight lectures) are dedicated to development of judicial skills (writing a judgment), oratory skills, observation and analysis of a court proceeding and judicial ethics. There is no uniform standard and it depends on the experience of prosecutor's candidates; on average the duration is one week (five days lectures and two days practical training).

15.16.7 Luxembourg

In the additional programme for judges, there are some courses dealing with history, sociology and communication skills.

15.16.8 The Netherlands

In the programme for judges and prosecutors, there are some courses that focus on how to deal with work pressure, communication styles, self-reflection and personal growth.

15.16.9 Portugal

During the initial training the trainees are studying the following disciplines: European Law and Proceedings, Sociology, Psychology, Philosophy and Ethics, Economics, Foreign

Languages, Information Technology and Management. Besides the disciplines pointed out in the table, there also are others as follows:

For judicial courts:

- General Training: Fundamental Rights and Constitutional Law; Judicial Institutions and Organization; Judicial Methodology and Discourse;
- Theoretical and Practical Training: Procedure Organization and Management;
- Expertise Training European and International Law: Accounting and Management; Judicial Psychology; Forensic Medicine and Sciences; Criminal Investigation;
- Optional Subjects: Competition Law and Economic Regulation; Administrative Law and procedure;
- Professional Training Areas: Civil Law, Civil and Commercial Procedure Law; Criminal Law and Criminal Procedure Law; Law of Infractions; Child and Family Law; Labour and Business Law.

For administrative and tax courts:

- General Training: Fundamental Rights and Constitutional Law; Judicial Institutions and Organization; Judicial Methodology and Discourse;
- Expertise Training: European Law and Procedure; Administrative European Law and Procedure; International Law, including Judicial International Cooperation;
- Theoretical and Practical Training: Administrative Organization; Accounting, Management and Principles of Financial and Tax Accounting; Law of Urbanism and Environment; Law of Infractions; Law of the Labour Relations in the Public Administration;
- Professional Training Areas: Civil Law (such as contracts, liability, civil procedure); Administrative Law and Procedure and Public Hiring; Tax Law, Procedure and Litigation.

15.16.10 Romania

The training offered by the National Institute of Magistracy in the first year of study aims that the future judges and prosecutors achieve: the necessary legal knowledge, without doubling those already acquired during faculty, offering a practical perspective over the different law institutions; the techniques specific to the magistrate profession; a logic, structured way of thinking; a European perspective over law and to allow future magistrates to handle the exigencies that result from the direct application of community law and of the jurisprudence of the European Court of Human Rights; the awareness of the fact that they belong to this profession and the openness to other fields of social life; the necessary knowledge of foreign languages and information technology.

Besides the already mentioned disciplines pointed out in the table, the trainees have the following disciplines of study: Forensics, Methodology of Justice Act, Administrative Law, Commercial Law, Constitutional Law, Family Law and Justice of Minors, European Convention of Human Rights, Intellectual Property Law, Competition Law, Environment Law, Consumption Rights' Legislation, Fiscal Law, International Cooperation in Civil and Criminal Matters and Penology.

15.16.11 Slovenia

The obligatory programme is composed of two parts – the criminal law part and the civil law part.

15.16.12 Spain

Courses on civil and criminal procedures are mandatory for judges/prosecutors.

15.16.13 Sweden

The taught subjects are mostly linked with the legal perspective as for instance ethics for judges; psychology means for instance psychology for family law cases and so on. However, there are to some extent non-juridical subjects taught by the Academy for Judges.

15.16.14 Turkey

The subjects are not taught as separate ones. For instance, candidates are offered a course called "personal development" and the subjects of this course include anger management, teamwork, time management and leadership. Arguably, these are communication and management skills, although they are not offered under this heading.

For judges and prosecutors: EU law, European Convention on Human Rights and the application of ECHR's decisions in domestic law; professional ethics; social behaviour and rule of the protocol; social and professional relations; rules of *savoir faire*; Turkish grammar and good speaking are mentioned in the law as subjects to be taught. Other subjects such as history or psychology are not covered as such but as much as they pertain to the legal subject. For instance, there is not psychology *per se* but judicial psychology or there is no separate European law and proceedings but EU and ECHR law. There was a request for comparative judicial systems from students which the Academy is thinking of offering next year.

15.17 The Proportion of Non-Legal Disciplines in Courses for Initial Judicial Training

The figures reflecting the status of the non-legal disciplines were specified by fifteen countries:

Austria: About 35 to 40% non-legal disciplines for judges and prosecutors.

Belgium: Less than 10% for judges and prosecutors.

Denmark: Graduate education: ca. 8% .

France: Less than 10% for judges and prosecutors.

Italy: The percentage of non-legal disciplines and topics is low: about 10-15%.

Latvia: The initial training programme is organized the following way – about 80% has legal content and about 20% covers non-legal subjects.

Lithuania: There are no purely non-legal disciplines and topics included in the initial training curriculum for judges. They are either purely legal or clearly interdisciplinary.

Luxembourg: ± 5%, when taking into account the three-year training programme.

The Netherlands: 10% if you exclude courses on legal skills, 30% if you include those courses.

Sweden: For judges maximum 10% and for prosecutors maximum 20%.

Portugal: Only six disciplines – out of the nearly twenty possible disciplines– are non-legal: judicial psychology, foreign language, judicial sociology and information and communication technology, so nearly 30% of the curricula includes non-legal disciplines.

Romania: About 20% non-legal disciplines for judges and prosecutors.

Spain: There is a clear predominance of legal matters (more than 50%) over non-legal disciplines, but a precise average is difficult to provide.

Sweden: For judges maximum 30% and for prosecutors maximum 20%.

Turkey: About 40% non-legal disciplines for judges and prosecutors.

15.18 Continuous Training: State of the Art

The continuous training of the judges and prosecutors was also under research. Specific questions led to key outcomes associated with Description per country wherever the context or situation proved to have country specific issues.

15.19 Preliminary Remarks about the Organization of Continuous Training of Judges and Prosecutors in England and Wales and in Ireland

In England and Wales (and the UK generally) it does not make sense to distinguish between initial training and in-service training, particularly for judges. Therefore the following answers only make this distinction where it is appropriate. It also *does not make sense to distinguish* between the training of prosecutors and advocates – the distinction to be drawn is between solicitors and barristers.

In Ireland there is a peculiarity of the Irish situation regarding the training of the prosecutors: The Prosecution of Offences Act, 1974, established the Office of Director of Public Prosecutions as an independent office. The Director makes decisions independently of all other bodies and institutions, including both the Government and the *Garda Síochána*, and decisions are taken free from political or other influence. In Ireland, there is no equivalent of salaried officials entitled "public prosecutors" as in the case of the CPS in England. Work is done, in practice, by barristers in private practice rather than by barristers in the paid employment of the State. Advocates/lawyers: The term "advocate/lawyer" is understood here in its wide sense as meaning a professional person authorized to practice law, that is to initiate lawsuits and provide legal advice.

There are two types of "advocates" in Ireland – solicitors and barristers. The Solicitors (Ireland) Act 1898 established for the first time that the Incorporated Law Society of Ireland was to have control over the education of students wishing to become solicitors. The Society was renamed the Law Society of Ireland in 1994. It exercises statutory functions under the Solicitors Acts 1954 to 2008 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. The Honourable Society of King's Inns was established in Dublin in 1541, and it remains the body which provides postgraduate legal training for those who wish to practice at the Bar, in a system parallel to the Law Society.

15.20 The Organization of the Vocational Training Sector

Twenty-three countries responded to the question: How is the vocational training sector organized?

15.20.1 Centralized or Decentralized Training Institutions

Are the in-service training institutions operating at a national and/or a decentralized level? The responses of the countries (from which Norway only regarding judges) are as follows:

- In one country (Lithuania), the in-service training of judges may coincide with the initial training when the training is organized jointly for the judges and the assistants of judges. Two institutions of a national level organize this training – Judicial Council and the Ministry of Justice, but they themselves are not the in-training institutions. The in-service training may be conducted (1) inside the relevant courts (for example, as some introductory practice when the judge is transferred to the other – higher or specialized – court, or the like), (2) by the special institution and (3) occasionally in the form of seminars, series of lectures, held outside the special institution. The Ministry of Justice has established its Centre of Education that may be involved in training activities aimed at the training not only of judges, but also of prosecutors (and especially them, besides judges), assistants of judges, attorneys, representatives of other legal professions. Nevertheless, the Judicial Council and the Ministry of Justice may decide/ approve that other forms of training are possible/ organized in an *ad hoc* format (as some concrete seminars, training sessions, some activities in cooperation with academic institutions etc., held outside the Centre). The in-service training of prosecutors in Lithuanian is organized by the Office of the Prosecutor General and the Ministry of Justice. The main institution of the in-service training of the prosecutors is essentially the same as for judges – Centre of Education of the Ministry of Justice. However, the training could be conducted not only in this institution, but other training "platforms" might be chosen (especially in the form of the organization of seminars by the Office of the Prosecutor General in cooperation with other institutions).
- Two countries (UK and Ireland) had in-service training institutions for judges operating at the national level, but regarding the prosecutors, they did not distinguish between prosecutors and advocates – the distinction is between Solicitors and Barristers that have national institution that operates at national level.
- Seven countries (Belgium, France, Italy, Poland, Portugal, Romania and Turkey) have common training institutions for judges and prosecutors; these institutions operate at a national level and also, they coordinates, in different degrees of competencies, the training activities at a decentralized level, at the level of the courts or prosecutors institutions.
- In one country (the Netherlands) the responsibility for the in-service training (permanent education) lies with the relevant district court or with the relevant public prosecutions office and not anymore with the Study Centre for the Judiciary. The courses the judges take in this part are usually given by the Study Centre for the Judiciary.

- In one country (Slovenia) the in-service training of judges is done through courses organized by the Judicial Training Centre in a centralized manner, or by the individual court on a decentralized basis but there is no monopoly.
- In one country (Luxembourg) there is no specific organization taking in charge this continuous training, but this training is carried out for judges and prosecutors under the jurisdiction of the Ministry of Justice, and also through the European Judicial Training Network of which Luxembourg is part. Apart from that, and more generally, the University of Luxembourg has established a specific procedure in order to validate the professional experience of practitioners so that they can integrate either academic or professional selective programmes in the framework of continuous learning, and secondly, it organizes on a regular basis conferences, seminars and workshops on miscellaneous topics scholars and professionals can attend.
- In one country (Austria) the decentralized training is done by the courts and prosecutors offices (special departments are within these institutions) and the training is coordinated by ministries or other institutions established at national level, institutions that are not training institutions.
- In one country (Norway) the in-service training of judges is done through courses organized by the Courts Administration centrally, or by the individual court on a decentralized basis.
- The countries Latvia, Malta, Spain and Sweden have different training institutions for judges and prosecutors; for judges there are judicial training centres that operate at a national level and they are responsible for the organization of the judicial training in the country; for prosecutors there are special departments within broader institutions and they operate at the national level.
- In four countries (Czech Republic, Denmark, Finland and Germany,) there are no continuous training institutions or specialized bodies within other institutions; the in-service training is not regulated or conducted by any national or regional body.

15.20.2 Latvia

In Latvia the Ministry of Justice is responsible for training of judges in general. This responsibility is carried out by Court Administration Agency that has contracted the Judicial Training Centre which then carries out the training (agreement is for five years). For the term of the contract it is a monopoly; then an open call is announced where any training institution may apply which then, presumably, will become a monopoly. The training programmes have to be licensed by the Education Quality State Office under the Ministry of Education and Science. Since the programmes fall within the category of "professional development education" their accreditation is not necessary. There are

Table 15.1 Centralized and Decentralized Organization of Judicial Training Institutions

	Judges		Prosecutors	
	Centralized	Decentralized	Centralized	Decentralized
Austria	X		X	X
Belgium	X		X	
Czech Republic				
Denmark				
United Kingdom	X		X	
Finland				
France	X		X	
Germany				
Ireland	X		X	
Italy	X	X	X	X
Latvia	X[2]		X[2]	X[2]
Lithouania	X		X	
Luxembourg	X		X	
Malta	X		X	
The Netherlands		X		X
Norway	X	X		
Poland	X		X	
Portugal	X		X	
Romania	X		X	
Slovenia	X[2]		X[2]	
Spain	X		X	
Sweden	X		X	
Turkey	X		X	

no credits awarded; however, the overall scope of the training programmes has to be 160 hours per year.

In Latvia, for the prosecutors there are no specific training institutions. There is a person (one of the prosecutors) in the Department of Operational Analysis and Management at the General Prosecutors Office who is responsible for organization of training. Most of the training takes place in Riga where the General Prosecutors Office is located; however, there is training organized at the regional level as well. In principle, there is no monopoly and prosecutors are free to attend other trainings. There is no accreditation and credit.

15.20.3 Slovenia

In Slovenia it is not only the Judicial Training Centre that offers different types of seminars, judicial schools and similar events. There are a lot of private companies offering education for judges, judicial advisers, prosecutors, court personnel and lawyers in general. For the purpose of limiting the costs, the Judicial Training Centre is preferred since there are no participation fees for the people employed within different judicial organs for the events the Centre organizes. The costs of the accommodation and travel expenses are covered by the institution that sends the participant (the court, the State Prosecutor's Office). Furthermore, judicial schools organized by the Centre are specifically focused on practical problems encountered by judges during their work, so they are best suited for their purposes. Still, there is no monopoly of the Centre. Every court or State Prosecutor office has its own budget dedicated to education and it divides the funds according to its yearly plan. The market regarding the in-service training is therefore open and not regulated – it is up to the court president and director to decide on the types of training offered to the employees, although the Judicial Training Centre events are preferred.

15.21 Autonomy and Independence or Special Service

Table 15.2 gives a perspective on the fundamentals of autonomy and independence versus special service of a broader institution.

15.22 Financing of Judicial Training Institutes

The aspect of the financing (public or private funds, state, regional or European, individual contributions etc.) of the continuous training institutions is summed up in the grid below.

Table 15.2 Autonomy and Independence versus Special Service of a Broader Institution

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.
Country	**AT**	**BE**	**CZ**	**DK**	**UK**	**FI**	**FR**	**DE**	**IE**	**IT**	**LV**	**LT**	**LU**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SI**	**ES**	**SW**	**TR**
Schools only for Judges					X				X		J										X[4]	j	
Schools only for Prosecutors														P							X[4]		
Common schools for judges and prosecutors		X[5]					X								X		X	X	X				x
Special service in an institution	X (J+P)									X[1] (J+P)	P	X[2] (J+P)	X	J	X	X[3]				X (J+P)		p	x (J+P)

[1] In *Italy*, before the creation of the School, in-service training was organized every year by the Superior Council of Magistracy, on the proposals of Commission XI (an internal division).[2] In *Lithuania* it is either the service of the judicial system (in the case of courts) or the Ministry of Justice (in the case of the Centre), or the outside/independent service.[3] In *Norway* the in-service training of judges is done through courses organized by the Courts Administration centrally, or by the individual court on a decentralized basis.[4] In *Spain* the professional training for judges is organized by the General Council of the Judicial Power and offered by the Judicial School. For prosecutors the professional training is organized by the Ministry of Justice and offered by its Center of Legal Studies.[5] In *Belgium* the training programme is established by the Institute following the guidelines defined by the Superior Council of Justice (for magistrates) and by the Ministry of Justice (for the personnel of the judiciary). The Institute evaluates each of the training activity organized. The training activity provided by the Institute implies "internal training" and "external training". The second one is provided by another institutions, which could be a university, a Bar association etc. Some of these "external trainings" are recognized by the Institute. In 2009, the Institute recognized 389 external trainings.

In all the countries the in-service training is financed almost in totality by the state

Table 15.3 Financing of Judicial Training Institutes

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.
Country	**AT**	**BE**	**CZ**	**DK**	**UK**	**FI**	**FR**	**DE**	**IE**	**IT**	**LV**	**LU**	**LT**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SI**	**ES**	**SW**	**TR**
State funds	X	X			X		X		X (J)	X	X[2]	X	X	X (J)	X		X	X	X	X	X	X	X
Tuition fees from participants	X				X				X[1] (P)					X (P)									
European funds										X		X							X				

[1] In *UK and Ireland* there is no equivalent of salaried officials entitled "public prosecutors" as in the case of the CPS in England. Work is done, in practice, by barristers in private practice rather than by barristers in the paid employment of the State. Both the Law Society and King's Inns are privately financed, primarily through fees paid by the participants. There is no information readily available as to their budgets.

[2] In *Latvia* currently 85% of funds for judges' training come from the state budget and the rest is made of private funding and international funds. For the prosecutor there are only public funds – from the budget of General Prosecutors Office.

Table 15.4 Mandatory Character of In-Service Training

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.
Country	**AT**	**BE**	**CZ**	**DK**	**UK**	**FI**	**FR**	**DE**	**IE**	**IT**	**LV**	**LT**	**LU**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SI**	**ES**	**SW**	**TR**
	no[1]	no[2]	no				yes[10]			yes[3]	no	yes[4]	no	no	yes[5]	no	yes	yes[6]	yes[7]	no[8]	no	yes[9]	no

[1] In *Austria* there is only a general obligation to take part in training measures. No sanctions are foreseen.[2] In *Belgium* the in-service training is a right but also a duty. A magistrate has the right to participate in the in-service trainings proposed by the Institute during five working days per judicial year. The in-service programme is determined by magistrates in consultation with the Chief Justice.[3] In Italy the in-service training was not mandatory for judges and prosecutors. The situation is changed after the creation of the School of the Judiciary in 2012. Now the in-service training is mandatory for judges and prosecutors. In particular, the judge/prosecutor must attend at least one course every year, during the first four years after appointment, and afterwards at least one course every four years.[4] In *Lithuania* the prosecutor's office provides conditions for the prosecutors to independently engage in in-service training; therefore, it appears to be an independent process, not a mandatory one. However, the prosecutors will involve in training under the special programmes, approved by the Office of the Prosecutor General, in drafting of whose the most import role is played by the Methodical Department of Training of the Office of the Prosecutor General and the special permanent Working Group.[5] Regarding *the Netherlands*, when the candidate has become a judge, he needs to spend thirty hours a year on permanent education, some hours are mandatory also for prosecutors.[6] Judges and prosecutors must attend to, at least, two training actions per year. Judges can also follow other training courses, if allowed by the superiors.[7] The magistrates are required to participate, at least once every 3 years, in in-service training programmes organized by the NIM, by higher education institutions in *Romania* or abroad, or in other types of professional development. In-service training is both a right and an obligation for the magistrates, being a guarantee of their independence and impartiality in performing their functions.Besides the general obligation of the magistrates to participate in a type of training, the law on the statute of magistrates stipulates two situations when in-service training is compulsory: the first regards the magistrates who get the rating "unsatisfactory" or those who get "satisfactory" twice consecutively in evaluations who are required to attend for a period of 3-6 months special courses organized at the NIM; the second regards magistrates who accede to the profession by competitive examination for admission to magistracy. Consequently, the law on the statute of magistrates stipulates that, after being appointed magistrates, the former candidates to magistracy are required to attend, for 6 months, an in-service training course at the NIM. Besides these particular situations, training is also compulsory for magistrates who are going to work for a specialized court. The reform of the Romanian judicial system presupposes the creation of specialized courts in the field of commercial law, administrative and fiscal law, labour law, and in field of justice for minors and family law. The magistrates who are to work in such courts will be required to participate in a special training programme at the NIM.[8] In *Slovenia*, formally, the training of judges is not mandatory, although it could be concluded from the provisions of the Judicial Service Act that failure to fulfil the duties of professional education is an act that entails a breach of judicial duties or irregular performance of judicial service. Similarly, the right of promotion is influenced by the attendance of in-service training.[9] In *Sweden*, formally, there are no legal provisions, but in practice there are.In practice, further training is provided. If needed, the head judge can decide that a judge should participate in further training. Neglecting to do so is a question of usual disobedience of employees. All the employees are encouraged to participate in further education. For prosecutors there are no official sanctions but it may affect the salary. If needed, the head judge can decide that the prosecutor should participate in further training. Neglecting to do so is the question of usual disobedience of employees.[10] In *France* the in-service training is mandatory for all judges and prosecutors. Also, the in-service training is a duty for all judges and prosecutors from 1 January 2008 (Art. 14, para. 2 of the Ordinance as amended by the Law No. 2007-287 of 5 March 2007 on the recruitment, training and accountability of judges).

Table 15.8 Attendance of In-Service Training and Career Promotion

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
Country	**AT**	**BE**	**CZ**	**DK**	**UK**	**FI**	**DE**	**IE**	**IT**	**LV**	**LT**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SI**	**ES**	**SW**	**TR**
	no	Yes							yes	yes[1]	yes[2]	no	no	no	yes	no[3]	yes[4]	no[5]	yes	yes[6]	no[7]

[1] In *Latvia* in the case the candidates for a position of prosecutor are comparable, then the record of the training received may give preference for a particular candidate. Otherwise there is no formal influence.

[2] In *Lithuania*, the attendance of training for judges pertains no formal influence on career promotion, however, factually it might. Formally, the scheme is completely different – first goes the promotion/change of the position, then – the training. On the other hand, every five years, Performance Evaluation Commission evaluates the prosecutor's service, competence, suitability for the prosecutor's duties, and in this evaluation the attendance of the obligatory in-service training programmes is usually accounted.

[3] In *Portugal*, there can be a positive evaluation, by the inspecting services, if judges attended some training activities, which makes it important to have a better record and, therefore, to claim some places in the judges' hierarchy, and when there are contests for promotions to higher courts. The application for Administrative and Tax Courts demands a training period and the access to specialized or specific courts takes into consideration these training activities.

[4] In *Romania*, the professional competence of the magistrates is evaluated annually. The criteria are the following: their efficiency in finalising work, cassation practice and the number of judgments invalidated, participation in the in-service training, conduct at work and relations with colleagues, fulfilment of other duties in compliance with the law.

[5] In *Slovenia*, formally there are no legal provisions but in practice the right of promotion is influenced by the attendance of in-service training.

[6] In *Sweden*, formally there are no legal provisions, but in practice there are.

[7] In *Turkey* the trainings attended are kept in the file of the judge or prosecutor. Therefore, the High Council of Judges and Prosecutors may take into consideration the attended trainings when appointing a judge to a post. However, a draft law that is being worked on aims to change that and make trainings attended as part of promotion.

15.25 Attendance of In-Service training and Career Promotion

The career promotion scheme might or might not be formally influenced by the attendance of the in-service training by judges, prosecutors or advocates. Table 15.5 shows the results of the research findings.

15.26 Evaluation of Skills and Knowledge of Trainees

In only three countries (Belgium, Spain and Sweden) the participants are evaluated after attending a module of continuous training.

15.26.1 Design of Judicial In-Service Training

The most common theoretical in-service training programmes offer the seminars or workshops. All the states make efforts to finance study visits and internships. Also, most of the countries are encouraging the participation of the judges and prosecutors at the conferences and seminars organized abroad in order to facilitate the European and international cooperation (Austria, Belgium, France, Luxembourg, UK, Poland, Portugal, Romania Slovenia, Spain and Turkey). In four countries (UK, Latvia, Spain and Romania) e-learning facilities are provided.

15.27 Country Descriptions of Judicial In-Service Training

15.27.1 Austria

The overwhelming part of the programme (80%) consists of seminars and workshops, the difference between the two types is not easy to discern. Occasionally there are lectures and study visits. No distance-learning techniques (e-learning, broadcasting, etc.) have been used so far.

15.27.2 Belgium

The training programme provides seminars, courses, workshops but also study visits. The content combines several branches of learning and fields of expertise. However, in 2009, the non-legal training (meaning training in other fields than law) represents less than 10% of the programme offered by the Institute. The international dimension is also important. In 2009, 42 magistrates took part in the seminars organized abroad. The selection of participants was made by the Institute. Magistrates have also the possibility to apply for an internship in an institution of another country (two trainees in 2009). In this respect, it is

Table 15.9 Training Compulsory for a Specific Career Step

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
Country	**AT**	**BE**	**CZ**	**DK**	**UK**	**FI**	**DE**	**IE**	**IT**	**LV**	**LT**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SI**	**ES**	**SW**	**TR**
	no[1]	yes							yes[2]	no[3]	no[4]	no	no	no	no	no[5]	no	no[6]	yes[7]	yes[8]	no

[1] In *Austria* the attendance of training courses is notified in the judge's or prosecutor's dossier and therefore may be helpful in regard of the career development. Also many of the events serve *de facto* as networking events.

[2] In the case of *Italy* the answer was no, until the year 2012. Beginning with 2012, the attendance of training is compulsory. The 2006 reform, regarding the School for the Judiciary, requires the magistrate attend specific courses at the School in order to be able to apply to chief positions or to move from the position of a judge to the position of a public prosecutor (and vice versa).

[3] In *Latvia* even if it is not compulsory, the training is important if a judge wishes to get promoted.

[4] In *Lithuania* essentially the whole mechanism started to function more efficiently only from the year 2007, when the Centre of Education of the Ministry of Justice started to function. For now the tendency is that the training takes place only after the appointment in the new position.

[5] In *Portugal* there is a positive evaluation, by the inspecting services, if judges attended some training activities, which is important to have a better record and, therefore, to claim some places on the judges' hierarchy, and when there are contests for promotions to higher courts. The application for Administrative and Tax Courts demands a training period and the access to specialized or specific courts takes into consideration these training activities.

[6] In *Slovenia*, as stated above the training is not compulsory, although the specialist knowledge and additional professional work are factors for the promotion as well as for the selection of court presidents. The only provision regulating the compulsory training in various disciplines within six months after the appointment is in the Courts Act and it applies to directors of courts, who are not judges, but civil servants.

[7] In *Spain* the training is mandatory before taking the position, and conditioned to a positive evaluation.

[8] In *Sweden* the attendance of training is compulsory in practice, even if there are not legal disposition.

Table 15.10 Evaluation of Skills and Knowledge of Trainees

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.
Country	**AT**	**BE**	**CZ**	**DK**	**UK**	**FI**	**FR**	**DE**	**IE**	**IT**	**LV**	**LT**	**LU**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SI**	**ES**	**SW**	**TR**
	no	yes[1]					no			no[2]	no[3]	no[4]		no	no	no	No	no	no[5]	no	yes	yes	no

[1] In *Belgium* each course is evaluated by the Institute. Also, the judges or prosecutors appointed on the basis of the examination of professional aptitude or oral examination evaluation receive during the year that follows their appointment, a theoretical and practical training, whose content and duration are determined by the Judicial Training Institute.

[2] In *Italy* there is a strong opposition within the judiciary to the idea of associating professional evaluation with learning and more generally to the very idea of assessing the abilities demonstrated in the training sessions.

[3] In *Latvia* there is no evaluation in the form of an examination at the end of training programmes. The participants are asked to fill in an evaluation form for the training indicating their satisfaction with the contents, presentation skills of the lecturer, topicality and it is also possible to add their comment that usually provides the most valuable information regarding the training needs of judges.

[4] In *Lithuania*, for the judges, the whole logics of the process – first promotion/event, then – training makes the evaluation rather irrelevant. What is usually required is only the attendance/participation and notification of this fact. Although the main document regulating this sphere is called The Rules of the Organization of the Training of Judges and the *Evaluation* of their Acquired Knowledge, there is essentially nothing stated there about the evaluation of the acquired knowledge. For the prosecutors, what matters is only the attendance of the events/forms of the training of prosecutors, which are as follows: seminars, lectures, symposiums, conferences, working meetings, practical sessions, traineeships abroad, and self-organized training.

[5] In *Romania* there were some exceptions regarding some training of trainers' modules where the future trainers were evaluated and proposed to be selected as trainers of the Institute. The future trainers who participate in trainers' training programmes are evaluated – when holding seminars – by the Romanian and foreign experts providing the training. The evaluation criteria focus on: the legal contents of the presentation, structure of the presentation, examples used, images used, practical cases, manner of presentation, manner of chairing the group's discussions, good time/programme management, etc.

important to notice that the Belgium Institute of Judicial Training is represented within the European Judicial Training Network.

15.27.3 Denmark

Since 1 January 2008, it has become mandatory for lawyers and attorneys to review in-service training. The requirement is 54 hours of training over a period of three years. This corresponds to an average of three training days a year. If in one single year, a lawyer or an attorney covers a number of training days above this average, there is the possibility to transfer excess course hours to the following year.

15.27.4 France

The national in-service training programme includes:

- training courses which take place at the School or on the premises of a partner organization;
- internships in a host organization (in or outside the court system);
- specialized training to prepare university diplomas or master's degrees, designed by the School in collaboration with universities.

15.27.5 England and Wales

For *judges* there are lectures, workshops, seminars, study visits, internships, e-learning and audiovisual facilities; For s*olicitors and barristers* there are lectures, workshops, seminars, study visits, internships, e-learning and audiovisual facilities.

15.27.6 Ireland

For *judges* there is a mandatory requirement that candidates for judicial appointment agree to undertake any course of training or education as may be required by the Chief Justice or the President of the court to which the person is appointed. Such training or continuing legal education is not compulsory for those appointed prior to 1996.

For *barristers and solicitors*: As regarding the solicitors, the training programme is two years in duration and consists of two elements: an in-office training period and completion of a professional practice course (one being conditional on the other because applicants must secure a training contract before they can apply for a place on the professional practice course). The professional practice course is a full-time course run by the Law

Society and phased in two blocks over the 24-month period. Having passed the entry examination, aspiring barristers proceed to the vocational stage of training, consisting of a one-year full-time course (or two-year part-time) in the King's Inns leading to the degree of Barrister-at-Law. Before being allowed to practice on their own, barristers are required to do a pupilage (commonly called "devilling" or on-the-job training) with a suitably qualified barrister in an established practice for a period of twelve months.

15.27.7 Italy

The traditional, face to face, method is usually preferred for updating courses relative to new laws or for unusual topics. As regards other topics, and namely civil and penal procedures, the preferred types of training are workshops and seminars coordinated by an expert who defines the subjects to be discussed. In the opinion of our partners, with the new School for the Judiciary the methods might change in part.

15.27.8 Latvia

Judges: In-service training has many forms – seminars, conferences, workshops and e-learning. E-learning means access to Training Information System where judges choose the training courses and access course materials. The Training Centre offers audio-materials for those judges who did not make to the seminar – they can listen to the recorded lectures. It is planned to introduce "webinars" – web-based seminars.

Prosecutors: Mostly these are lectures, but workshops and internships (for the newly appointed prosecutors) also take place.

15.27.9 Lithuania

As for the in-service training, as conducted by the Centre (which is the main in-service training institution in Lithuania), as well as the initial training, the form of training here is called seminars, although usually they are some kind of the hybrid of the lectures and seminars; however, workshops (practical sessions) are not conducted at the end here.

15.27.10 The Netherlands

Judges: The professional training offers many different lectures and workshops, both on substantive law and practical skills. There is a slight focus on courses on how to examine witnesses, forensic evidence, and how to read and interpret expert reports. Most of these courses are given at the Study Centre for the Judiciary.

Prosecutors: There is no data on how the professional training looks like for a public prosecutor, except for the fact that most of these courses are given at the Study Centre for the Judiciary.

15.27.11 Norway

In-service training of judges is done through courses organized by the Courts Administration centrally, or by the individual court on a decentralized basis.

15.27.12 Poland

Judges: Usually there are workshops and court practice, no e-learning; sometimes there are study visits especially in foreign courts, and practice;

Prosecutors: Workshops and court and public prosecutors' offices practice.

15.27.13 Portugal

Mainly workshops and seminars, where attendants have a passive role (normally there is a period for discussion with the invited experts).

15.27.14 Romania

It is important to mention the fact that the training activities attended by each magistrate in time are kept in an electronic record system beginning with 2003.

NIM developed a *complex training system* that uses simultaneously classical training methods (seminars, conferences, train-the-trainers programmes etc.), alongside with modern non-conventional methods, which make it particularly efficient as it allows for sustainable results.

NIM has developed *two ECHR Jurisprudence Books* (the first issue was in 2002, the second in 2005); the Courts of Appeals distribute this volume free of charge to all Romanian magistrates, based on their agreements concluded with NIM in this respect. Another similar initiative is the development of a *CD* that includes a translation into Romanian of all current *cases lost by Romania at the ECHR*, the rules applicable to the operation of the ECHR, as well as the two textbooks, namely "ECHR – Civil Aspects" and "ECHR – Criminal

Aspects", developed by NIM within a Phare Programme. Another initiative to train magistrates on Community law is the development of a *Community Law Manual*, which has already been distributed free of charge to all the Romanian magistrates, together with the first 55 European Court of Justice preliminary rulings, translated into Romanian. The magistrates also have an opportunity to find on *NIM* website the teaching materials regarding the Community law and human rights which the Institute uses for its continuous training programmes.

In 2007, NIM set up *an online information desk* on Community law (a help-line) that had been in operation for up to two years and provided an online access to information. Making such a desk operational required development of a network of experts able to take up the questions raised by the interested parties, to create an e-mail address (comunitar@inm-lex.ro), as well as it was necessary to connect all these experts so as to enable them coordinate the collection of queries, the development of answers, and the sending of replies.

The National Institute of Magistracy is highly involved and interested in developing alternatives methodologies for training judges and prosecutors; therefore, the Institute, adapted and implemented the *open-source* platform Dokeos for eLearning since July 2008. Currently, the e-learning platform based on DOKEOS technology is available on NIM servers, ready to be uploaded with courses/modules on various topics, adapted to the e-learning format and requirements. Furthermore, in 2009, NIM developed the e-learning curriculum for long distance training of judges and prosecutors, as the future alternative to classical training, a more efficient and less-costly method of training judges and prosecutors throughout the country. The four e-learning modules created are mainly addressing the European law – EC Law and European Convention of Human Rights. The modules are in the pilot testing phase, based on the guidelines issued for this form of training – converting a traditional training curriculum into an eLearning training curriculum. For 2010, NIM developed, with the support of the Judicial School of Spain and the High Council of the Judiciary in Spain, three e-learning training modules in the following fields: anticorruption, fight against economic and financial crimes and seizure of goods.

Since December 2005, NIM was an observer in the European Judicial Training Network (EJTN) and that has allowed the Romanian magistrates to take part in training programmes, funded by the European Commission. As a result of the progresses from the last years and for the involvement of the NIM in the activities of the EJTN, the institute became, in June 2007, with unanimity of votes, the member with full right of the EJTN.

In the past years NIM has developed cooperation partnerships with the European Academy of Law from Trier, the European Institute for public Administration, the European

Court of Human Rights, the Court of Justice of the European Union, EUROJUST, and also, with other European schools of magistracy or institutions in charge of magistrates' training, such as: the French School of Magistracy, Spain, Italy, Belgium, Portugal, Austria, Germany, Macedonia, Ukraine or Albania.

All these international partnerships developed by NIM offer to the Romanian magistrates the possibility to participate annually at study visits and internships organized in other Member States.

15.27.15 Slovenia

Judges have the right to participate in forms of education, in conferences and in other meetings of legal experts. The judges' participation is ruled on by the president of the court, who must ensure that judges from specific legal fields are equally involved in the forms of education or conferences.

The Judicial Training Centre prepares so-called schools (for judges and for prosecutors) in specific legal fields annually. There are civil law, criminal law, commercial law, administrative law schools as well as enforcement law, land register law, court register law, etc. These schools include lectures as well as workshops with judges discussing specific legal issues and real problems. However, contrary to the initial training, these in-service training schools do offer lectures and topics from non-legal disciplines.

The Judicial Training Centre is also involved in the European Judicial Training Network (EJTN) that offers different types of study visits and an exchange project. Within the network several one-week study visits to the European Court of Human Rights in Strasbourg and the Joint Investigation Teams have been organized for judges and state prosecutors. The exchange programmes of the EJTN offer judges and state prosecutors the possibility to work at a court or prosecutor's office from another European country for a week. There are two international projects going on at the moment – one linguistic and deals with terminology, the other with criminal law. Within these projects judges go abroad and foreign judges come to Slovenia. Additionally, there are some international activities organized by specific international bodies – a group of Supreme Court judges recently visited New York upon invitation and dealt with the issues of refugee law.

15.27.16 Spain

The judges and prosecutors can participate in the following in-service training activities: lectures, workshops and seminars, study visits, e-learning and audiovisual conferences.

15.27.17 Sweden

Judges: There are plenty of courses which are always based on the practical needs of the employees. The education is based on the judges' active participation, which means that the traditional lectures and other form of teaching is given a back seat. Instead, the focus is on such teaching methods as seminars, workshops in large and small groups, mock trials and tutorials. Also pure role-playing and interactive theatre can be included as part of teaching. Even excursions are possible.

Prosecutors: Each prosecutor is entitled to continuous professional development within its area of operation so that he or she feels secure in the prosecutor's role and in their daily work. In further education includes a number of fixed courses of varying scope. They are essentially a continuation and deepening of undergraduate education.

15.27.18 Turkey

The in-service training is more technical and the training is offered in a more seminar like fashion.

15.28 General Characteristics of the Training Programme Delivery

Basically, in all the countries, the trainers are usually judges, former judges, prosecutors, advocates or legal academics. In the countries where there exist training institutions there is a core of trainers that are coordinating the elaboration of training programmes. Usually, trainers are parttime judges, prosecutors, advocates, academics and experts but some countries are fulltime-detached judges or prosecutors acting as trainers within the institution's staff. (See the responses of the Questionnaires on the Menu for Justice website: <https://www.academic-projects.eu/menuforjustice/intranet/WP2/default.aspx>.

15.29 Non-Juridical Disciplines in Judicial Training Programmes

A set of fourteen disciplines was chosen as denominators to see if they are part of the training programme proposed to the judges and prosecutors. The subjects listed are: comparative judicial systems, comparative law, European Law Proceedings, European Law and Proceedings, Political Sciences, Sociology, Anthropology, Psychology, Philosophy

and Ethics, Economics, History, Foreign languages, Communication, Computer Science (Information technology) and Management.

15.29.1 Belgium

In 2009, the *in-service training* covered the following topics: criminal responsibility of legal persons, interrogation techniques, fight against discrimination, in-service training for judges in commercial courts, exchange of professional experience between examining judges, exchange of professional experience between magistrates of the labour courts, exchange of professional experience between public prosecutors specialized in the use of special investigation methods, exchange of professional experience on specific problems of procedural law, exchange of professional experience on specific problems of family law, environmental law, tax law, management techniques, narcotics, the contacts with the press, the sects, the reforms of the court of assizes, court costs in criminal matters and mental patients.

In 2009, the *career guidance* covered the following topics: specialized training for future examining judges, specialized training for future juvenile court magistrates, specialized training for the magistrates of the penalty enforcement courts and basic training military techniques.

In terms of *international training*, the Institute organized also training on the following topics: fight against terrorism, fight against environmental crime, international family law, cooperation in criminal matters between Belgium and the Netherlands as well as a visit to the International Criminal Court and Eurojust.

15.29.2 Lithuania

For the year 2011, 25 programmes of the in-service training of judges were adopted by the Ministry of Justice and conducted by the Centre. All of them are divided into sections (which essentially are the lectures), from two to nine. The programmes usually are of purely legal nature (as: The Peculiarities of the Protections of Persons Intangible Rights according to the Lithuanian Law and the Practice of the ECHR; The Peculiarities of the Case Hearing Procedures for the Administrative Violations in District and Regional Court; Criminal Procedure; Criminal Law; Imposition of Penalties; Civil Procedure; Civil Law; Labour Law; Constitutional Law; Family and Inheritance Law; Contract Law; Media Law; etc.), but some are of interdisciplinary, international or rather peculiar in nature (as: Programme for Strengthening of General Skills (where the lecture "Courts and Politics"

Table 15.11 Non-Juridical Disciplines in Judicial Training Programmes

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.
Country	**AT**	**BE**	**CZ**	**DK**	**UK**	**FI**	**FR**	**DE**	**IE**	**IT**	**LV**	**LT**	**LU**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SI**	**ES**	**SW**	**TR**
Comparative Judicial Systems	X						X			X	X								X	X	X		
Comparative Law							X			X	X						X		X	X	X		
European Law and Proceedings	X	X					X			X	X	X-j			X		X		X	X	X	X-j	
Political Sciences										X		X-j									X		
Sociology	X						X			X											X		
Anthropology										X											X		
Psychology	X	X					X			X	X	X-j					X			X	X	X	
Philosophy and Ethics	X						X				X	X-j			X				X	X	X	X-j	
Economics	X									X	X	X-j								X	X	X-j	
History	X						X																
Foreign Languages	X						X			X	X-j						X		X	X	X		
Communication	X	X			X		X			X	X-j	X – j			X		X		X	X	X	X	
Information technology	X				X		X			X	X-j						X		X	X	X	X-p	
Management	X	X					X			X	X								X	X	X-j	X-p	

or the lecture called "How to Pack Yourself for the Success" are provided); Issues of Contemporary Economics; the EU Law; the EU Civil Procedure; the Communication of the Judge; Application of Psychology in the Judge's Work).

15.29.3 The Netherlands

For judges it is also possible in the third part to attend courses outside their field, *e.g.* forensic psychology. Management skills are excluded for judges. They do have to take those courses, but do not fall under the third part of the in-service training programme.

15.29.4 Portugal

It is not possible to fill correctly this chart because the in-service training, whether we talk about judges, Public Prosecutors or advocates, is elaborated every year taking into consideration the recent changes of laws, in several domains, the emergent necessities or other factors. Therefore, the themes/topics always change and they are never the same. All the possibilities introduced in this chart can be filled, for instance, if we consider the last the years.

15.29.5 Romania

The NIM continuous training curriculum includes:

- International Cooperation in Civil and Criminal Matters,
- Human Rights, the Jurisprudence of the European Court of Human Rights,
- Unification of Romanian jurisprudence in civil, commercial and penal matters,
- Training focused on the specialization of judges and prosecutors (financial and administrative law, banking law, intellectual property law, competition law, justice for minors, anticorruption and economic and financial crime, money laundering, organized crime, cyber crime, labour law, traffic of human beings, criminology etc.),
- Developing non-juridical skills specific to the profession of the magistrate (combating discrimination, public policies in courts and relationship with the media).

As an element of novelty in 2009, *issues of the human rights law and community law were included in the seminar's agenda devoted to specialized training of magistrates.* So far, this was achieved only in a sporadic manner, depending on the approach envisaged by the trainers of these seminars. Thus, the agendas of seminars of competition law, labour law,

environmental law, commercial law, administrative law and financial and taxation law, combating discrimination have provided also topics of community law. Also, the agenda of the seminars of labour law, environmental law, administrative law and financial and tax law and justice for minors, criminal law and criminal procedural law, civil law and combating discrimination and relationship with the media relevant topics of the ECHR were included.

15.29.6 Slovenia

The Courts Act regulates mandatory training only for presidents of courts and court directors that are civil servants (while only the secretary general of the Supreme Court must be a judge). Within this mandatory training provided by the Judicial Training Centre various skills are taught, including management, human resources management, knowledge management, use of information, budgetary issues and communication skills. Failure to attend these courses in a limited period of time results in dismissal from the position of president or director.

Due to financial restraints the foreign language schools have been temporarily omitted this year. In the previous years the Judicial Training Centre signed a contract with different external providers (as for example national institutes of foreign countries within Slovenia) that then organized courses for judges and prosecutors free of charge for the participants.

15.29.7 Sweden

The subjects marked above are usually taught in connection with the legal matters only. For instance, there is psychology in the course of family law and accounting in the course of white-collar crimes.

15.30 Proportion of Non-Legal Disciplines and Topics in In-Service Judicial Training Programme

Austria: About 35 to 40% non-legal disciplines for judges and prosecutors.

Belgium: Less than 10% for judges and prosecutors.

France: The non-legal disciplines and topics represent over 35% of the total seminars and trainings organized by the Institute.

UK: Unquantifiable – it varies per judge.

Italy: The percentage of non-legal disciplines and topics is about 20%

Latvia: Judges: About 70% is legal and 30% is left for non-legal programmes. *Prosecutors*: about 90% of the content is legal and 10% non-legal content.

Lithuania: There are no purely non-legal disciplines and topics included in the training curriculum for judges. They are either purely legal or clearly interdisciplinary. There is not only one programme, but 25 programmes (for the year 2011) adopted and conducted by the Centre. From all those programmes only one (*i.e.* Issues of the Contemporary Economics) could be considered as purely non-legal programme.

The Netherlands: Around 10%. It is partly up to the discretion of the individual judge or prosecutor and his supervisor whether courses in other fields are taken.

Poland: For judges maximum 10% and for prosecutors maximum 20%.

Romania: About 22% non-legal disciplines for judges and prosecutors.

Slovenia: For judges maximum 10% and for prosecutors maximum 5%.

Sweden: For judges maximum 15% (there is some ethics concerning the role of the judge and medical terms, accounting and communicative skills and so on linked with the legal matters mostly) and for prosecutors (all the subjects are taught from the legal point of view only. The deep specializing is characteristic, not the general knowledge or civilization).

Turkey: Given the technicality of on-the-job trainings which are designed for professionals, only 10% of what is taught is non-legal.

16 Judicial Administration – Comparison of Case Summaries and Comments With a View to an Inventory of Possible Judicial Training Needs in Europe

*Philip Langbroek & Quirine Sluijs**

16.1 Introduction

The Menu for Justice for justice project has been developed to find out what the common denominator for legal and judicial training is in Europe. Law and judicial administration in Europe have become very dynamic fields. Change is everywhere in European societies, stimulated by technological developments, increased transnational travel and trade, to such extends that national law and national courts cannot be considered only national courts, but function also as courts of wider than only national societies. Within the European Union this often means that national courts function as EU courts when matters concerning the national implementation of EU law is at stake. But also from a wider perspective, it would be a denial of transnationalization to consider it otherwise. This, of course, does not challenge the fact that courts' jurisdictions are defined by national law and, possibly, in part, by international treaties. The societal changes and technological innovations are also affecting the courts in their national jurisdictions. Therefore, it seemed useful to us to try to make an inventory and comparison of how law school teachers and researchers evaluate the current ways of handling and deciding cases of different legal fields by national courts. This should generate some basis and inspiration for suggestions on what knowledge and skills law schools and judicial traning institutes should focus on to enhance the level of legal education and training.

Below we first describe our method and perspectives. We give the cases as presented by Menu for Justice partners and we end this chapter by formulating some recommendations for legal and judicial training.

* Editors and reporters.

16.2 Methods and Perspective

We asked Menu for Justice partners to send us summaries from cases that were dealt with well or bad by the courts, together with their explanations. We have received reports from ten countries.[1] This of course restricts the reliability and validity of the comparative analysis below considerably. There are quite some restrictions on the conclusions we can draw from the analysis of the cases delivered to us.

First of all, during project meetings it showed that there is a great difference in perspective from people working in practice, like Giacomo Umberto and Rosa Jansen, and the academic awareness of actual problems in justice administration. Mr. Umberto showed that deficiencies in legal academic education in Italy does exist – and what his court in Turino is trying to do about it. Mrs. Jansen from the Dutch Judicial Training Institute, gave a strategic outlook, pretty much as Mrs. Edith van den Broeck from the Belgian Judicial Training Institute. Instead of stressing the differences in perspective, we do think we should try to integrate practitioners' needs and the perceptions of academics. It showed that legal academics in general know not very much about the needs of the judiciary.

Next to that, in a constitutional state, there also are the administration and the legislative and office holders as institutional players. Like the press and other media, they are also supposed to play their roles in the constitutional state. When there are lacunae in the functioning of the courts, it is not self-evident that the courts are the only ones to react to such a finding. It usually are not (only) the judges that need to be trained, but (also) the other institutional players in the constitutional democracy. This clearly shows from the examples from Belgium and Hungary. On another note, European law is not necessarily a judicial deficiency, if not all judges contribute to its development. But it may only *appear* to be a judicial deficiency, if it is a specialization and the focus is only on that subject and it appears not all judges have good knowledge of European law. European law is a subject that, within EU member states, can be expected to be a part of the law school curriculum: every lawyer should have some basic knowledge about it. So, if there are deficiencies in legal knowledge, repairs should begin in law schools, and judicial training institutes can also be expected to support judges to deal with the problem by offering extra training courses.

Constitutionally, courts and judges are the weakest state branch. Courts depend largely on other state actors for their functioning, for example parliament has to vote for the budget. Nonetheless, training may be necessary in a country. From our Menu for Justice perspective

1 Belgium, Finland, Germany, Hungary, Italy, Latvia, Lithuania, The Netherlands, Romania, Slovenia and Sweden.

we focus on common denominators for legal and judicial training in Europe. For the restricted amount of information we present here, however, it is impossible and it would be unwise to posit the outcomes presented below as outcomes for Europe in its entirety.

16.3 Summaries of Country Inputs by Responding MfJ Partners.

16.3.1 Belgium, by Ramona Coman[2]

16.3.1.1 Case 1: "Fortisgate"[3]

In 2008, in the context of the global financial crisis, the board of directors of the most important bank in Belgium decided to close a deal with BNP Parisbas (in order to save the bank from bankruptcy). Fortis was nationalized and sold (for 75%) by the state-run company (*Société férérale de participantions et investissement*) to BNP Parisbas (in October 2009). A number of stakeholders were unhappy about the conditions under which their bank had been sold to BNP. They argued that their rights had been violated as they had not been consulted by the board of directors before the transaction. For this reason they filed an application before the *Brussels Commercial Tribunal*. Their criticism was that the government had sold off the bank for a low price.[4] The *Court of Appeal* in Brussels, was asked to rule on the legality of the sale by Fortis shareholders.

In November 2008, the Brussels Commercial Tribunal decides that the stakeholders *were not to be consulted* before the Fortis Bank was sold to the BNP. In December 2008: the Court of Appeal in Brussels decided that the stakeholders should have been consulted before the Fortis Bank was sold, and as a consequence, the sale of the state-run bank was frozen.

The Belgian Prime Minister, Yves Leterme was accused of trying to influence a judge in the Fortis case, which he denied. The president of the Court of Cassation addressed a letter to the speaker of the federal Parliament (Herman van Rompuy) in which he stated that the executive had attempted to influence the judiciary. The Prime Minister had to resign. In January 2009, the highest member of the Public Prosecution, addressed a letter to the first president of the Court of Cassation in which he stated that the Court has violated the Article 6 of the European Convention of Human Rights (by sending the letter to the president of the federal Parliament, Van Rompuy). In March 2009: the Parliamentary investigation

2 Dr. Ramona Coman, Professeur, Directrice adjointe de Centre de la vie Politique, Département de science politique, Unversité Libre de Bruxelles.

3 This part draws on data from three newspapers *La libre Belgique, le Soir, Flanders Today.* Period covered: 2008–2011. We also used the materials published on the website <http://fortisgate.wordpress.com/>.

4 See "Fortisgate four appear in court", *Flanders today,* 2 March 2011; "Judge found guilty in Fortis gate", *Flanders today*, 20 September 2011; Hof van Beroep te Gent, eerste kamer, 14 September 2011, nr. 129/23/2010.

committee started hearing sessions about a possible violation of the principle of separation of powers.

What had happened was that a judge from Brussels Court of Appeal (Mrs. Schurmans), had informed the head of the Judicial Hierachy of the unexpected and sudden change of mind of her colleagues, who wanted to rule that the shareholders of Fortis should have been consulted first. She also sent a confidential letter to the Procurator General in Brussels (November 2009) accusing her colleagues of letting themselves be unduly influenced by third parties. But she had sent the concept of the judgment for advice to a befriended magistrate of honour, and also had sent of her colleagues of the three-judge panel to her husbands' office to be printed. It seemed that the content of the concept judgment became known amongst politicians and the advocates of the parties after that.

In December 2009, the Public Prosecutor recommended that the Fortis judgment be annulled. In January 2010, the judges sitting in the Fortis case went on trial (Ghent court), being accused of infringement of the professional confidentiality (they are accused of having discussed the case with outside parties) and forgery (in having presented the ruling without the third judge, who had taken sick leave). The judge (Mrs. Schurmans) had consulted a colleague not being part of the panel that had to decide in the Fortis case. For this consultation she was prosecuted and eventually convicted (and also for sending e-mails of her colleagues to the office of her husband to be printed). The other judges were acquitted.

Mrs. Schurmans said in public about the ruling of the Gent court: "I don't understand the decision of the court at all. I'm been found guilty according to an *extremely technical and academic approach* because I asked for advice from a colleague. That is a common practice among judges, who, like doctors, have to be able to consult among themselves."

This ruling of the Ghent court was upheld by the Court of Cassation in a judgment of 12 March 2012.[5]

Comments

From an outsider perspective, it is hard to believe that the judges of Brussels Appeal court were not unduly influenced. What has been proven is that a judge violated secrecy of chambers, and she was convicted for that. The context where this happened is a highly complex one, showing interrelatedness between the judicial and the political domains in the state. The way the Fortis case was handled is an example of that.

5 Hof van Cassatie van België 13 March 2012 P.11.1750.N/1.

What is called the "hierarchy" is really hard on the members of the judicial profession. As a consequence the Belgian judiciary is not able to learn or to engage in interaction with society. Fear, not professional trust seems the basis of their internal organization, but it also shows the interrelatedness of the juridical and poitical elites. The Belgian judiciary is blocking internal exchanges and open interaction with society. Restricted internal transparency and restricted (organizational) interaction between courts and society are not demanded by Article 6 ECHR. On the contrary, restrictions as applied in Belgium create circumstances where individual judges can be unduly influnced by third parties without anybody seeing or noticing. If a judge or court clerck would mention this to *e.g.* a public prosecutor or to the president of the Court of Cassation, they risk to be removed from office. There are clear organizational and ethical issues at stake here.

16.3.1.2 Case 2: The Relationship Between the Council of State and the Minister of Justice

The Council of State is the country's highest administrative court with the function to scrutinize legislation for compatibility with the constitution and other legal order texts. In May 2011, the court struck down the decisions (space planning) to enable a project to build a new tramline in Antwerp (even although the work was completed for 60% already). The case against the tramline was brought by a resident of a house situated along the route, who claimed that the environmental impact of the new tram had not been sufficiently investigated before the work began.

Politicians reacted furiously against those decisions: The Flemish Minister for Mobility said: "the decision of the court is Kafkaesque", and the Minister of Justice accused the Council of a "stunning lack of common sense". He proposes a change to the law to allow elected government to overrule the Council of State in cases where major public interests supersedes individual interests – for example in building crematoria and prisons. Furthermore, a reform of the State Council is proposed: "[T]he Council should give more weight to the public interest than to the objections of a single citizen."[6]

Comments

There are separation of powers issues in Belgium. One cannot say here that the administrative judges made a mistake. It is peculiar that building construction started while the legal decisions could still be charged in court. It would of course, be interesting to know, how the judges reacted on the overt political pressure.

6 Flanders Today, "Confusing rulings prompt changes", 28 June 2011.

16.3.1.3 Case 3: Senior Judges Accused of Corruption

In 2009, the head of Brussels judicial police informed the Minister of Justice of the existence of corruption charges against several high-level judges (including the president of the Commercial Court, Francine De Tandt). She was accused of "delivering verdicts on demand" and "of accepting bribes to support cases". De Tandt "would have allowed a lawyer to write her verdicts", and she was accused of "not keeping enough distance to lawyers". She was suspended from office. An interesting detail is that Francine DeTandt was also a part of the judge panel deciding in first instance in the Fortis case.

The Minister of Justice had ordered an enquiry to determine whether De Tandt had done anything wrong: he stated that "it is unacceptable that judges should be suspected of corruption". The highest officials at the public prosecutors' office in Brussels refused several times to start an investigation on De Tandt, although he received plenty of information about the judge. In the criminal case against her and an expert at the court with whom she had a debt of € 500.000, she is accused of forgery and also of violating the confidentiality of chambers in the first instance Fortis case, where she had consulted a colleague.

Comments

It would be most interesting to know the motives of the public prosecutor not to prosecute Mrs. De Tandt. This case confirms the need to develop judicial ethics and an open working culture in the Belgian judiciary.

16.3.1.4 Case 4: Prisoners Escape in Belgium[7] and Court Killing[8]

In 2010 a man shot a justice of the peace in the court room. The man wanted revenge after the judge ruled against him in a case in 2007. The incident happened in the courtroom of the fourth canton of the Brussels small claims court.

The small claims court in Brussels is competent to settle disputes in a wide range of matters, including rental disputes, consumer matters, custody, and child support. The responsibility of a small claim court is to reach a negotiated settlement between parties, "to be the human face of justice". For this reason, the small claim courts are not guarded in the same way as the assizes courts and correctional courts. So there are no police checks and no metal detector scans.

7 Home "Top gangsters" make helicopter jailbreak", *Flanders today,* 28 July 2009; "De Clerck called to account. Parliamentary justice committee returns for emergency session", *Flanders today*, 28 July 2009; "Home Escaped convicts apprehended. Three break out – only one returns", *Flanders today,* 11 August 2009.

8 "Man shoots justice of peace and clerk in Brussels Court killings were revenge for an eviction three years ago", *Flanders today,* 9 June 2010.

Similar cases are, a spectacular helicopter jailbreak by three men from Bruges prison in 2010, and some successful escapes in the Justice Palace in Brussels, where armed men freed three prisoners awaiting trial.

Comments
Security is an issue in Belgian courts. Technical and organizational measures can be taken to combine safety for the judges with a good accessibility of the courts for citizens.

16.3.1.5 Case 5: Procedural Errors and not Enough Police Investigation[9]
In 2009, ten persons involved in four major cases of organized crime (including drugs and human trafficking) were released from prison after an appeal court found that there had been serious procedural errors in their prosecution. The procedural errors concerns the "special investigation method" (undercover work and infiltration) which under Belgian law is strictly regulated. The law requires that the method has to be approved by a magistrate from the prosecutorial office. In this case, no magistrate had consented in applying this special criminal investigation method.

Comments
Organize logistics properly when conducting such important investigations. Cooperation between public prosecutions office, police and the courts. This skill can be learned, it is called justice management.

16.3.2 Finland, by Markku Kiikeri[10]

16.3.2.1 Case I: Fertility Treatment of Women
In Finland, the constitutional committee can check draft legislation on compatibility with the Finish constitution. When this has occurred and the outcome is positive, Finnish judges have the inclination to take the constitutionality of this legislation and of possible restrictions of citizens' rights for granted. Courts hesitate to scrutinize those issues from the point of view of constitutional rights.

Women couples cannot get fertility treatment in Finland because the fertility treatment it is legally related to the recognition of the child by a man (husband or a man outside

9 "Prisoners go free because of procedural error – Drug dealers released on a technicality", *Flanders Today*, 14 January 2009.
10 Dr. Markku Kiikeri, Senior Lecturer European Law, Faculty of Law, University of Lapland, Rovaniemi, Finland.

marriage). The Constitutional Committee in the legislative procedure maintains that the law is constitutional simply because the societal value-evaluations are within the powers of the legislator and it may estimate, whether the right to the treatment may be given to women couples or not. Furthermore, it maintained that the law regulating fertility treatment will be a normal law, not requiring the legislative process related to constitutional changes.

16.3.2.2 Case II: Saami Reindeer Stock Breeding

The livelihood and cultural identity of four Saami reindeer herders from the Nellim area in the north eastern-most part of Finnish Lapland is threatened by a decision by the Ivalo reindeer co-operative that essentially the entire herd of the Nellim group should be forcefully slaughtered.

The Finnish Supreme Administrative Court has upheld the decision as legal under the Finnish Reindeer Herding Act. The Ivalo reindeer co-operative has announced that it will enforce its decision.

The situation in Nellim is a direct result of the fact that Finland, unlike Norway and Sweden, is not protecting reindeer stock breeding as a distinct livelihood of the Saami, says the Finnish Saami Council in a press-release.

The Saami Council says the Finnish Reindeer Herding Act fails to distinguish between reindeer farming, common to Finnish reindeer owners, and traditional Saami reindeer husbandry. Reindeer farms can slaughter more reindeer compared to Saami traditional reindeer herding, as farmers keep their reindeer fenced, *e.g.* resulting in less losses to predators. The Ivalo reindeer co-operative has decided how many reindeer each reindeer owner should slaughter each year based on what is common in Finnish reindeer farming. For the Nellim group, pursuing traditional Saami reindeer herding, it has, however, been impossible to slaughter the amount of reindeer decided by the farmers, as doing so would eliminate their herds. Now, the Ivalo reindeer co-operative has decided that the Nellim Group has over the years build up a "slaughter debt" entailing that essentially their entire herd should be forcefully slaughtered, according to the press release from the Saami Council.

The decision by the Ivalo reindeer cooperative is clearly absurd with devastating consequences for the Nellim Saami reindeer herders, yet somehow possible under Finnish law, says Mattias Åhrén, Head of the Saami Council´s Human Rights Unit. He says the Saami reindeer herders in Nellim are punished for pursuing reindeer herding in a traditional Saami manner. That this is possible under the Finnish Reindeer Herding Act underscores that the Act is racially discriminatory, Åhrén claims. If the forced slaughter is carried out,

this would constitute a brutal violation of the human rights of the Saami reindeer herders in the Nellim area, Åhrén continues.

The Saami Council called on the Finnish government to immediately take action to prevent the forceful slaughter. They requested that the UN Human Rights Committee and the UN Special Rapporteur on the Rights of Indigenous Peoples intervene in the matter, and will also bring this affair up when Finland appears before the UN Human Rights Council's Universal Periodic Review.

As mentioned, the absurd situation in Nellim is possible because of Finland not protecting reindeer stock breeding as a distinct Saami livelihood. The *Nellim* case illustrates the need for Finland to immediately reform the Reindeer Herding Act to make reindeer husbandry a sole right of the Saami, Mattias Åhrén concludes.

The UN Human Rights Committee criticizes Finland over the Saami Issue. It addressed the state of Finland with a request to prevent the forced slaughtering of the reindeer belonging to the herders in Nellim, on the shores of Lake Inari in the far north. Without the intervention of the world organization, the forced slaughters would possibly have taken place this week.

The United Nations Human Rights Committee has called on Finland to take rapid action to resolve disputes over land rights of the indigenous Saami, or Lapp population, and to maintain the cultural identity of the Saami population. The committee called on Finland to report within a year on measures that it has taken to rectify the problems.

The Saami Parliament in Finland feels that the views taken by the human rights committee confirm the statement of the Constitutional Committee of the Finnish Parliament, according to which those with a stake in historical villages in Finnish Lapland have a right to their reindeer-grazing land, hunting grounds and fishing waters. The committee also questioned the present land ownership rights of the state.

According to the Saami Parliament, the view of the UN Human Rights Committee clarifies the point that the land rights issue is a matter specifically for the Sámi people and the Finnish state, and that the solution specifically applies to the Saami right to land. The committee deplores what it sees as violations by Finland of the right to a fair trial. When reindeer herders appealed on behalf of their grazing land, the court ordered them to pay the court costs of the Finnish Forest Administration.

The committee notes that the Saami are Finland's indigenous people entitled to autonomy and the right to freely use their natural resources and language in all circumstances. It also

notes that Finland has failed to resolve the land rights issue, which affects the traditional Saami livelihoods, endangering their culture and identity as a nation.

Comments

Apparently, Finnish judges feel they are strictly bound to legislation, also in situations where discussion is possible about the constitutionality of legislation or with the infringements on human rights. The examples given seem to be politically highly sensitive issues. A question to be answered therefore is how judges best can deal with cases in subjects with a high degree of political interest.

16.3.3 Germany, by Fabian Wittreck[11]

16.3.3.1 Case 1: Prayers on School Premises[12]

The claimant is a Muslim student visiting a grammar school in Berlin. In November 2007, he and two of his schoolmates prayed according to Islamic ritual in the corridor of the school building. The following day the head teacher stated that saying one's prayers on the school grounds will not be tolerated. The same day a letter repeating the prohibition of demonstrating religious beliefs in school was sent to the student's parents.

The Administrative Court (court of first instance) found that the claimant is allowed to pray according to Islamic ritual in school outside teaching time. Upon appeal filed by the state of Berlin the claim was dismissed by the Higher Administrative Court. The appeal filed thereupon by the claimant has been dismissed by the Federal Administrative Court of Germany.

However, the Federal Administrative Court did not decide that praying in school is generally forbidden. By contrast, the court found that generally a student is allowed to pray in school outside teaching time on grounds of his freedom of belief, if classified as a rule of faith by his religion. The negative dimension of his schoolmates' and the teachers' freedom of belief imposes neither an obligation nor an allowance onto the school governance to spare students and teachers the contact with religious symbols and demonstrations alien to them. In addition the principle of strict neutrality of the state (*Neutralitätsgebot des Staates*) does not demand public schools to be spared from any religious symbol or act. By contrast, state schools shall admit ideological and religious utterances having regard to changes in society without imposing any one-sided judgment – however framed.

11 Prof. Dr. Fabian Wittreck, Professor of Public Law, Westfälische Wilhelms-Universität, Münster, Germany.

12 Federal Administrative Court of Germany – Decision, 30. November 2011 – 6 C 20.10, See <www.bverwg.de/pdf/2809.pdf>.

Tolerating the claimant's prayers in school does neither stand for a one-sided preference of the Islamic faith nor does it demonstrate the influence of others in terms of the Islamic faith which could constitute a breach with the principle of neutrality of the state.

However, in this particular case the Federal Administrative Court decided that praying in the school corridor is capable of increasing the imminent threat to the concept of a school as an area free of conflicts (*Schulfrieden*). This concept aims at a status free of conflicts and rather characterized by conflict settlement that allows lessons to take place properly corresponding to the state's task of educating. If a student's behavior motivated on religious grounds causes or intensifies religious conflicts in school, the status of a school as an area free of conflicts may be impaired. As the Higher Administrative Court found, at the school in question there have been severe conflicts between Muslim students as to the compliance with rules rising from a particular interpretation of the Koran. Furthermore, according to the findings of the Higher Administrative Court at this particular school, it was likely that existing conflicts will be intensified by such religious motivated behavior whereas educational measures would not suffice to counteract those conflicts and preserve the status of a school as a conflict-free area. According to the findings, the preparation of a specific room for prayers would go beyond the facilities of the school in question.

Comments

This case constitutes a rather positive example of an act of the judiciary. The Federal Administrative Court takes the different positions of the stakeholders into account when stating that in general a student has a right to pray on public school grounds during school time, if that is a binding rule of his religion. By finding that the concept of state neutrality does not oblige public authority to ban any religious symbols or acts from school grounds due to the task of public schools to convey ideological and religious matters without judgement, the concept of tolerance in school is promoted. Furthermore, this decision allows for margins as to a different outcome resulting in a prohibition of praying in school based on the circumstances of the individual case. Thus, the result is a question of the balancing of interests on a case-by-case basis.

This judgment takes into account the different interests at question when finding for the general allowance of payers:

- Religious acts are an important part of the right of belief; a decisive factor is the finding as a rule of the religion in question.
- The negative side of the freedom of belief does not include to be spared from any religious demonstration in public schools.
- The state's task of educating is taken into account.

At the same time, the judgment allows a different finding, if the concept of school as an area free of conflicts is impaired. By putting an emphasis on this concept, the judgment considers that interests may be valuated differently depending on the facts in question.

This way of assessing the interests at stake by way of differentiation between the level of abstract valuation and the level of valuating the interests in a particular case must be part of judicial training. Students are assessed in this skill from the beginning of their law studies.

16.3.3.2 Case 2: Case Görgülü[13] *– Decision of the Higher Regional Court Naumburg Resulting in the Accusation of Perversion of Justice*[14]

Over several years, three judges at the Higher Regional Court Naumburg disregarded not only a decision of the European Court of Human Rights but also several rulings of the German Federal Constitutional Court.

K. Görgülü is the father of an illegitimate child born in August 1999. Directly after the child was born, the mother gave the child for adoption. Since then the child lived with a foster family wishing to adopt the child. Since October 1999 K. Görgülü files cases for child custody or at least visitation rights in several lawsuits. The Family Court of Wittenberg instigated visiting rights and granted child custody respectively. However, in 2001 the Higher Regional Court Naumburg (14th *Zivilsenat* of the court) dismissed the claim for child custody and denied visiting rights until 30 June 2002. The constitutional complaint to the Federal Constitutional Court was rejected for consideration (*nicht zur Entscheidung angenommen*).

In 2004 the European Court of Human Rights (ECHR) dealt with an individual application according to Article 34 of the European Convention of Human Rights (ECHR). The court ruled in favour of Mr. Görgülü and decided that there was a breach of Article 8 of the Convention. This provision imposes on every State the obligation to aim at reuniting a natural parent with his or her child. It was declared that the possibilities of reunification

---

13 Sources: Federal Constitutional Court (BVerfG), decision of 14 October 2004 – 2 BvR 1481/04, *NJW* 2004, p. 3407 (available at: <www.bverfg.de/entscheidungen/rs20041014_2bvr148104.html>).
Federal Constitutional Court (BVerfG), decision of 28 December 2004 – 1 BvR 2790/04, *NJW* 2005, p. 1105 (available at: <www.bverfg.de/entscheidungen/rk20041228_1bvr279004.html>).
Federal Constitutional Court (BVerfG), decision of 5 April 2005 – 1 BvR 1664/04, *NJW* 2005, p. 1765 (available at: <www.bverfg.de/entscheidungen/rk20050405_1bvr166404.html>).
Federal Constitutional Court (BVerfG), decision of 10 June 2005 – 1 BvR 2790/04, *NJW* 2005, p. 2685 (available at: <www.bverfg.de/entscheidungen/rk20050610_1bvr279004.html>).
Higher Regional Court Naumburg (OLG Naumburg), decision of 6 October 2008 – 1 Ws 504/07, *NJW* 2008, p. 3585 (available at: <http://rsw.beck.de/rsw/upload/NJW/KW_44-2008.pdf>).

14 Higher Regional Court Naumburg (OLG Naumburg): decision of 6 October 2008 – 1 Ws 504/07.

will be progressively diminished and eventually destroyed if the biological father and the child are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur.[15]

Thereupon, child custody was (again) conferred onto the father by the Family Court and he was granted visiting rights by interim measure. However, the interim measure was revoked by the Higher Regional Court Naumburg. The reasons brought forward included the following: According to the court the decision of the ECHR did neither constitute a change of national law nor did it have the effect of a change of the case law of the highest courts. According to the court there is not even an indirect binding effect.

Dealing with a constitutional complaint against this decision, the Federal Constitutional Court defined the obligation of state authority to take into account the provisions of the ECHR as interpreted by the ECHR. The Convention and the case law of the ECHR are binding in this respect not only on the Federal Republic of Germany as a subject of public international law, but on all state organs of Germany. The Constitutional Court then found that the decision of the Higher Regional Court had not fulfilled this obligation. The judgment of the ECHR had not been considered sufficiently. The case was transferred to a different *Zivilsenat* of the Higher Regional Court of Naumburg.[16] After indicating that the appeal against the Family Court's interim measure is inadmissible (according to the German Civil Procedure Code, an appeal against an interim decision about visiting rights is inadmissible), the appeal was abandoned.

In 2004 the Family Court again granted Görgülü visiting rights by interim decision. Upon appeal by the youth welfare office and the foster parents the Higher Regional Court (again the 14th *Zivilsenat*) ordered a stay of execution of the Family Court's decision dating 8 December 2004. After the filing of a constitutional complaint and a petition for interim measures by Görgülü, the Higher Regional Court annulled its decision. In amendment of the Family Court's interim measure, visiting rights were denied until the decision in the principal proceedings. Görgülü also filed a constitutional complaint against this decision of the Higher Regional Court. The Federal Constitutional Court stated in its interim decision that the Higher Regional Court again disregarded the findings of the Constitutional Court as to the binding effect of the judgments of the ECHR. There was not in any way a consideration of the possibilities to reach family reunion as demanded by the ECHR, if any contact whatsoever is denied.[17] In its later decision the Federal Constitutional Court

15 ECtHR, Application no. 74969/01, paras 45, 46 – *Görgülü/Germany*.
16 BVerfG, decision of 14 October 2004, 2 BvR 1481/04, *NJW* 2004, p. 3407.
17 BVerfG, decision of 28 December 2004, *NJW* 2005, p. 1105.

found that the Higher Regional Court's decision is arbitrary and does constitute a breach of the constitution. Furthermore it found that the Higher Regional Court not only disregarded the judgment of ECHR. The Higher Regional Court had done the opposite of its obligation to consider the judgments of the ECHR. The Higher Regional Court had not promoted the realization of visiting rights – as demanded in the decision of the ECHR – and had rather prevented visiting rights that had been granted according to the findings of the ECtHR. Thus, the court had abolished a status compatible with the ECHR even without having any jurisdiction in the matter. This had been decided to be in breach of the constitution.[18]

The Public Prosecutors General Naumburg brought a charge of perversion of justice against three judges of the Higher Regional Court Naumburg. The Regional Court Halle (*Landgericht* Halle) refused the opening of the main proceedings in 2007. The Public Prosecutors General Naumburg filed an appeal. However, this appeal was dismissed. Due to the requirements of a conviction of a judge on grounds of perversion of justice because of a decision of a Court composed of several judges, the Higher Regional Court found that conviction is not to be expected. Such conviction requires the finding that the judge – being a member of such court – has voted for the decision containing perversions of justice which he recognized to be unlawful. According to § 196 para. 1 of the Courts Constitution Act (*Gerichtsverfassungsgesetz* – GVG), the court shall give its decisions by an absolute majority vote unless otherwise provided by statute. According to the Higher Regional Court, a judge who is overruled does not render himself liable to prosecution by participating in the proceedings. Thus, according to the findings of the court, evidence is required that every member of such court has voted for the decision. However, this could not be proven in this case. The judges in question made use of their right to silence and referred to the confidentiality of deliberations as laid down in § 43 of the German Judiciary Act (*Deutsches Richtergesetz* – DRiG). The questioning of other judges as witnesses, which was justified as an exemption to the confidentiality of deliberation could bring no further knowledge.

Critical publications regard this case as a shameful example of boycott of justice.[19] The principle of legal certainty, which is a significant part of the rule of law (*Rechtsstaat*), has been challenged by this unbelievable case. The aim of justice to constitute a state of legal justice and peace (*Rechtsfrieden*) cannot be achieved if lower instances obviously disregard decisions of higher courts again and again. The decision of the Higher Regional

18 Violation of the commitment to statute and law ["Bindung an Recht und Gesetz"] as formulated in Art. 20 para. 3 of the German Basic Law; BVerfG, decision of 10 June 2005, *NJW* 2005, p. 2685.

19 *E.g.*, R. Lamprecht, "Wenn der Rechtsstaat seine Unschuld verliert", *NJW* 2007, pp. 2744 *et seq*.

Court dealing with the charge of perversion of justice has also been subject to (severe) criticism.[20]

This case constitutes an unprecedented example of a bad judiciary. Judges not only disregarded binding procedural law but also disregarded decisions of the ECHR and the German Constitutional Court, although being upbraided by the Constitutional Court several times.

The decisions of the Higher Regional Court in the *Görgülü* case reveal a deficiency in judicial skills. Law studies deal with the elements of the rule of law (*Rechtsstaat*). There has been no other case like this recently. However, it suggests that the role of a judge in a *Rechtsstaat* could be dealt with to an even stronger extent in law schools.

16.3.3.3 Case 3: Magistrate's Court Frankfurt am Main (Amtsgericht Frankfurt) – Family Court[21]

The applicant made a request for legal aid in a pending case before the family court situated at the Magistrate's Court Frankfurt/Main dealing with a petition for divorce. The applicant (a woman with German nationality born in Morocco) and the respondent had married in Morocco "according to the provisions of the Koran". They have lived apart since May 2006. In a case before the court dealing with protection from violence, the marital home had been allocated to the applicant for single use. A ban had been imposed on the husband (respondent) to enter or approach the marital home within a distance of 50 m. This judicial order had been prolonged to 20 June 2007.

The applicant filed a request for immediate divorce. Due to serious abuse during the marriage and harassment before the marriage she claims a further duration of the marriage to be inacceptable.

The decision about granting legal aid in the pending case about the divorce depended on the existence of the requirements for divorce that are laid down in § 1565 BGB (German Civil Code). According to this provision, one can get divorced if the marriage failed. A failure of marriage is given, if the marital relationship has ceased to exist and reinstating of such relationship is not to be expected. According to law, failure of marriage is assumed, if the married couple has been living separately for one year. If this condition is not fulfilled,

20 *E.g.*, V. Erb, "Zur Verfolgung von Rechtsbeugung in Kollegialgerichten", *NStZ* 2009, pp. 189 *et seq.*; C. Mandla, "Senatus legibus solutus – Kollegialrichter können straflos Recht beugen", *ZIS* 2009, pp. 143 *et seq.*

21 This matter has been subject to controversial discussion in public and daily press. For press releases of the court relating to the case, see: <www.ag-frankfurt.justiz.hessen.de/irj/AMG_Frankfurt_Internet?rid=HMdJ/AMG_Frankfurt_Internet/sub/37d/37d46c69-eb29-411a-eb6d-f144e9169fcc,,,11111111-2222-3333-4444-100000005003%26overview=true.htm>.

one can only get a divorce, if the continuation of marriage constitutes an inacceptable hardship (undue hardship) on the applicant for reasons caused by the spouse. In common judgment this condition requires it to be inacceptable to wait for divorce for the duration of one year. Thus, it is understood as an exception to the rules defining a failure of marriage.

In a letter (dated 12 February 2007) dealing with the request for legal aid the responsible judge pointed out that according to her judgment the requirements for a decision on grounds of undue hardship are not fulfilled in this case. The reasons refer to the couple's provenance. Both parties have a Moroccan cultural background. According to the judge, the husband's right to corporal punishment is not uncommon to this background. Since the request for legal aid would have to be dismissed on these grounds, the judge suggested to suspend proceedings until the expiration of the year of separation. The applicant challenged the judge because of prejudice. The judge in question substituted her judgment by referring to a particular passage of the Koran. The applicant's request has been approved by the judge responsible and the case has been transferred to a different judge.

Comments

This case is an example of bad judgment. The judge in question announced the dismissal of the petition on grounds that suggest a significant lack of knowledge and a misunderstanding of Islamic law as well as a lack of knowledge about the application of German Law in cases where the parties have a provenance alien to the judge.

This matter shows a lack of even basic knowledge about Islamic law resulting in a decision colored by prejudice. Islamic law plays hardly any role in law studies. Students can deal with Islamic law voluntarily as part of the matter of choice examination, provided that the university in question offers such courses. However, most students finish their law studies without being trained in this regard.

16.3.4 Hungary, by Péter Hack[22]

16.3.4.1 Case 1: Problems Regarding the "Garda" in Roma Areas of Hungary

In Hungary, there is a situation of racial tensions between the Roma and Hungarian. Racially motivated crimes are committed on both sides. Only the Roma suspects are accused and convicted of crimes, not the Hungarian suspects. Although Roma are continuously (and over) represented in the courts in criminal cases, there is very little training for the judiciary on Roma culture. It is obvious that tensions will rise given the economic problems, also given the difference in fertility rates (greater for Roma than for Hungarians).

22 Dr. Peter Hack, Associate Professor Faculty of Law, ELTE University, Budapest, Hungary.

There is a need of (more) training of judges on how to communicate with Roma defendants and witnesses.

16.3.4.2 Case 2: New Legislation Allowing the Police to Detain Suspects for 72-120 Hours Without Charge

A new law was passed allowing the police in specific cases (corruption/political crimes) to detain suspects for 72-120 hours without charge. I wonder if the judges do require to control the files, in order to ensure that such detention was in accordance with the law.

Comments

Judges have no other option than to obey the law. If legislation states that the prosecutor has to issue the warrant for an exceptional rule for exceptional cases (corruption/political crimes), then the judge is not able to overrule the decision and will not order the release of the suspect. This law has been frequently amended, because policymakers are trying to react to reality. This means that politicians and citizens think that when miscarriages of justice are visible, something must be done about it. The present government promised to punish politicians who are responsible for the economic situation in the country. This policy primarily is targeted on previous ministers and politicians. One year has passed since the law came into effect. But so far prosecutors have been unable to put together any cases.

No one knows exactly who drafted the law, but it appears that the prosecutor's office were heavily involved in the process. They complained that they were unable to act against politicians because lawyers are always present during interrogation. What the prosecution actually wants is their cooperation in pursuit of other suspects and they need witnesses, and they try to offer suspects a deal to testify against other suspects. So the prosecutors are looking for more effective ways to prosecute former politicians. The law says that they can use this extraordinary procedure if the crime is about corruption, if the suspect is a member of local government, mayor or senior clerk in the local government's office and central government and administration. If a suspect is not charged, he can be interrogated without legal counsel. The general rule is 72 hours, but the exception is 120 hours, without the possibility of *habeas corpus* application to the court (The 72 rule is mentioned in para. 554/g Criminal code). Paragraph 554J, says that the defendant should be interviewed within 72 hours. In these cases, within the first 48 hours, the prosecutor can decide within 48 hours that contact between the defendant and lawyer is prohibited. In some cases, the prosecutor can allocate the case to a court of his liking (forum shopping). Thus, in this phase of criminal procedure, there is no role for a judge. There is no independent judiciary, and no way for the judge to intervene.

The law says that judges must give a speedy procedure. There are 800-900 cases that fit to this situation. There is a greater need for case management, or to use some kind of

professional assistance. It is against our judges' nature to work in teams. The obligatory mass retirement (purging), though inappropriately done, was needed. Whilst you can see the difference between twenty years ago and now in other public services, you can see that courts work in exactly the same way as twenty years ago. They still work with archaic proceedings and have not enough support staff. Apart from that, judges are not used to work with court staff. The Judges Association is eager to find a way to evaluate work of the judges.

16.3.4.3 Case 3: Abolishment of the National Council for the Judiciary

One of the greatest problems is that Hungary is planning to abolish the National Council for the Judiciary because it is not efficient enough. It is a self-governing body (management and budget) though there are some members representing the Ministry of Justice and Ministry of Economy, and MPs from constitutional and budget committees, prosecutor general, members of the bar, plus the president of supreme court.

Comments

In the new fundamental law, they changed the name of the Supreme Court to "Curia" as the "supreme court" came from the Russian, so they went back to the old Hungarian name. The previous Parliament elected the president for six years. The president of the curia will be elected by the new Parliament for nine years. So what will happen to the present president? They will further establish a National Judges' Council with less authority than it currently has. Its new powers will be split between the Ministry of Justice and the Council.

Then the question is of objective criteria for evaluation of the courts, as cases are not weighted. Even distribution of workload is extremely unfair. The new situation may be able to increase transparency of judicial work. The Hungarian Judicial Council (a trade union) has invited people to give training on this. It is my opinion that old fashioned judges and those benefiting from the system do not wish to see change.

16.3.4.4 Case 4: A Leading Prosecutor Forced Employees to Invest in a Bank Where his Wife Worked

Just this week a new case came against the leading prosecutor for forcing employees to invest in a bank where his wife worked.

Comments

There is a national integrity project to develop integrity codes. An important question is whether there is a role of universities in these issues. Judges and court staff and court administrators need to learn how they can increase the transparency of judicial work.

16.3.5 Italy I, by Massimo Vogliotti[23]

16.3.5.1 Case 1: Welby[24]

The judge has declared it to be unacceptable to let Welby terminate his/her life by interrupting the therapy. Welby, paralyzed since a long time because of a severe degenerative illness, could communicate only through a machine.

The reasons for the decision came in three steps: On the basis of different sources the judge finds a juridical basis resting on the principle of self-determination that a patient can choose to refuse therapy, even when this could cause the patient's death.

Legally, the right to self-determination is insufficient and contradictory set. The insufficiency of the legal regulation is linked to the fact that the law does not prevent any rules on this matter. The contradictory aspect of the matter is found in the fact that the Italian legal order does contain the right to self-determination but also favours the right to life and is opposed to the renunciation of life.

Because of the insufficient and contradictory legal setting, the right to self-determination is an existing right in the legal order but it cannot be enforced against the prohibition to end a life. Without a legislative regulation which traces the boundaries of this right, the judge is obliged to dismiss the appeal.

16.3.5.2 Case 2: Englaro[25]

The Court of Cassation upheld the appeal of the father of Miss Eluana Englaro (she was in a vegetative state after a caraccident) to stop giving artificial nutrition and intravenous fluids to his daughter. This decision was largely criticized by the majority of the political parties and by the Catholic Church. The Court stated that there is a right to self-determination which is based on a network of different national and international sources. Because of the lack of an existing explicit standard, the Court has provided a large/deep and persuasive motivation concerning these sources, to ensure the legitimacy of its decision.

---

23 Dr. Massimo Vogliotti, Associate Professor of Philosophy of law, Faculty of Law, Università del Piemonte Orientale.

24 Decision of the Tribunale Civile di Roma, December 16 2006, in *Giurisprudenza di merito*, 2007, 4, 1002 sv. On this decision, see the striong crticism of Rodotà and of Zagrebelsky in *La Repubblica* from 18 December 2006 and 19 March 2007. On the Welby case, also see: Donini, 'Il caso Welby e le tentazioni pericolose di uno "spazio libero dal diritto"', in *Cassazione penale*, 2008, 902 sv.

25 Ruling of the Corte di Cassazione, civil chamber, 16 October 2007, *Foro italiano*, 2007, I, 3025 sv. Fora good presentation of that judgment (and of the Welby judgment), see: Pulitanò-Ceccarelli, 'Il lino di Lachesis e i diritti inviolabili della persona', *Rivista italiana di medicina legale*, 2008, pp. 330-342.

Concerning the new question here, sited in the aspect of the lack of the explicitly stated will of the patient (coma) the Court has stated that the judge, while there is a lack of legislative standards on a 'living will', has to ascertain the presumed wishes of the patient based on different indices, such as lifestyle and statements made before his handicapped condition.

Comments

These two cases arrive at two opposed solutions based on the same legal framework. This result is the effect of different juridical premises.

The first decision is based on a precise conception of law (as a set of positive rules), the sources of law (constitutional principles are to be elaborated by the legislator which means to subordinate the constitution to the law), the role of judges (a simple executioner of law), and of specific conception of judicial application of law (declaratory interpretation). This decision of the judge of the Tribunal of Rome revives the doctrine of programmatic standards (*norme programmematiche*). Only the articles of the constitution that contain explicit rules (*norme precettive*) can be applied by the judges (this doctrine has been rejected by the Constitutional Court in its first judgment in 1956), and the constitutional character of the issue at hand is ignored. The judge of the Rome Tribunal thus shows a very poor conception of law and how it should be applied.

The second decision demonstrates a legal culture connected to the challenges of contemporary society. The judges show they are very much aware of the constitutional turn they take. In the centre of the legal order is the constitution. Law is no longer reduced to a system of coherent rules, but is perceived as a network of positive legal materials and principles, values and reasoning. The law exists not only as a set of principles set by political authorities as it was during the time of pre constitutional legalistic positivism, but also as the expression of fundamental values of the community (ethos). The judges here are aware of their role as 'rule makers'. They know that the solution of hard cases cannot be found in the books, but are the result of interweaving of legal rules (*auctoritates)* and principles (*rationes)*. The Court of Cassation reconstructed the rule while appealing to the authority of foreign supreme courts, who departed from the same fundamental values. From the motivation of the court it is evident that the decision is not based on a syllogism leading to the one right answer, but seeks to persuade a rational audience. Considering the autonomy of subjects as the leading principle in a State that is not governed by religious values, their decision is presented as the most reasonable.

Legal education should bring the capacity of understanding the complexity of the question judges have to decide on. This requires not only technical-legal knowledge, but also interdisciplinary knowledge. For instance, judges should have knowledge of the history of

their country and the backgrounds of the values at the basis of their constitution. Furthermore, they need to know the history of law and of the legal thinking, in order to acquire a relativist, not dogmatic outlook on the law. Especially knowledge of juridical experiences of the middle ages and of the *ancien régime* will enable judges to discover practices and theoretical categories that help understand contemporary law. Also the development of science and technology makes it unavoidable for the courts to answer questions on the fundamental ethics of human existence. And this requires sensitivity and humanism from the judiciary.

In order to achieve those capacities a training focusing on problem solving and on sound argumentation is necessary as well as the skill to write clearly and simply. One should promote the imagination and the virtue of wisdom (prudentia), meaning the juridical knowledge that was replaced by the modern epistemology in the civil law countries. The solution of hard cases will not be readily found in positive law but will be the result of a normative construction.

16.3.6 Italy II, by Giuseppina Passarelli[26]

Case 1: Insufficient Justifications Given to Support a Preventive Detention Order
On 3 January 2012, the Judge for Preliminary Investigation of Naples has merely summarized the argument used by the Public Prosecutor, copying *verbatim*, as regard to the preventive detention request of Gaetano Riina, Toto Riina's brother, who was arrested in November 2011 on charge of external collusion with the Camorra. For the Public Prosecutor of Naples Gaetano Riina is involved in illegal and unlawful sharing of fruit and vegetables markets in conjunction with several local businessmen. For the Public Prosecutor he is also involved in the monopoly of trucking of the same goods in collusion with Sicilian Mafia in the framework of the *Arancia Connection* inquiry. But the Judge for Preliminary Investigation of Naples has only summarized and recapitulated the request of preventive detention made by Public Prosecutor; she has fallen into many mistakes and errors in writing and in justifying the order for custody. She has only copied and transposed the words used by the Public Prosecutor and she has not given any reason about it. For these reasons, the Court of Review of Naples has annulled the order of preventive detention. Gaetano Riina is still remaining in prison just because further restrictive measures were issued against him and against Nicola Schiavone, a relevant member of Camorra organization, in other investigations. Actually, the District Antimafia Directorate (Direzione Distrettuale Antimafia – DDA) of Naples is considering the documents and the evidences for putting forward a new request of preventive detention.

26 University of Calabria.

On 5 January, the Minister of Justice has sent some inspectors for controlling the situation in the Court of Naples.

Comments

In relevant and complex cases as the criminal prosecution of members of the mafia, the judges must be accurate, specific and careful in drafting the judicial decisions, be it judgments, orders of custody in prison or other measures. Not living up to legal standards for the written justification of court decisions may nullify the results of long and difficult inquiries and investigations conducted by Public Prosecutors. Eventually this can undermine the foundations of the rule of law.

Apparently, because of the daily routines in the criminal court, the judge had not noticed the special character of this case and therefore she had not been extra cautious.

Case 2: Discrimination in Teaching Hours for Disabled Pupils?

On February 2011, a family of Friuli Venezia Giulia, a Region of Northern Italy, became aware that the hours assigned to special lessons for disabled children at school were reduced from 22 to 16 hours. This was not in accordance with the 22 hours reserved for those special lessons in the education plan for the current year. The parents of the disabled pupil filed a case at the Civil Court to complain about the discrimination suffered by their son in light of the Law No. 67/2006. The first instance Court granted the legal action because the reduction in hours of special lessons support created a discrimination with regard to the other pupils.

In the judgment, the court has ordered the Ministry of Education to pay the court costs and the non-pecuniary damages suffered by pupil. But the Public Administration appealed against the first instance decision. The panel of Judges, in second instance (ordinanza n. 1245) accepted the appeal because the other six hours in support of the pupil were carried out, but only not by specialized teachers. This circumstance was not supported by evidence in the court. For the judges of second instance there was no discrimination against the pupil because the school had guaranteed the six hours of teaching.

Comments

The Judge of the appeal court completely ignored the discriminatory aspect based on the quality of support hours, basing the judgment merely on the amount of hours. In this case, there is clear violation of law, of right to school continuity and to a specialized teacher for students with particular disabilities. Judges should know when to apply quantitative and when to apply qualitative measures.

Case 3: Compensation for too Lengthy Proceedings[27]

In a recent decision of Supreme Corte of Cassazione (sentence n. 35, 9 January 2012), the Italian Supreme Court decided that the violation of reasonable duration of trial involves the right of all parties to have a fair compensation in light of Law No. 89 of 2001. Even if the legal action is obviously unfounded (this rule does not apply in case of reckless dispute or litigation), this circumstance does not exclude that the plaintiffs/applicants have suffered an unjust injury. In the case decide by the Supreme Court, the applicant had waited thirteen years without getting any date for a court hearing at the Administrative Court. For the court those conditions justified compensation of non-pecuniary damages suffered by the parties, even if their judicial action had no legal basis. The Supreme Court thus overruled the decisions of other courts.

Comments

What went well in this case is the recognition of a fair compensation for the violation of the demand of a reasonable time. This important decision of *Supreme Corte of Cassazione* will gradually lead to a trial with a reasonable duration and to a more efficient judiciary. Thus the courts will respect the fundamental rights of parties in a case of trial to have justice within a reasonable time and of all citizens to have a more efficient judiciary system.

These aspects are key elements of judicial or court organization skills and knowledge and should be a not only a part of judicial training, but must be the *forma mentis* of every member of judicial system.

16.3.7 Italy III, by Pasquale Policastro[28]

16.3.7.1 The Murder of Avetrana and the Media Resonance of Justice

The murder of a young girl in Puglia (Italy) was followed by a huge media interest. The family of the cousin of the girl was suspected. The defendant, the cousin, filed a request for the trial to be suspended and remitted elsewhere because of the abnormal media interest. It was observed by them that the secrecy of the investigation had vanished altogether. Also because of the media interest there was a lot of local discontent (demonstrations etc.).

The Italian Court of Cassation assessed that there was no heavy local situation in which the the impartiality of the judges of the case could be influenced. It is stated that there was no

27 Sources: L. Biarella, "Causa troppo lunga? Equo indennizzo spetta anche alla parte che perde", availavbla at: <www.altalex.it>.

28 Prof. dr hab. Pasquale Policastro, Department of Constitutional Law and European Integration, Faculty of Law and Administration, University of Szczecin, Poland.

heavy local situation because this case had 'national relevance'. The court stated that to remit a trial to another court is an exceptional measure (considering the right to the natural judge in Italy) , and therefore it should be applied only in very exceptional circumstances.

The reasons for the decision in the case of the murder at the Avetrana trial lies in the fact that there may not be envisaged a grave local situation, external to the trial and concerning the local environment, which is so heavy and abnormal that it constitutes a true danger to the judge's impartiality (p. 3). According to Article 45 Code of Criminal Procedure as modified by Article 1 (7 November 2002), such a local situation may cause prejudice to the determination of the people participating in the trial, to the public order and to security. The Court shows however, that there is "no heavy local situation", because the exceptional media interest "has a national relevance". And this notwithstanding that such "national interest", as the Court points out, "went in some occasions beyond the requirement of a due information on an indisputably grave fact, giving rise even to virtual trials parallel to the legitimate one", taking place in Puglia.

Comments

The "strange loop" of the Court's reasoning is produced by its ambiguity. Indeed we may reason *a fortiori*, saying that "since there is a sincere national situation, then it is more than evident that there is also a sincere local situation" and we may reason by "exclusion of the opposite", saying "since there is a general situation, which is sincere, which manifests itself at a local level, we may not say that there is a sincere local situation". The second reasoning may appear worse than the first. However, the Court of Cassation justifies its use by affirming that to remit a trial to another court is an exceptional measure, and therefore a measure that should be applied most reluctantly. This argument may still be considered as being unsatisfactory because we may say that it lacks a term of reference. Should such a measure to reallocate a case to another court be applied most reluctantly to protect the individual's right to a fair trial (strict scrutiny), or it should it be applied most reluctantly to respect the objective legal order?

The Court adopted another argument that the interest of the parties to a fair trial may not balance out the principle of the "natural judge", which is the backbone of the fair trial in the Italian Constitution. Such argument appears only implicitly in the reasoning. Adopting such an argument the Court may have said: if we would deviate from the principle of the "natural judge" in this case due to the media pressure, we may disrupt a basic constitutional principle by acknowledging the interest of the parties to have their case removed from the local jurisdiction – and by identifying such removal with the general interest to a better administration of justice. There is an undue media pressure with respect to trials in many cases.

How can we organize a better administration of justice due to the frequent invasion of the domain of the trial by the media? The question should be seen in a different perspective:

A development of a new legal profession, related with the administration of the court, that is the court press agent. Such a profession is appearing with success in many courts where a clear communication with the press is needed. The experience of the Dutch press judge and of the press office of some Central European Constitutional Courts appears to be a good example. Furthermore, we should encourage the development of normative guidelines for conduct of the press and the courts if media have an interest in a case.

16.3.8 Latvia, by Martins Mits[29]

16.3.8.1 Case 1: The Jaunalksne *Case*[30]

Starting from 7 September 2007, several newspapers and Internet portals published excerpts from telephone conversations between journalist Ilze Jaunalksne and several public officials. The telephone of the journalist was tapped by the public authorities responsible for fighting economic crimes on the basis of permission given by a judge of the Supreme Court.

It turned out that there did not exist a valid reason under the law for tapping telephone conversations of the journalist. The Chairman of the Supreme Court publicly called the actions of the judge providing permission for phone tapping "unprofessional" and the Judicial Disciplinary Committee issued a reprimand to the judge.

The journalist claimed a compensation for moral damages from the State and the court of the first instance awarded her compensation of 100, 000 LVL (appr. 143, 000 EUR), but the court of the second instance reduced it to 12, 000 LVL (appr. 17, 000 EUR).

Criminal proceedings were also started and three employees of the Finance Police who initiated the tapping were given prison sentences up to three years for wilfully abusing their powers, the fourth employee received a fine. The appeal against this judgment is pending before the Supreme Court (the third and the final instance).

As a follow up, court proceedings have been filed related to disciplinary punishment of several top officials of the State Revenue Service to which the Finance Police is subordinated.

29 Dr. Mārtiņš Mits, Prorector, Riga Graduate School of Law, Latvia; Lecturer, Human Rights Law.

30 Judgment of the first instance court from 7 February 2007 in the case No. C-2211/12 concerning moral compensation in Latvian available at <www.tiesas.lv/index.php?id=2325>. Information on conviction of Finance Police officers in English available at: <http://bnn-news.com/accused-persons-journalist-jaunalksne-phone-tapping-case-sentenced-imprisonment-28625>.

Comments

This case received a lot of public attention and it goes as far as the principle of the rule of law calls for the protection against abuse of power in spying on citizens and media. It shows a willful abuse of powers on the part of the Finance Police and neglect from the part of a judge providing the permission. Although the real reasons have not been made public, from the publicly available information it can be assumed that the employees of the Finance Police had indicated another telephone number than the journalist's, but the judge did not properly verify which telephone number was intended to be tapped.

This case shows neglect of the professional duties from the part of the judge of the Supreme Court. It can be argued that the judicial training should provide for proper understanding of the rule of law, not to mention human rights guarantees, in cases of tapping of citizens and journalists in particular. Perhaps, this could have contributed to a more responsible professional performance.

16.3.8.2 Case 2: Litigation Kitchen[31]

A book, entitled: *Litigation Kitchen,* published in 2007, containing transcripts of tapped telephone conversations between a well-known advocate, Andris Grutups, and his colleagues, judges and other high profile public figures that were allegedly recorded between 1998 and 2000. The transcripts revealed that judges discussed cases under their consideration outside the court, including with advocates representing parties in these cases, as well as a possible influence of politicians and businessmen on the judiciary. The authenticity of the records could not be proved, however. The facts and confirmation from some of the involved persons testified to the truthfulness of many episodes reflected in the book. The journalist who published the transcripts alleged that transcripts of the conversations were forwarded to him by an anonymous source that has never been identified.

A criminal investigation was opened, based on the fact of illegal telephone tapping, but the case was closed in 2011 due to a lack of evidence (incl. the audio records) and a statutory time bar for prosecuting the relevant offence. Three judges resigned as a result of the public discussions following the publication of the book. A Judicial Ethics Committee was established with a mandate to examine complaints about unethical behaviour by any judge. The Committee decided that its task was not to deal with the violations of ethical standards in the past, but to deal with events taking place or continuing after its establishment.

31 The book "Tiesāšanās kā ķēķis" in Latvian at <http://uploadingit.com/d/FX1GF6YRS0ZKV9UO>. Information in English from the US State Department Country Reports 2008: <www.state.gov/j/drl/rls/hrrpt/2009/eur/136040.htm; Article in the Baltic Times>; <www.baltictimes.com/news/articles/18565/>.

Comments

This case reflects the impact of the socio-political environment of corporate (corruptive) relationships characteristic to the Socialist state well after the restoration of Latvia's independence in 1990. Discussions of cases by top-level judges with lawyers undermined the impartiality and independence of the judiciary. Apart from signaling violations of legal (incl. constitutional) standards, this scandal substantially contributed to deepening the distrust the public in the judiciary as a whole.

For the follow-up it was left for the judges themselves to sort out what reaction should follow. A convention of all judges discussed the issue, but it did not result in a strong condemnation of the misbehavior of their colleagues or of the deeds themselves. Apart from voluntary resignation of a few judges, no other actions followed. On the other side, the case was brought to the public discourse and discussed at all levels. A Judicial Ethics Committee was established that to date is a properly functioning body and efficient tool in monitoring ethical behaviour of judges in the country.

The legal culture required in the state governed by the rule of law was lacking in Latvia, as well as a proper understanding of the principles of independence and impartiality of the judiciary. As a general remark, it must be noted that the composition of the judiciary is mixed in terms of age and legal education they have received. Young generation of judges have not experienced the corporate relationships described above and they have been taught about the principles of democracy as part of their legal studies.

The picture is different today compared to what it was ten years ago, also due to the public discussions following the publication of the book. At the same time, this case points to the time needed to establish a proper legal culture and the need for a smart and adequate in-service training of judges, including the top-level judges on the fundamental principles of the functioning of the judiciary in a state governed by the rule of law.

16.3.8.3 Case 3: The Tautas Partija *Case*[32]

Tautas Partija (the People's Party) was one of the largest parties making up the Government and preparing for parliamentary elections in 2006. The Law on Financing of Political Parties set limits as to the period of time during which the public campaigns were prohibited prior to elections and as to financial resources that were allowed for advertising activities. The law did not expressly regulate whether direct or indirect advertising was prohibited.

32 Judgment of the Supreme Court from 22 September 2011 No.SKA-311/2011available at <www.tiesas.lv/files/AL/2011/09_2011/22_09_2011/AL_2209_AT_SKA-0311-2011.pdf>. Info note in English: <http://bnn-news.com/peoples-party-ordered-pay-anti-corruption-bureau-1-03-million-lats-37059>.

A legal person (non-governmental organization) was established not directly linked with *Tautas Partija* in order to produce series of advertisements shown on TV where different publicly known persons positively described activities of *Tautas Partija.* The party was elected to the Parliament with the highest number of votes.

The Bureau for Prevention and Combating Corruption considered that the described activities were attributable to *Tautas Partija* and were subject to the Law on Financing of Political Parties. The party was ordered to pay to the state budget 1, 027 366 LVL (appr. 1,460,670 EUR) – the amount that exceeded the financial ceiling of advertising activities and received donations set by the law.

Tautas Partija disagreed with this interpretation of the Law on the Financing of Political Parties and appealed against the order in the court. The case went through all three instances and all courts (in 2009, 2010 and 2011 respectively) dismissed the claim of *Tautas Partija* and ordered it to pay the amount calculated by the Corruption Prevention and Combating Bureau. *Tautas Partija* was not elected to the Parliament in 2010 and, shortly after the time when the Supreme Court delivered the final judgment in 2011, the political party was liquidated.

Comments

This case is a positive example of interpretation of legal norms according to their object and purpose and having due regard to the wider context of the case. The courts assessed the described activities in the context of equal elections, *i.e.*, the need to follow the same rules on financial ceilings for all political parties taking part in the elections, and found that there existed sufficient connections between the established non-governmental organization and *Tautas Partija* in terms of participation in the establishment and financing of the non-governmental organization in order to attribute its activities to *Tautas Partija.* The decisions of the courts were received positively by the public.

This case demonstrates the inability of the legal system (incl. courts) to act proactively in order to ensure the payment of the exceeded financial resources – *Tautas Partija* was liquidated and it is impossible to ensure the payment of the above amount. Before the liquidation *Tautas Partija* paid only a fine of 5,000 LVL (appr. 7,100 EUR) imposed for incompliance with the financial rules for political parties.

This was a case with a great public interest and the court built its argumentation on fundamental principles related to democracy and had a wide view on the case. So the courts ruling was a great support for the liberal democratic state.

Skills of wide interpretation of legal norms giving preference to the interpretation method according to object and purpose were present. The interpretation methods and the importance of the overall context of the case is (and should be) part of the judicial training.

16.3.9 Lithuania, by Tomas Berkmanas[33]

16.3.9.1 Case 1: Problem with Special Judicial Skills[34]

A building company sued the contracting company for damages because of a breach of contract. The process of making the contract is what is focused upon here. Everything started when the building company provided two offers for the contracting company to build a certain parking lot. In one offer the price for the works to be done was higher, in the other – lesser. The contracting company accepted the second offer (lesser price) and delivered the corresponding undersigned contract to the building company. There was totally no reaction from the contracting company in relation to the first offer (higher price). Also – the third party – the bank who financed all the building process – was involved.

During the case the building company provided a copy of the contract, accepting the first offer (higher price), which it allegedly received from the bank; *i.e.* on the contract there was a seal of the bank that the copy is that of the original document. Accordingly, apparently two contradicting contracts were made, and the building company relied on the one accepting the higher price. However, the contracting company (the company that was to own the building) alleged that the contract, accepting the first offer and received from the bank in a copy format, was faked.

While considering the case, courts of lower instances partly satisfied the claim of the building company. The Supreme Court of Lithuania (SCL; instance of cassation) rejected the decisions of the lower courts and, by that, rejected the claim of the building company. The main argument of the rejection by SCL was that the courts of lower instances, while evaluating which of the two contradicting contracts should be considered the valid one, as the most important thing considered the fact that the contract was delivered to the bank (the third party); however, the SCL stated that the bank is not the party to the contract, therefore, while considering what is more important in determining which variant of the contract is the valid one; it is more important to take into account the fact of delivering the contract to the other party of the contract (building company), but not to the third party (bank).

33 Dr. Tomas Berkmanas, Associate Professor, Vice-Dean for Research, Faculty of Law, Vytautas Magnus University, Kaunas, Lithuania.

34 Civil case No. 3K-3-353/2011.

Comments

The SCL here very elegantly neutralized misapplication of contract law rules in the court of lower instances (Kaunas Regional Court (first instance) and Lithuanian Appellate Court).

It is a rather simple case requiring really very simple handling and application of contract law rules; also, probably, application of rather simple rules of logics. First, of course, there were some gaps in judicial skills related to contract law. But, also, this in itself shows that training in logical thinking is always and continuously necessary.

16.3.9.2 Case 2: Problem with Court Administration Skills

On 26 January 2012, the media announced that the Lithuanian Agency of Special Investigations, after the investigation by operative means (*i.e.* listening of phone conversation; rather interestingly, the agents listened to totally different person(s) for other purposes and by accident discovered the processes described below), discovered that some judges of Kaunas courts (district and administrative courts were involved) asked their colleagues to impose lighter penalties for the people that they knew in the cases of administrative violations.[35]

For example, in one case, the monetary penalty was reduced from 3,000 Lt to 1,000 Lt. The Judicial Council of Lithuania was quickly involved in this process. The accused judges were informed that the disciplinary penalties were possible for them for this informal behaviour. Four judges then decided to leave their posts by their own decision.

In this context it is important to stress that the President of Lithuania plays an important role in appointing and releasing judges, especially of the lower instances. Therefore, the reaction from the President office was interesting in itself.[36] The representative of the President office alleged that the President is not considering the question to release from their offices neither the president of the Supreme Court nor from Kaunas court; however, the principled approach to the activities of judges by the presidents of the courts is very important.

Comments

This case shows and proves one of the main pertaining problems in court administration in Lithuania – that of the lack of training in legal ethics and proper court administration in this field.

35 See in Lithuanian: <www.delfi.lt/news/daily/law/po-atlikto-stt-tyrimo-is-kauno-teismu-traukiasi-4-teisejai.d?id=54701921>.

36 See in Lithuanian: <www.delfi.lt/news/daily/law/prezidentes-patareja-skaudus-pokyciai-teismuose-nebutu-galimi-be-naujuju-teismu-vadovu-principingo-poziurio.d?id=54738253)>.

Of course, legal ethics, and not only as a matter of training of any judge, but also as a matter of training in court administration or, more exactly, of court administrators. Also, the necessary attention should be given just for general moral/ethical training.

16.3.9.3 Case 3: Problem with General/Interdisciplinary Skills

This is probably the case that attracted most of public attention in recent years in Lithuania. Everything started when the judge of regional court of Kaunas (this is court of second/higher instance) was killed by a man (Kedys), who accused him and one other person (Usas) of sexual exploitation of his very young daughter (around six years; Kedyte). Kedys also accused his former cohabitee and mother of the daughter of willingly allowing all this to happen. This now is known as pedophilia scandal in Lithuania. Before the act of killing, Kedys placed video material on the Internet where his daughter describes all what was done to her, so, essentially, she is the main source of evidence here (although allegedly there were four more witnesses, but for now three of them are dead, and one is in psychological hospital). After the act of killing it was impossible to find Kedys; finally, after around a year, he was found dead near one lake, and it was the controversy, whether he was murdered or died naturally (*i.e.* drowned). Also, the other accused person (Usas) was found dead; after some time allegedly, he also drowned.

Also, important fact is that the sister of Kedys – Venckiene – is also a judge. So, she, from the very start, has taken the defensive position in relation to Kedys and his daughter, and, as for now, Kedys' daughter is in her custody, while the mother (who, as said, was accused by Kedys as the one who allowed the sexual exploitation of her daughter) tries to retake her daughter back from Venckiene. As a consequence of all that we know, several parallel legal/judicial processes are ongoing.

First of all, the pedophilia case itself – the prosecutorial and judicial process is started but it is in some kind of a deadlock. After Usas was found dead, the process was stopped by Panevezys regional court (as both accused persons were dead), but then renewed by the SCL. One of the issues to be solved here is whether Kedys was killed or not? In the process of expertise even the experts from Sweden were involved. Up till know the official conclusion is that he was not killed, but naturally drowned. Also, the role of the mother in all that is still not clear.

The other process is related to the sister of Kedys, judge Venckiene. Venckiene in all that process made some very controversial statement in relation to the judiciary. After Panevezys District Court stopped the pedophilia judicial process/case, she essentially accused the judiciary of being a group of criminals. After that Judicial Council of Lithuania

decided to propose to the President to discharge Venckiene from the office of a judge. However, our President refused to do that, so, she still holds a judicial position with all the immunities of the judicial position.

And the other process, probably now the most interesting, is the problem of the custody of the daughter of Kedys. For now, she is in the custody of Venckiene. However, the District Court of Kedainiai recently (16 December 2011) decided that the daughter should be returned to the mother. Up untill now this decision is not implemented; the daughter remains in the custody of Venckiene. Allegedly, the daughter refuses to go to her mother. The daughter lives in the house of Venckiene, who has special protections as a judge. There is fierce discussion in society about all that. Some say that the decision must be implemented because we live in the *Rechtsstaat* and therein the decision of courts must be implemented; otherwise we live not under the rule of law. Others disagree in various forms. For example, the President says that the main thing here are the interests of the child and, actually, the decision is implemented by simple attempts to return the daughter to the mother, even if failed. Others just say that *justice requires* not returning daughter to the mother before the investigation process of pedophilia has not ended and the mother is still suspected of allowing her daughter to be sexually exploited. In the spring of 2012, the daughter has been forcefully removed from the house of Venckiene and brought into the custody of her mother.

Comments

The whole judiciary here fails in the light of a very difficult and very public process. Handling of such process requires really thorough interdisciplinary and universal knowledge, understanding the position of the judiciary as a possible participant of public and political process; and, of course, simply moral training, training in ethics, from the very start.

Just simply universal humanitarian and philosophical training is lacking, allowing judges to understand and conceptualize the place and role of the judiciary in the modern architecture of government. It is generally not enough for a judge to know how to apply rules, *i.e.* just legalistically. They have to understand the delicate tensions between conceptions of legality and legitimacy, and that the function of the judiciary is or at least might be much broader than to mechanically apply rules. They should also understand, that, even if it is theoretically controversial, they may be compelled to be more publicly sensitive (or just *sensitive*, recalling a Llewellynian 'situation sense'), that their role is generally much broader, related to the implementation of justice, not just application of rules (Art. 109 of Lithuanian Constitution states that "Only courts implement justice in the Republic of Lithuania").

16.3.10 The Netherlands, by Philip Langbroek[37]

16.3.10.1 Case 1: Lucia de Berk

In September 2001 Lucia de B. was arrested and detained on accusation of murder of 7 children and attempted murder of three children in the Juliana childrens' hospital in The Hague (JKZ), where she worked as a professional nurse. This hospital treats several very ill children, some of whom do not have a fair chance to survive.

Between September 2000 and September 2001 a declaration was filed of the unnatural death of a child. Because Lucia de B had been with the child when it died she was appointed as a suspect. The hospital also filed a declaration and did an investigation into the medical files and concluded Lucia de B. had been involved in 9 medically unexplainable death incidents in the hospital. Also other hospitals that had employed Lucia de B published a list of death incidents with which Lucia de B could have been involved. The JKZ had calculated that the chance that Lucia de B would be present at an infant's death would be 1 in 7 billion. That was the point of departure of a police investigation against Lucia de B. In the hospital several stories went around about Lucia de B, who in a former life had been a prostitute.

This involved: her arrest at the sickbed of her dying grandfather whom she nursed; an investigation of her background in Canada where she was born and a psychiatric investigation and observation in a detention centre. She was questioned twenty times for two hours or more in the course of the police investigation, her family was questioned, her diaries were found and used as circumstantial evidence (she had written about her compulsion to lay tarot cards; this was associated with her 'compulsion' to supposedly murder young children; her parental home had burnt down in Canada, she was therefore seen as an arsonist).

During her trial at The Hague District Court two statistical experts witnessed that the chance that Lucia de B was accidentally present at an infant's death in a hospital was 1 in 342 million. The court ruled that now that there had been no medical explanations for the death of these children and no medical experts to witness otherwise that the small chances of Lucia de B being accidentally present at the death of an infant could count as proof against her, especially now that in two cased digoxin had been found in two of the deceased children. She was convicted in 2004 to imprisonment for life. The district court reasoned that now that proof had been delivered for two murders, chain reasoning proved she was also guilty of the other murders in the JKZ.[38]

37 Dr. Philip Langbroek, professor of justice administration and judicial organization, Utrecht School of law, the Netherlands.

38 LJN AF6172, Rechtbank's-Gravenhage 24 March 2003, 09/757337-01en 09/092180-02.

In appeal at the appeal court she was convicted to life imprisonment and also to psychiatric treatment (TBS), also based on a medical expert witness that at least one child had died of a non-therapeutic dose of digoxine.[39]

The court of cassation confirmed the judgment of the appeal court in 2006, except for the psychiatric treatment.[40] A few days later Lucia de B. got a brain attack but was left alone in her cell for eleven hours. Later the appeal court of Arnhem convicted Lucia de B. again to lifelong imprisonment.[41]

A group of scientists and a medical doctor (the sister of the head of the JKZ department where Lucia de B. had worked as a nurse.) made a case against the so-called evidence in the trial, and published against the probability calculations. They also accused the JKZ of bad medical treatment policies, probably causing the death of the children.

Eventually her case was filed at the 'Commission for the revision of closed criminal cases'. Finally an American medical expert argued against the medical witness statement about the dose of digoxin, also based on a two-year-old report (dating back to 2006) of the Dutch forensic institute, proving that digoxin could not have caused the infant's death, because the marker substance to proof digoxin in blood also reacted to a natural substance in human blood. The commission showed that in the two years before Lucia de B. started to work in the JKZ the mortality of children was just as high as when Lucia de B. worked there.[42]

The Commission recommended reopening of the case of Lucia de B. She was released from prison in 2008[43] and eventually acquitted of all accusations in 2010.[44]

Comments

From this case it can be learned that medical colleagues in the Netherlands in a case like this do not want to witness against each other. Judges should have known that. An American medical expert witness was necessary to do the job. Also the judges did not understand anything of probability calculations. They were not able to adequately evaluate police evidence and forensic evidence. And thus, judges should be trained in evaluation of forensic evidence, knowledge and understanding of forensic techniques, knowledge and

39 LJN AP2846, Gerechtshof's-Gravenhage 18 June 2004, 2200181003.

40 LJN AU5496 Hoge Raad 14 March 2006, 03431/04.

41 LJN AY3864, Gerechtshof Amsterdam , 13 July 2006 23-001403-06.

42 J.W.M. Grimbergen, M.S. Groenhuijsen, P. Vogelzang, *Rapport van het driemanschap in de zaak tegen mevrouw de B.*, October 2007.

43 LJN BD4153, Hoge Raad 7 October 2008, 08/01492 H.

44 LJN BM0876, Gerechtshof Arnhem 14 April 2010, 21-004292-08.

understanding of probability calculations, but they also should be aware of the mutually protective attitude of medical specialists in the Netherlands as a trait of this part of the medical profession.

16.3.10.2 Case 2: Sailing Girl Laura Dekker

Laura Dekker, born in New Zealand of a Dutch father and a German mother was thirteen and had a lifelong sailing experience. She wanted to make a solo sailing tour around the world. Her father discouraged her and demanded she showed true sailing skills. So he trained her in traffic rules, boat control and navigation techniques. And then he demanded she would sail up and down to Lowesoft in England from the river Rhine in the Netherlands, expecting that this experience would cure her from her compulsion. However, when she arrived in an English port, authorities found it too dangerous to let her go back by herself. They contacted her father, to come over and pick up his daughter. The father initially refused, Laura was kept in a children's home in England, and therefore her father decided to go. In England authorities wanted her father to accompany her. He promised to do so but in fact let her go alone. Authorities in England therefore warned the youth care authorities in the Netherlands. Laura did not change plans at all, and announced her plans in a newspaper interview. Her request for leave from ordinary school was denied by municipal schooling authorities. The civil servant in charge reported also to the youth care authorities.

Youth protection authorities, following a short investigation into family conditions of Laura Dekker, filed a case at Utrecht District Court 20 August 2009, to suspend parental authority and issue a supervision order. The court denies the suspension order and grants the supervision order, but the court also issues an inquiry into Laura's mental abilities.[45] Laura turned 14 in September 2009.

On 30 October 2009, Utrecht District Court made a decision based on Article 1:254 of the Civil Code. The question to be answered was: will the moral or mental interests or the health of the child be seriously threatened if she starts the solo sailing tour around the world? If this is the case, can this threat of her development be cured by a supervision order? And, if so, what should be the aim of the supervision order?

Also based on the report of a psychologist on the social, emotional and identity development, and cognitive abilities of Laura Dekker, the court rules that, although sailing capacities of Laura may be exceptional, and her cognitive development is (very) good, the security of Laura while sailing is not (yet) enough supported by her abilities to cope with

45 LJN BJ6275, Rechtbank Utrecht , 272993/FA RK 09-5005; 272995/JE RK 09-2115.

problems aspects like interrupted sleep, and possible irregular dangers at sea. Her security is not guaranteed. Furthermore, schooling arrangements while sailing have not been elaborated at all. As Laura Dekker is registered in the municipal base registry, and not yet eighteen, she is under the obligation to attend school.

For that reason, the Court issues a supervision order until 1 July 2010. The court states: 'considering the special character of the case, the supervision should be of a special character, aimed at controlling and assessing if the sailing trip is being adequately prepared and to see to it that the child does not depart if this would seriously thwart her interests'.

The supervision is to be executed by the Youth Care Agency of Utrecht.[46]

Laura and her father appealed against that decision, but the appeal court confirmed the decision of Utrecht District Court on 4 May 2010.[47]

The youth care agency Utrecht demands that Laura is removed from her parental home in December 2009, because her father refuses cooperation. This is denied by Utrecht district court, while during the hearing good arrangements for cooperation between Laura´s father and the youth care agency Utrecht has been made.

Laura has moved home with her father to Middelburg. The Child Protection Agency in Zeeland has taken over the case. In June 2010 it demands a prolongation of the supervision order by Utrecht District Court, from the Court in Middelburg. The court grants this prolongation for one month.[48] One month later, the youth care agency of Zeeland demands that the supervision order be ended, because Laura Dekker and her father have lived up to the demands of the supervision order issued by Utrecht District Court. However the Child Protection Agency demands a new order for twelve months. Middelburg District Court assessed the situation as difficult and referred to the judgment of the appeal court a few months earlier. The court noticed that Laura and her father had lived up to the conditions set by Utrecht District Court. Training and schooling arrangements with the World School had been taken care of. The court noted that further cooperation between Child Care Agency and Laura´s parents to prevent Laura from departing would be difficult. The court then decided to return parental responsibilities to Laura.[49]

Laura Dekker has returned home safely after sailing the world alone.

46 LJN BK1598, Rechtbank Utrecht 30 October 2009, 272995/JE RK 09-2115.
47 LJN BM2916, Gerechtshof Arnhem 4 May 2010, 200.056.276.
48 LJN BM8125, Rechtbank Middelburg 17 June 2010, 73059/JE RK 10-352.
49 LJN BN2481, Rechtbank Middelburg 27 July 2010, zaak/reknr: 73059/JE RK 10-352.

Comments

This is an example of a wise judgment under an enormous media pressure on the courts. Where child care and child protection agencies have stressed the anomaly in the situation, the judges have carefully considered how far the state can reach into the private life of a family. They knew very well that it would be possible for Laura and her father to arrange for the sailing trip to go abroad anyway, and that this eventually could not be stopped. Finally, Utrecht and Middelburg District Court were able to delay Laura's departure, but showed very well, that ultimately this was a parental responsibility.

Media management, cooperation between judges and media/information officers, developing a case based media strategy, organizing 'peace and quiet' for the judges on the case.

16.3.10.3 Case 3: The Chipshol *Cases*

The Netherlands has a group of 'disquieted citizens' whose deepest conviction is that courts and judges – and prosecutors and advocates – are not honest. About fifteen years ago this group consisted about a few persons who merely felt maltreated by the courts. They started a group "Court Watch".[50]

From 1994 onwards Chipshol, a project development company, has a conflict with Schiphol Airport, a Limited Liability Company, owned by the State. A large piece of land was owned by Chipshol (600 hectares). There had been a disagreement between two partners in Chipshol, Jan Poot and Harry van den Andel about developing or selling the ground. But Poot wanted to develop an airport city on that spot because he thought it would be a very beautiful and profitable project. The case between the partners was decided in 1994 by Judge Hans Westenberg of The Hague District Court. He judged against Jan Poot and they had to divide the business. The judgment was reversed in appeal two years later, but the damages caused appeared to be irreparable. Chipshol, owned by Jan Poot continued to have conflicts with Schiphol airport, about the positioning of highways, space planning decisions etc., and continued to challenge those decisions in court. Often they eventually won these cases and then try to get damages from the administrative authorities or from Schiphol Airport, often for large amounts of money.

In the case of Westenberg, a journalist published a book with interviews in 2004. In one of the interviews the lawyer of Chipshol said that judges are not unbiased in cases against the state. Referring to the *Chipshol* case in 1994 he said that judge Westenberg had made a phone call with the advocate of the State. Then, Westenberg started a case against the journalist and the advocate for defamation, but he lost his case in 2010. Chipshol managed

50 <www.courtwatch.nl>.

to proof that Hans Westenberg could not maintain his assertion that he did not make this phone call, as he had said under oath in his own case. So Chipshol pressed charges for perjury, and Westenberg lost his job as a judge.

In a case of Chipshol against Schiphol Airport for damages at the trade sector of Haarlem District Court, proceedings had been ongoing for several years. But the courts have a roulations policy for judges. And the judges sitting on the Chipshol case had been in the trade sector for seven years already. Therefore they had to move to another court sector. The board of the district court insisted that the judges on the case were replaced by other judges. This not only prolonged proceedings. Chipshol had been in heavy juridical combat.

Procedures of Chipshol to challenge the new judges or against the State for illegality of the change of judges in that case were rejected.[51] Because Chipshol had the suspicion they had been secretly counteracted not only by Schiphol Airport, the Province of North Holland and the Ministry of Infrastructure (responsible for aviation), but also by the Ministry of Justice. They thought the original judges were more in favour of them than the new judges. And filing a case for damages against the Dutch state, they try to prove illegal influencing of court proceedings. Therefore they asked for the president of Haarlem district court and the Secretary General of the Ministry of Justice to be preliminary examined as witnesses. This was denied by the District Court of the Hague and the denial was confirmed by the Hague appeal court, but this judgment was reversed by the Court of Cassation, and referred to Amsterdam Appeal Court. Hearings were conducted in June 2011 and the judges confirmed the courts' roulation policy but gave different statements about how cases had been actually transferred to the new judges on the case. The secretary general of the Ministry of Justice denied that Chipshol had been the subject of any form of conversation or policy-making at the Ministry of Justice. For that reason Chipshol pressed charges for perjury against the judges and especially to the President of Haarlem District Court. Chipshol also asked for new hearings of witnesses. The cases are all still ongoing…

Comments

The *Chipshol* cases have revealed that up until 13 years ago the integrity of several judges in the Netherlands has been jeopardized and violated by judges who had auxiliary jobs with companies and who were hired for legal advice also by public authorities. The Council for the Judiciary and Court Management has developed a policy and changes in legislation for more sanctions against defaulting judges are under way. But journalists have found cause to make further attacks on the judiciary as a non-transparent organization that unjustly protects wrongdoers. Courts and judges in the Netherlands have quite some

51 LJN BA9669, Rechtbank's-Gravenhage 16 July 2007; LJN BA1882, Rechtbank Haarlem, 28 March 2007.

trust of the general public, but this is not going to last very long if they do not manage to show they deserve better than the amount of journalistic distrust that is poured out over them as an institution and as a professional group.

Here there is a need for media management of the judiciary at large. Next to this judicial ethics and especially the perception of the general public of the ethical attitude of judges and the courts' presidency and court administrators in general are extremely important. Ethics training for judges and court managers in joint sessions may help.

16.3.11 Romania,[52] by Corina Rebegea and Radu Carp[53]

16.3.11.1 Case 1: The Movement for Spiritual Integration into the Absolute

The case envisages an appeal introduced by the prosecutor's office attached to the Sibiu Tribunal after a decision of the latter court with respect to the defendant Gregorian Bivolaru, yoga guru and leader of the Movement for Spiritual Integration into the Absolute (MISA). Bivolaru was charged for sexual act with a minor, sexual perversion, sexual corruption, trafficking of minors and attempted illegal crossing of the border. For some of these offences Sibiu Tribunal noticed that the statute of limitations applied, while for the remaining it decided that the criminal case must be closed.

The facts were alleged to have started taking place in 2002 when Bivolaru, as yoga instructor, got to know the victims and started having sexual relations with them (two girls aged fifteen and sixteen at the time). Based on evidence such as criminal complaints by the victims, searches, phone tapping transcripts, witness testimony, and personal diary of the victims, the prosecutors claimed that the defendant, also given his authority as their instructor, lured the victims not only into having sex with him, but also made them practice all sort of obscene acts (including group or gay sex) in view of producing "educative tapes" for MISA members.

Alba Iulia Court of Appeal maintained the decision of Sibiu Tribunal.

During criminal investigation one of the victims stated that she had intercourse with Bivolaru, but then withdrew her statement saying that she was under pressure by the police and prosecutors when she had made that statement. Moreover, the victim's mother

52 Note on sources: the analysis is based on court decisions, indictments or prosecutorial resolutions published on-line, several newspaper articles and commentaries, as well as discussions with several magistrates. Due to the recent date of these cases, there is no jurisprudence book or legal commentary analyzing them.

53 Corina Rebegea is a Ph.D. student at the Faculty of Political Science of the university of Bucharest, Romania. Dr. Radu Carp is Professor of Public Law and Political Science, Faculty of Political Science, University of Bucharest.

also changed her declaration. She had submitted a complaint about her daughter being kidnapped, but then declared to the police that she had agreed that her daughter moves to Bucharest and that she never had any sexual relation with Bivolaru. This declaration was also maintained during the trial in front of the judges.

The prosecutors also included as evidence a psychological evaluation of the two victims, which revealed the fact that they were "enslaved" by the defendant and under an abuse of authority. This evaluation was not upheld by the court as the psychological examination was not done in the presence of the victims, but was based on personal notes or diary entries, which can hardly lead to such a conclusion.

As regards another main piece of evidence provided by the prosecutors – phone tapping – the court observed that the authorization for this means of surveillance was done before the starting of criminal prosecution which contravenes Romanian Criminal Procedure Code provisions. Therefore these could not be used as evidence in court. Moreover, the court could not check the legality of the authorization as it was classified as state secret.

Given all these elements, Sibiu Tribunal decided to acquit Bivolaru on all accounts for which no statute of limitations intervened. The prosecution appealed the decision on reasons of legality by stating that the court attached more importance to evidence gathered during the handling of the case in court, rather than the one gathered during the investigation done by the prosecutors. The prosecution also claimed that witness testimony cannot value more than other evidence such as phone conversations, photos and documents.

The court of appeals upheld the decision of the tribunal on all accounts. The court gave the following arguments:

- all evidence must be analyzed by the court during public hearing before a decision is made and therefore the prosecution cannot claim giving preeminence to certain evidence over other evidence.
- phone tapping was done in breach of the European Convention for Human Rights and domestic legislation and was thus illegally obtained. Furthermore, the authorizations were secret and so unavailable for court review and there were several mistakes and confusions in the transcripts which make them unreliable.
- The first suspicions of sexual abuse date from 2002 and the prosecution intervened only in 2004 thus raising doubts as to the prompt response of authorities.
- The psychological expertise is also unusable as the psychologist never met with the victims for a personal evaluation.

Comments

The case created a public outcry in Romania after practices of the yoga Movement for Spiritual Integration into the Absolute came to media attention. Gregorian Bivolaru, leader of this movement, was publicly accused of obscene practices and luring people into doing things they would not normally do through esoteric means. Furthermore, he was under suspicion that he used minors during his sex-based rituals. To the Romanian public he was as guilty as charged and a lot of dissatisfaction arose when he managed to flee the country and receive asylum in Sweden. Therefore, this case is a good opportunity to explore the ways in which prosecutors ran their investigation and built the case as well as how judges reached the decisions.

Apart from the very long duration of this case that gave way to a lot of speculation in the media and protests from the adepts of MISA, the prosecutors mishandled the case flagrantly. First of all, they gathered most important evidence through surveillance, which was based on a secret authorization, which became unusable in court. Moreover, they were unable to distinguish between the phones that had been tapped and made many mistakes in interpreting the conversations. This is a frequent mistake in Romania and many times prosecutors have to restart criminal investigation because they do not pay enough attention to procedural details when using phone tapping. Secondly, the psychological expertise was done unprofessionally. The psychologist who established the trauma suffered by the victims never actually met the victims. The prosecutors only presented her with personal items, diaries etc. based on which she wrote her report. It comes to no surprise that the court had to dismiss this piece of evidence. Thirdly, it appears from the description of the case that also during the preliminary investigation and hearings done by the prosecutors they used intimidation and statements, which were infirmed immediately after and proved of no use in court.

The conclusion based on this case is that more emphasis should be put on the special training of prosecutors in handling investigative techniques. Moreover, as so many problems arise when it comes to means of surveillance and the technical expertise to evaluate and confirm the findings, a more in-depth training in this field is required. More specifically, the training done so far is a theoretic one, while workshops and simulation are lacking. As far as using experts in handling cases, there seems to be an obvious inability from the prosecutors to work and properly use their evaluations in building cases.

This case can also serve as an example of good practice on behalf of the judges in dealing with a complex case which is at the same time under close public scrutiny. Both judges who dealt with the case in the first instance and those who judged the appeal, made a clear appreciation of the facts and evidence presented to them and gave reasoning beyond

doubt. Despite public antipathy towards the defendant and numerous speculations in the media about this case, the judges were not influenced and no bias can be noticed in the two court decisions.

As far as judicial skills are concerned, the two court decisions (issued by Sibiu Tribunal and by Alba Iulia Court of Appeal) point out the strong emphasis of judicial training on procedural accuracy and legality. Moreover, they also show the attention to the case law and reasoning of the European Court of Human Rights (which represents a strong component of judicial training in Romania) and to court decision drafting technique.

16.3.11.2 Case 2. Allegations of Corruption Against a Leading Judge in the Administrative Law Division of the Court of Cassation

On 7 October 2011, the prosecutors of the National Anticorruption Directorate searched the house of the head of the administrative section of the High Court of Cassation and Justice, Judge Gabriela Birsan (wife of the Romanian judge at the European Court of Human Rights, Corneliu Birsan). The prosecution had information that Gabriela Birsan had received jewels, plane tickets, excursions abroad and free accommodation for her son in Paris from a lawyer friend in order to help a plaintiff in several civil cases at the High Court. At the same time another judge from the High Court – Iuliana Pusoiu – had her house searched on the same account.

The charges were peddling in influence for the two judges and influence buying for the lawyer and her client. Criminal prosecution started on 10 October, mainly based on evidence obtained during searches and previously from phone tapping.

Romanian law requires that in cases involving magistrates, the Superior Council of Magistracy (constitutional body in charge with safeguarding the independence of the judiciary and managements of magistrates' careers) has to approve searches beforehand, which it did in this case on 6 October.

On 10 October Corneliu Birsan challenged the decision of the SCM and that of the judge authorizing the searches and also filed a complaint with the Council of Europe and European Court of Human Rights (ECHR) for breaches of diplomatic immunity (according to Additional Protocol no. 6 and Vienna Convention). Given that the search took place at their common home, it must be considered illegal. SCM rejected the complaint and maintained its authorization. The lawyer representing judge Birsan also declared that he had informed the prosecutor leading the search about the immunity (on the day of the search) and appealed the decision of the SCM at the High Court, which is now pending.

On 12 October the High Court dismissed as inadmissible the appeal lodged against the authorization of the search by the same court with a definitive decision.

On 16 November the National Anticorruption Directorate (NAD) asked the ECHR to issue a point of view on whether Corneliu Birsan benefits from immunity and if this is the case to lift it in order to continue criminal prosecution against his wife. On 21 and 23 November the ECHR decided that the search violated immunity, applicable both to Corneliu Birsan and his wife, and waived it in respect of Gabriela Birsan, but without retroactive effect.

On 5 December the NAD informed judge Gabriela Birsan of the decision to cancel the prosecutor's resolution for the starting of criminal prosecution with respect to acts connected with the search. On 14 December Gabriela Birsan was cited by the NAD for a hearing on a new corruption file based on the same offences, during which she also found out the previous investigation was annulled completely. The investigation is ongoing.

Comments

This case is a very recent one and it was highly visible in Romanian media and not only for obvious and striking mistakes done by both prosecutors and judges. The example shows how great public interest can obliterate the correct appreciation of all aspects of complex cases and how magistrates sometimes rush to conclusions without considering all elements. Both judges and prosecutors mismanaged the proceedings of a criminal investigation by ignoring the applicable national and international legislation with respect to immunities and then tried to cover the mistake and obtain a retroactive endorsement of their decisions. Due to that, the entire preliminary investigation of the prosecutors as well as judges' authorization had to be annulled while several persons' reputation had been trashed. This case also shows flaws in the way criminal investigations are generally conducted (basically in terms of evidence gathering) and points to the necessity of a broader preparation of files. Not least, there is a recent tendency to showcase certain people who are investigated by the anti-corruption prosecutors. The effort to stir public attention is sometimes done to the detriment of the full legality and accuracy of the investigation.

What this case shows in terms of judicial training is that future magistrates do not have the necessary knowledge and information to deal with suspects with a special status. There is no class or reference on how to deal with immunities, be it for national or European parliamentarians or international judges, and despite the strong procedural emphasis of the Romanian National Institute of Magistracy (NIM), this particular aspect is lacking.

After interviewing some magistrates and trainers from the NIM, there is a frustration especially among younger magistrates related to the fact that there is little accent being put on developing other types of skills (such as communication, teamwork, management etc.) and thinking outside the box, which would allow them to better deal with all sort of different aspects of a case.

16.3.11.3 Case 3: Forgery and Corruption of a Chairman of a Mining Union and a Member of Parliament

On 11 May 2006 the National Anti-corruption Directorate (NAD) sent to court the case of the former Chairman of the Mining Unions' League from Jiu Valley and former member of Parliament (2000-2004), Vasile Ioan Savu, for forging writings under private signature, abuse in office against the interests of other persons, and for having used his influence and authority to obtain undue benefits during the period when he was a Deputy and the Chairman of the Mining Unions' League from Jiu Valley as well as for influence peddling in connection with the management of the miners' money. The prosecutors ordered Vasile Savu be charged with fraud amounting to 1 billion Romanian lei. They relate to the period of 2002-2003 when Savu, as head of two trade union movements, used his authority and influence to force the leadership of the two unions to approve the allocation of funds that eventually reached his own pocket. The amount of the prejudice exceeds 960 million lei.

The case remained in the court of first instance for four years, and went through 47 trial hearings, most of them postponements. On 10 February 2010 the defendant was sentenced to three years of imprisonment and damages up to 50,000 EUR. His lawyers lodged an appeal with the Bucharest Court of Appeals where the case ended with no sentence. Although informed by the anticorruption prosecutors on the risk of reaching the statute of limitation, the three judges in the panel of the last appeal at Bucharest Court of Appeals decided on new postponements, followed by the changing of the legal classification of the crimes, which in the end led in April 2011 to the statute of limitation being reached.

Comments

The third case is somewhat symptomatic for Romanian case management, especially in the field of corruption. Most big corruption cases involving politicians, high public officials or magistrates are characterized by extremely lengthy proceedings which in many cases lead to the statute of limitation of the criminal liability being reached. While in part this is due to poor courtroom facilities and big caseloads, in many situations it is because of the poor administration of the file by the judge and innumerate postponements (usually procedural tricks invoked by the lawyers, such as unconstitutionality exceptions, which no longer suspend trials but which were largely used, or new expertise reports). Moreover, judges are being criticized for accepting these postponements while being fully aware that

they are just tricks to keep pushing the terms of the court hearing and therefore allegations of corruption involving judges do appear. Press and civil society as well as the European Commission take a high interest in this type of cases, while certain statistical information shows that over twenty corruption or fraud cases have been pending in court for four years or more. Another twenty cases have been pending in court for two to three years.

This aspect points to a shortcoming in the ability of the judges to manage cases so as to avoid both criticism about the lengthy court proceedings and the closing of files because of the statute of limitation of the criminal liability. During the judicial preparation of future magistrates, there is no specific class or seminar on case management, not to mention court management. Case management is rather dealt with as an aspect of procedural law.

16.3.12 Slovenia, by Jasa Vrabec[54]

The cases presented below have been widely discussed in public and in some instances training needs as well as legislation initiatives have been modified accordingly. The subjects that are temporarily seen as problematic by judges and the areas that need more specific knowledge, but are not connected with the presented cases are the following:

- Criminal offences in the field of commercial law – the area of expertise is very specific and it takes very well trained prosecutors and judges to handle complex legal transactions and company modifications properly;
- Electronic evidence – this is another area that requires high-level technical knowledge and that represent a challenge to the judiciary.

16.3.12.1 Case 1: The problem of the Length of Judicial Proceedings – the Lukenda *Case*[55]

The Constitution of the Republic of Slovenia (Art. 23) establishes the Right to Judicial Protection in stating that everyone has the right to have any decision regarding his rights, duties, and any charges brought against him made without undue delay by an independent, impartial court constituted by law. The practical component of said right is therefore guaranteed through a speedy trial without unreasonable delay.

54 Jaša Vrabec, LL.M., Judicial Councilor, President's Office, Supreme Court of the Republic of Slovenia.

55 Documents on the website of the Ministry of Justice connected with the Lukenda project: <www.mp.gov.si/si/zakonodaja_in_dokumenti/dokumenti/>. The Lukenda Project document in English is accessible on this address: <www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/zakonodaja/The_Lukanda_Project-_v_ANGLESCINI.pdf>.

Following the judicial reform in 1994 and the reorganization of the courts a large number of cases lasted for years and years in front of Slovenian courts, denying the right of trial without undue delay. Mr. Franjo Lukenda was one of the hundreds of applicants that applied to the European Court of Human Rights (ECHR) complaining that the length of the proceedings had been incompatible with the 'reasonable time' requirement provided in Article 6 of the European Convention on Human Rights. Furthermore, the applicant complained that the remedies available in Slovenia in length of proceedings cases were ineffective (Art. 13 of the Convention).

Mr. Lukenda was injured at work in a lignite mine and in February 1998 he instituted civil proceedings against his employer at the Local Court of Celje. The procedure in front of the local court and the higher court lasted until February 2004, when it became final – altogether it lasted six years. There were numerous other cases from other applicants filed at the ECHR in which procedures at all three stages lasted even longer than ten years. The ECHR found in the case *Lukenda v. Slovenia* that the rights of the applicant to a trial without undue delay and to an effective legal remedy have been violated. At the request of the ECHR, which in the case of *Lukenda v. Slovenia* (6 October 2005) and subsequently in hundreds of similar cases established that a violation had occurred of the right to a fair trial and of the right to effective legal remedies under the Convention as well as following the decision of the Constitutional Court of the Republic of Slovenia no. U-I-65/05 (22 September 2005), the Ministry of Justice in December 2005 addressed the issue with the Lukenda Project. The project is named after the name of the applicant in the first judgment before the ECHR in which Slovenia has been found liable of violating Article 6 of the Convention because of the excessive length of court proceedings. The Operational Action Plan has been elaborated by the Ministry of Justice in cooperation with the Supreme Court and the Office of the State Prosecutor General. Many questions that the Lukenda Project addressed concerned the quality of the judiciary in general, not only the right to a trial without undue delay.

Among the most significant measures for providing a more efficient judiciary and the elimination of the court backlogs is foremost ensuring better court management through among others legislative regulation, adopting a strategy of spatial development of the judicial system, legislative optimization of judicial proceedings, providing proper workspace conditions for the work of courts and State Prosecutor's Offices and ensuring proper training of judges, state prosecutors, state attorneys as well as for administrative court personnel.

Additionally, a new law has been adopted that gives right to effective legal remedies in case of excessive length of court proceedings. The *Act on the protection of the right to trial without undue delay* gives a party to court proceedings the right to have his rights, duties and any charges brought against him in his case before the court to be decided upon by the court without undue delay.

The legal remedies that are available to protect the right are three:
- supervisory appeal,
- motion for a deadline, and
- claim for just satisfaction.

The purpose of the first two remedies is to expedite the proceedings. On the other hand, the claim for just satisfaction can only be filed, if the supervisory appeal was granted or if the motion for a deadline was filed.

Monetary compensation is payable for non-pecuniary damage caused by a violation of the right to a trial without undue delay. The strict liability for damage caused lies with the Republic of Slovenia. The amount of monetary compensation for an individual case is limited by law to the figures between 300 and 5,000 EUR.

When deciding on the amount of compensation, the criteria that are taken into account are in particular the complexity of the case, actions of the State, actions of the party and the importance of the case for the party.

Comments

The case clearly exposed the problem of excessive length of court proceedings and of the system of legal remedies to expedite proceedings. The court explained that it not so much the fault of the courts that took so long to decide on the case, but more of the state that does not provide sufficient conditions for a trial without undue delay.

Following the Lukenda Project laws were changed to give more power to presidents of courts and new laws were adopted for handling complaints about the length of proceedings. More importantly, the number of judges and court personnel has significantly arisen and court spatial conditions for the work of courts improved.

The Lukenda Project has been prolonged in terms of personnel employment and the results are clearly evident – the average length of proceedings has dropped, the number of court backlogs has fallen substantially and parties have special remedies to monitor the evolution of their cases in courts. Overall, the Project can be regarded as successful.

It has to be underlined that it was the whole judicial system that has been found liable in front of the ECHR, not only the individual court. A lot had to be changed – most importantly the conditions for the functioning of the courts had to improve. With the employment of new court personnel, with the building of new court buildings and with legislative changes in procedural as well as organizational laws the conditions did improve.

16.3.12.2 Case 2: The Problem of Custody Proceedings – the Asja and Daša Jež *Case*[56]

Daša and Asja Jež are daughters of the father Stojan Jež and their mother. The parents got divorced and in the custody proceedings in 1998 the custody over both daughters (eight and five at that time) was assigned to the mother even though both daughters wanted to live with the father. The mother left their town near Žalec (Celje) where they were living and transferred with the daughters to Ljubljana (around 60 km away). The procedure in which the two daughters through their father as legal representative contested the decision of the court lasted for four years, six years for the younger daughter. It involved numerous institutions and individuals – the social work centres and judicial experts. The court of first instance had to decide more times about custody, since the court of second instance annulled its decision. When the older daughter Daša turned ten the court had to respect her wish and assigned custody to the father in 2001, but the high court overturned the decision and gave custody to the mother again. Finally, in 2002, the Constitutional Court of the Republic of Slovenia decided that the expressly declared will of the daughter to live with the father was not respected. Two years after the older daughter moved to live with her father, the younger sister joined them as well.

In 2010 the Local Court of Ljubljana found the Republic of Slovenia liable for damages suffered by Asja Jež because of the lengthy and unreasonable procedure in the custody case. It awarded Asja Jež 14,500 EUR of just monetary compensation. In 2011 the Higher Court of Ljubljana decided on the appeal and awarded the plaintiff even higher damages of 21,500 EUR – 18,000 EUR for just monetary compensation for mental distress suffered owing to a reduction in life activities and 3,500 EUR for the length of proceedings. In the monetary compensation case the District Court of Ljubljana found the Local Court of Celje, that decided on custody, liable for not having examined the circumstances of the case and not having explained the decision to assign custody to the mother enough thoroughly, even though the court of second instance obliged it to do so. In the lengthy procedure of custody assignment the girl suffered mental distress because of emotional tensions, as her needs for a safe and loving environment were not respected. The Higher Court of Ljubljana agreed with the decision of the court of first instance, stating that the Local Court of Celje did not act legally as it did not check sufficiently the living conditions of the girl prior to deciding on custody and thus did not follow the best interest of the child. The monetary compensation case of the older daughter is still pending, while the case of the younger daughter became final with the decision of the court of second instance.

56 For the *Asja and Daša Jež* case the following sources were used: <www.dnevnik.si/novice/kronika/1042345820>; <www.dnevnik.si/novice/kronika/1042328616>; <www.dnevnik.si/novice/aktualne_zgodbe/1042397049>; <www.siol.net/novice/crna_kronika/2012/01/asjajez.aspx>; <www.rtvslo.si/odprtikop/tednik/13-12-2007/>.

Comments

The case is important because the court – the Republic of Slovenia – was found liable of inflicting damages to the child in its proceedings. The length of the proceedings and the unreasonable way the court conducted them gave ground to the conclusion that the court did not respect the rights of the child in this delicate custody case which should have been concluded much faster.

The case shows the evolution of the perception of the right of a child in court proceedings and of the need to conduct custody cases with special care, allowing all voices and opinions to be equally heard. In custody cases in Slovenia the vast majority of children are assigned to the mother, without actually checking the real circumstances of each particular case. This case showed that by doing so, without exercising the necessary care, irreversible damage can be inflicted on children.

The whole procedure showed that not enough attention was given to professional knowledge in child communication and that special attention should be devoted to analyzing the will of the children involved in custody cases, to prevent long procedures that in the long run damage all participants. Special initiatives aiming at providing special professional assistance to children in court proceedings have been formed at various levels (the Ombudsman, civil society).

16.3.12.3 Case 3: The Prison Sentence of a Parliament Deputy – the Prijatelj *Case*[57]

Srečko Prijatelj is the first deputy of the Slovenian Parliament to be sentenced to a prison sentence. He was convicted of extortion, attempt of self-willed exercise of rights and illegal possession of weapons and explosive materials. The court of first instance sentenced him in the end of September 2010 to five years and two months in prison and the payment of 16,500 EUR, while the higher court lowered the prison sentence in May 2011 to four years. The judgment is final.

Srečko Prijatelj was the deputy of the Slovenian National Party (that at the last general elections in December 2011 did not receive enough votes to cross the 4% soil prescribed to enter the Parliament). In the beginning of 2010 Mr. Mikuž (an entrepreneur) reported to the police that he was victim of blackmail and extortion by Mr. Prijatelj. A meeting was

57 For this case the following sources have been used: <www.delo.si/clanek/123417>; <http://24ur.com/novice/slovenija/prijatelj-se-je-pritozil-na-sodbo.html>;<http://24ur.com/novice/slovenija/sodisce-bo-izreklo-sodbo-v-primeru-prijatelj.html>;<http://primorske.si/Kronika/Zapor-za-Srecka-Prijatelja-potrdili-se-visji-sodni.aspx>.

then organized and supervised by the criminal police in which the entrepreneur handed the money to Mr. Prijatelj that was apprehended by the police *in flagranti*. Mr. Prijatelj was in custody from March 2010 until the final verdict. The criminal procedure has shown that Mr. Prijatelj and Mr. Mikuž were in a business relationship regarding the acquisition of some land. The first instalments Mr. Mikuž had paid Mr. Prijatelj in 2008 as commission for setting the deal for the land business were paid without problem. After a few more instalments of a few 10,000 EUR, Mr. Prijatelj requested larger sums of a few 100,000 EUR. As Mr. Mikuž refused to pay, since in his view there were no grounds for such sums, Mr. Prijatelj started to threaten him and his family with calls and SMS messages. The threats regarded Mr. Mikuž's health and life and the life of his relatives. Other people involved in the land transactions testified of beying victims of extortion by Mr. Prijatelj as well. In the investigation procedure the police found large quantities of illegally kept army weapons in Mr. Prijatelj's house. In the proceedings at first instance Mr. Prijatelj's wife was also conditionally sentenced for criminal support in the act of extortion to six months of prison with the probation period of two years, while she was acquitted at the higher court. The illegally detained weapons were seized.

After the conviction became final, the mandate of the deputy in Parliament ended in May 2011 as the prison sentence was longer than six months and he was replaced by another deputy. While in custody Mr. Prijatelj did not receive any salary.

Comments

The case is important because it shows that in practice criminal actions are prosecuted and criminals convicted regardless of their status. Even though Mr. Prijatelj was a deputy, he was sentenced relatively harshly. In explaining the grounds for the conviction at first instance, the judge specifically stressed, that given the fact that the convict was a deputy of the Parliament, high moral standards were expected from him.

The case received wide media coverage, as it involved undercover police operations and a deputy of the Slovenian Parliament. The accusations against the deputy, the content of his threats and the execution of the criminal acts represented the so-called classical criminal acts, which are more common to TV series than to actions of deputies. The proceedings were also followed and debated, as the public wanted to see equality before the law.

No specific skills or knowledge can be outlined regarding the proceeding itself. However, the media coverage of the proceedings gave the officials directly involved new experiences and skills.

16.3.13 Sweden, by Laura Ervo[58]

16.3.13.1 Case 1: Children Possessed by Bad Spirits[59]

One African family (originally from Kongo) was sure that their children were in the power of bad spirits. They really believed in this and they thought these bad spirits can damage children. Therefore the parents tried to get the bad spirits away and because of this treatment one of the children died and the other had some damages. A criminal case was filed against the parents and they were prosecuted for committing a murder.

The district court admitted that there were cultural dimensions (there had been evidence on these matters given by one socio-anthropologist) but the case should be handled according to the Swedish legal system. This was all. No, argumentation on justifiable defense or act of emergency or putative defense and so on. The Court of Appeal followed the same approach without giving extra reasons.[60]

Comments

Sweden is a very multicultural society and these questions/problems are part of daily life there. Therefore, courts should be used to handle these kinds of situations but they are not. In addition, there has been very much discussion on this case in Sweden among colleagues.

The courts should argue and give real reasons even if there are very difficult situations to handle. The right way is not to ignore such problems and to write in three lines "we noticed the problem but we will skip it". The different points of views should be linked and answered in a judgment. Even in difficult situations the court should be professional enough in order to "call the tunes".

16.3.13.2 Case 2: Punitive Taxes and European Law[61]

The case is connected with the *ne bis in idem* – principle and its links to the European law (EU-law and European Convention on Human Rights) in situations, where the punitive taxes based on tax laws and the usual sanction based on the criminal law in the situations

58 Dr. Laura Ervo, University Lecturer in Procedural Law, University of Örebro, School of Law, Psychology and Social work, Sweden.

59 Huddinge district court, judgment 11 April 2000i mål nr B 4073-99,. Svea Hovrätt judgment 9 June 2000Målnr B 3101-00.

60 Lernestedt, "Kulturella försvar", likhet och diskriminering. I (red Sarnecki) *SOU* 2006:30. Är rättvisan rättvis? Tio perspektiv på diskriminering av etniska och religiösa minoriteter inom rättsväsendet, pp. 283-319.

61 S. Nystén-Haarala, O.-A. Suhonen, H. Kosonen & S. Romppanen, 'The Application of Foreign Law in Finland, Sweden and Denmark, *in* C. Esplugues, J. –L. Iglesias & G. Palao (Eds.), *Application of Foreign Law*, Sellier 2011, pp. 327-344.

of tax fraud can be seen against *ne bis in idem*. The Swedish courts more or less ignore this problem saying that the EU law gives some margin for national laws in this connection and therefore we can follow the national rules in these cases. (Now I simplify a little, but this is the idea.) Again, the Swedish Courts just think that the national system and national laws are better and maybe easier to follow and we will do so and more or less ignore the EU law or European Convention on Human Rights. The national courts should have more professionalism and expertise to link the national and international rules and materials connected to the single case. The same problems in general also cover situations, where foreign law should be applicable in national courts.

Comments

In addition, there are problems in attitudes. Rather often colleagues just think that the national system is better and they will follow it or it is just easier to do so because they are not used to follow international rules and they are not familiar with them (this concerns especially elder colleagues).[62]

Judges should link and handle situations, where international norms cover national cases and are linked with national rules. There is still lack of this kind of knowledge as well.

16.3.13.3 Case 3: Information Misleading Investors?[63]

The claim concerns the Swedish company, which – according to the plaintiffs' claims – had given misleading information to investigators. Based on that, they demanded damages of 34,000,000 SEK.

The court dismissed the claims and gave the reasons:

Although there were errors in the prospectus, the information was in no case is misleading. The claims will be dismissed already based on this reason only. However, the court added that even the two other prerequisites for damages were unclear, that is if there is an adequate causality between the claims and the facts and in addition, if there have been any damages factually.

Comments

This is a good example because the court could make a distinction between liability and unsuccessful businesses. Too often, these two things are put together in a wrong way in

62 L. Ervo, "Förhållandet mellan Europadomstolen och nationella domstolar – några aspekter ur finländsk synvinkel" ("The Relation Between the European Court and Finnish Courts – Finnish Perspectives"), *JFT* 4/2006, pp. 411-422.

63 Stockholm district court, 31 January 2012, T 15904-10, T 19807-10. Also see: <https://www5-infotorg-se.db.ub.oru.se/rb/pdfroot/T_15904-10.pdf.pdf>.

the juridical decisions especially if there are pressure to give the condemnatory decision. In addition, this case is a good example because the court gave reasons to two other prerequisites of damages even if they decided to dismiss the case based on the lack of the first prerequisite. Too often, the court puts the point after the first reason and does not say anything about the other possible prerequisites etc. which can then cause problems if the case is appealed and if the juridical situation is changed at the higher courts.

The courts should be clever and tough enough in order to avoid the bad consequences of public pressure and in order to keep different reasons and situations separately. For instance, bad and unsuccessful business does not always mean that there are reasons for damages or that someone has committed criminal offences. It can mean simply that there is a risk in business life.

16.4 Comparative Analysis of Needed Skills of Judges

In the examples given there are five issues that deserve our attention for the training of judges and courts. Those are the most striking subjects in the cases mentioned above:

1. The logistics of case handling. Most sets of rules of procedure in Europe allow for effective case management, to speed up proceedings. There appear to be a few countries that allow judges to postpone hearings for a long time.
2. Judicial ethics. In the practice of everyday work it appears sometimes to be difficult to maintain the boundaries between keeping up judicial independence and impartiality and opening up to societal debates. This has to do with removing judges from a case, or with connections of judges with certain interests. Sometimes this is considered normal in a country, but also according to European standards, judges should not maintain such connections. It takes an open organizational culture within the judiciary to address ethics issues effectively. In quite some countries this internal open culture seems to be missing. (Lithuania, Belgium, Romania and Latvia)

   Also politicians sometimes need to learn to have more respect for judicial decision making in a liberal democracy. (Belgium and Hungary)
3. Legal interpretation. There is a classical distinction between a rule oriented application of the law (*lex dura, sed lex*) and goal oriented application of law. A rule oriented interpretation will not allow stopping treatment of a terminally ill person, a goal-oriented interpretation of legal rules probably will. Within this context a debate is possible about how to deal with persons from non-mainstream cultures (Kongolese family in Sweden; rights of Saami in Finland; cases Welby and Enlargo in Italy; Roma in Hungary). Whatever the way judges choose to interpret the law, this should be done in such a manner that the courts show they are aware they are a part of the

society they work for. Judges need an open mind, that is able to combine juridical knowledge with practical wisdom.

4. Handling media pressure. As the courts are becoming increasingly visible because of modern media, the courts are more easily exposed to public criticism. On the on hand, courts need to explain how they do their job; on the other hand, they will never be able to publicly defend their judgments in public against the party who lost the case. Here the judiciaries need to learn how to fulfill this balancing act. On the one hand , maintain and enforce the law – business as usual – on the other hand, an extravert handling of media interests, without bringing judges and the courts legitimacy into jeopardy. Practical legitimacy training is what the courts and the judges need. (*The sailing girl* case, the Netherlands)
5. It appears not to be sufficient that judges have good juridical skills. They also need knowledge and experience in dealing with special situations in court (*e.g.* related to children) and they need knowledge of the societal field they deal with, *e.g.* criminal organizations, forensic evidences, the functioning of administrative bodies etc. This will enhance the problem solving capacities of the courts.
6. Courts are organizations that handle cases in bureaucratic routines. Also for judges this makes it sometimes difficult to recognize the extraordinary cases from the ordinary cases. Judges read the case from the file before they hear it. Judges should learn to be aware of the risks of admitting too much routines in their work, and be prepared that every case they handle can come under the looking glass of public scrutiny. This is a point of attention for the management of courts and judges and for judges themselves.

Other issues concern the combination of international and national law, European and national law. This can be improved in several countries, but Sweden is mentioned explicitly. Furthermore it is recommended that judges learn to write in a clear and simple way (Italy).

Annex 1 Instructions and format Court Cases and Judicial Training Needs

Dear Menu For Justice Participants,

Following up on the meeting of last November 24-25, Task force 3 has taken the initiative to add a small extra item to the Menu for Justice Project. The background of this idea is quite simple: we do not know a lot yet about the actual training needs of judges and courts from a societal perspective. We have gathered some information about judicial training needs from legislation and somewhat from the courts and judicial training institutions.

We can make the efforts of the Menu for Justice Project more effective by also gathering some information from what is actually perceived in the public discourse (media) as extraordinary well or extraordinary bad judicial and court performance in your country.

We kindly ask you to give a short summary of three court cases in your country that attracted public attention and were debated.

This can concern cases where there has been a miscarriage of justice, *e.g.* the wrong person was convicted and the case had to be reviewed. It can also be about case management and judicial bias. Or it can be about a case where public attention has been handled very well by the courts, or where the judgment was particularly wise and creative considering a new kind of case etc. You are entirely free in your choice of cases but we insist that you also choose at least one case that went well.

What we want to know, is not only the content and circumstances of those cases, but we would also like to have an indication on what went wrong or what went very well, together with your comments. What judicial skills or knowledge were prominently present or lacking? Is there a specific skill or knowledge involved judges and/or court organizations should have?

The format:

1. The case description, plus sources where to find the case (if published, and possible publications on it).
2. Your comments on the case (what went wrong or well).
3. What made you select those cases? (just give the reasons for your choice of cases in a few lines).
4. What judicial or court organization skills or knowledge were prominently present or lacking? Should they be part of a judicial training?

17 Building Blocks for Legal and Judicial Training: Proposals to Identify and Assess New Training Needs

*Cristina Dallara and Rosanna Amato**

17.1 Introduction

In the context of the project Menu for Justice, the Work Package 4 (WP4) titled *Design of scenarios for implementation*, was designed to deal with the differential legacies, practices and regulatory environments that a possible implementation process of the *curriculum studiorum* would face in each European Union Country. The WP4 was coordinated by the Research Institute on Judicial Systems of the National Research Council of Italy (IRSIG-CNR).

Implementation entails a balanced assessment of the contexts (educational, cultural and regulative) in which the *curriculum* has to be embodied, followed by a comprehensive discussion among the partners, each of whom brought on the table their own experience in teaching; all this is a promising foundation for a large impact project. The WP was run in parallel by the four task forces of the project, which addressed barriers, resources, capacities that influence the implementation process of the *curriculum studiorum* in the four tracks of the legal education and judicial training cycle. The WP4 has foreseen two deliverables: an implementation meeting (D23) and the development of a training needs assessment tool (D22).

Given these commitments, IRSIG proposed to the Steering Committee of the project Menu for Justice to organize a workshop (intended as Implementation Meeting, Deliverable D23) in order to develop a debate among the partners and some selected guests; its main focus was to present the new contents and subjects which are needed in order to integrate legal and judicial training programmes missing elements. The debate in the Workshop was intended as the starting point to develop a Reference Tool for the Assessment of Training Needs, the other deliverables of the project.

* Cristina Dallara is permanent researcher in Political Science at the Research Institute on Judicial System of the National Research Council (IRSIG-CNR) in Bologna. Rosanna Amato is Ph.D. candidate in EU law at the University of Bologna and research-associate to IRSIG-CNR.

Our approach was to develop a tool that identifies key factors that individual countries need to consider in assessing their current judicial training programme, future judicial training needs and the most effective means of delivering judicial training.

It is worth mentioning that one of the specific objectives of the WP4 was not to assess judicial training in European Countries on a hierarchical basis, but, instead, to take an issue-based approach to judicial training. In this way, we do not express any judgment or evaluation about the countries' training programmes but we will offer some information drawn by the debate developed in our network. Such an assessment tool will provide any individual country with the building blocks for advancing their judicial training programme.

17.2 The Workshop "Building Blocks for Legal and Judicial Training"

The aim of the Workshop was to develop a debate among the partners of the Menu for Justice Project and the selected guests on the new contents and subjects needed to integrate legal and judicial training programmes in EU member States.

Through the ideas, opinions and recommendations raised during the workshop, the participants contributed to the development of a Reference Tool, helping countries to identify key factors that they need to consider in assessing their current judicial training programme, future judicial training needs, and the most effective means of delivering judicial training.

The workshop, intended to be an open minded exchange of information and ideas, was sparked off by the guest speakers. It was divided into two sessions. The first one dealt with the new European dimension of judicial training, the main challenges and the new needs. In particular, this session highlighted the main problems deriving from the increasing development of EU law scope and impact in national legal orders, which occurred with successive changes to the European Union Treaties and particularly the Lisbon Treaty.

More than ever, legal professionals are concerned by EU law; as a consequence, they need to be more aware of both the interaction between EU legislative instruments and national legislation and the mechanism of cooperation between the European Court of Justice and the national courts.

The second session focused on the identification of tools and methods for the definition of the new judicial training needs. Through various casestudies, the session examined

both the experiences in the field of judicial training realized at the national level in certain EU countries and the suggestions and guidelines provided by the relevant international, European and national legal instruments. See the detailed programme in the Annex.

17.3 The European Dimension of Judicial Training: New Challenges, New Needs

In the light of the topics and questions presented by the guest speakers during the first day, the debate was mainly devoted to analyze how training programmes can deal with new issues deriving from EU law.

As to European Union Law issue, it was remembered that EU law application at a national level is generally affected by the existence of different legal cultures across the Europe. For national judges it is quite difficult to feel as European judges; as a result and also the principle of supremacy is conceived and applied differently. The majority of the participants considered judicial training as a key tool for the establishment of a common legal culture in Europe and ultimately to favour the application of EU law at a national level; in fact, the importance of providing for specific EU law courses both at university level and within the framework of continuous training was stressed all along.

In particular, it was highlighted that in some countries – as Romania – it is mandatory to attend EU law courses but also both legal English and French. Here, a centralized training system is combined with an e-learning platform.

Differently, speakers coming from other member states, as the Italian ones, said that within the national judicial training system EU law is not sufficiently dealt with (in fact specific courses are organized once per year) and that even many judges confuse the European Court of Justice for the European Court for Human Rights.

In addition, in the opinion of many participants, the judicial training has to be more practical and less theoretical; it could be very useful to organize seminars focused on questions concerning problems that judges meet during their day-to-day work.

In order to assess the awareness and the attitude of judges toward EU law, an interesting idea of collaboration between academics and judges was presented. Academics could invite judges to participate in some research work, asking them to write both very short

notes concerning cases where they dealt with EU law questions and reflections about what kind of questions they dealt with.

At the end of the year it would be useful to discuss with judges about the experiences they reported. This mechanism would make judges more aware of EU law and contribute to the development of researches in that field. Only one participant considered contents of judicial training less important than resources in terms of money, time and personnel.

Finally, attention has been paid on the *ratio* of the preliminary ruling procedure.[1] It is well-known that this fundamental mechanism grounds on active cooperation between the national courts and the Court of Justice, with a view to refer questions concerning the interpretation or validity of European law. Since a great amount of national law originates from EU law, lawyers and judges in the first place have to be aware of the relevance of EU law, in order to ensure a proper and uniform application throughout the EU. In particular, mention was also made of the creation of a special preceding that can be used in urgent cases.[2] A few years ago, the Court proposed the introduction of the urgent preliminary ruling procedure (PPU), that enables the Court to deal far more quickly with the most sensitive issues relating to the area of freedom, security and justice, such as those which may arise in situations where a person is deprived of liberty or in proceedings concerning parental authority or custody of children.

Among the guest speakers, Eleonor Spaventa (School of Law Durham University – UK) focused on the relationship between the national courts and the European Court of Justice – ECJ. Considering the viewpoint of both ECJ and the national courts, she highlighted the main challenges characterizing this form of cooperation. For instance, looking at this relationship from an EU perspective, three main shortcomings can be identified.

The first one is related to the ever expanding scope of application and incidence of EU law. As a result of the successive Treaty revisions, the huge amount of secondary legislation (ever more technical) and the pronouncements of European Court of Justice, a greater number of areas are covered by EU law. In particular, it is worth noting that most of the progress in substantial law stems from the content of ECJ judgments issued after a

1 The Court of Justice of the European Union has jurisdiction to give preliminary rulings on the interpretation of EU law and on the validity of acts of the institutions, bodies, offices or agencies of the Union. This is conferred on it by Art. 19(3)(b) of the Treaty on European Union (TEU) and Art. 267 of the Treaty on the Functioning of the European Union (TFEU).

2 The urgent preliminary ruling procedure is applicable only in the areas covered by Title V of Part Three of the TFEU, which relates to the area of freedom, security and justice. The procedure is governed by Art. 23a of Protocol No. 3 on the Statute of the Court of Justice of the European Union and Art. 104b of the Rules of Procedure of the Court of Justice. National courts may request that this procedure be applied under the conditions laid down in Art. 23a of the Protocol and Art. 104a of the Rules of Procedure.

preliminary ruling. Nevertheless, the latter can contribute to the development of EU law in a way that is not always clear and coherent. For this reason, it is ever more difficult for national judges to actually recognize whether national litigations imply point of EU law to rise, even if they are trained in EU law.

Linked to these problems is that preliminary ruling is a time-consuming activity; indeed, when the national judge wants to refer to the ECJ, the main proceeding brought before the national court has to be interrupted and, only after ECJ ruling, the judge can issue its decision. This can clearly constitute a deterrent; as a result, since only courts of last instance are obliged to refer ECJ, other judges may decide to avoid asking ECJ a preliminary question, also if they are aware that points of EU law have to be raised.

Another issue highlighted by Spaventa consists in a huge confusion deriving from the existence of the two parallel systems of EU and the Council of Europe in the matter of fundamental rights. Many national judges are still disoriented about the role played by ECJ and the Court of Human Rights in Strasbourg. She remarked that it is not so unusual to find requests for a preliminary ruling where a national judge asks ECJ to pronounce about the interpretation of ECHR provisions.

Finally, Spaventa identified critical elements affecting the cooperation between the national courts and ECJ from the national courts perspective. First of all, she stressed the tensions which often characterize the relationship between higher national courts and ECJ in respect sensitive issues like primacy. Secondly, in her view some shortcomings concerning the work of the European Court should be pointed out. For instance, attention should be paid to the low quality of ECJ's rulings, since very often it uses the technique of copy and paste from its own ruling. As a final point, she evidenced that ECJ has to face structural problems. EU has twenty-three official and working languages; all these languages may be used in the applications to ECJ and may be the "language of the case". As a result, problems of translation can arise. Moreover, many judges, in particular judges coming from new member States are often not fluent in French that is the working language used traditionally by the Court. In light of the foregoing, it follows that vocational training programmes should be designed and implemented also for judges in Luxembourg, who often are not sufficiently aware of their role.

Karolina Podstawa (European University Institute – Fiesole) focused on the analysis of judicial cooperation among national authorities and on the importance of mutual exchange of ideas and experiences between judges. As Podstawa remarked from the judiciary perspective the number of challenges for judicial cooperation significantly increased. The problems she identified are listed as follows:

- the existence of different legal cultures and traditions in each EU member State;
- the multiplication of sources of law;

– the use of different languages in the institutions;
– the different organization of the courts and of the judiciary at a national level.

In the light of the foregoing, she suggested to contribute to increase the national judges awareness of the helpfulness of judicial cooperation and judicial dialogue. The latter should be considered as a set of techniques to ensure coherence between national law and EU law, and to reduce conflicts in the protection of some constitutional goods, as for instance fundamental rights. In order to achieve this goal, in her view, attention should be paid not only to the knowledge of substantive law, but also to the sharing of practices and procedures. She highlighted the need to emphasize the methods and practices of adjudication. As a result, legal training programmes should integrate also practice and not only theoretical substantive law. For this reason, she suggested to improve the cooperation between judges and academics.

Juan A. Mayoral (Juan March Institute Madrid/European University Institute – Fiesole) presented a research aimed at mapping the national judges' attitude to EU law application. He called to mind that after the entry into force of the Lisbon Treaty, more attention was paid to the importance of a common judicial culture in order to achieve a better functioning of the EU legal order and a correct application of EU law in the territory of all member states. In particular, he mentioned the Commission Communication *Building trust in EU-wide justice a new dimension to European judicial training* (2011),[3] where the Commission affirmed that judicial training is a fundamental tool for enhancing mutual confidence among Member States, practitioners and citizens.

The first aim of the research was to give some evidences of the different attitudes and preferences of national judges in respect to EU law application; the second aim was to verify to what extent the judicial training can improve the correctness and the consistency of European law by the national judges, as the Commission suggests.

In order to answer the first question, Mayoral tried to understand to what extent the national judges agree or disagree with certain important EU law principles. For instance, the judges were asked if in their opinion principle of primacy is essential for the European legal order; only 50% of the judges involved agreed to this sentence. In addition, the participants were asked if the principle of primary the principle of state liability for breaches of EU law is an advantageous principle. In this case, more than 75% agreed.

3 Communication of the Commission "Building trust in eu-wide justice: a new dimension to european judicial training" (COM/2011/0551 final).

Another item dealt with by Mayoral refers to the application *ex officio* of EU law. Judges were asked if they think that EU law application ex officio has to be extended (in this case 30% of participants did not agree). Much more relevant for this study was questioning the national judges if, as European judges, they feel part of the European legal order. The research evidenced that 75% of participants agreed to this statement.

On this basis, Mayoral wondered to what extent the judicial training can positively influence the national judges' feeling of participation in the EU Legal order; he tried to answer this question by crossing data he gathered. The finding was that the more the national judges are trained in EU law, the more they feel part of EU legal order. In order to ascertain the degree of awareness of the national judges about the importance of the application of EU law, in his view, it is important to verify to what extent the national judges are able to identify points of EU law in their national cases and to what extent the national judges know the tools to identify the points of EU law in their national cases. In addition, he stressed the importance of verifying to what extent the national judges have clear in mind when EU has to be applied *ex officio*.

Finally, he mentioned other two critical elements; first of all that EU has to be more accessible and clear; particularly secondary legislation. He also remarked the question of time, because, as already mentioned by the other speakers, preliminary ruling is a time-consuming activity.

17.4 Alternative Methods of Judicial Activity and New Training Needs

As to alternative methods of dispute resolution – ADR, all the participants confirmed the usefulness of mediation and the Ombudsman; in particular, as to the mediation, it was stressed that in Sweden it is compulsory for the Court of first instance level and that a remarkable number of cases are solved through this mechanism; differently, at the Court of appeal's level mediation is not compulsory but it is possible to use it as well. Nevertheless, there are no training or accreditation requirements for mediators in Sweden. Mediators tend to come from a legal background, usually being judges or lawyers.

As for the Ombudsman, it was confirmed that it simplifies significantly procedures because it is able to deal with certain questions in a very quick way (in certain states there is an Ombudsman for specific fields as administrative issues and relations with IT). In particular, a very interesting activity in consumers' rights field has been evidenced. Generally people do not trust in this system; an exception is Sweden, where the Ombudsman institution was created. Here the Ombudsman has a high status and plays a sort of correction

role for judges' activity but in a soft way. He looks at how a case is dealt with; judges take into account these criticisms and respect the opinion expressed by the Ombudsman.

Among the guest speakers, Radu Carp (Faculty of Political Science – Bucharest University) focused on the need to cover legal training programmes also with alternative methods of dispute resolution as mediation and the Ombudsman. As to the mediation, he underlined that since it is performed out the formal judicial schemes, it is considered an extra-judicial solution; nonetheless, it can be a good way to have access to justice.

For this reason, with a view to facilitate better access to justice, in 2008 the *EU Directive* 52/2008 *on certain aspects of mediation in civil and commercial matters* was issued. The new legal instrument aims at encouraging the use of alternative dispute resolutions and promoting amicable settlement of disputes. In particular, Prof. Carp highlighted that this Directive is intended to support the initial and further training of mediators, in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties.

Nevertheless, he observed that this act is silent about the way in which training in mediation matters has to be performed. Indeed, EU law gives only a very broad definition of mediation and provides for very weak criteria regulating the training programmes and requirements to be met to become mediator. He stressed that under Romanian law few requisites have to be satisfied to become a mediator; it is sufficient to obtain a university degree and to attend a post-university course or a master programme recognized by the Mediation Council (the latter is an autonomous legal entity responsible for supervising mediation activity in Romania).

Professor Carp concluded that in order to increase trust in alternative methods of dispute resolution, the entire system of professional training of mediators has to be improved. The solution he envisaged consists in designing and implementing a dedicated academic training course in mediation, like a special diploma or master degree in mediation. In particular, as regards the Romanian case, he considers it appropriate to grant the Mediation Council concrete power to define the curricula, since this is the body responsible for setting the training standards in the field of mediation and approving the training curricula for mediators. In addition, also the Ministry of Justice should be involved in the determination of the common standards to be observed in the design of these curricula.

The second issue dealt with by Professor Carp was the role of the Ombudsman. He observed that any course on this topic is available at a national level and considers that it should be included in the training programmes for legal professions. Together with a group of colleagues, Professor Carp conducted a research aimed at verifying the attitude

of national judges towards the role of the Ombudsman. One of the results of this research is that, in spite of European and national provisions, judges do not consider the Ombudsman empowered to introduce a case in a court; in addition, what is more striking, is that neither judges nor ombudsmen are in favour of rules providing for this right.

So, even if a legal framework exists, there is this idea diffused that the Ombudsman work is not capable to produce concrete and effective results.

In the view of Professor Carp this problem relies in a question of trust. He thinks that this situation produces a sort of vicious circle; on the one hand, judges do not trust the Ombudsman because they do not know its role and professional profile, on the other hand, it seems to Prof. Carp that the Ombudsman does not trust in itself. In addition, this research evidenced that most of the judges involved do not consider the Ombudsman as a lawyer and, as a consequence, they do not think that he could be granted of the power to act in a court. In their view, the Ombudsman's main tasks are to carry out investigation activity and to issue recommendations.

To conclude, Professor Carp considered that the EU Directive's approach is correct because a better access to justice shall include also the various form of ADR, including mediation and the Ombudsman. On this basis, the real challenge is to find a solution aimed at increasing trust in ADR. This solution, in the view of Professor Carp has to be envisaged in training. The better the knowledge of these two instruments, the higher the confidence in alternative methods of dispute resolution.

17.5 How to Identify New Judicial Training Needs? Suggestions and Experiences Drawn from National and International Training Programmes

During the second day, the debate was devoted to analyze the different training needs raised in the different member states. The central question posed to participants was "how is it possible to build up and organize a European curriculum on judicial studies, in the light of the different national training needs?"

In addition, participants were asked how, in their opinion, the *European Judicial Training Network - ENJT*[4] can deal with the differences between national judicial training systems.

4 The European Judicial Training Network – EJTN is the main platform for the development, training and exchange of knowledge and competence of the EU judiciary. It was established in 2000, in order to develop training standards and curriculum, coordinates judicial training exchanges and programmes and fosters cooperation between EU national training bodies. Official website: <www.ejtn.net/>.

Participants stressed that in order to face the challenges deriving from diversity in Europe, both ENJT and the national institutions in charge to provide for training have to contribute to establish a common judicial and legal culture. In particular, since ENJT's mandate is to help EU Institutions and member states to promote knowledge of legal systems, it contributes to enhance the understanding, confidence and cooperation between judges within states. Nevertheless, to realize common judicial training programme is a hard task; first of all, by reason of the different national legal languages existing in the EU and secondly, because certain issues can be of interest for certain states and totally unattractive for other states.

In particular, the main challenge for judicial training in Europe is to favour the mutual understanding of the different national legal contexts and the respective needs. This goal can be achieved only through the use of a comparative perspective.

Participants highlighted that the proper approach to refresh the judicial training programmes should take in due consideration not only the contents of training but also the methods used to deliver it.

As to the contents, it was stressed that a discussion concerning judicial training cannot be separated from a reflexion on the new role of the judge. Some participants evidenced that even if the main function of the judge is to deal with conflict solutions, the role he/she plays is increasingly affected by several social changes. For this reason, more attention should be paid on new issues, as medialization. In particular, it was suggested to create a common ground for training in three areas: legal skills, management skills and judge crafting. A grey zone of disciplines, not traditionally included in judicial training programmes should be developed.

With regard to the tools and methods used for delivering training, it was suggested to adopt a new approach, less traditional/academic and more practical. In particular, participants proposed to focus on new key elements as: networking, judicial dialogue, decentralization, sharing of best practices and IT tools. During the debate, some national experiences of judicial training were also discussed. For instance, in Romania a centralized system of training is combined with a decentralized system based on several e-learning platforms; the latter provides for specific *curricula* (*i.e.* legal English and legal French).

Finally, it was remarked that a judicial training model one-size-fit-all cannot exist and cannot be created. As a result, in the view of the participants a flexible approach is needed; the latter should grounds on a re-definition of the training's targets.

The contribution of Jiri Priban (Cardiff Law School – UK) aimed at giving a response to the question: "how to educate judges?" In his view, in order to achieve this goal, the main

characteristics of judges as a group of professionals should be emphasized; therefore, it is important to look at non-legal factors and especially at sociological elements. On this basis, with a view to stress how authoritative and powerful judges are as a group of professionals, he mentioned two interesting judgments issued by the Czech Constitutional Court: the Lisbon Judgment, pronounced on 3 November 2009, and a decision concerning the Czech and Slovak pensions systems, issued in March 2012.

In both of them, the Czech Constitutional Court ruled without any preliminary questions and denied any point of EU law. In particular, in Lisbon Judgment the Czech Constitutional Court reiterated the German constitutional principle of *kompetenz der kompetenz* and stated that although it is committed to pro-European interpretation of EU Treaties, in cases of gross incompatibility with national constitutional law, the Constitutional Court reserves the right to overrule the European Court of Justice jurisprudence.

Priban referred also to the German Constitutional Court's Lisbon Judgment issued in 2009, where the German Court quoted the Czech Constitutional Court in its own Lisbon Judgment. In his view, although the latter seems to be a fascinating example of horizontal cross fertilization, it actually is another example of how authoritative and powerful the judges are as a group of professionals within both EU and national member states political systems.

In his view, the characteristics of this group have to be considered in any project aiming at educating judges. In the light of the foregoing, as to the design of the future training programmes for judges he suggested to pay attention to the following elements:

- First of all, he stressed the importance of the role played by institutions, like the judicial academies working at national level to provide judicial training, especially in EU law.
- Secondly, he stressed the importance to increase the level of specialization of practitioners on specific issues.
- Finally, the need to take in due consideration the socio-legal and cultural concept of pluralism has been emphasized. Training for judges has to be based on the European legal pluralism and to be focused on the role concretely played by the judge in the process of Europeanization. That means to use a comparative method. He remarked that differences and conflicts do not rise only from normative texts but also from both the different uses of law and practices. Prof. Priban affirmed that judicial training should be instrumental in using this comparative approach and that a prominent role should be played by the epistemic communities of European lawyers. EU judges, but also academics, should both go deeply into and contribute to the epistemic community of European lawyers.

Rosa Jansen (Dutch Training and Study Centre for the Judiciary – NL) presented an overview of the Dutch system of judicial training and pointed out the main challenges occurred during the last years. She stressed that the Netherlands has a long tradition in training judges and prosecutors (it started in 1956) and that the national system provides for a very long training after university (six years). In general terms, the most part of the Dutch training system has not changed, because the real work of the judge is still giving solutions and decision-making; nevertheless, even if the work of judges is in a way stable and constant, the world around us is ever changing. For this reason, changes in both judicial training programmes and methods have to occur. The world is becoming more and more demanding and in that context it is important to find solutions aimed at supporting judges in a practical way.

As to the Dutch experience, she stressed that in the Netherlands, developments in society are considered as a source of inspiration and that these developments produce effects on knowledge, learning, education and research for the judiciary. Indeed, she highlighted the importance of literature describing social trends and predicting what the society will be in 2020. These developments will shape the future administration of justice, for this reason judiciary and bodies entitled to provide for judicial training need to prepare themselves timely. Judicial training cannot be performed as in the past; even if substantive and procedural law remain pivotal topics for training, other matters, also non-legal, have gained importance. Since education and training are essential drivers of change within organizations, judicial training institutions must be aware of current and future developments in society because tomorrow's judges and prosecutors are recruited, selected and educated today.

In the light of the foregoing, Jansen gave an overview of the various challenges that institutions in charge to provide for training can take as inspiration when thinking about the design of future programmes.

The first challenge to face, in the opinion of Jansen, is demography. As to this point, she pointed out that in the coming years there will be fewer professionals; thus, there is a huge risk of loss of knowledge. As a consequence, she affirmed, more attention should be paid to knowledge management; since the generation of the 1970s, *i.e.* the current generation of judges, is leaving the judiciary, coming generations must be trained timely. She added that in order to maintain the quality of the judicial system, recruitment of talented young people is required. In her view, this is a critical problem since most of the talented young lawyers choose other kinds of jobs, more attractive and lucrative. As a result, the challenge for training institutions is to contribute to make the judicial professions more attractive for the young generations, by offering innovative training programmes and promoting personal development plans and other incentives.

The second challenge is globalization. Many cases dealt with by judges have a European or an international context; as a consequence, judges and prosecutors need new knowledge and competences to deal with these contexts. In addition, they should take part in new transnational partnerships.

"Citizens and society" is the third issue challenging judiciary and judicial training. Many developments take place within society, at various levels. Although these developments are outside the scope of control of magistrates, it is important to have awareness and to understand the current and future dynamics. It is also important to understand how these developments affect the role of the judiciary and to design training programmes that take into account these problems.

Another topic dealt with by Jansen concerns the economy and work. She remarked that new approaches to work emerge, as for instance flexible working hours as well as flexible labour arrangements and shorter contracts. All these elements should exercise an influence in the way people need to be trained. In this light, for the young generation the choice for the judiciary strongly depends on the position taken in respect to a new approach to work. On this basis, the 'experience of learning' has to be revisited with a view to attract young professionals; that means to pay attention not only to course materials or the trainers. Changes in the knowledge landscape represent another challenge to face. Current judicial organizations often are of a closed nature; for this reason, judicial training institutions have to be a vehicle for change in the knowledge infrastructure within judicial organizations.

Among the other current challenges, Jansen listed also digitalization and the growing amount of available information. She outlined how digital infrastructure is deeply linked to the quality of learning. Therefore, judicial training institutions must be involved in the design and implementation of the digital knowledge infrastructure. She remarked that currently, they are often not involved. A new generation of magistrates needs to be trained by means of digital training methodologies.

Finally, Jansen mentioned other two critical elements: medialization and innovation. As to medialization, she underlined that it affects judiciary and judicial training for two reasons; first of all, the impact of the media is ever increasing and the growing media attention for the judiciary compels the judiciary to be transparent. Secondly, visibility and media wisdom are of strategic importance for courts and prosecutor's offices. Dealing with media has become unavoidable for the judiciary; therefore in the Netherlands, many training institutions have already incorporated this topic in their training programmes. As to innovation, she stressed that it is important to turn knowledge and training into a catalyst

for change within the judicial sector and that judicial training institutions are in a good position to support innovation within the judicial sector.

Giacomo Oberto's (Judge of the First instance Court in Turin – IT) intervention focused on the national, European and International legislation concerning judicial training. He divided his presentation into four parts: the first one dealt with judicial training in international legal instruments, the second part was about judicial training in EU law, the third one focused on the preliminary training for future jurists and the last one concerned the topic of efficiency of justice.

As to the International legal instruments concerning this matter, he referred to some provisions issued by the Council of Europe; in particular he mentioned the *Recommendation 2010/12 COE Committee of Ministers on judges: independence, efficiency and responsibilities*, where there are two articles devoted to judicial training. Article 56 states that "judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience; Article 57 affirms that an independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office".

In addition, Oberto mentioned the *European Charter on the statute for judges*, issued in 1998, where other hints can be identified in order to define new training needs. The Charter provides many conditions to satisfy in matter of judicial training; for instance, *the statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law* (Art. 1.1). Moreover, Article 2.3 states that "*the statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties*".

Also the Opinion 4 /2003 of the Consultative Council of European Judges (CCJE) provides important suggestions in the matter of judicial training; for instance, Article 28 point iii) states that in view of the diversity of the systems for training judges in Europe, the CCJE recommends that *theoretical and practical programmes should not be limited to techniques in the purely legal fields but should also include training in ethics and an introduction to other fields relevant to judicial activity, such as management of cases and administration of courts, information technology, foreign languages, social sciences and alternative dispute resolution (ADR)*. Furthermore, with a view to foster better knowledge and mutual

understanding between judges and other professions, the Opinion recommends also the practice of providing a period of training common to the various legal and judicial professions (Art. 29).

The second part of the presentation aimed at analysing how judicial training is dealt with by EU law. As to this point, Oberto affirmed that it is necessary to adopt a European approach in any kind of substantive and procedural law. He suggested to organize seminars and training for prosecutors and judges always taking into account EU law, because the latter affects more and more sectors of the national legislation.

He evidenced that often scholars make use of the expression "methodological Europeanization" (Von Bogdandy),[5] in order to define methods of legal interpretation which are able to bring about results compatible with EU law and, in his view, this kind of methodology should be used in order to re-design the methodological attitude of teaching and training in the law field.

Oberto mentioned also the establishment of the *European Judicial Training Network* – EJTN in 2002 and remarked that attention should be paid on how it is currently working. He admitted that a lot of good work has been done; nevertheless drawbacks still affect the system. He particularly referred to the link between the network and the final addressees of its activities, *i.e.* the judges.

As to the Italian experience, he evidenced that in Italy any initiative concerning the judiciary involves the Italian Superior Council of Magistracy (CSM) that is the body in charge for judicial training at the national level. The latter is based on a very good model, but it presents some drawbacks, especially a pantagruelic tendency to swallow everything that concerns the judicial life. Since initiatives starting at the European level are filtrated through the cumbersome and ineffective procedures of the Council, the final result is that programmes from the European Network reach their addressees very late, sometimes after the training events have taken place.

Oberto stressed that this kind of remarks have been confirmed by a report compiled for the European Parliament by the Academy of European Law (ERA) and the EJTN. Accordingly, only a small minority of judges, prosecutors and court staff have attended a European judicial training programme. The report further states that judges and court

5 See Von Bogdandy, "Prospettive della scienza giuridica nell'area giuridica europea. Una riflessione sulla base del caso Tedesco", *Foro it.*, 2012, V, c. 54.

staff face a number of obstacles to participate in continuous judicial training programmes. These obstacles are listed as follows:

1. lack of information about the training programmes available;
2. short notice of when training programmes will take place;
3. lack of places, particularly for judicial exchanges;
4. lack of funding by employers;
5. institutional opposition;
6. work/life balance;
7. language barriers.

The third part of the speech was about the "preliminary training," that is to say the training of young law-graduated people who are preparing themselves to face the competitive examination to become judges. In the view of Oberto the main problem is to bridge the gap between University education and the necessary skills to become a judge. Indeed, he emphasized that in Italy, University programmes are devoted to provide only a theoretical preparation and students are not trained from a practical perspective.

In order to solve this problem, the Italian legislator established the Schools of Specialization for the Legal Professions that are postgraduate schools set up with the aim to provide a specialized preparation. (Legislative Decree No. 398/97). On the one hand, this initiative represented a good solution because, first of all, it provides young jurists with additional legal training. On the other hand, the same initiative presents negative aspects; the legislation at a stake allows young law graduates to become lawyers even without having attended that School. In addition, law graduates can be admitted to the examination to become a judge even if they have not attended the School, provided that they have passed the bar exam. The final result is that the level of preparation of many candidates is far from being satisfactory. The solution envisaged by the Italian legislator was the introduction of agreements between courts and Universities that provide the possibility for trainees to complete internships.

Finally, the last part of the Oberto's contribution was devoted to the topic of the efficiency of justice. He referred to the activity and the official documents issued by the CEPEJ on the quality of justice and on the judicial time management and he affirmed that they should become a common *acquis* for all European judges. In particular, he mentioned the activity carried out by the SATURN Centre for judicial time management, set up by CEPEJ, whose main task is to collect information necessary for the knowledge of judicial time frames in the member States and to enable member states to implement policies aiming at preventing violations of the right to a fair trial within a reasonable time. Recently, in the

framework of the activity of this group it was decided to start up coaching sessions with local courts applying for help; for instance, it was designed a Court coaching programme for the effective use of the CEPEJ's tools and guidelines.

Antonella Ciriello (Italian Superior Council of Magistracy – CSM) dealt with the training activities organized by CSM. In particular, she talked about her experience as a trainer and as a member of the scientific committee of the CSM; the latter has definitively approved the action plan called "European Gaius".[6] Having regard to the Dutch experience, the project aims at increasing the knowledge in European law of Italian judges through three actions:

1. the first one is aimed at increasing the number of central and decentralized courses on European law, with particular regard to language aspects and, if possible, also supplementing the courses on national law with specific sessions dedicated to European law;
2. the second action involves the training of judges having jurisdiction in the sector of European law, to be held at the Office of the Reference person in charge of decentralized training, next to the judges with specific skills in the penal and civil sectors;
3. the third action involves the creation, as part of the *cosmag* website, of a web page (e-G@ius: electronic Gaius) capable of providing quick and easy access to both past and ongoing training courses, the teaching material of the High Council for the Judiciary, all the European sources as well as to national and supranational legislation.

Another point stressed by Ciriello was the adoption of the European Parliament Resolution of 14 March 2012 on judicial training (2012/2575(RSP)). Especially, she remarked the content of recitals d), f), g) and h) where the European Parliament states that in adopting the Recommendation at a stake the following elements have been considered:

– Language barriers, a lack of (timely) information on existing programmes, the fact that the programmes are not always adapted to judges' needs, judges' heavy workloads and the lack of relevant funding are among the reasons for the relatively low level of respondents receiving training in EU law (point d). As to this point, she remarked the critical situation faced by the judiciary from an economical perspective; in particular she emphasized a huge lack of resources that affect the daily activities.
– The European judicial area must be built on a shared judicial culture among practitioners; it is not only based on EU law but developed through mutual knowledge and understanding of the national judicial systems. As a result, with the active support of the Academy of European Law, the European Judicial Training Network and the European Law Institute the university curricula, exchanges, study visits and common training have to be revamped (point f).

6 For further information see the official website of the Italian Superior Council of Magistracy <www.csm.it>.

- Judicial training should be linked to a debate on the traditional role of the judiciary and its modernization; this also entails language training and a deeper knowledge of comparative law and international law (point g); she proposed the need to organize more seminars and training events concerning the interaction between the different systems. She stressed that CSM organized seminars where judges could learn how to prepare a preliminary ruling question and training courses to learn to use European jurisprudence databases.
- A common judicial culture also needs to be created among members of the judiciary using also the Charter of Fundamental Rights and the work of the Council of Europe's Venice Commission, in order to promote the core values of the judicial profession, by discussing and promulgating common professional ethics, the rule of law and the principles for the appointment and selection of judges, and to avoid the politicization of the judiciary, thereby promoting the mutual trust necessary to make the common judicial area a reality.

Finally she mentioned another interesting initiative promoted also by CSM, *i.e.* the *E-forum civil cooperation*. The project, which adopted English as its working language, aims to promote judicial cooperation in civil matters for the purpose of creating an authentic European space for justice in civil matters, based on recognition and mutual trust.

17.6 Proposing a Reference Tool for the Assessment of Training Needs

On the basis of the valuable contributions of the guest speakers and the lively debate among the participants, summarized above, the IRSIG team prepared a report that singles out some issues at stake that have been identified as relevant to assess the different judicial training programmes at national level and to identify the future needs. In relation to those issues, we drafted some recommendations and suggestions for planning and reforming judicial training programmes. The Reference Tool is composed by those recommendations and suggestions. The Reference Tool is divided in six sections dealing with: 1. "General institutional setting of judicial training"; 2. "Interaction between EU law and national law of member States"; 3. "Alternative methods of dispute resolution"; 4. "Developments affecting society as a source of inspiration"; 5. "Courts relationship with media and civil society"; 6. "Other recommendations deriving from national experiences".

In each section, the authors of the Tool added also some questions that could be ideally addressed in designing and reforming national judicial training programmes. In this way, these questions could be seen as a practical tool that national authorities responsible for judicial training could differently address and consider in designing or assessing their training programmes.

Annex Reference Tool for the Assessment of Training Needs

Recommendations and Suggestions for the Assessment of Training Needs

1. Suggestions About the General Institutional Setting of Judicial Training

From the Guest speeches and the subsequent debate in the Workshop it comes out that:

1. National judicial training programmes should provide trainees with theoretical and practical initial and in-service training, entirely funded by the State.
2. Training should include economic, social and cultural issues related to the exercise of judicial functions.
3. Initial and in-service training programmes have to meet requirements of openness, competence and impartiality inherent in judicial office. These requirements should be ensured by an independent authority.
4. Theoretical and practical judicial training programmes should not be limited to techniques in the purely legal fields but they should also include training in ethics, and other fields relevant to judicial activity, such as case management and court administration, information technology, foreign languages, social sciences, alternative dispute resolution (ADR).
5. "Methodological Europeanization" should be used in order to re-design the methodological attitude of teaching and training and to define methods of legal interpretation which are able to bring about concrete results. In this respect, any kind of substantive and procedural national law needs to be considered and taught in relation with EU law.
6. *European Judicial Training Network* – EJTN's activity should be promoted at a national level.

Questions to be Addressed in Designing and Reforming National Judicial Training Programmes

A. How many (and which) national institutions are involved in judicial training?
B. Which type of cooperation/subsidiarity could be granted among these institutions?
C. Are all the relevant judicial actors involved in defining the training programmes?
D. Are all the relevant judicial actors involved in the assessment of the training programmes?
E. Is the majority of the issues related to the exercise of the judicial functions included in the judicial training programmes?

2. Interaction Between EU Law and National Law of Member States

Training for judges has to be based on the European legal pluralism and to be focused on the role concretely played by the judge in the process of Europeanization. As a result, an effective judicial training in EU law should achieve the following goals:

1. to offer a comprehensive knowledge of matters and sectors falling into the scope of application of EU law;
2. to enable judges to recognize clearly situations that fall within the scope of application of EU law;
3. to favour the knowledge and use of different languages;
4. to contribute to increase the awareness of the different judicial cooperation mechanisms;
5. to favour the knowledge and the use of instruments aiming at sharing information related to both substantive law and practices and procedures used at a national level (for instance, European Judicial Network and European Judicial Network in Civil and Commercial Network websites, E-forum civil cooperation);
6. to educate trainees in using a comparative method.

Questions to be Addressed in Designing National Judicial Training Programmes

A. Do national judicial training programmes cover all the main legal areas falling into the scope of application of EU law?
B. How many specific university courses and vocational training events concerning EU law matters are included in national training programmes?
C. To what extent is the training effective in the opinion of the national judges?
D. Does the national training programme include specific courses devoted to the elaboration of preliminary ruling questions?
E. How many English language courses are included into the national training programmes?
F. Is the knowledge and the use of EU databases or IT tools diffused in training programmes?
G. Do university education or vocational training courses deal with comparative substantial and procedural law?

3. Alternative Methods of Dispute Resolution

A comprehensive judicial training programme should also cover alternative methods of dispute resolution and contribute to increase confidence in these instruments. Even if they

are performed out the formal judicial schemes; nonetheless they can be a good way to have access to justice. In particular, judicial training programmes should:

1. favour the knowledge of mediation, including this topic in the traditional judicial training programmes as well as creating or improving specific professional training academic courses in matter of mediation, This will allow to professionalize the mediators' career and, in turn, to increase trust in this alternative method of dispute resolution;
2. promote the knowledge of the *EU Directive 52/2008 on certain aspects of mediation in civil and commercial matters* with a view to:

(a) provide information concerning the relevant supranational rules aimed at facilitating the use of mediation as a method of settling cross-border disputes in civil and commercial matters;

(b) understand how an effective mediation can be ensured. The Directive, for instance, exhorts member States to encourage the development of voluntary codes of conduct by mediators as well as other effective quality control mechanisms concerning the provision of mediation services;

(c) understand how the judge can contribute to the success of mediation (in courts or in private settings);

(d) enhance mutual trust between States in matter of mediation, favouring a better understanding with respect to confidentiality, effect on limitation and prescription periods, and recognition and enforcement of agreements resulting from mediation.

3. As to the role of the Ombudsman, judicial training programmes should contribute to change the attitude of national judges toward this instrument by including courses on this topic at national level, in order to enhance the knowledge of the Ombudsman's role and professional profile.

Questions to be Addressed in Designing National Judicial Training Programmes

A. Do national judicial training programmes include mediation issues?

B. Are specific training courses for mediators organized within judicial schools or academies?

C. Do national judicial training programmes include courses devoted to the Ombudsman's role and functions?

4. Developments Affecting Society as a Source of Inspiration

The judicial training should be linked to a debate on the traditional role of the judiciary and its modernization. Social trends will shape the future administration of justice, even if substantive and procedural law remain pivotal topics for training. Other matters, also

non-legal, have gained importance. For this reason judiciary and bodies entitled to provide judicial training should pay more attention to new issues such as:

1. *Demography*: in the coming years there will be fewer professionals due to the retirements of the older judges; thus, there is a huge risk of loss of knowledge. In order to maintain the quality of the judicial system, it is necessary to take account:
   (a) Recruitment of talented young people is required as most part of talented young lawyers choose other kinds of jobs, more attractive and lucrative. As a result, the challenge for training institutions is to contribute to making the judicial professions more attractive for the young generations, by offering innovative training programmes and promoting personal development plans and other incentives.
   (b) More attention and knowledge of management issues.
2. *Globalization*: many cases dealt with by judges have a European or an International context; as a consequence:
   (a) Judges and prosecutors need to be more aware of the features characterizing global context;
   (b) Judges and prosecutors must take part in new partnerships with other actors outside the judiciary.
3. *New approach to work*: new approaches to work emerge, as for instance flexible labour arrangements. For example, the diffusion of shorter contracts influences the way people need to be trained. Also the judiciary is affected by this new approach to work.
   (a) "Experience of learning" should be revisited with a view to attract young professionals employed with new types of contracts;
   (b) Judicial training institutions should be also a vehicle for change within judicial organizations.
4. *Digitalization and growing amount of available information*:
   (a) Judicial training institutions should be involved in the design and implementation of the digital knowledge infrastructure.
   (b) Digital training methodologies should be provided for judges, prosecutors and legal professionals.
5. *Medialization and innovation*: since dealing with media has become an important task for judiciary, this topic should be incorporated in training programmes.

Questions to be Addressed in Designing National Judicial Training Programmes

A. Are the issues mentioned above inserted in the national judicial training programmes?
B. Are specific plans of future scenarios of judicial training elaborated?

C. Who elaborates these plans? Are scientific experts and academics involved in the long-run planning?
D. Which are the concrete benefits of including these innovative issues in the judicial training programmes?

5. Courts' Relationship with Media and the Civil Society

One of the current and future challenges for judges, and courts in general, regards how to deal with media and the civil society. In many European countries, in the last twenty years, the media became more and more a key factor in building public opinion in the field of justice and in shaping the relations between judicial actors and political actors.

Sometimes, judicial actors used the media as a new channel to gain legitimacy and visibility especially during phases in which the power of the judicial is challenged by other powers or by citizens' negative perceptions. This was the case of countries like Italy, France, Belgium and also Spain. Thus, judicial training has also to include specific topics and courses related to how to manage the interactions with media and civil society organizations.

Maybe with the support of communication experts specific courses could be organized on:
1. how to deal with the communication of sensitive information and proofs during the trial;
2. how to explain judicial decisions;
3. how to inform the public and the civil society organizations about judgments;
4. how to help media and the civil society in rightly understanding information.

Questions to be Addressed in Designing National Judicial Training Programmes

A. Are topics and courses related to judges and media interactions already present in judicial training programmes?
B. If present, are these topics taught only by external experts or also by other experienced judges?
C. Are specific communication skills developed throughout the judicial training?
D. Are topics related to the interactions between courts and the civil society organizations specifically inserted in judicial training programmes?

6. Towards a New Vision of Judicial Training: Judge Crafting, Management and Judicial Skills

In conclusion to the Workshop, it was suggested to create a common ground for training in three areas: judge crafting, management and judicial skills. In this respect, a "grey

zone" of disciplines, not traditionally included in judicial training programmes should be developed.

As stressed in other studies on the topic,[7] judicial training should pay more attention, for example, to the so-called "judge craft" skills. These skills are commonly conceived as a set of knowledge, behaviours and attitudes that judges are expected to have in performing their judicial role (for instance, opinion writing, sentencing, dealing with expert evidences, vulnerable witnesses, unrepresented litigants, the use of alternative dispute resolution mechanisms, linguistic skills needed to deal with for multi-lingual proceedings).

National judicial training programmes should take into account also "judicial skills". This term can include a wide set of non-legal competencies that are needed in the day-to-day work of judges in the courtroom. Specific attention should be paid to court management skills.

National judicial training should include seminars and courses providing an in-depth study of the principles and techniques for the development and administration of a modern, efficient, fair and transparent court system. In particular:

1. Case-flow and time management;
2. Managing court financial resources;
3. Specific computer training.

As to the tools and methods used for delivering training, participants suggested to adopt a flexible approach and to focus on new key elements as: networking, dialogue, focus on practice, decentralization, sharing of best practices, and use of IT tools.

Questions to be Addressed in Designing National Judicial Training Programmes

A. Does the national judicial training programme include courses and seminars devoted to help trainees in developing knowledge, behaviours and attitudes needed in performing their judicial role?
B. Does the national judicial training programme include courses and seminars devoted to non-legal competencies that are needed in the day-to-day work of judges?

7 See the relevant work of Judicial Studies Alliance: C. Thomas, H. Epineuse, C. Guarnieri & D. Piana, *Judicial Training & Education Assessment Tool. Meeting the Changing Training Needs of Judges in Europe*. Draft report prepared for CEPEJ – Council of Europe, 1 October 2007. Available at: <www.ucl.ac.uk/laws/judicial…/Judicial_Ed_Assess_Tool_2007.pdf>.

In particular:

C. Does the national judicial training programme provide trainees knowledge in matter of case-flow and time management?

D. Does the training for judges include courses helping judges to develop skills related to the management of court financial resources?

E. Does the national judicial training programme cover computer training?

F. Does the national system of judicial training include e-learning platforms?

6. Other Recommendations Deriving from National Experiences

1. To bridge the gap between University education and the necessary skills to become a judge, by introducing agreements between courts and Universities that provide the possibility for trainees to complete internships;
2. to increase the number of central and decentralized courses on European law, with particular regard to legal linguistic and semantic aspects and, if possible, also supplementing the courses on national law with specific sessions dedicated to European law;
3. Need to better organize which subjects can be part of general/generalist training and which subjects, on the other hand, can be part of specialized training (addressed not to any judge but to specific judge/s);
4. One of the main challenges for judicial training in Europe is to favour the mutual understanding of the different national legal contexts and the respective needs. This goal can be achieved only through the use of a comparative perspective.
5. As a result, a flexible approach is necessary; indeed, some participants remarked that a judicial training model one-size-fit-all cannot exist and cannot be created.
6. Participants highlighted also that a discussion concerning judicial training cannot be separated from a reflexion on the new role of the judge. Some of them pointed out that even though the main judges' function is to deal with conflict solutions, their role is also affected by several social changes. Judicial training programmes should be refreshed not only as to their contents but also in regards to the methods used to deliver training. As observed by participants, since a judicial training model one-size-fit-all cannot exist and cannot be created, it is suggested the use of a flexible approach, less traditional/academic and more practical. This change should be realized also since a re-definition of the training-target;
7. Judicial training programmes should also take into consideration the use of information and communication technologies (ICT) and how they are going to affect the administration of justice and the role of the judge. In particular, the use of ICT can affect the access to justice (*e.g.* e-filing), the way to manage court proceedings (*e.g.* e-evidence, telephone and video hearings), the judge's decision-making process

(*e.g.* legal data base, machine learning tools) and the assessment of court and judge's performance (*e.g.* court statistics and data mining for performance appraisal).

Questions to be Addressed in Designing National Judicial Training Programmes

A. Does the national judicial training system include opportunities for trainees to complete internship based on specific agreements between courts and universities?
B. Does the national judicial training system provide for training in European law? If yes, is the training centralized or decentralized and how many courses are available?
C. Does the national judicial training system provide training in legal language aspects related to EU law? If yes, is the training centralized or decentralized and how many courses are available?
D. Which are the subjects that can be part of general/generalist training?
E. Which are the subjects that can be part of specialized training? (addressed not to any judge but to specific judge/s)
F. Does the national judicial training system include courses in comparative law?
G. Does the national judicial training system include in-service training?

Part VII
Toward a European Curriculum Studiorum on Judicial Studies? Recommendations for Policymakers and Course Developers

18 Recommendations for Policymakers and Course Development in Legal and Judicial Training

*Tomas Berkmanas, Daniela Cavallini, Laura Ervo, Ole Hamerslev, Markku Kiikeri, Philip Langbroek, Otilia Pacurari**

18.1 Introduction: Towards a Right-Oriented and Communicative Approach to Legal Education

18.1.1 The Menu for Justice Project

The Menu for Justice Project is an effort of a group of European academics to make an inventory of how lawyers and juridical professionals, especially judges, are educated and trained. Based on the country reports of our participants and the feed back we organized from practicing legal professionals, we developed a set of recommendations for legal and judicial training, from undergraduate to graduate, to Ph.D. training to initial professional training and eventual vocational training. Below, we first explain in more detail the methodology of our work. After that we present our recommendations.

18.1.2 The Legal-Substantive Viewpoint

The interpretation of the data collected and analyzed during this project required a method and a vision. Analysis of the various key findings and the re-evaluation of the preliminary conclusions and recommendations cannot be made without more comprehensive approach to the legal-educational system in the countries studied in our project. In this introduction we try to describe the approach applied at the final stage of this project and the vision that emerged from our exchanges.

The aim of the legal education is not institutional in any self-referential sense. The political legitimacy of the functional institution is not the greatest in importance in legal education. And even if we recognize the centrality of the legal correctness and the correct application of rules of legal orders, the most important aspect for legal education is the effective

* The current document is a joint work of the Coordinators of the Project "Menu for Justice: toward a European Curriculum Studiorum on judicial studies" (<www.menuforjustice.eu>).

granting of rights to the individual persons within legal jurisdictions. European citizens' rights must become the reality of their social life.

Consequently, the questions of our project (*e.g.,* how should lawyers and judges be educated and trained?) relate to the legal tradition of the European individual. A European individual (EI) is the almighty subject of the legal system. EI experiences her rights being enforced by the democratic institutions and a well-functioning legal system. This is our traditional assumption about the European legal world. This experience is not, however, so clear when considering the individual within the European legal world. The legal heritage of rights appears many times conditioned by the "national legal-systematic" traditions. In practice, and despite EI's formal status within the European legal system and rights deriving from various European legal rules, EI often faces a different type of legal world outside her "national-legal" world.

Here the main factor is communication. In enforcing and getting her rights recognized, EI often faces various communicative problems. EI, or her attorney, is not understood by local attorneys. Communicating with a foreign court and its administration as a claimant, accused or as a witness differs considerably. There is a lot of misunderstanding and ignorance. This all is mainly determined by the mode of communication and not principally by the linguistic abilities. The question is about the sense of the European system and not the meaning of the individual rules.

18.1.3 Communicative Obstacles and Legal Education

Legal and political integration is characterized by removal of obstacles for realizing the individual rights. Our basic questions are quite similar. What obstacles does the integration of education remove? What is the nature of the individual "rights" related to that? Furthermore, what extra value does this integration add, *i.e.* what is the value-aim of these improvements? We claim that the right to be realized is the individual right to effective legal communication.

The communicative obstacles are, as we very well know, anchored strongly in national traditions. Indeed, traditions are legally strongest in the realm of the procedural law. Procedural law is the field of law regulating legal communication. We are not, however, analyzing procedural law. That is the task of a different type of policy designer.

Many times the obstacles are characterized by unskilled lawyers and legal-institutional actors. These actors may be inexperienced *vis-à-vis* the communicative recognition of an

individual. The main aim of the legal education, according to us, is to try to achieve a communicative-rational (European) legal system. Predictability and reasonability of the legal procedures and legal work are values as such. They are also the conditions for the traditional, functional and collective legitimacy of the legal system as a whole. Without them the European individual does not have expectations of legal certainty. The question is also about how the democratic nature of the system is experienced.

18.1.4 Some Preliminary Conclusions

Our conclusions must be seen in this context. All legal education and its improvement start from the aim of achieving communicative and analytical skills and respect of the legal and social integrity of the (European) individual. We have selected to the conclusions some existing and project-designed pedagogical solutions, which may help educators to improve the aforementioned skills. Some general remarks can be made about their relationship to our fundamental approach.

We think that the mere language skills are not decisive in achieving the communicatively well-functioning law in the European legal world. Even if highly recommended, good communication does not only depend on the fluency of legal actors in (many) foreign languages. Important is not "with what" but "what". Apart from fully understanding the content of the rules and the basic principles constituting their systematic application, legal actors must be skilled in facing unconventional and problematic communicative situations. They must have compassion and skill to recognize the European citizen as a communicative person coming from a different tradition. This understanding is not necessarily improved by knowing the language only.

Many of the pedagogical methods support these necessary skills. Participating in academic discourses in all levels of legal education is probably the most effective one. Where the undergraduate education is designed for learning the basic skills, for example in legal clinics, the participations on the graduate and Ph.D. levels are designed to learn more critical, self-critical and analytical participation. Also the vocational training should focus on that. Closed discourses do not support this aim, for their emphasis is too often on the substantive content of law. Thus, we have suggested that the legal education must, at all levels, focus on pedagogical solutions aiming at good communication and discourse skills. Furthermore, these methods should be applied, as far as possible, cross-border.

Some proposed technical solutions, like the European wide electronic environments and "clinics", are supporting these basic methods. The so-called "practical" training

must be related to these types of skills too. The improvement of the European exchange programmes targets also at achieving more skilled European lawyers in our sense. Institutional exchange, apart from possible exchange on information regarding the legal-substantive issues, may help the legal actors reduce the barriers for the "European legal communication". Multi-disciplinarity, in addition to creating understanding of the technological and social systems as such, does improve the legal actor's ability to understand the European individual coming from various societal, economic and technical contexts.

Finally, it must be stressed that we have tried to avoid any interference to the autonomy of the legal institutions. The discussions during this project and the analysis of the data have confirmed that there seems to prevail, in Europe, relatively strong differences in this regard. In some traditions the institutional recruitment and promotion seem to be intensely regulated. The tendency in Europe seems to be the same. However, in some traditions policymakers are still very cautious in touching the autonomy of the legal institutions. Some uncertainty in our recommendations relate to this. There seems to be a need for a separate study regarding these differences.

There would be a need also for a separate study regarding the relationship between the academic world and legal institutions. Academic world is quite distinctive part of legal education. However, it is also a place where the substantive and the most valuable skills may be achieved academically, institutionally and socially. Nevertheless, regulation of the relationship between the academia and the legal institutions is more problematic than in basic or vocational education. One may wish for cooperation, but if this should be instituted by regulation is another question. Many forms of institutionalized cooperation are developing in various member states.

In the end, some remarks could be made about our findings regarding the Bologna system and legal education. The common basic European structure of education does not seem to function perfectly in the field of legal education. There may be many reasons for this. However, seen from the point of view of the "European communication" and the legal-substantive viewpoint, there may be need for the legal actors to acquire skills more "cross-gradually". One could aim at some kind of "country specialization". Indeed, the possibility to "cross" various undergraduate and graduate levels would result in some kind of country specialization, a minimum competence of a lawyer of one jurisdiction in another. This idea is motivated by our original and fundamental standpoint, *i.e.*, there is a need for the European citizen to get help by such legal actors, who are profoundly competent in understanding the peculiarities of each social and legal system.

Below we explain how lawyers can be taught and trained, at different levels of their education, to be skilled legal communicators who are able to support European citizens to maintain and realize their European and national rights.

18.2 Undergraduate Law Degree

In most European countries undergraduate degree curricula are largely based on traditional legal courses, whereas non-legal/interdisciplinary courses are given minor importance. Despite this, non-legal/interdisciplinary courses are present in almost all universities and some of them seem to gain increasing attention (like, for example, public management, organization of judicial systems, accounting). As regards international subjects (EU law, comparative law, foreign language, etc.) and exchange programmes (Erasmus), they seem to be well established in the vast majority of the Countries. On the other hand, innovative teaching methods (like moot court, legal clinics, e-learning, multimedia) are not universally widespread. Formally, most universities are autonomous in designing the curriculum of the law courses, but in practice some barriers do exist (accreditation procedure; sometimes law professors are afraid of changes and innovations or not stimulated to adopt them, considering also that they can require lots of time, effort and resources; the legal requirements to access the legal professions strongly influence the content of university degrees).

Recommendation 1: Teachers should be trained in pedagogical skills to develop capacities in for example legal clinics, moot court, legal problem solving, and other teaching/learning methods, following the new pedagogical research based standards.

Recommendation 2: Moot court is a teaching method to improve juridical skills of lawyers in a practical way (theoretical knowlegde put into practice). This applies to national, European and international legal subjects. Thus, it contributes to lawyers being better able to help EU citizens to attain their rights. Universities should offer opportunities to students to participate in national and international moot court competitions.

Recommendation 3: Legal clinics is a teaching and learning method. Students advise a real person as a part of a training process. This could also be applied to EU law situations and as transnational interuniversity cooperation. It could also be combined with applied ICTs and electronic platform (in this case, media education of students is required).

Recommendation 4: Small groups are a teaching and learning method. It would be highly recommended to universities to encourage students to work in groups and take active part in class discussions.

Recommendation 5: Multimedia can be used to make lectures more attractive and it can make European Legal Realities better visible.

Recommendation 6: Practical skills. There is a tension in European undergraduate studies between learning theoretical and practical competences (writing skills, team work,

communication, negotiation and presentation skills). These are training purposes that should be integrated into Legal training, also in the graduate degree curriculum.

Recommendation 7: There is a tension in European undergraduate studies between learning legal and non-legal competences, also concerning the question in what phase of the study general *Bildung* should be stressed (philosophy, economics and sociology).

Recommendation 8: Special integration courses for foreign students are an instrument to faciltate international student exchange.

Recommendation 9: Given that students are limited in their choice of destination by the exchange programmes (Erasmus), it is advisable for universities to create more exchange programmes, also on a regional basis. It is also recommended that universities acknowledge not all students are habitually disposed to travel abroad and that the universities thus focus on this fact when recommend students to consider exchange programmes. Long-distance e-learning programmes could be used as well. The Menu for Justice Map of law schools may help students find places they otherwise would not have thought of, beyond the usual universities (this concerns also graduate studies).

Recommendation 10: Transnational cooperation between universities to create joint law degree programmes should be enhanced. This requires recognition in the different countries (accreditation). In this way national accreditation requirements are obstacles to do this. Legislation requires national diploma to enter the legal professions (apart from requirements of nationality to become a judge).

Recommendation 11: More measures should be taken to financially support law students to visit European institutions.

18.3 Graduate Law Degree

In many of the countries analyzed in the project the structure of the university courses follows the so-called "Bologna model", which is based on two cycles (undergraduate and graduate degree) and a corresponding system of credits. Some variations exist with regard to the cycles' length. In some countries (as Lithuania) however the Bologna model coexists with other "traditional frameworks", especially in the form of integrated legal studies. Also in some countries (as Germany or Hungary) the Bologna model is not implemented in legal education at all.

In this context there are two main approaches to graduate legal education: either graduate studies are not separated as a distinct level of studies and are the part of the integrated

(undergraduate and graduate) legal studies, or they are separated as a second cycle of studies in the Bologna model. Also, in both cases the postgraduate studies might be possible as essentially advanced master studies. In any case, if graduate studies form as separate level/cycle of studies (either as a regular master or advanced master), they should be used for interdisciplinary courses (in a progressive way from the undergraduate degree) and specialization of a future lawyer. They can function as either the means to widen the scope of knowledge and skills of the future lawyer more in an interdisciplinary direction, or to deepen it in some more specialized fields of law.

Recommendation 12: Interdisciplinarity for legal studies is to be a point of attention from the first year of university studies onwards (with *e.g.* sociology, psychology, economics, other). It should be implemented in a progressive way. Widening the scope of knowledge and skills can take place on the graduate level. This could require participation of teachers from different disciplines in one course. Also the specialization of lawyers to some more specific fields of law (as labor law, administrative law, environmental law, etc.) might be implemented on the graduate level.

Recommendation 13: The Bologna model for higher education does not seem to have resulted in better exchangeability of lawyers/legal professionals in Europe. It has not been implemented in higher education in all countries of the EU. It therefore needs continuous attention in higher legal education.

Recommendation 14: The labels of master studies, advanced master studies and LL.M. studies need clarification on a European level. Those labels are used differently in different countries.

Recommendation 15: Law faculties should develop post-graduate (master) programmes for professional lawyers with a focus on specialized and possible multidisciplinary subjects.

Recommendation 16: European Law should be integrated in all law programmes in EU member states. The same should be the case for European Human Rights.

Recommendation 17: Universities should consider developing master's courses or master's programmes on national law for foreign students in English.

Recommendation 18: The Erasmus programme should be better used for the possibility of internship in an organization (law firm, public administration) of another EU member country.

18.4 Ph.D. Studies

The Ph.D. study regulations are very diverse. The relation between legal Ph.D. studies and the legal field is very thin, because Ph.D.'s focus on a certain content, as a part of a scientific work. Even if Ph.D. graduates often enter into practice (law firms, public administration, courts), we have not gathered information about what those organizations would require from Ph.D. graduates.

Recommendation 19: Throughout undergraduate and graduate courses judges and advocates should participate in teaching, in keeping with their professional obligations.

Recommendation 20: Scholars should give courses for judges and advocates.

Recommendation 21: Interest among students in the judicial and advocates fields should be encouraged; students should be encouraged to write papers on the judicial organization, judicial topics, advocates, law firms and so on. This can be done in regular courses, *e.g.* by writing papers etc.

Recommendation 22: Courts staff, judges and advocates should be involved in seminars and research by law schools (they are part of the faculty network). Local cooperation structures between law schools and courts are recommended.

Recommendation 23: Internships for law students at law firms and courts should be organized.

18.5 Initial Training

Based on the answers on questionnaires for cases that were perceived by the researchers in this project as to be either well or badly handled by courts and judges, and for information about the cooperation between law schools and courts, we have drafted the following additional proposals for initial and vocational training.

Recommendation 24: The national court administration should consider that enough persons in the organization speak a foreign language.

Recommendation 25: Judicial training schools/institutions should develop training courses on subjects that reflect actual and urgent societal developments (for example, human trafficking and medical technology).

Recommendation 26: Enhancing legal writing skills. Initial training should develop the skills required for arriving at and writing of the relevant judicial decisions. During undergraduate and graduate studies students should have acquired sufficient skills of legal writing, including research, argumentation, structuring, referencing, etc. What cannot be learned in the university is the style and format of writing judicial decisions that is shaped by legal traditions and peculiarities of the relevant country and courts.

Recommendation 27: There should be attention in training judges and court staff (especially in the European context) to a user-friendly court administration of justice.

Recommendation 28: Training should be provided in core non-legal subjects that are useful in the work of a judge, for example, psychology, professional ethics, communication and management skills, information technologies.

Recommendation 29: Mixture of lectures and simulations. The use of various training methods should be encouraged, with emphasis on simulations and other types of exercises that stimulate acquiring of practical skills.

Recommendation 30: Attendance of court hearings. Initial training should include attendance of proceedings before various courts with a focus on domestic courts.

18.6 Vocational Training

Recommendation 31: Judges should be trained in the logistics of case management. This involves application of procedural law within the court organization with a view to timeliness and efficiency of proceedings. ITs may, but need not be involved.

Recommendation 32: Judges and court staff should be trained in *judicial ethics*. This is about the relations between the court as an organization with the outside world and between judges and others. It takes an open organizational culture within the court and the judiciary to address ethics issues effectively. Therefore there should be a balance between maintaining judicial ethical values and enhancing responsiveness between the court organization and society.

Recommendation 33: The judiciary and the Court administration should be *trained in dealing with media interest in cases and the courts*. As the courts are becoming increasingly visible by modern media, the courts are more easily exposed to public criticism. On the one hand, courts need to (extrovertly) explain how they do their work; on the other hand,

They need to continue maintaining and enforcing the law – business as usual. Practical legitimacy training is what the courts and the judges need.

Recommendation 34: Judges need to acquire special knowledge of the societal field they deal with. Because not every judge should know everything, the court organization should see to it that every court has adequate non-judicial knowledge and skills available with judges in order to be able to solve problems brought before the courts (*e.g.* children, criminal organizations, forensic evidences, the functioning of administrative bodies etc.).

Recommendation 35: Non-legal knowledge. In-service training should provide training in non-legal subjects that are relevant for the work of a judge, for example, economics, psychology, professional ethics, communication and management skills, ICT.

Recommendation 36: Judges should be trained in foreign language(s) (in particular, English and French), having regard to geographical peculiarities.

Recommendation 37: Updates on development of EU law and ECHR case law should be included as a systematic part of the regular in-service training programmes.

Recommendation 38: Exchange between national and European/International courts should be facilitated (also judges of international courts visiting national court judges).

Recommendation 39: Mixed training groups on selected topics should be organized to facilitate communications between judges, prosecutors and advocates.

Recommendation 40: The use of e-learning tools in the continuous training should be promoted.

Recommendation 41: Judges should have knowledge of IT systems in the operations of the courts.