

REPORT ON LEGAL EDUCATION IN GERMANY

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For a real understanding of the German system of legal education it is indispensable to look back more than 1000 years to a time when the Holy Roman Empire felt the necessity of disposing of a common legal system within the whole empire. Somewhat after the year 1000 AC it became usual for young Germans who wanted to become a jurist to go to Bologna to study roman law that became the “Common Law” of the Holy Roman Empire. Since that time the legal education in Germany traditionally is an education at a university. When during the 14th century the first universities were founded within Germany law faculties were among the founding faculties of the universities and Roman law was the main topic of teaching. Therefore, for nearly 1000 years it is tradition in Germany that the jurist is educated by a university.

At the beginning of the 19th century the Holy Roman Empire ceased to exist (1804/6) and after a period of about 50 years a new German state was recreated first as a confederation (1851) and later (1871) as a federal state.

One must bear in mind that the situation of legal education in contemporary Germany is influenced by this tradition resulting in the fact that the legal professions are regulated by a federal statute for the whole country. But as it will be explained later on this federal law only gives a frame that is completed by laws of the states (Länder) and regulations of the about 50 faculties of law.

Perhaps surprising for foreigners the federal law is not a statute on legal professions, but on judges (Richtergesetz). According to its sections 5, 5a, 5b and 5d the qualification to act as a judge (Befähigung zum Richter) is regulated by federal law. Persons who are entitled to become a judge qualify for all other legal professions. And vice versa: exclusively persons can become lawyers, attorneys, higher civil servants etc. who are entitled for the office of a judge.

Section 5 § 1 of the Act on Judges presupposes for this qualification

- - the study of law at a university
- - the so called “first legal State examination” (Erste juristische Staatsprüfung)
- - a preparatory stage of two years (Referendardienst) with courts, lawyers and administrations and
- - the “second legal State examination” (Zweite juristische Staatsprüfung).

All persons that fulfil these four conditions are entitled to be called to office of a judge, provided that a post is free. At the same time they are entitled, as already mentioned, to act as lawyer or in any other juristic function. They are what is called in Germany “full-jurists” (Volljurist).

At the same time the full-jurists are unitary jurists (Einheitsjurist). This means that the legal education has to be the same for all professions, irrespective where the education takes place. As the full-jurists are entitled to pursue any legal profession it must be guaranteed by the process of education that they are equally qualified to do so.

To achieve this aim the federal act on judges establishes the essentials for the study at a law school and for the preparatory stage, as well as for the examinations.

As far as the study is concerned section 5a of the Act on judges prescribes that the study must at least last three and a half years. At German universities the year is divided into two semesters beginning the academic year with the wintersemester in the mid of October running until the mid of February next year. The summer semester starts at the beginning of April and ends at the end of June/ first week of July. Therefore the study has to be organised in seven semesters according to federal law. But actually according to the law of the states eight semesters are required.

Section 5a § 2 regulates the substance of the study in dividing the subject of law into obligatory subjects and one subject of choice by the students.

The obligatory subjects are the “core” (Kernbereich) of civil law, penal law, public law and procedural law including law of the European Union, the legal methodology and the philosophical, historical and social basis of law. There exist no federal rules concerning the topics eligible for the students.

Section 5d concerns the examinations, but only in regulating that the examinations have to take place as written and oral examinations.

Because the legal education is regulated by Act on judges on the federal level only as a frame the necessary supplementation takes place on the level of the states of the federation. The German Federal Republic consists of 16 states. Each of these states has enacted its own act on legal education (Justizausbildungsgesetz) mostly completed by one or several regulations of the ministry of justice of the pertinent state. It is nearly impossible to give a general survey on the content and the way of organising the legal studies by these 16 different legal spheres. But notwithstanding these differences there are some common structures.

The first very important point is that the examination takes place in a form that the student is required to discuss a case in writing an expert opinion on the legal questions of the given case. It is essential for German law students to acquire the capability in writing expert opinions during the study at the university. In the northern parts of Germany usually the student has some weeks of time to write such an expertise. In the southern part of Germany normally the students have to write a testpaper under supervision. Normally during the 5th, 6th and 7th semester the students have to undergo these examinations within the fields of civil law, public law and penal law. As result they receive a certificate of the university to be presented to the bureau of examinations within the Ministry of Justice of the state when applying for the first state examination. Normally during the first three semesters the students acquire a first certificate in one of the basic topics of the study of law as philosophy, methodology, history or social aspects of law.

The acts of the 16 states contain definitions on what is understood to be the core of the civil panel and public law. There you find regulations as: “The core of civil law means general principles of civil law, law of torts, law of property, law of treaties” The acts of the states also give a list of possible subjects for the choice of the students.

Though there are regulations on the level of the federation and further regulations on the level of the states there is no obligatory curriculum defined by the acts of parliaments. The curriculum has to be developed within the frame of the acts by each of the nearly 50 faculties of law of the different universities in Germany. Each university is relatively free in developing its own curriculum. But nevertheless it is possible to describe a general structure followed by most faculties of laws. It should be mentioned that the semester normally takes 15 to 16 weeks and that a student is obliged to participate in courses to an extent of 16 to 20 hours per week (hpw). Following I try to give a kind of a regular curriculum though each law faculty might deviate to minor extends from it.

1st Semester

Introduction to the science of law 2 hpw

General part of civil law 4 hpw

Penal law I 4 hpw

Constitutional law 4 hpw

History of law 2 hpw or Philosophy of law 2 hpw

Working group 4 hpw (discussion of cases in small groups)

2nd Semester

Law of obligations 4 hpw

Penal law II 4 hpw

Fundamental rights 4 hpw

Roman law 2 hpw or Political science 2 hpw

Legal methodology 2 hpw

Working group 4 hpw

3rd Semester

Law of torts II 3 hpw

Law of property 2 hpw

Penal law III 2 hpw

Administrative law 6 hpw

European law 4 hpw

Working group 2 hpw

4th Semester

Family and Inheritance law 4 hpw

Commercial law 3 hpw

Procedural law – penal 2 hpw

Administrative law II 3 hpw

Working group 4 hpw

5th Semester

Civil law – repetition and examination 2 hpw

Commercial law II 2 hpw

Procedural law – civil 2 hpw
Procedural law – public 2 hpw
Labour law 4 hpw

6th Semester

Penal law - repetition and examination 2 hpw
Seminar 2 hpw
Administrative law 2 hpw

7th Semester

Public law – repetition and examination 4 hpw
Repetition civil law 4 hpw
Repetition penal law 4 hpw

8th Semester

Repetition civil, penal and public law 12 hpw

State examination by the ministry of justice.

Starting with the 5th semester the student is obliged to choose one elective topic at 2 hpw out of list of topics offered by the faculty according its possibilities. The smaller faculties – i.e. between 17 and 21 professors – offer about 10 topics, larger ones up to 25. Such topics could be e.g. international public law, European law, conflicts of law, tax law, commercial law, special fields of public law, family law, history of law, economic law like competition, social law, labour law and other similar topics. The problem concerning these elective topics is that the topics have very different importance and need very different efforts to be taught and to be learned. The students often make their choice according to these criteria with regard to the examination.

Most law faculties have concentrated on certain subjects aspiring to become centres of excellency for these topics. Without any pretension to be complete one could mention as examples for the law of nations Heidelberg, Kiel, Hamburg, Göttingen or for tax law Osnabrück, Cologne, Muenster, Bochum, Heidelberg and so on.

This report would not be complete without mentioning that the ministers of justice are discussing a general reform of the legal education in Germany. During a meeting in november 1999 the decided that the practical stage should be integrated into the study and be shortened to one year. But the two cornerstones – Einheitsjurist and state examination – should remain.