

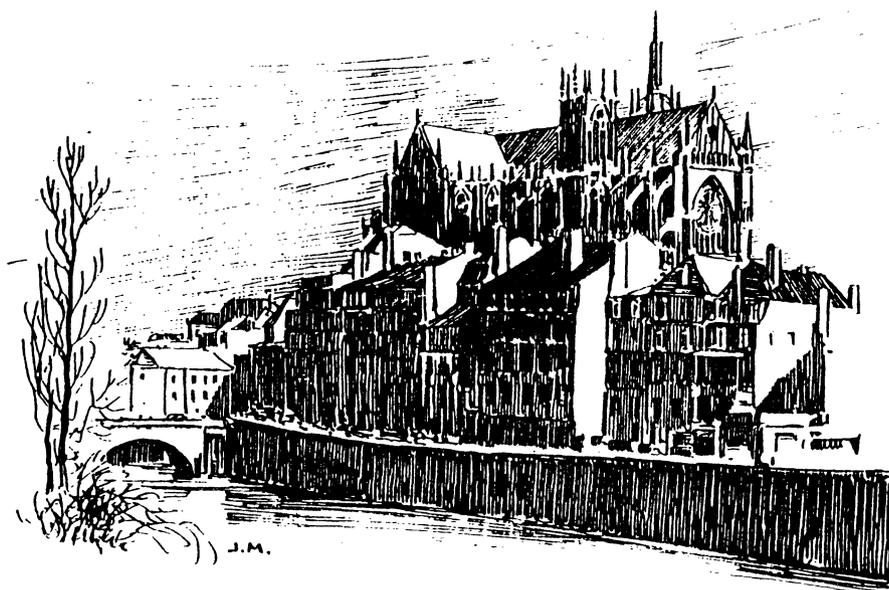
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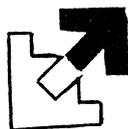
COMMISSION  
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# LEGAL EDUCATION AND TRAINING IN TOMORROW'S EUROPE



**THE NETHERLANDS**



UNIVERSITÉ DE METZ

LEGAL FORMATION AND TRAINING IN  
TOMORROW'S EUROPE

***THE NETHERLANDS***

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## Preliminary note

This report has no pretention of completeness. It had to be made in less than 4 weeks in the middle of an academic year with a lot of teaching obligations. The report is based on available written information, in particular The Report *Visitatie Rechten* (Utrecht, mei 1991) of a committee which evaluated/commented on the programmes of the Law Faculties in the Netherlands (so-called: *Visitatiecommissie*) and information from the Dutch Bar Association and the Study Center in Zutphen of the Dutch Association for the Judiciary.

# 1. THE EDUCATION AND TRAINING OF JURISTS

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## 1.1. HIGHER EDUCATION

### 1.1.1. GENERAL

In the Netherlands there are nine universities with a Law Faculty, reasonably spread over the country although with a concentration in Western parts. The Open University also has a Law Faculty. But because of the special nature of this form of education (courses are provided in writing) the programme of this faculty is not included in this report.

The annual inflow of new students in the nine faculties is declining, most likely because of demographic developments. After a peak of almost 6000 first years students in 1987 and 1988 inflow in 1993 was about 5300. Till about the year 2000 a further decline is expected ( $\pm$  5000). The three largest faculties at the University of Leiden, the University of Utrecht and the University of Amsterdam have an annual inflow of about 750-900 new students. The medium size faculties are at the Catholic University Brabant (Tilburg), the Erasmus University (Rotterdam) and at the University of Groningen (about 500-700). The three smallest faculties are at the Catholic University of Nijmegen, the University of Limburg, (Maastricht) and at the Free University of Amsterdam (about 300-400).

The usual requirement for admission to the Law Faculty is that the student has successfully completed a secondary education of 6 years, the so-called VWO (*Voorbereidend Wetenschappelijk Onderwijs*). But students can be admitted if they have completed other forms of higher education. There are no separate admission tests for Law Faculties.

The inflow of female and male students is about the same (50% women, 50% men). Most students are full-timers but all faculties provide evening-classes for part-time students varies from about 60 to about 150 per faculty. The part-time students are usually much older than the full-time students.

The output - the percentage of students who successfully complete their legal education, is at an average about 45%. According to the Visitation Committee which evaluated the legal education at the Law Faculties in 1990, this percentage should be 60%.

The career of the graduates varies and covers various segments of the labour market. Most students (about 40%) pursue a career in one of the classical legal professions (judiciary and bar), about 20-22% are working for a company (including banks, insurance), about 15% choose a job with a governmental body (national or local) and about 11% find a job in education (these figures are based on some faculty survey but they are more or less an indication for the variety of jobs available for law graduates). Most students find a job although it seems more difficult (longer periods of unemployment or odd jobs after the completion of the education) than some years ago.

The universities are fully financed by the Minister of Education. But the policy of the Dutch Government to cut down the national expenses has also affected the financing of the universities. The cutting of the budgets for education is an ongoing concern and limits of course the possibilities to provide students with more intensive supervision/guidance and other

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support.

Students are entitled to financial support from the government (Ministry of Education). Each student of 18 years or older receives for a limited period of time (5 years) a scholarship, a monthly basic amount of money (so-called *basisbeurs*). Depending on the income of his/her parents, he/she can receive an additional scholarship and he/she can borrow some money at a special interest rate. The annual tuition fee is rather moderate (Dfl. 2000) but most students consider the scholarship from the government as a bare minimum and many of them have some kind of part-time job to improve their financial situation.

Finally and to avoid misinterpretations: the nine faculties of law do have similarities in the way they organize and conduct their legal education. But there are also quite a number of sometimes important differences. The information in this report cannot take into account all those differences. So I am presenting you with an "average" picture of the content and organization of the legal education at the universities. The rest of the information is based on documents available or specially sent to me for this occasion by the Dutch Bar Association and the Study Center of the Judiciary.

### 1.1.1.1. Contents

In general it can be said that the content of the programme of legal education at the law faculties is aiming at the forming of lawyers with broad and basic knowledge and understanding of national and international law. The faculties - with some variety - formulate as goals for their education among other things that their students- acquire knowledge and understanding of the existing national and international law including the understanding of the legal system and its development of the processes of implementing the law, the administration of justice and its implications for the society;

- acquire an understanding of the interdependency between the study and implementation of the law and other social sciences;
- acquire skills to study, analyse and compare foreign legal systems;
- acquire the verbal, oral and writing skills necessary to become a good, effective lawyer;
- acquire the ability to weigh interests of parties involved without any prejudice and to reach, whenever necessary, just and useful decisions.

In order to "produce" the broadly educated lawyer four faculties provide their students with mandatory courses during three years (out of the 4 years programme). The others do the same for a period of 2 years. It means that the time left for special training, specialization with a view to a job is (very) limited. In general (too much) specialization during the education at the law faculty is not recommended or encouraged. This also due to the fact that the main sectors of the labor market open for graduates from a law faculty (judiciary, bar, business) do have some sort of in service, on the job training (see under § 1.2.).

All faculties have a study programme that consists of two parts:

- the foundation phase (*propedeuse*) of one year which provides students with a basic introduction in the various parts of the law. This phase also has the function of a selection at least "de facto": about 35% of the students fail in this first phase of their study. In 1990 the Visitation Committee concluded that the *propedeuse* programmes of some faculties were not selective enough (too light) and recommended to make those programmes heavier.

All courses of the "*propedeuse*" are mandatory and every student has to take the same courses i.e. regardless the programme he/she chooses for the second phase of the study,

--*doctoraal* phase.

Only after students have passed all the examinations and met all the requirements of the

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*propedeuse*, they can move to the next phase, the "*doctoraal*" phase of three years. During this phase the student chooses one of the programmes offered by the faculty. Those programmes are, as said, composed of mandatory courses (the first 2 or 1 yrs) and non-mandatory courses.

When students have met all the requirements (passed the exams) of this phase, they are said to have passed the *doctoraal* examination. They are awarded the title *meester in de rechten* (*mr.*) or sometimes the title *doctorandus* (*drs*). They may use the internationally more familiar title *Master*. It is important to note that only the degree *meester in de rechten* gives access to the classic legal profession: the judiciary.

#### The content of the *propedeuse*:

All faculties provide the students with introductions to the main areas of law. Although the faculties use different names, it means that at least the following courses are given in the first year.

- Introduction to private law;
- Introduction in criminal law (substantive and procedural);
- Introduction in constitutional law, sometimes in combination with general administrative law and/or EEC law.

Under one name or another the faculties also provide the student with a general introduction in law and courses on philosophy of law (*encyclopedie*) and legal history (sometimes called Roman Law, European legal history). Many faculties also teach one or more non- or meta-legal courses like on economics, sociology of law. Some faculties pay special attention to training of practical skills (methods/techniques/writing skills), sometimes as regular courses, sometimes as projects carried out by a group of students.

#### The content of the *doctoraal* phase

When a student enters the *doctoraal* phase he/she chooses one of the programmes (so-called *studierichtingen*) offered by the faculty. Every faculty has a programme Dutch Law which is followed by most of the students. Within this programme students can put more emphasis on e.g. Private law or Criminal law (see below). Six faculties have a Notary Law programme (two Universities of Amsterdam, the Universities of Groningen, Limburg and Utrecht and the Catholic Universities). Six faculties (Universities of Amsterdam, Leiden, Limburg, Groningen and Rotterdam and the Catholic University of Nijmegen) have a programme on Tax Law (or: the fiscal-legal programme).

All these programmes are at full and successful completion awarded with the degree *meester in de rechten*.

Three other programmes: International Law (three faculties), legal-administrative (5 faculties) and legal-political (one faculty) are awarded with the degree of *doctorandus* (*Drs*). This also applies for the so-called *free doctoraal*, a programme that is composed of courses chosen by the student and presumably fully in accordance with his interests.

The programme awarded with the *Drs* degree are a mixture of legal and non-legal courses and has therefore a rather strong interdisciplinary character.

Only the programmes awarded with the degree *meester in de rechten* give access to the judiciary but students who have only completed the Notary Law or the Tax Law programme have to take additional courses in Criminal Law (substantive and procedural). The *Drs* degree is not sufficient for a career in the judiciary.

For practical purposes I will deal only with the content of the programmes awarded with the degree *meester in de rechten* (*mr.*).

#### The Dutch Law Programme

This programme (studierichting) provides students with the broadest legal education.

Students who want to become practicing lawyers, judges or public prosecutors must/should choose and complete this programme. But it also gives access to other sectors of the labor market interesting for law graduates like corporations, the government (local and national) and various organizations (e.g. trade unions, consumer organizations and other non-profit entities like health care, welfare).

Within this programme most faculties distinguish between the phase in which mandatory courses are given the first, *basis-doctoraal*, phase. In four out of the nine faculties this part lasts two years. The *Visitatiecommissie* has expressed some concerns regarding some of the faculties with a first phase of the *doctoraal* programme of Dutch Law of 18 months. There were some doubts whether these programmes were sufficiently meeting the requirements for the master. degree with a view to access to the judiciary.

Regardless the differences, all faculties have during this first phase of the programme rather intensive courses in Private Law (including procedural law), Criminal Law (substantive and procedural) and Constitutional and Administrative Law. Furthermore, courses in International Law and International Private Law are given. In most faculties the first phase of this programme also includes (mandatory) courses in Labour Law, Philosophy of Law, legal history and Economic. This part of the programme followed by most of the students clearly shows that an important goal of the legal education is to "produce" broadly educated lawyers.

The second phase of this programme (also known as the *einddoctoraal* or differentiation phase) which lasts 12 to 18 months, allows for more specialization. It means that students can choose to take some indepth courses in certain areas of the Dutch Law. But in most instances, the choice is limited to one of the subprogrammes or variations/differentiations (called: *afstudeerrichtingen*). This means:

For this final phase of the programme the faculty offers the student a limited number of subprogrammes. Most common are:

Private Law, Criminal Law, Constitutional and Administrative Law, Criminology and Law and International Law (for those faculties without a separate program (*studierichting*) for International Law). Within these subprogrammes some courses are mandatory or choices have to be made from a limited number of indepth courses. A rather small part of the credits can be achieved via courses which are chosen by the student at his/her full discretion. As a result the qualification given to students who pass this programme is therefor: Dutch law, educated in Private law (or: Criminal law, etc.).

#### Notary Law

This programme usually has an overlap with the Dutch Law programme, particularly with the differentiation Private Law. It is therefor possible (most at the Free University) to combine these two programmes. The advantage for students is evident: you are not only eligible for the profession of notary (which is the case if you only do the Notary Law programme) but you can also pursue a career in the judiciary as a practicing lawyer.

Notaries in the Netherlands are dealing with questions of real estate, marriage and property wills etc. and the programme therefor contains, besides of course formal Notarial Law, many courses in Private law, in particular Real Estate Law, Family Law, Inheritance law and the Law of Corporate Entities and Trade. Usually special attention is also given to Tax Law, Private International Law and Economics.

Most courses of this *doctoraal*-programme are mandatory, the free choice of a student is usually limited to one or two courses (4-6 credits in total).

#### Tax Law (or: fiscal-legal programme).

This programme is like the Notary Law programme very much focussed on specific professions (Tax Law Specialist, either as Tax Law Inspector or with a company or a governmental institutions e.g. a ministry). This explains why this programme first of all has (like the Notary Law) a limited possibility for students to take elective courses (4-6 credits).

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The programme is composed of various courses in Private Law and Tax Law (Income Tax, Corporate Tax etc.) and furthermore, courses in Public Finance, International Tax Law, Bankruptcy Law and Economics. Criminal Law is not (or only very limited) taught (same for Notary Law).

The students who decide to take the Tax Law Programme are very motivated because they know exactly what they want with their legal education, a career as Tax Law Expert/Inspector. In choosing this programme they also decided on their professional life.

### 1.1.1.2. Course structure

Besides what already has been said about the structure of the programmes (foundation phase - *propedeuse*, *doctoraal* programme), the following information seems to be relevant.

The academic year is divided in either two semesters (2 periods of each 4 to 5 months) or in three trimesters (3 periods of 3 months). In one semester usually 4 or 5 courses are taught and at the end of the semester the examination of each course takes place with the possibility of one or two re-examinations during the same academic year.

In the trimester system three courses are taught and immediately at the end of the trimester examined, also with one or two possibilities of re-examination.

Due to the variety of programmes and faculties it is impossible to be more specific in terms of which courses are taught during which trimester or semester and for how many hours.

But just to give an example of a *propedeuse* programme and the first year of the *doctoraal* programme Dutch Law, two different matrix are given (Free University programmes).

The <i>propedeuse</i> programme		1° trim.			2° trim.			3° trim.			
	cred	sep	oct	nov	dec	jan	feb	mar	apr	may	jun
General Introduction	4	--E									
Intr.Priv Law I	5		--	--E							
Legal History	5		--	---	-E						
Project	3		--	---	--	C					
Theory of Reasoning	1,5				--	--C					
Int. Priv. Law II	5					---	-E				
Intr. Const. Law	5					---	--	--E			
Philosophy of Law							--	--	--	-E	
Intr.Criminal Law									--	---	--
Intr. Administr. Law									-	---	---
E=examination											E
C=completion											

The line means the period the course is taught

First year *doctoraal* programme Dutch Law

	cred	sep	oct	nov	dec	jan	feb	mar	apr	may	jun
Private Law I	4	---	---	E							
Constit.Law I	4	---	---	---							
Philosophy of Law	8		--	---	-E						
Private Law II	4					---	---	E			
Legal History	4					---	---	E			
Constit. Law II	4					---	---	---	E		
Law. of Gov. Org.	4						---	---	E		
Private LawIII	4								---	---	E
Intern. Law	4								---	---	E
Economics	4									---	---

E= examination

Line means period during which the course is taught

Courses usually are a mixture of lecturing, working group meetings and skill training.

Lecturing is used for a systematic presentation of a particular part of the law, of specific academic problems and for presenting links with actual developments in the Society.

Large groups of students can be dealt with effectively in this way.

Working group meetings, usually groups of 20 to 30 students, are more meant for and suitable for discussions, questions, a more indepth presentation of some aspects of the law. Often students actively participate by writing notes or brief papers dealing with specific questions or cases and presenting their findings at the working group meeting. Furthermore, internships (stages) are used to enhance the practical skills and experience of the students.

The grading is from 0 to 10 and the student needs at least 5,8 to pass the exam.

The faculties have different policies in awarding the *judicium cum laude* when a student has completed his legal education. Common is the requirement that the average grade for all courses (*propedeuse* and *doctoraal* programme) has to be an 8. But in addition some faculties require that the student never failed an examination and that his lowest grade has been a seven (7).

Oral examinations are, due to the high number of students, rather exceptional. It sometimes happens during the final phase (the last year) of the *doctoraal* programme. Exceptions are also made (of course) for students who are visually or otherwise handicapped and students who have evidently problems with taking written examinations.

The policy of most faculties is to limit the use of multiple choice questions as much as possible. The sometimes high number of students can make multiple choice questions a necessity, but often in combination with some open questions.

In conclusion: almost all examinations are in writing and open questions (e.g. a case with some questions) are most commonly used.

The crediting system is as follows: (classes and self study). Most courses are credited with four points or 160 hrs of work. In most faculties a student has to acquire 42 credit points per year; in other words, a student has to invest at least 1'680 hrs per year in his/her law study (more is allowed!). Research indicates that students spend less than 1680 hrs but nevertheless acquire the credit points they need.

Each student has to write - at the end of his/her study - a final paper (the so-called *scriptie*). This paper (average length about 30 à 40 pp) has to deal with a subject that belongs to the area of the law the student is concentrating on during the final year of his/her study e.g. a student who takes within the Dutch Law programme the differentiation Criminal Law has to choose a subject from that part of the Dutch Law.

This *scriptie* is the ultimate test of the student's capacity to master a subject of the law and to present it orderly, consistently, critically etc. in a clear and understandable style (writing skills). When applying for a job the student rather often has to tell something about the *scriptie* he/she has written (it is also an indication of his/her interest).

### **1.1.1.3. Internationalisation: the impact of programmes of the European Union**

#### **1.1.1.3.1. Some general remarks**

Attention for international law is not a new phenomenon. But at the time, let's say about 30 years ago, one could hardly speak of an internationalisation of legal education like we see nowadays.

Recent developments have led, at least in the Law Faculties in the Netherlands, to an almost structural change of the character and the content of the legal education faculties provide for.

One can distinguish a substantive component and an organisational component.

In terms of content of legal education programmes of faculties one can see a considerable increase of courses dealing with International (Private) Law and/or international aspects of the Law Practice. Just to mention a few of these courses developed over the last 10 years on top of the classic international law courses (including Law of the European Economic Community and Human Rights Law):

- International and European labour law;
- International and European economic Law;
- International environmental law;
- International and European Institutional Law;
- European Consumer Law;
- European Social Security Law;
- European Contract Law;
- European Trust law;
- International Monetary and Financial Relations;
- European Immigration Law;
- East European Law (University of Leiden).

These courses are not all given at every Faculty but every Faculty does have a number of these courses (the larger Faculty, the more of these courses are provided). At the organisational level the growing exchange of students and staff has to be organized, creating an extra burden not only for the administrative staff but also for the (associate) professors and other academic personnel.

Most faculties have so far supported this process of internationalisation with considerable enthusiasm and a lot of their own free time.

My personal concern is whether it is possible to maintain the level of extra efforts of the pioneering phase (the last five years). These extra efforts are necessary to maintain and to further develop the internationalisation of the legal education. But taking into account the ongoing process of economizing on the expenses for higher education, I have my doubts. That process affects not only the availability of human resources but also the possibilities of students. Inter-national exchange always requires extra money and the reduction (slowly but steadily) of the regular scholarship (*Studiebeurs*) and the limitation - recently - of this scholarship to five years (was six years) may negatively affect their willingness/motivation to participate in programmes for international exchange.

#### 1.1.1.3.2. European programmes (Erasmus, Tempus, ECST).

All law faculties participate more or less intensively in the Erasmus programmes.

The result of this: annually hundreds of Dutch Law students attend courses at Law Faculties all over Europe and hundreds of foreign students attend courses at the Dutch Law Faculties. These courses are taught in English because it is hard to expect from an average student from Italy, Spain, France, UK that he is capable of understanding Dutch enough to attend the regular Dutch courses. But for those foreign students who like to learn the Dutch language (for whatever reason) are, at most faculties, special courses to obtain the required level of proficiency.

If one would list all the courses which presently are taught in English at the Dutch Law Faculties, it would result in a long list of perhaps close to 200 courses covering a wide variety of topics. Most courses are of course dealing with International and European Law or are comparative.

The courses can also be attended by Dutch students. This participation has been and is promoted as much as possible. The courses are usually given to small groups (e.g. 30 students) and can have a "working-group" character (exchange, discussions).

Foreign students who successfully completed a course (usually written examination in English); sometimes oral exams) receive a certificate indicating the course/courses they have passed. The Dutch Faculties have either an office or a contact person for International Exchange helping Erasmus and other foreign students with their enrollment, language courses, housing, residence permits etc.

Some faculties participate to the Tempus Programme, but so far this programme seems to be less successful than the Erasmus Programme. Lack of time did'nt allow me to get a more clear picture of the actual difficulties hampering the full development of this programme. But differences in culture, the legal system and development might be important factors. Recently - Academic year 1993-1994 - four faculties (Amsterdam, Groningen, Leiden and Utrecht) decided to participate - as a joint pilot project - to the *European Community Course Credit Transfer System (ECST)*.

It is undoubtedly true that a good system of transferring study credits will make the option of obtaining part of one's higher education abroad more appealing to students. As Dutch students in future are allowed less time (and money; see under my general remarks) for completing study programmes and therefore have less time to spare, this will become increasingly important.

The introduction of *Credit Transfer System* is a complicated affair (2). It needs a lot of consultation and coordination. But for the advancement of international exchange it seems to me very crucial. I hope that this pilot project will be successful and that in the second phase indeed the University of Limburg and the Free University can join the project as they intend to do.

It is clear that the European programmes in particular Erasmus and *ECTS*, have had and are having a considerable impact on the content and the organization of legal education at law

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faculties in the Netherlands.

The *ECTS* started some years ago and is already developing at about 150 universities in Europe. Five disciplines are involved: medicine, chemistry, mechanical engineering, business administration and history. This report is not the place I think to deal with this programme in more details. Information can be found elsewhere.

Finally I should mention an initiative taken in 1993 by the University of Limburg (Maastricht) in cooperation with partner faculties in many European countries to start a complete new programme separate from the existing programmes of that faculty called *European Legal Studies (ELS)*. The first year of the programme *the propedeuse* has the same courses as the *propedeuse* of the regular programme. The second and third year basis doctoraal and end-*doctoraal* courses are followed and at the same time one language (French, Spanish or Italian) is taught. The fourth year is spent at one of the cooperating Law Faculties abroad.

### 1.1.2. POST GRADUATE STUDIES

#### 1.1.2.1. Some General Remarks

The main activity in the area of post graduate studies is the so-called *Post Academisch Onderwijs (PAO)*.

According to the Law on Higher Education it is one of the tasks of the university to organise post-graduate courses. Each of the nine Law Faculties does have a *PAO*-coordinator or office, often supported by a committee or advisory board which advises or decides on the courses which will be given during either the Fall-period (Sept-Dec) or during the Spring-period (Jan-June).

These post-graduate courses are meant to provide practicing lawyers (from various parts of the labour market) with the possibility to refresh their knowledge in certain areas of the law and/or to be informed about recent developments in legislation and jurisprudence.

The participant to these courses pay a fee and it means that *PAO*-activities are a source of sometimes considerable income for the faculty. Some faculties are very active in organising *PAO*-courses, others have a very limited programme.

Faculties are free to decide how many *PAO*-courses it will organise and about which topics. The *PAO* offices/coordinators do have regular meetings to discuss their programmes and to avoid overlap in the courses offered for a certain period. The courses are usually taught by (associate) professors and other academic staff of the faculty. For some courses practicing experts from outside the faculty (e.g. corporate lawyers, members of the judiciary) are involved and paid on a hourly basis.

The faculties announce their Fall- and Spring-programmes in well-read legal journals and most faculties also publish for every Fall or Spring period a separate booklet containing all the information about the courses they offer during that period. Registration forms are included. The average participation is about 30 to 40 with a minimum of about 20 (to make it financially attractive for the faculty. The courses are usually taught in (one of) the building(s) of the Faculty but they can also be given in-house (meaning: in the office of a large law firm, a district court).

Just to give an idea I'll mention some of the courses for the Spring period of 1994, recently announced in *the Nederlands Juristen Blad*, a Journal read by most lawyers. Recent juris-prudence on Labour Law, Actual developments in Rent Law, *ibidem* in Notary Law, *ibidem* in Matrimonial Property Law; *ibidem* in Criminal Procedural Law etc.; Environmental Law, New Legislation on Soil Pollution, New Inheritance Law, Juvenile Criminal Law but also Legal Aspect of national/international Electronic Trade; Analysing and writing Legal Textes and Policy Documents; Legal English.

### 1.1.2.2. Course Structure

Again the structure of *PAO*-courses varies but the following structure is not uncommon.

The course takes place on one or more days depending on the subject. In case more than one day is used the interval between the days is rather short, meaning that a course is usually spread over not more than one or two months. The course usually starts in the afternoon at about 4 p.m. and continues with a break of an hour for dinner, till about 9 p.m. The timing is convenient for most practicing lawyers. The course consists of series of lectures by different professors and there is always some time allotted for questions and discussions.

### 1.1.2.3. Impact of European programmes

So far the *PAO*-courses are not - perhaps with some rare exception - organised in cooperation with Law Faculties from abroad (e.g. a Faculty which is a partner in an Erasmus Programme). This may be caused by the fact that the *PAO*-courses are very much oriented on the Dutch legal practice and developments. courses on European or other international law developments are only given if they are of relevance for the Dutch practice. So they are regularly part of the *PAO*-programme of the Law Faculties but they seem to be rather limited.

Separate from the above mentioned *PAO* (post graduate studies) organised by the Law Faculties, a special form of post graduate studies is provided by a private foundation, the Grotius Academy. Four Law Faculties (Leiden, Nijmegen, Rotterdam, Tilburg) and representatives of various organisations of legal professions are participating in (the Board of) this foundation.

The Grotius Academy organises rather intensive (they call them "part time") post graduate study programmes with a strong focus on the problems of the daily law practice and meant for the more experienced lawyers (three years or more in law practice, judiciary, companies etc.). They cover specific parts of the Law (e.g. Spring 1994: Environmental Law, Law of Corporate Entities and Trade Law, Real Estate Law, Procedural Tax Law). The structure of these programmes is roughly as follows: a two days and thereafter full day meetings every two to three weeks (about 10 days all together).

The teachers are very experienced practicing lawyers, sometimes also part-time (extraordinary) professors at one of the Law Faculties.

The courses are of a high level, intense and require from the participants active involvement. Homework has to be made beforehand and in general good preparation (reading literature/jurisprudence) is necessary. At the end an oral examination takes place. The final grade is based on the result of this examination in combination with the grades for the papers written during the programme (kind of take-home exams). The participant who passes receives a certificate.

Finally, within the framework of this paragraph I should mention that *LLM programmes* hardly exist in the Netherlands. Only the University of Leiden offers such a programme for foreign students.

The courses of this - one year - *LLM* programme are taught in English. The courses are covering three different themes or areas: Foreign and Comparative Law, International and European Community Law and Legal History; there is also an area called Free Subjects.

*LLM* students must successfully (grades from 6-pass-till 10, outstanding) pass examination in ten courses (four in the Fall and six in the Spring semester) and write a thesis (at the end in the summer). Most courses content at least 30 teaching hours and the compulsory literature is between 400-1000 pages per course. At the end of the programme a certificate of completion will be issued to each participant who has met the academic standards of the programme. The tuition fee for this *LLM* programme is Dfl. 12.000,-

### 1.1.3. STUDIES FOR THE DOCTOR'S DEGREE

In the table of contents drafted for the country reports, this paragraph calls for information about Pre- and Post Doctoral Studies but the French text uses the term "*Etudes doctorales*". I think it is therefore appropriate to give some information in this paragraph about the Studies leading to a Doctor's degree at the Law Faculties in the Netherlands.

Formally, the legal education at the Dutch Law Faculties is organised according to a two-tier system, the so-called *twee-fasen structuur*. The first phase is the four year programme described in paragraph 1.1.1. with at the end the doctoraal examination which leads - if successfully completed - to the degree *meester in de rechten* or *doctorandus*. The second phase is meant for those (excellent) graduates who want to proceed to a doctor's (dr.) degree. This degree is the highest obtainable academic degree at a Dutch University. It takes at least four more years of independent research conducted under the supervision of a professor (called: pro-motor). The results of the research are presented in a dissertation (= *proefschrift*) and defended in a public session of the Board of Deans of the University.

The number of graduates who can take this second phase of the legal education is very limited (compared to the total annual number of graduates).

The Board of the University allocates to each faculty -including the Law Faculty - a limited number of places for these doctorate studies (on an average of about 20% of the total academic staff). The way the graduates are selected and appointed, the so-called *AIO's* (*Assistent in Opleiding* ≈ Research Assistant in Training), differs from faculty to faculty. Sometimes the Board of the Faculty allocates place to certain departments of the faculty (e.g. Private Law, Criminal Law etc.); sometimes the faculty professors are invited to submit research proposals in a competition for an *AIO*-position. These proposals are judged by a scientific committee of the Faculty which advises the Faculty Board which of the proposals should be "awarded" with an *AIO*.

Given the nature of these doctorate studies, it is close to impossible to describe in general terms the content and structure of these studies. What can be said is the following:

- the *AIO* usually follows a course in research methods and techniques and sometimes a course in legal theories/philosophy;
- the *AIO* furthermore attends courses, conferences etc. which are relevant to the subject of his study/research;
- the *AIO* may receive some on-the-job training from his promotor who regularly reviews, analyses and criticizes the draft-chapters of his dissertation.

## 1.2. TRAINING OF PROFESSIONS

### 1.2.1. THE BARRISTERS/ADVOCATES/ATTORNEYS

Graduates from the Law Faculty can be admitted to the Bar and appear in court as an *advocaat* only after they have been sworn in before a district court. This admission is conditionally meaning that only after a successful traineeship of three years and passing the examination of the professional training programme (*Beroepsopleiding*) registration with the Bar becomes definitive. The total number of advocates in the Netherlands is between 6500-7000. Annually about 650 new aspirant-advocates are admitted to the Bar.

The aspirant-advocate has to find a place with one of the law firms where he/she can practice law under the supervision of an experienced advocate (mentor). During this period of three-years traineeship the advocate must follow the training programme which is made compulsory by Law (Traineeship Regulation 1988). Goal of the programme is to educate the trainees within a relatively short period of time in the elementary skills required by the profession. For this reason the study materials use as much as possible case studies, practice

files, practical assignments like writing documents, memoranda correspondence. Training of practical skills required for effective functioning as an *advocaat* are also taught (negotiating, oral presentation e.g. of pleadings before a court).

The programme consists of 6 mandatory courses (Rules of Conduct, Practical Skills, Law of Civil, and of Criminal Procedure, Administrative Procedural Law and Tax Law/annual accounts) and two optional courses (to be chosen from: Divorce Law, Employment Law, Social Security Law, Bankruptcy Law, Law of Landlord and Tenant).

The course instructors are highly experienced advocates and sometimes instructors are drawn from law faculties. A course group is comprised of 16 trainees. The total training programme requires 90 half days (58 for instruction and 32 for preparation and examination). The trainee's mentor is obliged to give the trainee days off in order to enable him to carry out the tasks imposed by the training (Traineeship Regulations 1988).

Written examinations are taken in all mandatory courses (except for the practical skills) during two separate days. When the trainee passes this examination he receives a diploma and becomes an unconditional member of the Bar.

Besides this training mandatory by Law, the Dutch Bar Association also organises a continuation of this professional training programme, a kind of secondary/permanent legal training (called: *Voortgezette Beroepsopleiding* (VSO)). The courses are seen as necessary supplements to the mandatory training programme. Trainees can take these courses in their second and third year. The General Council of the Dutch Bar Association made it a rule that each trainee must take two VSO-courses.

The courses are usually given during two successive days and cover specific parts of the law (e.g. Bankruptcy Law, Corporate law, Rent Law, Alimony, European Law, Drafting Contracts, Criminal Law etc. Spring 1994).

There are no examinations. Participation for the full courses is required. Participants who have missed part of the course don't receive the certificate acknowledging participation.

### 1.2.2. JUDGES

The professional training of judges (and for the public prosecutors) is organised by a private foundation, the *Stichting Studiecentrum Rechtspleging* (SSR) (Foundation Study Center for the Judiciary). The Board of the foundation is comprised of members of the Judiciary (judges, public prosecutors) and representatives of the Ministry of Justice.

The daily activities are carried out by a staff course coordinators, headed by a Rector and a Conector (many of them have at the same time regular jobs in the judiciary) and supported by a bureau located in Zutphen.

When somebody after graduation from the law Faculty wants to become a judge (or public prosecutor) he/she has to apply for a position as *RAIO* (*Rechtelijke Ambtenaar In Opleiding* ≈ Trainee for the Judiciary). Twice a year the Minister of Justice calls candidates for this position via advertisements in legal journals and newspapers. Requirements are Dutch Nationality, completed study Dutch Law (see under § 1.1.1.1.), not older than 30 years and good behaviour.

The candidates have to undergo a test (by the State's Psychological Service) to assess their analytical skills and general intelligence. The best candidates from that test (± 100) have to take a second test (again by the Service mentioned before); this one is testing the candidates' personality. The candidates are also interviewed by a Selection Committee (2 judges, a public prosecutor, representatives of the Ministry of Justice and somebody who does not belong to the judiciary).

This committee finally advises the Minister of Justice which candidates he may appoint as *RAIO*. Every year there are in this way two groups of *RAIO*'s (each about 25 persons) starting

their career.

The training of these aspirant-judges (or public prosecutors) is in the first place an in-service training. During specified periods of time (so-called *Praktijkstage*) they are acting as clerks for the criminal court (6 months), the private law sector of the court (10 months) and the administrative law sector of the court (10 months).

Finally he/she acts as a deputy public prosecutor (10 months).

After these three years of in-service training, the trainee has to make the decision whether he wants to become a judge or a prosecutor. Depending on this decision the trainee will, during the fourth year of his training, work at the public prosecutor's office or at the registry of a court (as clerk). The fifth and sixth year the trainee has to find a place outside the judiciary (usually with a law firm) where he can get new and other experiences and view the judiciary from another different angle.

The *RAIO* is at the same time obliged to take every year a number of required courses organised by the *SSR*. The courses are published in the annual Program Book of the *SSR* indicating which courses are mandatory for which *RAIO* group. Depending on the content the courses last for two or three days. They are introductory courses and trainings of practical skills (e.g. presentation of a case in court, writing verdicts, judgements, summons/subpoenas).

Some courses require active participation (homework, drafting a legal document). Participation/presence is obligatory; there are no examinations.

Besides this training programme for aspirant members of the judiciary the *SSR* organises every year many courses (usually two successive days, sometimes one day or two separate days) for members of the judiciary (judges, public prosecutors) and also some for the non-lawyers staff of courts. The courses cover a wide variety of topics from various parts of the law;

some courses are training in practical skills.

Since a couple of years it is the policy of the *SSR* foundation to offer more courses on European Law. This not only resulted in an increase of courses but also in organising study visits to the European Court in Luxembourg, the Council of Europe in Strasbourg and to different countries in Europe (this year Germany). The instructors of the courses are either members of the judiciary or law professors. But courses about foreign legal systems (this year 1993-1994 about the French legal system) are taught by experts from the country concerned.

In short: the training for judges in the Netherlands is increasingly paying attention to developments in Europe (European Union, National Laws) not only passively (courses) but also actively (visits).

It can be said that the *SSR* Foundation provides the judiciary with a well structured and up to date programme for permanent education/training.

### 1.2.3. OTHER PROFESSIONS

In this paragraph I'll briefly mention training programmes for other legal professions.

Notary : The Royal Fraternity of the Notary (*la Confrérie Royale du Notariat*) organises since 1987 and in cooperation with the Law Faculties of Leiden and Nijmegen a professional training programme meant for beginning candidate-notaries (*les candidats-notaires*). It is a three years part-time programme comprised of two parts. Part 1 has 6 different courses and they are taught in the first year (two one-day meetings every month). Oral examination is taken at the end of the first year. One can only be admitted to that examination if one attended all the courses and made all the homework (save in exceptional circumstances). After one has passed the examination for Part I admission to Part II is possible. The courses of Part II are taught in the second and third year (one-day meetings every month).

#### 1.2.4. CORPORATE LAWYERS:

The Foundation for Professional Training of Corporate Lawyers (*SBB Stichting Beroepsopleiding Bedrijfs-juristen*) organises regularly a training programme for Corporate Lawyers. The Foundation has been established by the Dutch Society of Corporate Lawyers and the Law Faculties of Leiden, Rotterdam, Nijmegen en Tilburg.

The goals of the programme are

- to provide the corporate lawyer with more indepth knowledge of the relevant areas of the law;
- to improve practical skills (negotiation, communication, writing of legal documents etc.).

Participants are required to actively prepare for the courses (homework, preparing papers).

During a period of six months various courses are given (e.g. Contract Law, Environmental Law, communication skills). At the end a final examination (an interview of about 30 minutes) is taken and a diploma issued to those who pass this exam.

Another professional training programme is for lawyers working at legislative directorates of ministries and for those who are otherwise involved in legislation or want to pursue a career in this area. This programme is organised by the Law Faculty of the Catholic University of Brabant (Tilburg) and all Law Faculties participate.

There are plans to develop other professional training programmes e.g. for lawyers working in health care.

## 2. NEW NEEDS AS TO EDUCATION AND TRAINING

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### 2.0. SOME GENERAL REMARKS

The observations in this chapter are based on my personal assessment of the developments in legal education and training in the Netherlands. Fortunately, I could use the report of the Visitation Committee of 1991 evaluating legal education at the Law Faculties in the Netherlands. But I would have preferred that I had some time to discuss my observations with some of my colleagues.

Why and how judicial national "provincialism" (see the draft content under § 2.3.) should be questioned don't seem to be serious problems in the Netherlands.

There is a strong development towards internationalisation of legal education and training. That is evident from the participation of all Law Faculties to European programmes for international exchange of students and staff. Also the professional training programmes pay more and more attention to international aspects of practicing law. This applies in particular to the training programme for judges (*SSR*-courses). But also the other training programmes e.g. the second part of the programme of the Dutch Bar Association (so-called *VBO = Voortgezette Beroeps Opleiding*) includes various courses on European Law and international aspects of practicing law.

It is very likely that this development will continue. In this regard it is noteworthy that the Visitation Committee questioned the usefulness of separate programmes (*studie-richting*) for international law and/or international legal aspects. Not because attention for international aspects is not necessary, but because this attention should be an integral part of the existing programmes for e.g. Dutch Law and Notary Law.

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It seems to me that (almost) everybody involved in legal education and training, acknowledges the growing importance of international developments for education and training of lawyers and that there is no place for "national provincialism". The only problem left is how to strike an appropriate balance between the need for a solid basic education in the various aspects of Dutch Law and the need for more attention for European and other international developments. The time given to students to complete their legal education has been shortened. Furthermore, the Minister of Education has taken measures to encourage (or should we say: to force) students to complete their education in four years. This kind of development (mainly caused by financial problems) might negatively affect the possibilities for faculties and students to pay attention to international aspects of the study.

In this chapter I want to concentrate on the new needs and possible developments - partly based on shortcomings and lacks of the existing programmes - from the point of view of changes in the law and from the point of view of the building of the European Union.

## **2.2. PERSPECTIVE**

### **2.2.1. NEW NEEDS FROM THE POINT OF VIEW OF CHANGES IN LAW**

One of the characteristics of the present development in Law (practice, legislation, implementation) is the ongoing process of integration of public and private law, also called (by the Visitation Committee) "functionalisation" of Law. In other words, the classic demarcation between public and private law is diminishing; these two parts of the law become more and more interwoven. This seems to be the result of, to be connected with the democratisation and socialisation of the constitutional State. The internationalisation of law appears to strengthen this process of interweaving by adding international aspects.

This development calls for an other approach of legal education and training. More courses and programmes should be developed integrating public, private and international law. One can call them functional or integrative courses or programmes. These courses/programmes should not deal with just a part of private or criminal law, but have a more thematic character. Themes for these programmes could be e.g. environment, health care, education, employment, agriculture or e.g. refugees, youth etc.

This kind of thematic education and training makes it better possible to include international aspects because they do have relevance across frontiers. It facilitates a comparative approach and the presentation of the impact of international treaties/conventions and guidelines. Finally, it can make the involvement of teachers/instructors from abroad more interesting.

The development of this approach could become an interesting challenge in the cooperation of law faculties within the framework of European programmes like Erasmus, Socrates, ECST; it could strengthen exchange of staff and facilitate the exchange of students.

Similar developments and effects seem to be possible in the area of professional legal training. The way the *SSR* in the Netherlands (legal training for judges) is developing courses which include active and direct contact with colleagues in other European countries, is promising.

### **2.2.2. NEW NEEDS WITH A VIEW TO THE BUILDING UP OF THE EUROPEAN UNION**

Over the past 10 to 5 years all law faculties became actively involved in European programmes for international exchange of students and staff. They have done that rather independent from each other, but it has been a time consuming activity. Given the constraints in terms of money and personnel, it seems to be recommendable for the law faculties to develop more exchange of information, mutual consultation and cooperation. It can facilitate the effective solution of all

kinds of practical problems (housing, grading, financing of non-Erasmus students). Also the development of teaching materials in the English (or French etc. for that matter) might be done more efficiently (and cheaper) in closer cooperation. More joint projects in this regard could improve the quality of the materials (books, readers etc.). It is not necessary and certainly not efficient to reinvent the wheel at each of the faculties.

Coordination and cooperation could also avoid overlap in some of the exchange programmes of the law faculties.

The joint pilot project of *ECTS* of four law faculties is a promising development towards more coordination and therefor harmonisation - where possible - of activities in the area of international exchange of students and staff.

Similar recommendations can be made concerning the professional training programmes. Acknowledging the differences (and different interests) it seems to be possible to further develop and strengthen the international aspects of these programmes by exchange of experiences and information.

In short, more exchange of information, coordination and cooperation at the national level are necessary to improve and strengthen the internationalisation of legal education and training.

To enhance and promote the exchange of students - as a way to more internationalisation of legal studies at the European level - it seems crucial to further develop and implement the *ECTS*. We assume that it is only a matter of time for the Dutch Law Faculties to participate to this system.

Another step in the building up of the European Union could be the development, bij Law Faculties which are partners in Erasmus/Socrates programmes, of thematic courses as described under § 2.2.

For the building up of the European Union from the lawyers point of view, the toughest barrier might be the mutual recognition of degrees/diplomas allowing them (the lawyers) to act in each of the States of the European Union. In this regard the following should be kept in mind the legal education in member States of the European Union will be closely connected with the national legal system for many years to come (perhaps for ever);

- most lawyers are educated and trained to practice law within the national context. This does not mean that international aspects are not important. But whatever the attention paid at international aspects in education/training, for most lawyers this cannot be done at the expense of teaching/training in national law. In other words: they are not - and most lawyers don't want to be - qualified for practicing law in another European country;

- it is nevertheless not unlikely that a growing number of lawyers will have the need (and/or desire) to practice law in other European countries, to have as an *advocaat* easy access to courts.

If there is a need for this kind of European lawyer we may consider the creation of European Law Schools. But before developing this concept further, it is necessary to try to answer (on the basis of an indepth study) whether there is indeed a need for such an European lawyer and which qualities, skills (languages) and knowledge of the law (European, national) he should have.

But perhaps this all a far fetched idea, dream, illusion?

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### Remarques générales

Conformément aux instructions données par le comité d'organisation et le comité scientifique, les rapports nationaux ont été soumis en anglais ou en français, à la seule exception du rapport allemand (présenté en allemand).

Certains rapports ont nécessité un travail plus ou moins conséquent de remise en forme ou même de réécriture, en particulier (mais pas seulement) lorsque la langue maternelle du rapporteur n'était pas l'une ou l'autre de ces langues. Dans tous les cas, les propositions de modifications ont été soumises aux auteurs qui ont donc pu valider les changements suggérés.

Toutes les versions traduites ont également été soumises aux rapporteurs pour validation avant impression.

### Options retenues pour la traduction

L'équipe des traducteurs a pris les options suivantes dans son travail et les a appliquées de façon systématique à tous les rapports nationaux (textes originaux et traduits), dans un souci de cohérence et de bonne compréhension

- le premier terme des expressions désignant une discipline porte une capitale lorsqu'un s'agit de renvoyer au nom d'un enseignement (cours, modul, unité de valeur, etc.)
- les termes donnés dans la langue originale du rapporteur sont écrits en italiques; il s'agit essentiellement de désignations de diplômes, titres, ou encore d'institutions et d'organismes propres au pays. Les italiques sont également employés pour les mots pleins ou en abrégé repris du latin.

En conséquence, un terme ou une expression pourra apparaître en italique même s'il s'agit, par exemple d'un mot français dans le rapport français ou belge.

### General

Following the guidelines provided by the organising committee and the scientific committee, all national reports were submitted in English or French, with the sole exception of the German report (drafted in German).

Some reports required more or less extensive editorial work or even re-writing, especially – but not exclusively – when the rapporteur's mother tongue was neither of these two languages. In all cases, proposals for amendments were submitted to the corresponding authors who were thus given the opportunity to validate the suggestions for changes.

All translated versions were also submitted to rapporteurs for validation before printing.

### Decisions made for the translation

The translation team made the following decisions for their work and then systematically applied them throughout the national reports (original and translated texts) for the sake of greater consistency and readability

- the first term of phrases referring to a specific discipline is capitalised whenever they identify a part of a curriculum (course, module, study unit, etc.)
- terms provided in the rapporteur's original language have been italicized. This holds true in particular for references to degrees and diplomas, or for the names of institutions and organisations proper to the country concerned. Full words or abbreviations in Latin have also been italicized.

Consequently, a term of expression can be italicised even if, for instance, it is an English word found in the English or Irish report.

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

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

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

- some elements of the terminology used in translated texts may appear as artificial. But it could hardly be otherwise. A typical example is using the word *advocate* to translate the French *avocat*, even though this term is not so common in English or Irish practice.
- the table of contents is supposed to be identical for all reports. But it can happen that some items were deemed not applicable by rapporteurs and that there is no corresponding text. Consequently, there can be some gaps in the numbering sequence.  
Certain rapporteurs provided some additional information and inserted new items, in most cases in the introduction. These paragraphs have been numbered in logical order, following the basic structure and using Ø... when necessary. Some other rapporteurs departed from the suggested outline, in which case the translation team took the liberty of making the proposed structures conform to this reference structure as closely as possible.