MESLEK İÇİ EĞİTİM PROJESİ SONUÇ RAPORU

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AB ve Türkiye arasındaki Sivil Toplum Diyaloğu'nun Geliştirilmesi Projesi
Promotion of Civil Society Dialogue Between EU and Turkey

Bu proje Avrupa Birliği Genel Sekreterliği tarafından yürütülmektedir
This Project is implemented by Secretariat General for EU Affairs

Bu programın sözleşme makamı Merkezi Finans ve İhale Birimi'dir
The contract authority of this programme is Centrall Finance and Contracts Unit

Bu hibe projesi ABGS koordinasyonunda Türkiye Barolar Birliği tarafından yürütülmektedir
This Project is implemented by Union of Turkish Bar Associations with the coordiation by Secretariat General for EU Affairs

Bu proje Avrupa Birliği Tarafından Fonlanmaktadır
This project is founded by the European Union

TÜRKİYE BAROLAR BİRLİĞİ

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Bu kitap Avrupa Birliği'nin katkıları ile hazırlanmıştır. Programın içeriğinden Türkiye Barolar Birliği Başkanlığı sorumlu olup Avrupa Birliği'nin görüşlerini yansıtmamaktadır.

Ekim 2009- Ankara

Baskı
Şen Matbaa
Özveren Sk. No: 25/B Demirtepe - Ankara
Tel: 0312 229 64 54 • www.senmatbaa.com

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AB - TÜRKİYE ARASI SİVİL TOPLUM DİYALOGU PROJESİ KAPSAMINDA

"HUKUK EĞİTİMİ YOLUYLA BAROLAR ARASINDAKİ SİVİL DİYALOĞUN GELİŞTİRİLMESİ"

Bilineceği gibi, 17 Aralık 2004 tarihinde Brüksel'de gerçekleştirilen Avrupa Birliği Zirvesi'nde; Türkiye ile Avrupa Birliği'ne katılım müzakerelerinin başlanması kararlaştırılmıştır. Bu bağlamda, 3 Ekim 2005 tarihinde Avrupa Birliği müktesebatı, "aquis communautaire", çerçevesinde fiilen katılım müzakerelerine başlanmıştır.

Diğer taraftan, söz konusu Zirve'de; "*Katılım müzakerelerine paralel olarak, Birlik her aday ülkeyle kapsamlı bir siyasi ve kültürel diyaloga girecektir. Kişileri bir araya getirerek karşılıklı anlayışı iyileştirmek amacıyla, bu kapsamlı diyalog sivil toplumu da kapsayacaktır*", şeklinde alınan kararla, Avrupa Komisyonu tavsiyesinin de kapsamı genişletilmiştir.

Bu bağlamda; Avrupa Komisyonu ve Türkiye Cumhuriyeti arasında devam eden katılım müzakereleri üç bölümden oluşmaktadır. Birinci bölüm, Türkiye'deki reform sürecini desteklemek, ikinci bölüm, katılım müzakerelerinin çerçevesini oluşturmak, üçüncü bölüm ise, Türkiye Cumhuriyeti ve Avrupa Birliği arasında sivil toplum aracılığı ile politik ve kültürel diyaloğu geliştirmektir. Bu doğrultuda, Komisyon; Türkiye ile ilişkili olarak karşılıklı bilgilendirmenin geliştirilmesini ve her iki taraf bakımından topluma ve siyasi konulara ilişkin algılamalar hakkında tartışma yapılmasını teşvik etmeyi hedefleyen bir diyaloğun öncelik ve özellikle zorunlu olduğu hususunu vurgulamıştır.

Görüleceği gibi, "sivil toplum diyalogu" Türkiye'nin Avrupa Birliğine kabul sürecinin üçüncü ve en önemli aşamasını oluşturmaktadır. Zira, bu üçüncü ayak Türkiye'nin AB'de tanınırlığını artırırken Türk vatandaşlarının da; AB'nin ilke ve değerlerini daha iyi anlamasına yardımcı olacaktır. Diğer bir ifade ile Türkiye ve AB arasındaki karşılıklı algı farklılıklarının giderilmesi sivil toplum kuruluşlarının diyalogu ile sağlanacaktır.

Buradan hareketle; sivil toplum diyaloğunun amaçları:

- Üye devletlerde ve aday ülkelerde, sivil toplumun tüm kesimleri arasında temasları ve deneyim paylaşımını güçlendirmek,
- Gelecekteki genişlemelerin yaratacağı fırsatlar ve zorlukların daha iyi bir şekilde anlaşılmasına yönelik olarak, ilgili aday ülkeler hakkında Avrupa Birliği'nde daha iyi bilgi edinilmesini sağlamak,
- Temelini oluşturan değerler, faaliyetler ve politikalar dahil olmak üzere, Avrupa Birliği'nin aday ülkelerde daha iyi anlaşılmasını sağlamak,

olarak özetlenebilmektedir.

1. Sivil Toplumun Diyaloğu

Avrupa Komisyonu, Türkiye'de sivil toplumun gelişiminin desteklenmesi bakımından sivil toplum örgütleri arasında en iyi uygulamaların karşılıklı değişimi vasıtasıyla bilgi alışverişinde bulunmaları ve gerekli işbirliğinin temin edilmesi amacıyla AB'de karşılıkları olan sivil toplumların ikili değişim projelerinin hayata geçirilmesini hedeflemiştir.

Bu bağlamda, sivil toplum diyalogu; AB ve Türkiye'deki meslek kuruluşları, iş çevreleri ile sosyal ve ekonomik aktör veya birlikleri arasında gerçekleştirilecek karşılıklı iletişim ve bilgi alış verişini içermektedir.

2. Sivil Toplum Diyaloğunun Geliştirilmesi Projesi

Avrupa Komisyonu 2005 yılında Avrupa Birliği ve aday ülkeler arasında sivil toplum diyaloğunun daha fazla güçlendirilmesi için hedef ve önceliklerin belirlendiği strateji çerçevesinde yukarıda vurgulanan diyalog sürecini desteklemek üzere "Avrupa Birliği ve Türkiye arasındaki Sivil Toplum Diyaloğunun Geliştirilmesi 2007 Hibe Programı" projesini hazırlamıştır. Söz konusu proje, aralarında Türkiye Barolar Birliği gibi meslek kuruluşlarının AB muadili meslek örgütleri

arasındaki ilişkilerin yoğunlaştırılması, çeşitlendirilmesi ve iki taraflı katkı sağlanması amaçlarına yönelik bulunmaktadır.

3. Hukuk Eğitimi Yoluyla Barolar Arasındaki Sivil Diyaloğun Geliştirilmesi Projesi

Avrupa Komisyonu'nun ülkemiz ile AB ülkelerindeki meslek örgütleri arasında diyalog, uzun süreli ilişkiler ve sürdürülebilir işbirliğini geliştirmek amacıyla öngördüğü hibe programı kapsamında; Türkiye Barolar Birliği, yedek (associate) üyesi bulunduğu Avrupa Barolar Konseyi (Council of Bars and Law Societies of Europe - CCBE) ile ortaklaşa olarak bir proje sunmuştur.

Avukatları temsil eden bir meslek örgütü olarak bu projenin ana temasını teşkil eden "diyaloğun" TBB üyesi barolar ve avukatlar ile Avrupa baroları arasında kurulmasının yerinde olacağı düşünülmüştür. Bu bağlamda, AB üyeliğinin üçüncü ayağını oluşturan "sivil toplum diyaloğu" için; "Hukuk Eğitimi Yoluyla Barolar Arasındaki Sivil Diyalogun Geliştirilmesi" proje başlığı olarak kabul edilmiştir.

Proje'de Birliğimizin yabancı ortağı olarak; CCBE, İngiltere ve Galler Barosu ve Fransa Barosu yer alırken Avusturya, İspanya, İtalya ve Polonya Baroları iştirakçidir. Bu doğrultuda; Avusturya, Fransa, İngiltere ve Galler, İtalya, İspanya ve Polonya Barolarının projede aktif olarak rol alması öngörülmüştür.

17 Ağustos 2007 tarihinde Merkezi Finans Kurumu'na sunulan söz konusu Proje kabul görerek hibe kapsamına alınmıştır. Proje'ye ilişkin Sözleşme; 30 Haziran 2008 tarihinde imzalanmıştır. Sözleşme'nin, imzalanmasından itibaren 17 aylık bir sürede tamamlanacak olan Proje'de yer alacak çalışmaların 5 ana başlık altında gerçekleştirilmesi öngörülmüştür.

Fransa ve İngiltere Baroları nezdinde yapılan temaslar Proje ortaklarının karşılıklı olarak; hukuk tahsili, avukatlık mesleğine giriş, avukatlık, mahkemeler ve baroların işleyişi konularında bilgi alışverişi yapmalarına ve anılan ülkelerdeki uygulamalar hakkında bilgi sahibi olmalarına katkı sağlamıştır. Toplumlar arası diyalogun sağlanması ve sürdürülmesi amaçlı bu çalışma ziyaretlerine ilişkin bilgilerin Adana,

Ankara, Denizli, Elazığ, İstanbul, Samsun ve Şanlı Urfa illerindeki Baro'lara kayıtlı avukatlara seminerler aracılığı ile sunumu da Proje'nin ana başlıklarından bir diğerini oluşturmaktadır.

Bu çalışmada yer alan Fransa ve İngiltere'de hukuk eğitimi ve avukatlık mesleğine ilişkin değerlendirmelerin ülkeler ve sistem arasındaki farklılıklara ışık tutacağı tartışmasızdır.

Bu bağlamda, Proje kapsamında gerçekleştirilen çalışmanın; sivil toplumun en önemli unsurlarından birisini oluşturan avukatların, kendilerine düşen çok önemli bir görev olan AB ve Türkiye arasındaki sivil toplum diyaloguna katkılarının yanında, mesleki bilgilerini de artırmaya yardımcı olacağına inanmaktayız.

Av. Özdemir ÖZOK
TÜRKİYE BAROLAR BİRLİĞİ BAŞKANI

I. BÖLÜM
FRANSA'DA GERÇEKLEŞTİRİLEN ÇALIŞMA ZİYARETLERİNE İLİŞKİN RAPOR

1. AVUKATLIK MESLEĞİ VE FRANSIZ SİSTEMİ HAKKINDA GENEL BİLGİ

1.1. Sistem Hakkında Genel Bilgi

Proje kapsamında ziyarette bulunulan diğer ülke İngiltere'deki sistemin ülkemizden büyük farklılıklar arzetmesine rağmen, idari yapılanmamızda çeşitli konularda Fransız sisteminin örnek alınmasının da etkisiyle kıta Avrupası hukuk sistemine bağlı bir ülke olan Fransa'da hukuki ve idari sistem ülkemizle çeşitli bakımlardan örtüşmektedir.

Raporun İngiltere ile ilgili bölümünde açıklandığı üzere, İngiltere'nin bir "common law" ülkesi olması, adli sisteminin ağırlıklı olarak geleneğe ve içtihada dayanmasını da beraberinde getirmektedir. Oysa, kıta avrupası hukuk sistemine bağlı bir "civil law" ülkesi olan Fransa'da hukuk sistemi tamamen yazılı hukuktan oluşan bir yapıya dayanmaktadır. Fransız hukuk sisteminin çekirdeğini beş kanun oluşturmaktadır. Bunlar; Medeni Kanun, Hukuk Usulü Kanunu, Ticaret Kanunu, Ceza Kanunu ve Ceza Usul Kanunu'dur.

Fransız yargı sistemi idari *(l'ordre administratif)* ve adli yargının *(l'ordre judicaire)* ayrılmasına dayanan ikili bir yapıya sahiptir. Ceza yargılaması da adli yargı *(l'ordre judicaire)* kapsamında düzenlenmiştir. Napolyon Kanunu (*Code Napoléon*) ile I. Napoléon döneminde ilk kez ortaya konulan idari yargı sistemi ülkemiz dahil pek çok ülkeye ilham kaynağı olmuştur. Bireylerin idare aleyhine dava açabilmesinin Fransız vatandaşlarına geçmişten beri üst düzey hukuki koruma sağladığı belirtilmektedir. İki yargı düzeni arasındaki görev uyuşmazlıklarını çözmek üzere, "uyuşmazlık mahkemesi" *(Tribunal de Conflit)* bulunmaktadır.

Fransa'da 22 İdare Mahkemesi *(Tribunaux de Premiére Instance)* bulunmaktadır ve bunların üstünde Danıştay *(Conseil d'Etat)* yer alır. Danıştay'ın ülkedeki en prestijli kurumlardan biri olduğu ifade edilmektedir. İdari yargı ile birlikte yargı fonksiyonunu icra etmekte olan ve hukuk ve ceza davalarını çözüme kavuşturan adli yargılama ise doğal olarak daha çeşitli bir yapıya sahiptir. Adli yargı, ülkemizdeki ifadesiyle sulh ve asliye olarak ayrıldıktan sonra, ceza yargılaması bakımından ağır ceza (tam çevirisiyle; cinayet) mahkemesi ve çocuk mahkemesi, hukuk yargılaması bakımından ise; ticaret, iş, sosyal güvenlik gibi uzmanlık mahkemeleriyle örgütlenmiştir. Sulh hukuk mahkemesi *(Tribunal d'instance)* il ve ilçe merkezleri ile önemli kantonlarda bulunur. Toplam sayısı 470 civarındadır. Duruşmaları tek hâkimli olmasına karşın her mahkemede genelde birden fazla yargıç bulunmaktadır. 181 asliye mahkemesi *(Tribunal de Grande Instance)* mevcuttur. Prensip olarak her il merkezinde bir asliye mahkemesi bulunmakta ve iş hacmine göre Asliye Mahkemelerinin daireleri *(chambrés)* kurulabilmektedir. Örneğin Paris Asliye Mahkemesinin 31 Dairesi ve 350'den fazla yargıcı vardır. Asliye Mahkemeleri yargıç sayısına bağlı olarak yeterli büyüklüğe ulaştığında dairelere ayrılmaya başlar ve ilk ayrım asliye hukuk ve asliye ceza daireleri ayrımıdır. Ceza mahkemeleri suçların ağırlığına göre Sulh Ceza Mahkemesi *(Tribunaux Correctionnels),* Asliye Ceza Mahkemesi *(Tribunaux de Police)* ve Ağır Ceza Mahkemesi *(Cours d'Assises)* olarak ayrılmıştır. Bu üçlü ayrım da ülkemizdeki ceza yargılamasının yapılanması ile aynıdır.

Adli yargılamada İstinaf Mahkemesi *(Cours d'Appel)* ve temyiz mahkemeleri *(Cour de Cassation)* bulunmaktadır. Fransa'da ülkemizde olduğu gibi idari bölgeler ile adli çevreler birbirinden ayrıdır. Ülke, yargı çevrelerinin yetkisi bakımından İstinaf Mahkemeleri ile bölgelere ayrılmıştır.

Fransa'da yargıçlar meslekten yetişen profesyonellerdir. Ticaret Mahkemesine atanan tacirler, temyiz mahkemesine atanan hukuk profesörleri gibi istisnai haller olmakla birlikte yargıçların neredeyse tümü sınavla genç yaşta mesleğe başlamakta ve kariyerlerini yargıçlık mesleğinde ilerletmektedir. Yargıç olmak için çok rekabetçi bir sınavı kazanmak gerektiği ifade edilmektedir. Acojuris'in yöneticisi Yüksek Yargıç Tristan de Lafond görüşmemiz esnasında bu durumu *"hukuk fakültesine giren öğrencilerin %20'si avukat ve %5'i hakim*

olabilmektedir" sözleriyle ifade etmiştir.

İngiltere'den farklı ve ülkemize yakın bir diğer özellik ceza yargıcının yargılama esnasında üstlendiği aktif görevdir. Söz gelimi, ceza muhakemesi usulünde sorgunun önemli ölçüde ceza yargıcı tarafından gerçekleştirildiği belirtilmektedir.

1.2. Barolar

Fransa'da tıpkı Türkiye'de olduğu gibi Barolar bağımsızdır, yerel baro örgütleri ve merkezi bir Barolar Birliği bulunmaktadır. Fransa'da Barolar asliye hukuk mahkemelerinin bulunduğu yerlerde kurulmaktadır. Bunun sonucunda bugün Fransa'da 181 adet Baro bulunmaktadır. En küçük Baronun 9, en büyük Baro olan Paris Barosu'nun 20.000'in üzerinde üyesi bulunmaktadır. Fransa'da çalışmakta olan 50.000 avukatın yarısına yakını Paris'te bulunmaktadır.

Asliye hukuk mahkemelerinin kapatıldığı durumlarda Barolar da kapatılmaktadır. Yakın zamanda gerçekleştirilen reform ile 23 asliye hukuk mahkemesi kapatılınca 23 Baro da kapatılmıştır. Yukarıda da belirtildiği üzere Fransa'da adli ve idari çevreler farklı belirlenmiş, adli bölgelerin belirlenmesinde istinaf mahkemeleri esas alınmıştır. Ülkede 22 idari bölge ve 35 istinaf mahkemesi bulunmaktadır. Fransa Barolar Konseyi Uluslararası İlişkiler Bölümü Başkan Yardımcısı Av. Marc Jobert, bu farklılığın sorunlara neden olduğu ve ortadan kaldırılması için reform çalışmalarının devam ettiğini ifade etmiştir. Bu kapsamda, bazı idari bölgeler daha büyük olmalarına rağmen asliye hukuk mahkemesinin tarihsel nedenlerle yakınlarındaki diğer şehirlerde kurulu olmasının sıkıntılara neden olduğu ve bu konuda bölgesel rekabetlerin oluştuğu ifade edilmiştir.

1990 yılında Fransa Barolar Birliği *(Conseil National des Barreaux (CNB) – Ulusal Barolar Konseyi)* kurulana dek ülkede Barolar arasında bir üst kuruluş bulunmamaktaydı. Bu konuda Paris Barosu'nun fiili liderliği mevcuttu ve başkent barosu uluslar arası alanda tanınan tek baro konumundaydı. Bugün dahi, CNB'nin varlığına rağmen ülkedeki avukatların neredeyse yarısının örgütlü bulunduğu Paris Barosu'nun geleneğinin ve güçlü mali yapısının verdiği avantajla halen bu öncü konumunu sürdürdüğü gözlenmiştir.

2. FRANSA'DA YÜKSEK ÖĞRETİM

Fransa'da yüksek öğretim Bologna süreci doğrultusunda Avrupa Birliği ile uyumlu hale getirilmiştir. Ülkemizdeki sistemden kısmen farklı olan yüksek öğretim sistemi hakkında kısaca bilgi vermek yararlı olacaktır. Buna göre, ülkedeki yüksek öğrenim sistemi 3 yıl lisans, 2 yıl yüksek lisans ve 3-4 yıl doktora esasına dayanmaktadır. Yüksek öğretim kurumları üç ana başlığa ayrılmaktadır. Üniversite, büyük okullar *(Les Grands Ecoles)* ve uzmanlaşmış okullar *(école spécialisée)*. Üniversiteye devam edebilmek için bakalorya veya denk bir diploma sahibi olmak gereklidir. Kural olarak lisansa devam etmek için bakalorya veya dengi, yüksek lisansa devam etmek için lisans veya dengi, doktoraya devam edebilmek için ise araştırma master diplomasına sahip olmak gerekir. Yüksek lisans derecesi Profesyonel Master *(Master Professionnel)* ve Araştırma Master'ı *(Master Recherche)* olarak ikiye ayrılır. Profesyonel Master iş hayatına yönelik olup, staj ağırlıklı bir programdır. Araştırma Master'ı ise tezli ve akademik hayata yönelik bir programdır. Yüksek lisans eğitimi iki yıldır. Birinci yılı başarıyla tamamlayanlar "M-1" ve ikinci yılı tamamlayanlar "M-2" derecesi sahibi olurlar.

2.1. Ön Lisans Eğitimi (Cycle Court)

Fransa'da eğitim süreçleri/aşamaları "*cycles*" olarak adlandırılmaktadır. Fransa'daki adıyla "kısa süreçli" ülkemizdeki tanımıyla "ön lisans" eğitimi iki yıllık derece almak isteyenler için tasarlanmıştır. Ziraat, uygulamalı sanatlar, ticari bilimler, sigorta ve bankacılık, teknikerlik, endüstri, turizm otelcilik, bilgisayar gibi bölümleri vardır. Bu eğitimi alanların Büyük Okullar'a devam edebilmek için gerekli olan bilimsel hazırlık dönemini bitirmesi veya Yüksek Teknisyen Brövesi *(Brevet de technicien supérieur - BTS)* ile Teknik Üniversite Diploması *(Diplôme universitaire de technologie - DUT)* alması mümkündür. Liseye devam edenler; "Yüksek Teknisyen Brövesi" sahibi olurlar. Eğitim süresine göre bir yıllık ise "BTS-1" iki yıllık ise "BTS-2" olarak adlandırılır. Yüksek Teknoloji Enstitüleri'ne *(Institut universitaire de technologie - IUT)* devam edenler ise Teknik Üniversite Diploması (DUT) sahibi olurlar. Bu "kısa süreç" eğitimleri sonunda kişiler, 1 ya da 2 yıllık ek uzmanlık dönemleriyle veya bir "uzun süreç" eğitimine geçiş yaparak eğitimlerine devam edebilirler.

2.2. Büyük Okullar (Les Grands Ecoles)

Mühendislik, ticaret, işletme, siyaset bilimi ve iş idaresi gibi alanlarda eğitim sunarlar. Sınavla öğrenci almaktadırlar. Eğitim süresi 5 (2+3) yıldır; 2 yıl lisede bilimsel hazırlık veya üniversitede lisans ve sonra Grande Ecole'de 3 yıl uzmanlık eğitimi almak gerekir. Büyük Okullar'dan master diploması ile mezun olunur.

2.3. Uzmanlaşmış Okullar (Ecole Spécialisée)

Sanat, mimarlık, hemşirelik, gazetecilik, radyo ve televizyon gibi alanlarda eğitim sunarlar. Dosya ve mülakat ile öğrenci almaktadırlar. Bazı bölümlerde bir yıllık hazırlık sınavı gerekmektedir. Ecole Spécialisée olarak gruplandırılan okullarda bölümler Bologna sürecine uygun olarak 3 sene lisans ve 2 sene master programı halindedir. Ancak 3 yıllık diploma her meslek için yeterli değildir. Örneğin, devlet mimarlık diploması toplam 5 sene okuduktan sonra alınabilir ve 5 yıllık diplomaya sahip olan mimar imza yetkisine sahip değildir ve büro açamaz. Mimarın kendi adına imza yetkisi sahibi olması ve büro açabilmesi için 6 yıl okuması gerekir.

2.4. Üniversite

Fransa'da hukuk eğitimi üniversitelerde verilmektedir. Lisans diplomasına sahip olmak için 3 yıl (6 sömestr boyunca) toplam 180 kredi almak gerekir. Üniversite eğitimi herkese açıktır. Üç yıl lisans, iki yıl yüksek lisans ve üç yıl doktora eğitimi verilir. Avrupa Kredi Transfer Sistemi'ne (ECTS) adaptasyon sağlandığı için Erasmus gibi değişim programları ile diğer okullardan kredi almak mümkündür. Birinci süreci *(cycle)* tamamlayıp ikinci sürecin ilk yılını tamamlayanlar lisans derecesi sahibi olurlar. Üç yıl sürdüğü için "Bakalorya+3" olarak da anılır. Hukuk lisans eğitimi üç yıldır ve sadece lisans diplomasına sahip olanların avukatlığa yönelmedikleri piyasada değişik işlerde çalıştıkları belirtilmektedir. Örneğin tıp alanında devlet diplomasına sahip olmak içinse 9 yıllık eğitim almak gerekir.

2008 yılı verileri ile Fransa'da, toplam yüksek öğrenim öğrenci sayısının (2.2 milyon) %70'ini üniversitede okuyan öğrenciler oluşturmaktadır ve bu sayı yaklaşık 1.5 milyon kişiyi ifade etmektedir.

2008 yılında Fransız üniversitelerine kayıtlı Türk öğrenci sayısı ise 2131'dir. Türk öğrencilerin yaklaşık 400'ü hukuk eğitimini tercih etmiş durumdadır. Bu rakam Fransa'da eğitim alan Türklerin en çok tercih ettiği fakültenin Hukuk Fakültesi olduğunu göstermektedir.

3. FRANSA'DA AVUKATLIK MESLEĞİNE GİRİŞ

Fransa'da avukat olmak isteyen kişiler ayrıntıları aşağıda açıklanacak olan şu şartları taşımalıdır :

- Hukuk Lisans Diploması Sahibi Olmak
- IEJ (Institut d'Etudes Judiciaries – Hukuk Eğitimi Enstitüsü) Sınavında Başarılı Olmak
- CRFPA (Centre Régional de Formation Professionnelle des Avocats) Eğitimini Tamamlamak
- CAPA (Certificat d'Aptitude à la Profession d'Avocat) Sınavında Başarılı Olmak

3.1. *Hukuk Lisans Diploması*

Hukuk Fakültesi Lisans mezunu olmak koşulu, Bologna süreci doğrultusunda 3 yıllık lisan eğitimi ile M1 master derecesini kapsamaktadır. Belirtmek gerekir ki, hukuken bu koşulun sağlanması bakımından 3 yıllık lisans derecesi yeterli olduğu halde, piyasada 3 yıllık derece iş yapmak imkansız kabul edildiğinden, M1 derecesinin fiili bir zorunluluk haline geldiği ifade edilmektedir. Normalde 4 yıl olan bu süreci tamamlamanın öğrencilerin yaklaşık %60'ı için 5 yıl aldığı ifade edilmektedir.

3.2. *IEJ (Institut d'Etudes Judiciaries – Hukuk Eğitimi Enstitüsü)*

Hukuk fakültelerinin verdiği bir yıllık avukatlık sınavına hazırlık eğitimini tamamlamak ve sınavı vermek olarak özetlenebilecek bu koşul da Fransa'da fiili bir durumu beraberinde getirmektedir. Aşağıda da detaylı olarak açıklandığı üzere, yasal olarak üniversite sonrasında avukat olmak isteyen öğrencilerin bir sınava tabi tutulmaları

öngörülmüş, bu görev üniversitelere verilmiş, üniversiteler de bunu gerçekleştirmek için IEJ denilen enstitüler kurmuşlardır. IEJ eğitimini tamamlayan ve sınavı geçenler Avukatlık Okulları'na (CRFPA) devam etme hakkı kazanmaktadırlar. Bunun dışında ayrıntısı aşağıda belirtileceği üzere; Hukuk doktorası yapanlar ve Avukatlık Kanunun 98, 99 ve 100. maddesinde işaret edilen, 8 yıllık mesleki tecrübe sahipleri ile yurtdışında bir baroya kayıtlı olan Avukatlar bu sınavı vermeksizin CRFPA'ya devam edebilmektedirler. Ancak yabancı avukatlar için bu hakkın uygulanması karşılıklılık koşuluna bağlanmıştır.

3.3. *CRFPA (Centre Régional de Formation Professionnelle des Avocats)*

Bölgesel Avukatlık Mesleki Eğitim Merkezi, avukatlık okulu/ akademisi, ülkemizdeki adıyla Staj Eğitim Merkezi) okuluna devam etmek de, avukatlık mesleğine giriş için öngörülen diğer bir koşuldur. Bu okula başlayanlar, "öğrenci avukat" unvanını almakta ve ülkemizdeki anlamı ile avukatlık stajına başlamaktadırlar. Bu aşama üç adet 6 aylık dönem ile ayrılmış toplam 18 aydan oluşmaktadır. Ancak, kayıt için beklenen süre, 6 aylık dönemlerin arasında kaybedilen süre ve bitiş sınavı da dikkate alındığında bu aşamanın fiilen iki seneye yayıldığı belirtilmektedir.

3.4. *CAPA (Certificat d'Aptitude à la Profession d'Avocat)*

Öğrenci avukatlar, avukatlık okulunda verilen eğitimin ardından girdikleri CAPA sınavını başarmaları halinde avukat olmaya hak kazanmaktadırlar. Aşağıda hakkında ayrıntılı bilgi verilecek olan CAPA sınavında başarı oranının çok yüksek olduğu belirtilmektedir.

Ülkemizdeki terminolojiye uygun olarak özetlemek gerekirse, Fransa'da staj eğitimine başlama sınavı ve staj bitim sınavı yapıldığını söylemek mümkündür.

Bu sürecin tüm aşamalarında başarı gösterenler avukat unvanı alıp yemin ederek Baroya kayıt olmaktadırlar. Fransız Avukatlık Yemini şu şekildedir :

"Bir avukat olarak mesleğimin gereklerini saygınlık, vicdani değerler, dürüstlük, bağımsızlık ve insancıllıkla yerine getireceğime yemin ederim."

(Je jure, comme avocat, d'exercer mes fonctions avec dignité, conscience, indépendance, probité et humanité.)

4. MESLEK EĞİTİMİ

4.1. Başlangıç Eğitimi

4.1.1. *IEJ (Institut d'Etudes Judiciaries – Hukuk Eğitimi Enstitüsü)*

Fransız sisteminde avukatlık ile yasal danışmanlık birbirinden farklı meslekleri ifade etmektedir. Bu çerçevede, avukatlık yapmak isteyen hukuk fakültesi mezunlarının staj eğitim merkezi olarak nitelendirilebilecek bölgesel avukatlık okulların (CRFPA) devam edebilmeleri için, öncelikle her üniversitede bulunan IEJ'ye *(Institut d'Etudes Judciaries – Hukuk Eğitimi Enstitüsü)* kayıt yaptırmaları ve süreç sonunda bu enstitülerce yapılan sınavda başarılı olmaları gerekmektedir.

IEJ, adından da anlaşıldığı üzere, hukuk fakültesi bünyesindeki öğrencilere hukuki eğitim veren bir kurumdur. Esasen, IEJ kurumu Fransa'da fiili olarak gelişim göstermiştir. Zira, avukatlık okullarına giriş sınavının yapılması yetki ve görevi kanun tarafından hukuk fakültelerine (üniversitelere) verilmiş, bir süre sonra ise üniversiteler bünyesinde münhasıran bu sınava hazırlık akademisi şeklinde örgütlenen enstitüler kurulmuştur. Yukarıda da belirtildiği gibi, hukuk fakültesi olan her üniversitenin bünyesinde aynı zamanda bir IEJ bulunmaktadır ve öğrencilerin avukatlık okullarına kabul edilmeden önce IEJ'ye kayıt yaptırması zorunludur. Halihazırda Fransa genelinde 44 adet hukuk fakültesi ve IEJ vardır.

Öğrenciler, IEJ'ye genellikle yüksek lisans (M1-M2) derecelerini yaptıkları sırada ya da mezun olduktan sonra kaydolmaktadırlar. Bu konudaki temel ön koşul, kayıttan önce öğrencinin son sınıfın final sınavlarını vermiş olması gerekliliğidir. IEJ'ye kayıt paralıdır ve her

öğrenci üniversite harcı (250 EUR) ile birlikte enstitü için de 300 EUR tutarında bir harç yatırmakla mükelleftir. Ayrıca, bir hukuk fakültesi öğrencisi/mezunu belirtilen temel koşulu sağlamak kaydıyla, istediği üniversitenin IEJ'sine kayıt yaptırabilir.

Bu noktada, IEJ'ye kayıt zorunluluğu ile derslere devam zorunluluğu arasındaki çizgiyi çekmek de yararlı olacaktır. Nitekim, sınava girmek için zorunlu olan şey, IEJ'ye kayıt yaptırılması olup, enstitüde verilen derslere devam etme mecburiyeti bulunmamaktadır. Bir diğer deyişle öğrenci sınava girmek için her durumda IEJ'ye kayıt yaptırmak zorundadır ancak dilerse dönem sonundaki sınava derslere devam ederek ya da kendisi çalışarak girebilir. IEJler'in öğrenci sayısı konusunda bir sınırlamaya tabi olmaması da dikkat çekicidir. Bu bağlamda genellikle IEJler kendilerine başvuran tüm öğrencileri kaydetmektedirler, ancak -çok uygulanmamakla birlikte- gerekli gördükleri durumlarda ya da kontenjanları eğitimci kapasitelerini aştığında başvuruları reddetme yetkisine de sahiptirler.

IEJ'de eğitim dönemi Kasım ayında başlamakta ve bir sonraki yılın Haziran ayında sona ermektedir. Sınavlar ise genellikle Eylül ayında başlamaktadır. Enstitüler bünyesinde verilen eğitim hukuk fakültesinin tekrarından ziyade, uygulamaya yönelik olarak kurgulanmıştır. Bu bağlamda, öğrencilere verilen dersler daha çok CRFPAlar'daki olaylara ve sınavda sorulması muhtemel konular üzerinde yoğunlaşmaktadır. Her IEJ kendi ders programını ve sınavını –mevzuattaki çerçeve hükümlere uygun olmak koşuluyla- kendisi kurgulamaktadır. Bu bağlamda, ortaya garip bir adaletsizlik de çıkabilmekte, kimi IEJ'nin sınavı çok zor iken kiminin ki çok daha kolay olabilmektedir. Söz gelimi, 2008'de Panthéon (Assas) Üniversitesi (Paris II) IEJ'sine devam eden öğrencilerin %30'u sınavı geçebilmişken, bu oran Malakoff (Paris V) Üniversitesi IEJ'sinde %60'tır.

IEJ'de derslere devam zorunluluğu olmadığı ve müfredat enstitünün takdirinde olduğu için dersler konusunda enstitüler arasında birlik bulunmamaktadır. Ancak derslerin sınava yönelik olması gerekliliği karşısında enstitülerde özellikle Borçlar Hukuku, Medeni-Ceza-İdari Yargılama Usulü Hukuku, Aile Hukuku, Miras Hukuku, Ceza Hukuku, Ticaret Hukuku, İdare Hukuku, İktisadi Hukuk, İş

Hukuku, Milletlerarası Özel Hukuk, Avrupa Birliği Hukuku ve Vergi Hukuku konularında dersler verildiği görülmektedir. Bunun dışında IEJ bünyesinde çeşitli seminer ve hazırlık dersleri ile seçmeli dersler de verilmektedir.

IEJ tarafından yapılan sınavlar Fransız sisteminin temel "eleyici unsuru" olarak nitelendirilebilir. Bir diğer deyişle, ileride incelenecek olan ve CRFPA eğitiminin sonundaki CAPA sınavına nazaran IEJ'nin CRFPA giriş sınavı çok daha zor bir sınavdır ve bu sınav sonunda bir çok öğrenci elenmektedir. Sınava giriş hakkı ise "üç" ile sınırlanmış olup, bir sınavdan kalan öğrencinin bir sonraki dönem için tekrar IEJ'ye kayıt yaptırması gerekmektedir. Bu durum uygulamada IEJ'ye kayıt olan öğrenci sayısı ile CRFPA'lara giren toplam öğrenci sayısı arasındaki farkı daha anlaşılır kılmaktadır.

IEJ'de yapılan sınav, öncelikle bir yazılı sınav, yazılı sınavın geçilmesi durumunda ise yapılacak olan bir sözlü sınav şeklinde kurgulanmıştır. Sınavların içeriği aşağıdaki gibi özetlenebilir:

Yazılı Sınav

1 .Komposizyon :

Hukuki belgeler çerçevesinde, sosyal, siyasi, ekonomik veya kültürel bir konu hakkında yazılması istenir. Süresi 5 saattir.

2. Muhakeme Yeteneği Testi :

a. Borçlar Hukuku pratiği

b. Bu pratiğe ilişkin olarak cezai, idari veya medeni bir dava açılması halinde (bu üçünden biri seçilecektir) izlenecek usul hukuku.

Hakkında olmak üzere iki kompozisyon. Süresi 5 saattir.

3. Pratik Çalışma Testi :

Öğrenci kendi seçtiği aşağıdaki konulardan birisi hakkında bir pratik çalışma çözümlemesi yapar. Süresi 3 saattir.

- Kişiler ve Aile Hukuku

- Mülkiyet Hukuku
- Genel/Özel Ceza Hukuku
- İşletme ve Ticaret Hukuku
- Sosyal Güvenlik Hukuku
- İdare Hukuku
- Ekonomi Hukuku
- İş Hukuku
- Milletlerarası Özel Hukuk
- AB Hukuku
- Vergi Hukuku

Bu aşamalardan her birinin puanlaması 20 üzerinden yapılmakla birlikte, öğrencinin başarılı sayılabilmesi için toplamda 60 üzerinden 30 alması gerekmektedir.

Sözlü Sınav

IEJ'de yapılan sözlü sınav için, bir avukat, bir yargıç ve bir akademisyen (başkan)'dan oluşan üç kişilik bir jüri oluşturulmakta ve öğrenci aşağıdaki aşamalardan geçmektedir

1.Temel Hak ve Özgürlükler Hukuku :

Öğrenci kendisine verilen konu hakkında bir saat hazırlandıktan sonra, öncelikle jüri huzurunda bir sunum yapmakta ve ardından jürinin sorularına cevap vermektedir. Süre 15 dakika ile sınırlanmıştır.

2.Seçmeli Sözlü :

Öğrenci, jüri tarafından seçilecek olan aşağıdaki konulardan biri hakkında on beş dakika hazırlandıktan sonra, yine jüri huzurunda sunum yapmakta ve ardından jürinin sorularına cevap vermektedir. Süresi 15 dakikadır.

Kişiler ve Aile Hukuku

Mülkiyet Hukuku

Genel/Özel Ceza Hukuku

İşletme ve Ticaret Hukuku

Sosyal Güvenlik Hukuku

İdare Hukuku

Ekonomi Hukuku

İş Hukuku

Milletlerarası Özel Hukuk

AB Hukuku

Vergi Hukuku

3. Usul Hukuku Sözlüsü :

Öğrenci, kendi seçtiği bir konuda on beş dakika hazırlandıktan sonra, bu konuda yerel ve AB yargı mercilerine yapılacak hukuki bir başvuru halinde izlenecek olan usuller hakkında bir sunum yapar. Süresi 15 dakikadır.

4.Muhasebe/Ekonomi Sözlüsü :

Öğrenci, kendi seçtiği bir konuda on beş dakika hazırlandıktan sonra, bu konuda bir sunum yapar. Süresi 15 dakikadır.

5. Yabancı Dil Sözlüsü :

Öğrenci, kendi seçtiği bir modern dilde (İngilizce, Almanca, İspanyolca) sözlü bir anlatım yapar. Süresi 15 dakikadır.

Öğrenci sözlüler sonucunda da toplam puanın yarısına ulaşırsa, başarılı kabul edilmekte ve CRFPA'ya kaydolma hakkını kazanmaktadır.

İstisnalar:

Aşağıdaki durumlarda, kişiler IEJ'nin sınavından geçmeye gerek kalmaksızın doğrudan CRFPA'ya kayıt yaptırabilmektedir :

- Hukuk doktorası yapanlar, (1971 Kanunu'nun 12. Md)
- 8 yıllık mesleki tecrübe sahipleri ve bazı meslek sahipleri (örneğin yasal danışmanlar), (1971 Kanunu'nun 11. Md – 1991 Kanunu md. 98)
- Yurtdışında bir baroya kayıtlı olanlar (100. Madde; ancak bu kişilerin durumu da AB vatandaşı olup olmamalarına göre değişkenlik göstermektedir.)

4.2. Staj Eğitimi

Fransa'da staj eğitimi sistemi özellikle 2004 yılında yapılan değişikliklerle deyim yerindeyse köklü bir reform sürecinden geçmiştir. Buna göre, Fransa'da avukatlık stajı için kurulan temel merkezler CRFPAlar'dır *(Centre Regional de Formation Professionelle des Avocats – Bölgesel Avukatlık Mesleki Eğitim Merkezi)*. CRFPAlar, bölgesel (birden çok Baro'yu kapsayacak şekilde oluşturulmuş) merkezi staj (ve meslek içi) eğitim kurumlarıdır ve tüm Fransa çapında 15 adet CRFPA bulunmaktadır. Bunların en büyüğü, tahmin edileceği üzere Paris'tedir[1].

Yukarıda değinildiği üzere bir CRFPA'ya kaydolmanın temel koşulu IEJ'nin yapacağı sınavdan başarıyla geçmek ya da bu sınavdan muaf olmaktır. Kişi, CRFPA'ya kayıt olmasıyla birlikte *"élève avocat – öğrenci avukat"* sıfatını kazanır. CRFPA'da verilen staj eğitimi, her biri 6 aydan oluşan 3 temel bölümü ve toplamda 18 aylık bir eğitimi kapsar. Öğrenci avukat bu sürecin sonunda CAPA adı verilen bir sınava girer ve başarılı olması halinde stajını tamamlayarak yemin edip Baro Levhasına kaydolabilir. CAPA sınavı da hesaba katıldığında, staj süresi toplamda yaklaşık 2 yılı bulmaktadır[2].

1 Paris'te bulunan eğitim merkezi çok büyük olduğu için, diğer merkezlerden farklı olarak CRFPA şeklinde değil EFB (Ecole de Fomation du Barreau – Baro Eğitim Okulu) olarak adlandırılmıştır. Yine kimi bölgelerdeki merkezler CFPA şeklinde isimlendirilmiştir. Ancak, temelde tüm bu merkezlerin işlevi aynı olduğu için, çalışmada bu merkezlerin tümünden CRFPA şeklinde bahsedilmektedir.

2 Staj süresi, Fransa'daki uygulamacılar tarafından çok uzun olmakla eleştirilmektedir.

Belirtmek gerekir ki, Fransa'da CRFPA'ya devam etmek için öğrenciler 1.600 EUR tutarında bir eğitim ücreti ödemektedirler. Her bir öğrenci başına düşen masrafın kalanının %20'si devlet, kalanı ise Barolar tarafından karşılanmaktadır. Ayrıca, bu aşamada devlet tarafından, ihtiyaç duyan ve gerekli koşulları sağlayan öğrencilere 3500 EUR civarında bir burs da verilmektedir.

CRFPA'da verilen staj eğitiminin ilk altı ayı okulda verilen temel derslerden oluşmakta, ikinci altı ayda ise öğrenci P.P.I. denilen kişisel bir proje üzerinde çalışmaktadır. CRFPAlar, uygulamada öğrencileri gruplarken bu iki aşamanın yerini değiştirebilmektedir. Stajın son altı ayını ise avukat yanı stajı oluşturmaktadır.

4.2.1. *Birinci Bölüm - Avukat Okulunda Temel Eğitim*

Yukarıda da değinildiği üzere, CRFPA 'da yapılan stajın ilk bölümünü temel dersler oluşturmaktadır. Bu eğitim esas olarak öğrenci avukatlara belli başlı konularda temel eğitim vermeyi amaçlamaktadır. Ancak bu temel eğitim, fakültede verilen derslerin aynı teorik-akademik eksende tekrarı şeklinde kurgulanmamıştır. Burada genel amaç, öğrencilere belli başlı hukuk alanlarıyla ilgili ve avukat mesleğinde kullanabilecekleri, büro yönetimi ile deontolojik kuralları da içeren nispeten pratik bir eğitimin verilmesidir.

Bu aşama Ocak ayında başlamakta ve Haziran'da sona ermektedir.

Okullarda verilen eğitim müfredatının çerçevesi merkezi olarak çizilmiştir. Gerçekten, 2004'te yapılan değişiklik ile bu 6 aylık eğitimin çerçevesi "yasal danışmanlık ve avukatlık pratiği ile mesleki etik kuralları, uyuşmazlıklara ilişkin usuller, danışmanlık verilmesi ile büro yönetimi ve modern bir yabancı dil" olarak çizilmiştir. Bununla birlikte, okullar eğitimin veriliş şekli ve düzenlenmesi bakımından özerktirler.

Eğitim genellikle zorunlu ve seçmeli derslerden oluşmaktadır. Zorunlu dersler, hukuk dalları bazında belirlenmektedir ve pratiğe yöneliktir. Buna göre, eğitimin kapsamını mümkün olduğunca gerçek olaylar üzerinden yapılan dosya çalışmaları, dilekçe yazma, usul bilgileri ve meslek kuralları oluşturulmakta, seçmeli derslerin de çoğu "çalıştaylar" şeklinde tasarlanmaktadır. Eğitim saatleri de yine okullara

göre değişmektedir. Örneğin Paris'teki EFB'de bu 6 aylık dönemde yaklaşık 450 saatlik eğitim verilmektedir. İlk altı aylık süreçte verilen belli başlı derslere şu örnekler verilebilir :

- Etik
- İletişim teknikleri ve sözlü anlatım
- Büro yönetimi ve stratejisi
- Uyuşmazlık Teknikleri
- Yasal danışmanlık ve savunma
- Müvekkille ilişkiler
- Hukuki Doküman hazırlama
- Medeni usul uygulama ve teknikleri
- Mahkeme önündeki bireysel ve ortak işlemler
- Ceza usul uygulama ve teknikleri
- Ücretsiz Danışmanlık Uygulamaları
- Yabancı hukuk terminolojisi

Öğrencilere, her eğitimle ilgili kimi temel dokümanlar verilmekte ve bunun yanı sıra eğitimciler tarafından yapılan sunumlara da öğrenci tarafından toplu olarak ulaşılabilmektedir. Dersler az öğrenci içeren küçük sınıflarda verilmeye çalışılmakta ise de, Paris gibi kimi kalabalık okullarda, bazı derslerin bütün öğrencileri kapsayacak şekilde konferans salonunda verildiği de görülmektedir.

Eğitim kapsamı içerisinde, dersler sırasında/sonunda öğrencileri sınamak için yapılan ve "sürekli değerlendirme" adı verilen quiz, ödev gibi uygulamalar da bulunmaktadır.

Derslere katılım zorunlu olup, öğrenciler mazeret nedeniyle derse devam edemeyecekleri hallerde okulu vakit geçirmeksizin haberdar etmekle yükümlüdürler. Mazeretsiz 5 devamsızlık öğrencinin "sürekli

değerlendirme" puanını yarıya düşürmekte, bunun aşılması halinde ise öğrenci bu değerlendirmeden 0 puan almaktadır.

Eğitimcilerin büyük çoğunluğunu avukatlar oluşturmaktadır ancak kimi dersler akademisyenler, yargıçlar, savcılar ve diğer uzmanlar tarafından da verilebilmektedir. Genellikle eğitimciler "zümreler" halinde birlikte çalışmakta ve öğrencilere verilecek dersin içeriği, pratik çalışmalar gibi konular bu zümrelerce belirlenmektedir. Öte yandan, bu dersler karşılığında eğitimcilere saat bazında ortalama 70 EUR ders ücreti verilmektedir. Derslerin avukat eğitimciler için bir diğer bir getirisi de, 1 saat staj dersi veren avukat eğitimcinin 4 saatlik zorunlu meslek içi eğitimden muaf tutulmasıdır. Böylece, avukatların staj eğitimcisi olarak CRFPAlar'a çekilmesi amaçlanmaktadır. Bazı okullarda, eğitimciler için özel "eğitici eğitimleri" de düzenlenmektedir.

Okulda geçirilen bu dönemde öğrencinin pasif olduğu, avukatlık pratiğine ilişkin daha fazla çalışması gerektiği gibi eleştirilerin getirilmesi nedeniyle, bazı okullarda bu dönemde öğrencilerin çeşitli staj imkanlarından yararlanması sağlanmaktadır. Örneğin, Versay'da öğrenciler ilk 6 aylık dönemde bir hafta eğitim alırken diğer hafta okul tarafından belirlenen bir avukatın yanında "gözlem" stajına gönderilmektedir. Ancak bu gözlem stajı, son 6 aylık dönemde yapılan "avukat yanı stajından" farklıdır ve birbiri yerine geçmemektedir. Burada gönderilecek avukat okul tarafından belirlenmekte ve öğrenci avukat bu gözlem stajı için gittiği avukatlık bürosundan herhangi bir ücret de almamaktadır.

Yine avukat okullarına göre değişen bir diğer uygulamada eğitimde internet olanaklarından yararlanılması esasına dayanan "e-öğrenme" sistemidir. Buna göre öğrenciler çoğunlukla yabancı dillere ilişkin derslerde belli bir saat miktarını e-öğrenme sistemi ile internet üzerinden alabilmektedirler.

4.2.2. *İkinci Bölüm - P.P.I. (Projet Pedagogique Individuel – Kişisel Eğitim Projesi)*

Kişisel Eğitim Projesi (P.P.I.) aşaması, Fransız staj eğitim sistemi içerisinde oldukça yeni bir uygulamadır. Aşama temelde, öğrencinin okul yönetimi tarafından da onaylanacak şekilde bir proje geliştirmesi

ve 6 ay boyunca bu proje üzerinde çalışmasıdır. Elbette ki, bu proje hukukla ve daha çok avukatlık pratiğine yönelik olmalıdır. Söz gelimi, öğrenci 6 ay boyunca bir mahkemede staj yapabilmekte, belli bir konu üzerine çeşitli kurumlarda (sendikalar, sivil toplum kuruluşları vs.) araştırmalar yaparak bu araştırmalarını raporlaştırabilmekte ya da belli konularda eğitime devam edebilmektedir. Her durumda, P.P.I. aşaması 3. aşamanın yerine geçecek şekilde avukat yanında staj şeklinde geçirilemez.

Bazı okullar, P.P.I. aşamasının daha verimli geçirilmesi adına belli konularda uzmanlık edinilmesini sağlayan eğitimler düzenlemektedir. Söz gelimi, EFB Paris'te, öğrencilere P.P.I. aşamasında belli konularda 250 saatlik eğitim alarak o konuyla ilgili derinlemesine bilgi sahibi olma şansı verilmektedir. Yine M2 denilen master programına devam edilmesi de, P.P.I. aşamasında geçerli olabilecek bir eğitim uygulamasıdır.

P.P.I. aşamasının yurtdışında geçirilmesi de mümkündür. Örneğin, Fransa'da yerleşik bulunan Türk öğrencilerin büyük bir kısmı bu aşamayı Türkiye'deki hukuk bürolarında çalışarak/incelemelerde bulunarak geçirmektedirler. Bu konuda okullar da kimi uluslar arası hukuk büroları/şirketlerle ilişki kurmakta ve P.P.I. aşamasını bu şekilde geçirmek isteyen öğrencilere yardımcı olmaktadırlar.

P.P.I. aşamasının gelişimi şu şekilde gerçekleşmektedir : Öğrenci, projesini e-posta üzerinden veya yazılı/sözlü olarak okul müdürü, eğitim direktörü gibi yetkililerin bulunduğu komiteye sunmaktadır. Komitenin projeye onay vermesi halinde öğrenciye haber verilmekte ve öğrenci projeye başlamaktadır. Bu aşamada, öncelikle öğrenci ile P.P.I. uygulamasının geçirileceği kurum arasında bir sözleşme imzalanmakta, aynı sözleşmeye okul da imza atmakta ve öğrencinin faaliyetleri periyodik olarak izlenmektedir.

P.P.I.'ın değerlendirilme biçimi de projenin niteliğine göre farklılık göstermekle birlikte, kural olarak öğrencinin proje sonunda bir rapor yazması ve CAPA. sınavında juri önünde savunma yapması esasına dayanmaktadır.

4.2.3. *Üçüncü Bölüm - Avukat Yanında Staj*

Fransız staj sisteminin okulda geçirilen son bölümünü, avukat yanında yapılan staj oluşturmaktadır. Stajın en önemli bölümü olarak tanımlanabilecek bu aşama, adından da anlaşılabileceği üzere öğrenci avukatın, baroya kayıtlı bir avukat yanında avukatlık uygulamalarına aktif olarak katılması esasına dayanmaktadır. Yanında staj yapılacak olan avukat genellikle öğrencilerin kendisi tarafından belirlenmekte ancak bunun mümkün olmaması halinde okul tarafından da öğrenciye yardımcı olunmaktadır.

Staj yapılacak avukatlık bürosu mutlaka CRFPA'nın bölgesinde olmak zorunda değildir. Söz gelimi öğrenci avukat Versay'daki CRFPA'ya devam ederken Marsilya'daki bir hukuk bürosunda staj yapabilir, ancak elbette, okul için gerekli raporlama ve her türlü iletişimi aksatmaması gerekmektedir. Yurt dışındaki hukuk bürolarında staj imkanı ise, büronun AB üyesi bir ülke içerisinde olup olmamasına göre değişmektedir. Öte yandan, bu aşamada staj yapılacak büro ile P.P.I. aşamasının geçirildiği yer arasında farklılık bulunması zorunludur.

Fransız sistemi açısından bu stajın en önemli özelliği, öğrenci avukata bu aşama için ücret ödenmesinin zorunlu olmasıdır. Bu ücretin miktarı aşağıdaki tabloda görüldüğü üzere staj yapılan büronun büyüklüğüne göre değişmektedir ve ücretin tamamı yanında stajyer çalıştıran bürolar tarafından karşılanmaktadır.

Büronun Niteliği	Brüt Ücret
0-2 Maaşlı Avukat İstihdam Eden Bürolar	Asgari ücretin %60'ı 768,04 EUR
03-05 Maaşlı Avukat İstihdam Eden Bürolar	Asgari ücretin %70'i 896,05 EUR
6'dan fazla maaşlı Avukat İstihdam Eden Bürolar	Asgari ücretin %85'i 1088,06 EUR

4.2.4 *Staj Değerlendirme Sınavı – CAPA (Certificat d'Aptitude à la Profession d'Avocat)*

18 aylık staj eğitiminin değerlendirilmesi, CAPA adı verilen sınavla yapılmaktadır. Staj döneminde yapılan bu sınavın kapsamı ve derecelendirilmesi şu şekildedir :

- Sürekli Değerlendirme Notları
- 5 saatlik yazılı sınav – dilekçe yazımı, hukuki mütalaa yazımını da içermektedir. (genellikle Avukat yanında stajın bitimini takip eden Temmuz ayında yapılmaktadır)
- Yabancı Dil Testi
- Sözlü sınavlar (genellikle Eylül'de yapılmaktadır)
- P.P.I. projesi savunusu
- Deontoloji

CAPA. sınavının tarihleri ve içeriği okullara göre değişebilmektedir. Bununla birlikte öğrenci, CAPA'ya en fazla iki kez girebilir. Ancak belirtmek gerekir ki, Fransa genelinde CAPA. sınavındaki başarı oranı, IEJ'dekinden farklı olarak çok daha yüksektir. Söz gelimi Versay'da 2008 yılında sınava giren 350 kişinin sadece 3 tanesi başarısız olmuştur. Bunda CAPA'nın IEJ'ye nazaran daha kolay bir sınav olmasının etkisinin olduğu belirtilmekle beraber, uygulamacılar bu durumu bir öğrencinin devlete ve baroya maliyeti ile de ilişkilendirmektedir. Ayrıca öğrenci avukatların 2 yıl gibi uzun bir sürecin sonunda bu sınava giriyor olmasının da sınavdaki yüksek başarı oranında etkili bulunduğu ifade edilmektedir.

CAPA jürisi 3 avukat, 2 hukuk Fakültesinde görevli öğretim üyesi, 2 adli yargı yargıcı olmak üzere toplam 7 kişiden oluşmaktadır. Bu jüri içerisinden seçilen 1 avukat, 1 akademisyen ve 1 yargıcın katılması ile oluşturulan bir de küçük jüri bulunmaktadır. Jürinin oluşturulması avukatlık okulunun iradesi ile gerçekleştirilmektedir. Baro veya Adalet Bakanlığı'nın jürilerin seçilmesi veya atamasında etkilerinin olmadığı ifade edilmiştir.

4.3. Meslek İçi Eğitim (Continuing Professionel Development – CPD

Fransa'da 2005 yılında yapılan mevzuat değişikliğiyle, Baro'ya kayıtlı bütün avukatların mesleki içi eğitimlere katılmaları zorunlu hale getirilmiştir. Bu eğitimler de, tıpkı staj eğitimi gibi bölgesel olarak CRFPA'lar tarafından koordine edilmektedir. Buna göre;

- Bütün avukatlar iki yıl içinde toplam 40 SAAT meslek içi eğitime katılmakla yükümlüdür.
- Mesleğe yeni başlayan avukatlar için, ilk iki yıl boyunca eğitimin %50'si deontoloji (meslek kuralları) eğitimi olmak zorundadır.
- Avukat belli bir konuda "uzman" ise, eğitiminin %50'si bu konuya ilişkin olmalıdır.

Bu eğitimler, Barolar, CNB ya da onun tarafından akredite edilmiş kuruluşlar tarafından çok farklı konularda (hukuk alanları, iletişim teknikleri, sosyal güvenlik vs.) tasarlanmakta ve eğitimi veren kurum ile eğitimin niteliğine göre ücretlendirilmektedir.

Eğitimin tüm avukatlar için zorunlu olması, eğitimlere devamlılığın denetlenmesi gerekliliğini de beraberinde getirmektedir. Bu denetimi Barolar yapmaktadır. Ancak, her ne kadar, eğitime devamsızlık halinde meslekten men'e kadar varabilen disiplin cezaları öngörülmüşse de, özellikle meslek yaşı yüksek avukatlar bakımından bu yaptırımların uygulanmasında zorluklar yaşanmakta ve deyim yerindeyse cezalar kağıt üzerinde kalmaktadır.

AB üyesi ülkeler arasında, meslek içi eğitim konusunda zaman zaman ikili anlaşmalara da rastlamak mümkündür. Nitekim, Fransa ile İtalya arasındaki anlaşma sayesinde, İtalya'da alınan bir eğitim Fransa'da (yahut tam tersi) geçerli sayılmaktadır.

Ayrıca, yukarıda staj eğitimciliğinden bahsedilirken değinildiği gibi, kimi diğer mesleki faaliyetlerin ya da yayımlanan bilimsel makale/ incelemelerin de meslek içi eğitim sayılarak, zorunlu katılım saatinden düşülmesi olanaklıdır.

II. BÖLÜM
BİRLEŞİK KRALLIK'DA GERÇEKLEŞTİRİLEN ÇALIŞMA ZİYARETLERİNE İLİŞKİN RAPOR

1. İNGİLİZ HUKUK SİSTEMİNDE AVUKATLIK MESLEĞİ VE BAROLAR

1.1 İngiliz Hukuk Sistemine Genel Bakış

United Kingdom olarak tabir edilen Birleşik Krallık, 4 farklı bölgenin birleşiminden oluşmaktadır. Bu bölgeler İskoçya, Kuzey İrlanda, Galler ve İngiltere'dir. Kuzey İrlanda ve İskoçya kendi içinde özerk bir yapıya sahiptirler.

İngiliz Hukuku sistemi, İngiltere ve Galler hukuklarına işaret etmek üzere kullanılan, içtihat hukuku olarak kabul edilen Common Law sisteminin temelini oluşturan ve İngiliz Milletler Topluluğu' na *(Commonwealth)* dahil ülkelerde ve Amerika'da uygulanan hukuk sistemidir. Bu hukuk sisteminin temeli, içinde bulunduğumuz Kıta Avrupası hukuk sisteminden farklı olarak, hakimin yaratmış olduğu hukuk prensibine dayanır. Bir başka anlatımla hakim, önüne gelen uyuşmazlıkta daha önceki uyuşmazlıklarda alınan kararları kendisine kaynak olarak alır ve bu kaynaktaki verileri en etkin bir şekilde kendi hukuk mantığı ve hakkaniyet süzgecinden geçirerek somut olayı çözer. Bu çerçevede İngiltere ve Galler'deki en üst yargı mercii olan Lordlar Kamarası *(House of Lords)* tarafından alınan kararlar diğer tüm mahkemeler yönünde bağlayıcı niteliktedir. Örnek vermek gerekirse İngiliz hukukunda adam öldürmenin suç olduğunun belirtildiği, kanun koyucu tarafından ihdas edilmiş bir yasa maddesi bulunmamaktadır. Her ne kadar böylesi bir yasa maddesi bulunmasa de bu suç, anayasanın mahkemelere vermiş olduğu yetki ve bu mahkemeler tarafından verilmiş daha önceki kararlarla yaptırım altına alınmış bir içtihat hukuku suçudur *(Common Law Crime)*. Şunu da belirtmek gerekir ki İçtihat Hukuku kimi zaman parlamento tarafından değiştirilebilir. Tıpkı önceden adam öldürme suçuna karşı ölüm cezaları verilebilirken şu anda ömür boyu hapis cezalarının verilebilmesi gibi.

Ayrıca belirtmek gerekir ki İngiltere ve Galler Avrupa Birliği gibi başka uluslar arası örgütlerin de üyesidir. Bu durumda İngiltere ve Galler hukuku, Avrupa Birliği Hukuk sistemlerinin bir parçası durumundadır. Avrupa Birliği'ne dahil ülkeler genel olarak Kıta Avrupası hukuk sistemini kullanmaktadırlar. Bu yaklaşımla bir değerlendirme yapıldığında İngiltere'nin Avrupa Birliği'nde uygulanan hukuk sisteminin çeşitli şekillerde bir parçası olduğunu söylemek mümkündür. Dolayısıyla Avrupa Adalet Divanı, Avrupa Birliği'nin düzenleme alanına giren konularda İngiliz ve Galler mahkemeleri yönünden bağlayıcı nitelikte kararlar alabilecek ve onları bu yönde kararlar almaya yönlendirebilecek bir konumdadır.

1.2 İngiliz Hukuk Sisteminde Avukatlık Mesleği

İngiliz hukuk sisteminin temel olarak içtihatlara dayalı olması, yargıçların ve jürilerin takdir yetkilerinin Kıta Avrupası hukuk sistemine göre daha geniş olması avukatlık mesleğinin önemini oldukça üst düzeylere taşımıştır. Avukatlık mesleğinin sahip olduğu önem, bir davanın görülmesi sürecinde farklı aşamalarda faklı uzmanlaşmayı da beraberinde getirmiş ve bizim hukukumuzda yer alan avukatlık mesleğini iki farklı alana bölmüştür. Bunlardan birincisi tüm detaylarına birazdan değineceğimiz ve Türkçe'ye Duruşma veya Duruşma Avukatlığı olarak çevirebileceğimiz "BARRISTER" lar, ikincisi ise dava sürecinden önceki aşamada görevli olan ve Dosya Avukatlığı olarak Türkçe'ye çevirebileceğimiz "SOLICITOR" lardır. İngiliz hukuk sistemindeki hukuk eğitiminin, Baroların ve avukatlık mesleğinin yapılanmasının temelinde bu ayrım yatmaktadır.

Baroların mesleğe ilişkin ikili yapısı nedeniyle, farklı yapılanmalarına ilişkin açıklamalarımızı yapmadan önce mesleğe ilişkin bu ikili ayrımın detayları ile incelenmesi sonraki aşamaların daha net anlaşılması açısından faydalı olacaktır.

1.2.1 *SOLICITOR (Dosya Avukatı) Kimdir? Genel Olarak Görev Alanı Neresidir? Sorumlulukları Nelerdir?*

Dosya Avukatları olarak Türkçe'ye çevrilen Solicitorlar,

hukuki bir uyuşmazlığın tarafı olan kişilerle ilk olarak irtibata geçen, onlara hukuki görüş sunan kişilerdir. Dosya Avukatları bir evin kiralanmasından, bir vasiyetin yapılmasına, boşanma işlemlerinin gerçekleştirilmesinden bir şirketin devralınmasına kadar çok geniş bir alanda, neredeyse hukukun her alanında hukuki görüş sunma, taraflar arasındaki husumeti giderme, sınırlı da olsa müvekkillerini mahkemeler huzurunda temsil etme yetkisine sahiptirler. Solicitor kelimesinin Dosya Avukatı olarak çevrilmesinin arkasındaki temel gerekçe solicitorların kural olarak davalarda hakim ve jüri karşısında müvekkillerini, alt derece mahkemeleri hariç olmak üzere temsil etme yetkisine sahip olamamalarından kaynaklanmaktadır. Ancak bu yapılanmada da günümüz ihtiyaçları çerçevesinde değişmeler yaşanmış ve ek yeterlilik sınavlarında başarı sağlayan Dosya Avukatlarının da Yüksek Mahkemelerde müvekkillerini temsil edebilmelerine olanak tanıyan yeni düzenlemeler getirilmiştir *(Solicitor Advocates)*.

Genel olarak Dosya Avukatları, müvekkil ile ilk iletişimi kuran kişilerdir. Dosya Avukatları, Barrister olarak tabir edilen Duruşma Avukatlarının görev alanına giren konular dışındaki tüm hukuki işlemleri yapmakla yetkili kişilerdir. Bir başka anlatımla bir davanın hakim ve jüri karşısında savunulması görevi dışındaki, mahkeme yazışmaları dahil bütün hukuki muameleler Dosya Avukatları tarafından yerine getirilebilecek işlemlerdendir.

İngiltere ve Galler'deki Dosya Avukatları mesleki görevlerini; büyük, uluslar arası yapılanmayı haiz, bünyesinde yüzlerce personeli barındıran özel Solicitor firmalarında veya tek başlarına kendi ofislerinde çalışarak veya bu iki yapı arasındaki diğer yapılarda *(High Street Solicitors)* yerine getirmektedirler. Bazı Dosya Avukatları ise devlet kurumlarında, çeşitli hukuk merkezlerinde, adli yardım hizmetlerinde, ticaret şirketlerinde görev yapabilmektedirler.

Dosya Avukatları, İngiliz hukuk sisteminde noterlik sistemi mevcut olmadığından, taşınmaz satış muamelelerinde veya vasiyet türü işlemlerde bizim hukukumuzda noterlerin yerine getirmekte olduğu görevleri yerine getirebilmektedirler.

Dosya Avukatları tek başlarına yürütebilecekleri bu işlerin dışında, Duruşma Avukatları ile ilişki içerisinde çalışmak durumundadırlar. Zira

yüksek mahkemeler nezdinde Dosya Avukatlarının müvekkillerini savunmaları mümkün değildir. Böylesi bir durumda Dosya Avukatları, Duruşma Avukatlarının ihtiyaç duyabilecekleri tüm bilgiyi müvekkilinden toplamak, delilleri elde etmek, delilleri müvekkilden talep etmek ve Duruşma Avukatlarına dosya halinde bu bilgilerini sunmakla yükümlüdürler. Duruşma Avukatları kimi zaman savundukları müvekkillerini hiç görmemekte veya dosyada yer alan bilgiler haricinde tanımamaktadırlar. Hatta müvekkil dahi kimi zaman sadece Dosya Avukatını tanımakta Duruşma Avukatını tanımamaktadır. Zira çoğu zaman Duruşma Avukatlarını, Dosya Avukatları belirlemektedir.

1.2.2. *BARRISTERS (Duruşma Avukatı) Kimdir? Genel Olarak Görev Alanı Neresidir? Sorumlulukları Nelerdir?*

Türkçeye Duruşma Avukatı olarak çevrilen Barrister, Dosya Avukatlarından gelen talimat ve bilgiler doğrultusunda hareket eden, müvekkiller ile değil Dosya Avukatları ile irtibat kuran ve çok nadir durumlarda müvekkillerle birebir iletişime geçen, genel olarak Hakim ve jüri karşısında (yüksek mahkemelerde - *Crown Courts, High Courts, Court Of Appeal, House of Lords)* müvekkilleri savunmakla görevlendirilmiş kişilerdir. Duruşma Avukatları mahkemedeki görevlerinin yanı sıra önemli uzmanlık gerektiren alanlarda da Dosya Avukatlarına yardımcı olmakta ve onlara özel uzmanlık gerektiren alanlarda detaylı görüş sunabilmektedirler. Yine duruşmalarda dilekçe ve delil sunma yetkisi Duruşma Avukatlarına aittir.

1.2.3. *Duruşma Avukat ve Dosya Avukatı Pratikteki Farklılıkları*

Pratikte Duruşma Avukatları ve Dosya Avukatları arasında temel olarak 4 farklılık vardır.

- Yüksek Mahkemelerde söz alma ve savunmada bulunma hakkı Duruşma Avukatlarındadır. Dosya Avukatlarının bu yetkileri sadece alt derece mahkemelerinde mevcuttur. Ancak Dosya Avukatları da gerekli olan yeterlilik testlerinden geçmek suretiyle yüksek mahkemelerde aynı Duruşma Avukatlarının sahip olduğu yetkilerle donatılabilirler. Bu çerçevede Duruşma Avukatlarının yargılama sürecinin sadece bir bölümünde (duruşma ve cevap sunma) görev almakla yetkili avukatlar olduğunu söylemek mümkündür.

- Duruşma Avukatları genellikle içtihatlar ve hususi uygulamalar konusunda Dosya Avukatlarına göre daha detay bilgiye sahiptirler. Böylesi uzmanlık gerektiren müstesna durumlarla karşılaşan Dosya Avukatları kimi zaman Duruşma Avukatlarının görüşlerine başvurmaktadırlar.

Ancak günümüz ihtiyaçlar tüm bu geleneksel farklılıkların zaman içerisinde azalmasına neden olmuştur. Özellikle Dosya Avukatlarının, Duruşma Avukatlarının sahip olduğu yetkilere sahip olabilmesinin önünün açılması ile birlikte Duruşma Avukatlarının kendi görev alanlarındaki tekeli büyük ölçüde sona ermiştir. Büyük firmalar Dosya Avukatlığı ile Duruşma Avukatlığını birleştiren bu gelişme ile gerek ekonomik nedenlerle gerekse müvekkil ilişkilerinde yaşanan sorunlar nedeniyle bu iki uzmanlık alanını tek bir çatı altında birleştirebilir hale gelmişlerdir. Benzer şekilde katı bir şekilde uygulanan Duruşma Avukatı ile müvekkil arasındaki sınır yumuşatılmış ve Duruşma Avukatları da doğrudan müvekkilden talimat alabilir hale getirilmişlerdir. Pratikteki uygulamada halen Duruşma Avukatları müvekkillerle doğrudan irtibat kurmamaktadırlar. Zira bu kişiler oldukça spesifik konularda uzmanlaştıkları için genel bilgi sunma konusunda sıkıntı yaşayabilmektedirler.

- Duruşma Avukatlığı ve Dosya Avukatlığı ayrımını benimsemiş ülkelerde, Duruşma Avukatlarının genel olarak tek başlarına çalıştıkları görülmektedir. Bunun nedeni, bu kişilerin bir ortaklık kurmalarının yasaklanmış olmasıdır. Ancak Duruşma Avukatları genellikle "CHAMBERS" olarak adlandırılan birden çok Duruşma Avukatının birlikte çalıştıkları bürolarda ortak faaliyetlerini sürdürmekte, buna karşın ortaklıkları sadece masraflara ilişkin olmaktadır. Ancak bu ortak yapının bir tüzel kişiliğinin bulunması mümkün değildir. Bu yapılar kimi zaman büyük bir şirket yapılanmasına benzese de, her Duruşma Avukatı her daim bağımsız olarak mesleğini sürdürmek durumundadır Bazı Duruşma Avukatları ise Dosya Avukatlığı yapan firmaların çalışanı olabilmekte, bankaların veya büyük şirketlerin hukuk bölümlerinde görev alabilmektedirler.

- Dosya ve Duruşma Avukatları mahkemelerdeki görüntüleri itibarı ile de birbirlerinden ayırt edilebilmektedirler. Örneğin İngiltere, Kuzey İrlanda ve Galler'de Duruşma Avukatları at tüyünden mamul peruk, sert ve yüksek yakalı cübbe giymektedirler. 2008 yılı ocak ayında öncesinde Dosya Avukatlarının bu tür kıyafetler giymeleri mümkün değilken, 2008 yılı ocak ayında yapılan değişiklikle Dosya Avukatlarının da peruk ve Duruşma Avukatlarından farklı bir cübbe giymelerine izin verilmiştir.

1.2.4. *Duruşma Avukatlığı ve Dosya Avukatlığı Ayrımının Avantaj ve Dezavantajları*

Yukarıda bahsedilen farklı uzmanlaşma alanına sahip olma özelliği beraberinde bazı avantaj ve dezavantajları da beraberinde getirmektedir. Bu farklılaşmanın başlıca avantajlarını aşağıdaki şekilde sıralayabiliriz.

- Müvekkil ile hiç karşılaşmamış olan Duruşma Avukatları, Dosya Avukatlarının yapmış oldukları incelemeden bağımsız olarak bir kez daha dosyayı inceleme ve tarafsız ikinci bir gözle olayı yeniden süzme fırsatı bulurlar. Her iki yetkininde tek avukatta birleştiği sistemlerde bu avantajdan bahsetmek mümkün değildir.

- Duruşma Avukatı önüne gelen olayda Dosya Avukatının izlemiş olduğu yolu da kontrol edeceğinden, usul ve esas a ilişkin hatalar yönünden Dosya Avukatının uyarılması imkanı bulunmaktadır. Bu tür bir durumda Duruşma Avukatı doğrudan müvekkil ile irtibata geçerek Dosya Avukatının yapmış olduğu hatayı bildirmekle yükümlü kılınmıştır.

- Tanık dinlenmesi, sorgulama ve çapraz sorgu sistemleri alanında uzmanlaşmış kişiler eliyle yürütülen yargılama faaliyetleri çok daha hızlı ve etkin bir şekilde çözüme kavuşturulmaktadır.

Tüm bu sıralanan olumlu yanlara nispeten bu ayrımın yarattığı bazı sıkıntılar da mevcuttur. Bu ayrımın yarattığı başlıca sıkıntıları aşağıdaki şekilde sıralayabiliriz :

- Vekalet hizmetinin farklılaşmış iki meslek mensubundan temin edilmesi müvekkil yönünden masrafları arttırmaktadır.

- Duruşma Avukatları bağımsız olmakla birlikte, kendilerine gelen bir dosya ile ilgili olarak Dosya Avukatı ile ilgili eleştirilerini müvekkile bildirme konusunda önünde bazı engellerin bulunduğunu söylemek mümkündür. Bu noktada akılda tutulması gereken husus Duruşma Avukatlarının Dosya Avukatları tarafından belirlenmekte olduğudur. Kendisine iş gönderen bir Dosya Avukatı ile ilgili görüşlerini sunan Duruşma Avukatının bu noktada üzerinde bir baskı olacağı şüphesizdir.

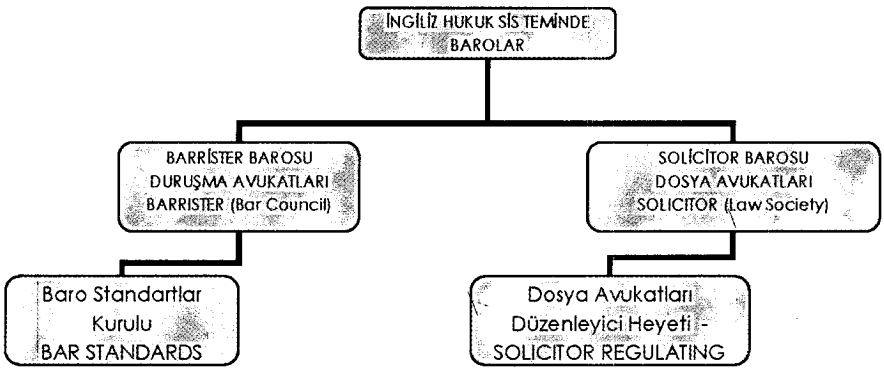
- Duruşma Avukatları kimi zaman uzmanlaştıkları alanların dışındaki genel hukuki meselelerden çok uzaklaşırlar. Böylesi bir noktada her hukukçunun bilmesi gereken basit detayları bile göremez hale gelebilirler. Bu alanlara örnek olarak Fikri Mülkiyet Hukuku ve Vergi Hukukunu verebiliriz.

1.3. İngiliz Hukuk Sistemindeki Baro Yapılanması

Duruşma Avukatı ve Dosya Avukatı kavramlarını bu şekilde açıkladıktan sonra bu ayrımın Baro yapılanmasındaki görüntüsünü inceleme aşamasına geçebiliriz.

İngiliz hukuk sisteminde baro yapılanması farklı uzmanlıklarda yer alan, farklı görevleri haiz farklı avukat gruplarının bulunması nedeniyle iki farklı yapı altında organize olmuştur. Baro' nun Duruşma Avukatları ile ilgili hususları düzenlemekle görevli yapılanmasına "Bar Council" "Barister Barosu", Dosya Avukatlarına ilişkin hususları düzenlemekle görevli yapılanmasına ise "Law Society", "Solicitor Barosu" denilmektedir.

Aşağıdaki tabloda Baro yapılanması gösterilmeye çalışılmıştır.



Şekil-1

1.3.1. *"Bar Council", "Barrister Barosu" "Duruşma Avukatlarının Mensubu Olduğu Baro"*

İngiltere ve Galler'deki Duruşma Avukatlarının mensubu olmak zorunda oldukları Baro yapılanması 1894 yılında kurulmuştur. Baro'nun günümüzdeki amaçları ve görevleri şu şekilde sıralanabilir;

- Müvekkillere en iyi hizmetin sağlanmasına yönelik olarak mesleki kaliteyi arttırmak,
- Mesleki standartların korunmasına ve daha ileriye taşınmasını sağlamak,
- Etkili bir şikayet ve disiplin sistemi oluşturmak,
- Mesleğe yeni başlayanlar için en elverişli yapılanmayı ve iş bulma alanları tespit etmek, mesleğe başlangıç prosedürlerini düzenlemek,
- Meslek içi eğitim planlamaları yapmak,
- Hukukun oluşması sürecine katkıda bulunmak,
- Baro mensuplarına yönelik olarak konferans vs. türden eğitim aktiviteleri organize etmek,

- Baronun diğer barolar ve uluslararası kuruluşlarla etkin bir şekilde etkileşimini gerçekleştirmek,

1.3.2. *Baro Standartlar Kurulu*

Yukarıda genel hatları ile değinilen Baro yapılanması, 2006 yılında yapılan değişiklikle bugünkü halini almıştır. Bu yapılanmadaki en önemli değişiklik Baro Standartlar Kurulu'nun kurulmasıdır. Bu kurulun kurulması ile baro içerisindeki idari yapı ve düzenleyici yapı birbirinden ayrılmıştır.

Baro Standartlar Kurulu'nun üye yapısı, avukatların üye olması usulünden tamamen farklı şekilde organize edilmiştir. Bu yapı içerisinde "lay member" olarak adlandırılan meslek mensubu olmayan kişilerde üye olarak bulunmakta ve hatta bir de meslek mensubu olmayan başkan bulunmaktadır. Baro Standartlar Kurulu'nda toplam 15 üye bulunmaktadır. Bu 15 üyeden 8'i meslek mensubu Duruşma Avukatlarından, başkan dahil olmak üzere diğer 7'si meslek mensubu olmayan kişilerden oluşmaktadır. Bu kişiler verilen iş ilanlarıyla ve yapılan başvuruların değerlendirilmesi suretiyle seçilmektedirler.

Baro Standartlar Kurulu'nun görev alanında ise aşağıda maddeler halinde sayılan hususlar yer almaktadır.

- Duruşma avukatı olabilmek için gerekli eğitim ve staj kurallarının koyulması,
- Duruşma avukatlarının kariyerleri süresince mesleki yeterliliklerini korumaları ve arttırmaları için meslek içi eğitime ilişkin düzenlemelerin yapılması,
- Duruşma avukatlarının uymakla zorunlu olduğu davranış ve etik kurallarının oluşturulması,
- Duruşma avukatları aleyhinde yapılan şikayetlerin değerlendirilmesi ve gerekli disiplin cezalarının uygulanması,

Buradan Baro Standartlar Kurulu'na disiplin yetkisinin verildiği görülmektedir. Baro Standartlar Kurulu'nun içerisinde meslek mensubu olmayan 7 üyenin bulunduğu düşünüldüğünde meslek mensupları hakkında karar verme yetkisinin meslek mensubu olan ve olmayan kişiler arasında paylaştırılmış olduğu sonucu çıkmaktadır. Benzer şekilde meslek mensupları hakkında düzenleyici işlem yapma yetkisinin de kurulda olması meslek mensubu olmayanların da, meslek mensuplarına ilişkin düzenleyici işlemlerin yapılması sürecinde rol aldıklarını göstermektedir. Bu uygulamanın toplum vicdanı açısından daha adaletli olduğu, meslek mensuplarının kendileri hakkında yine kendilerinin karar vermesi ilkesinin toplum vicdanını ve adalet duygusunu kimi zaman zedeleyebileceği, farklı bakış açılarının grup içerisinde gündeme getirilmesine olanak tanıdığı savunulmaktadır.

1.3.3. *"Law Society", "Solicitor Barosu", " Dosya Avukatlarının Mensubu Olduğu Baro"*

İngiliz Hukuk Sisteminde Dosya Avukatlarını temsile yetkili kuruluş "Solicitor Barosu" dur. Bu heyetin kuruluşu 1845'lere dayanmaktadır. Barrister Barosu'na benzer şekilde bu kuruluş da kendi içerisinde Düzenleyici Kurum ve diğer birimler olmak üzere 2 temel yapılanma şeklinde örgütlenmiştir.

1.3.4. *Dosya Avukatı Düzenleme Kurumu*

Düzenleyici Kurum tıpkı Baro Standartlar Kurulu'nda olduğu gibi Dosya Avukatlarına yönelik olarak her türlü düzenleyici işlemi yapmakla yükümlüdür. Baro Standartlar Kurulu gibi bu Kurumun üyeleri arasında meslek mensubu olmayan üyelerde bulunmaktadır. Yine aynı Baro Standartlar Kurulu'nda olduğu gibi bu heyet de 7'si meslek dışından kişilerden oluşan toplam 15 kişiden teşekkül etmektedir. Bu Kurumun Baro Standartlar Kurulu'ndan temel farklılığı disiplin görevini yerine getirmemesidir. Düzenleyici Kurum dışında disiplin soruşturmalarını yürütmek üzere ayrı bir kurul kurulmuştur. Bu kurul da 6'sı meslek dışı kişilerden olmak üzere toplam 13 üyeden oluşmaktadır. Bu kurula meslek mensubu dışından bir kişi başkanlık etmektedir.

2. İNGİLTERE VE GALLERDE HUKUK EĞİTİMİ

İngiltere ve Galler'de Dosya Avukatı/Danışman Avukat (Solicitor) ya da duruşma avukatı (Barrister) olabilmek için akademik safhada aşağıda detayı ile açıklanacağı üzere farklı yollar izlenebilmekle birlikte, öncelikli yol bir hukuk diploması alınması ile bu aşamanın tamamlanması şeklindedir.

Bu aşamanın başarı ile tamamlanması sonrasında Duruşma Avukatları - Solicitor için Dosya Avukatlığı Mesleki Kursu – Legal Practice Course (LPC) , Duruşma Avukatları - Barristerlar için ise Duruşma Avukatlığı Mesleki Kursunun – Bar Vocational Course (BVC) tamamlanması gerekmektedir. Meslek içi eğitim içinde yer alan kurslar ile ilgili olarak raporun ilerleyen bölümlerinde daha detaylı bilgi verilecektir.

2.1 Akademik Kısmın Tamamlanması

İngiltere ve Galler'de dosya avukatı ya da duruşma avukatı olabilmek için öncelikle iki aşamalı sürecin ilk aşaması olan akademik safhanın tamamlanması gereklidir. Akademik aşamanın tamamlanabilmesi için öngörülen 3 ana yol vardır :

a. Bir hukuk diploması ile ,

b. Hukuk Dışındaki Bir Alanda Üniversite Mezunları için Hukuk Diploması ile ,

c. Herhangi bir diploma olmaksızın,

Bu yol 4 farklı şekilde tamamlanabilmektedir :

- Adli İdareciler *(Legal Executives)*
- Hakim Katibi Yardımcıları *(Justice's Clerk Assistants)*
- Yetişkin Başvurucular *(Mature Applicants)*
- Diplomaya Eş/Denk Yeterlikler *(Degree-Equivalent Qualifications)*

2.1.1. *Hukuk Diploması Yolu :*

Akademik aşamada öncelikli yol gerek dosya gerekse duruşma avukatları açısından düzenleyici kurullarca[3] kabul görmüş olan bir hukuk fakültesi diplomasına sahip olmak olarak söylenebilmektedir. Her iki kurul da kabul gören diploma derecelerini yıllık bazlı güncellemekte ve yayınlamaktadır.

- *Kabul Koşulları ve Giriş :*

Öncelikle üniversiteye kabul koşulları açısından değerlendirmek gerekirse bu koşullar üniversiteler açısından benzerlikler göstermektedir. Her ülkede olduğu gibi İngiltere ve Galler'de de başarılı öğrencilerin hukuk fakültelerini tercih etmeleri beklenilmektedir.

Hukuk fakültelerine giriş için genel olarak A derecesinde akademik başarı koşulu aranmaktadır. Bu A derecesi ise Beşeri Bilimler, Fen Bilimleri ya da Sosyal Bilimler alanlarından birinde ya da karışık olabilmektedir.

İngiltere ve Galler'de hukuk eğitimi alabilmek için yerel öğrencilerin yıllık ortalama 3000-5000 Pound eğitim bedeli ödemesi beklenmektedir. Örneğin Birmingham Üniversitesi Hukuk Fakültesi'nde 2008-2009 akademik yılı için yerel öğrenciler ve AB vatandaşlarının 3700 Pound, uluslararası öğrencilerin ise 9450 Pound eğitim bedeli ödemesi öngörülmüştür. Başarılı öğrenciler için elbette üniversitelerin çeşitli burs programları da bulunmaktadır.

- *Eğitimin İçeriği :*

Akademik devrenin başarı ile tamamlandığını söyleyebilmek için 7 temel alan derslerinin başarı ile alınmış olması gereklidir. Aşağıda gösterilmekte olan bu başlıklar genellikle hukuk bilgisinin 7 temeli olarak adlandırılmaktadır.

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3 Düzenleyici Kurul, barrister ve solicitor meslek örgütleri bünyesinde faaliyet gösteren kurumun idari yapısından özerk kural koyucu ana organlardır. Solicitor meslek örgütlenmesi olan Law Society'nin Düzenleyici Kurulu, Solicitor Regulation Authority (Solicitor Düzenleme Kurumu), Barrister meslek örgütü olan Bar Council'in düzenleyici kurulu Bar Standards Board (Baro Standartlar Kurulu) 'dur.

- Borçlar = Sözleşme
- Borçlar = Tazminat ve Haksız fiil
- Ceza Hukuku
- Eşitlik ve Tröst Hukuku
- Avrupa Birliği Hukuku
- Gayrimenkul Hukuku/Toprak Hukuku
- Kamu hukuku = Anayasa Hukuku, İdari Hukuk ve İnsan Hakları Hukuku

Ayrıca öğrencilerin hukuki araştırma eğitimi alması da istenmektedir.

Her ne kadar hukuk eğitimi veren kurumlarda bu temel konu başlıkları farklı isimler altında adlandırılmış, farklı modüller şeklinde birleştirilmiş olsa da verilen kursun adlandırılışından ya da modüllerin yapılanışından ayrı olarak derslerin müfredatı tüm kurumlarda aynıdır.

Staj Öncesi Eğitim aşamasına geçmek isteyen tüm öğrenciler açısından hukuk bilgisinin temelleri olarak kabul gören bu derslerin alınması zorunludur. Bu başlıklar altındaki sınav ve değerlendirmeleri başarı ile tamamlamayan hiç kimse dava/duruşma avukatı olamaz.

Müfredat açısından yıllara göre detaylandıracak olursak;

1 . Yıl

İlk haftalarda hukuka giriş eğitimi verilmektedir. Burada genel olarak hukuk sisteminin genel yapısı, hukuk davalarının nasıl okunması gerektiği, mevzuatın yorumlanma şekli ve hukuki yazışma şekilleri anlatılmaktadır.

1. Sömestr	2. Sömestr
Kamu Hukuku (30 Kredi)	Ceza Hukuku (30 Kredi)
Borçlar hukuku A (30 Kredi)	Borçlar Hukuku B (30 Kredi)

2. Yıl

1. Sömestr

AB'nin Hukuki Kurumları (30 Kredi)

Gayrimenkul Hukuku/Toprak Hukuku A (30 kredi)

2. Sömestr

Hukuk Doktrini

Gayrimenkul Hukuku/Toprak Hukuku B (30 Kredi)

3.yıl

1. Sömestr	2. Sömestr
3 Seçmeli Modül (20 kredi)	3 seçmeli Modül (20 kredi)

Son yıl seçmeli olarak verilen derlerin 6 tanesi seçilmektedir. Aşağıdaki modüller seçmeli derslere örnek olarak verilmiş olup üniversitenin büyüklüğüne ve akademik kadrosunun genişliğine bağlı olarak fazlalaşabilme ya da azalabilmektedir.

- Sosyo-hukuki çalışmalar
- Deniz Hukuku
- Uluslararası Kamu hukuku
- AB Hukuku
- Dünya Ticaret Örgütü Hukuku ve Politikası
- Hukuk ve Tıp
- İş hukuku
- Küçükler Hukuku

- Uluslararası İnsan hakları
- Aile hukuku
- Kriminoloji
- Şirketler hukuku ve Ortaklık
- Medeni usul Hukuku ve Delil

Hukuk fakültesi diplomasını almak şeklinde izlenen ana yol genellikle dosya/duruşma avukatlarının çoğunlukla tercih ettikleri yoldur. Ancak İngiltere ve Galler'de hukuk derecelerinin üniversiteden üniversiteye hatta programdan programa farklılık gösterebildiği söylenebilir. Şöyle ki;

- 3 yıl ve 4 yıllık tam zamanlı hukuk diplomaları
- 4-6 yıllık yarı zamanlı hukuk diplomaları
- Birlikte ya da karışık yüksek *(honours)* diplomaları
- Tam-zamanlı ya da yarı-zamanlı yetişkin *(mature)* statüsü hukuk diplomaları

Ancak Dosya Avukatı - Solicitor ya da Duruşma Avukatı - Barrister olabilmek için izlenmesi gereken temel akademik yolun 3 yıllık tam zamanlı ya da 4-6 yıllık yarı-zamanlı diploma derecelerinin olduğu söylenebilir. Bu şekilde bir hukuk diploması olan bir kişi çeşitli kariyer yollarını tercih edebilmektedir. Örneğin, hukukçu olarak, kamuda görev yaparak, sosyal hizmetler, özel sektör ya da endüstri alanları bir mezunun tercih edebileceği bazı alanlardır. Ayrıca ifade edilmelidir ki, İngiltere ve Galler'de bitirilen hukuk fakültelerinin iş hayatında tercih edilme açısından da büyük önemi bulunmaktadır.

Yukarıda detayı ile anlatılmış olan hukuki temel başlıkların tam zamanlı eğitimde en az 1,5 yıllık dönem halinde alınması ve tüm eğitimin en az 3 en fazla 4 yıl içinde tamamlanması gerekmektedir. Yarı zamanlıda ise yine bu temel derslerin alınma usulü tam zamanlı eğitim ile aynı olup tüm eğitimin tamamlanmasında bu kez en az 4 ve en fazla 6 yıllık bir süre öngörülmüştür. Bu süreler içerisinde eğitim başarı ile

tamamlanamaz ise bu şekilde alınmış bir diploma genellikle ilgili meslek örgütlerinin Düzenleme Kurulları tarafından kabul edilmemektedir.

Bu eğitim süreleri içinde temel hukuki konuları başarı ile tamamlayabilmek için öğrencilerin en fazla 3 hakkı bulunmaktadır. Bu derslerin tamamlanması ise diğer seçmeli derslerin alınabilmesi için önkoşuldur. Ancak belli durumlarda bu temel derslerin tamamlanmasıyla ilgili olarak bazı şartların gerçekleşmesine bağlı muafiyetler getirilebilir.

Düzenleme Kurullarına göre hukuk diploması alınabilmesi için eğitim kurumlarınca belirlenen geçme notundan bağımsız olarak geçme notu %40 olarak belirlenmiştir. Kendi geçme notunu Düzenleme Kurullarının %40lık değerinin altında tutan eğitim kurumları öğrencilerine kurumların bu şartıyla ilgili olarak bilgi vermek zorundadır.

2.1.2. *Hukuk Dışındaki Bir Alanda Üniversite Mezunları için Hukuk Diploması Eğitimi :*

Akademik aşamayı "Hukuk Dışındaki Bir Alanda Üniversite Mezunları İçin Hukuk Diploması Eğitimi" ile tamamlamak isteyen öğrencilerin yine 7 ana hukuki başlıktaki dersleri tamamlamaları gerekmektedir. Ancak bu eğitim daha kompakt bir eğitim olup daha önceden akademik bir eğitim almış kişilere yönelik hazırlanmıştır. Bu yolu izleyerek mesleki eğitim aşamasına başlayan kişilerin tüm avukatlara göre istatistiksel ortalaması %15-20 olarak verilmektedir. Bu eğitim ile ilgili olarak raporun ilerleyen kısımlarında detaylı bilgi verilmektedir.

2.1.3. *Herhangi Bir Diploma Olmaksızın Akademik Aşamanın Tamamlanması:*

Bu şekilde akademik aşamanın tamamlanmış sayılabilmesi için 4 farklı yol vardır :

1. Legal Executives / Adli İdareciler : Adli İdareciler Enstitüsünde / Institute of Legal Executives (ILEX) yapılmakta olan sınavları başarı ile vermek şartına bağlı olarak akademik aşamanın tamamlanmış sayılabilmesi mümkündür. ILEX'e

üye olabilmek için bu sınavların verilmesi yeterlidir. ILEX üyesi olan, en az 25 yaşında olan, sonraki 2 yılı ILEX üyesi olarak geçirmek koşuluyla en az 5 yıllık mesleki deneyimi olan kişiler fellowship (nitelikli üye) olarak kabul edilebilirler. MILEX *(Member of ILEX)* ya da FILEX *(Fellowship of ILEX)* olmanın meslek içi eğitim aşamasındaki kurslara kabulde bir takım muafiyetler getirmesi mümkündür.

2. Justice Clerks' Assistants / Yargıç Katibi Yardımcıları : Hakimin Hukuku / İçtihata Dayalı Hukuk *(Magisterial Law)* deneyimine sahip Yargıç Katibi Yardımcıları genellikle meslek içi eğitim aşamasına başlayabilme olanağına sahiptir. Bazı durumlarda da bazı temel hukuk başlıklarından muaf tutulmaları mümkün olabilmektedir.

3. Yetişkin Başvuruları : En az 25 yaşında, akademik, mesleki, ticari ya da idari alanlardan birinde belirgin tecrübe sahibi (en az 10 yıllık iş deneyimi kastedilmektedir), kabul edilebilir derecede genel eğitim sahibi, İngiliz dilinde kendini iyi derecede ifade edebilen, Düzenleme Kurumunca dosya avukatı olabilmek için düzgün karakterli ve uygun olduğuna ikna edebilen kişiler akademik aşamayı tamamlamış sayılarak meslek içi eğitim kısmına başlayabilirler.

4. Diplomaya Eş/Denk Yeterlikler : Yine Düzenleme Kurumlarının belirlemiş olduğu şartlar gereğince bir kişi "Birinci derecede diplomaya eşit sayılabilecek akademik ya da mesleki yeterliliğe sahip ise" meslek içi eğitim aşamasına başlayabilecektir. Ancak burada arana çok özel şartların tamamlanmış olması gereklidir.

2.2. Karakter ve Uygunluk :

Akademik aşamadan staj öncesi eğitim aşamasına geçebilmek için tamamlanması gereken bir diğer husus kişinin karakter ve uygunluğunun Düzenleme Kurumlarınca kabulüdür. Düzenleme Kurumuna öğrenci üyeliği için başvuru yapıldığında örneğin dosya avukatı/solicitor

olabilmek için aranan uygunluğu taşıdıklarını gösterir her tür bilgiyi sunmaları gereklidir.

Alınmış herhangi bir mahkumiyet ya da benzeri durum başvuruyu etkileyecektir. Ancak her başvuru kendi koşulları içinde değerlendirilir. Düzenleme kurumları başvuruculardan konuyla ilgili yazılı ya da sözlü savunma isteyebilir. Öğrenciler başvuru yaptıkları Ceza Kayıtları Sicil Bürosundan kendilerine ait kayıtları da sunmakla yükümlüdür.

2.3. Ulusal Hukuk Kabul Sınavı (Law National Admission Test - LNAT)

Bazı özel programların tercih edilmesi halinde LNAT testi de aranmaktadır. Bu test hukuk fakültesinde okuyabilme birikimi olup olmadığının tespiti için yapılmaktadır. Pek çok tanınmış hukuk fakültesi binlerce yüksek nota sahip öğrenciden başvuru almaktadır. Bunların arasındaki seçimi yapabilmek adına bu test yapılmaktadır. LNAT'den alınan sonuç başvuru ile birlikte değerlendirilmektedir.

Testte bir çoktan seçmeli bölüm bir de yazılı bölüm bulunmaktadır. Çoktan seçmeli kısımda 5 seçenek bulunmaktadır. Genellikle verilmiş bir paragrafa yönelik soruların cevaplandırılması istenilmektedir. Bu kısımda yazılı bir materyali okuyup anlayıp analiz edebilme yeteneğinin olup olmadığı kontrol edilmektedir. Yazılı kısımda ise birden çok konu başlığı verilerek birinin seçilmesi ve 500-600 kelimelik bir yazı yazılması istenilmektedir.

2.4. Akademik Düzey Eğitimi Tamamlama Onay Belgesi

7 ana hukuki başlığın tamamlanmasıyla birlikte öğrencilerin Düzenleme Kurullarına başvurmaları istenmektedir. Bu başvurular kurullarca incelenmekte ve akademik aşamasının tamamlandığını gösterir bir onay yazısı verilmektedir. Bu onay verilirken, akademik devrenin başarı ile tamamlandığının söylenebilmesi için Düzenleme Kurumunun öğrencinin;

- Temel alanlardaki dersleri başarı ile tamamlaması
- Herhangi bir af öngörülmediği sürece %40lık bir başarı notunun alınması
- Öngörülen zaman sınırları dahilinde diplomanın alınması
- Ya da geçmiş 7 yıl içerisinde diplomanın alınmış olduğu hususlarında ikna olması ve onay vermesi gerekmektedir.

Sertifika başvuruları genellikle ilkbahar-yaz döneminde ve Dosya Avukatları Mesleki Kursu (LPC) / (BVC) Duruşma Avukatları Mesleki Kursu'nun başlangıcından önce yapılmaktadır. Düzenleme Kurullarınca verilen onay belgeleri ile öğrencinin başarı ile 7 ana konuyu tamamladığı ve hukuki araştırma eğitimi aldığı tescil edilmektedir. Dosya Avukatları Mesleki Kursu / Duruşma Avukatları Mesleki Kursu'na başvuru yapıldığında eğitimi verecek olan kuruluş bu onay yazılarını istemektedir. Bu onay belgesi alındığı yıl tarihi itibarı ile 7 yıl geçerliliğe sahiptir. 7 yılın sonunda staj öncesi eğitim aşamasına geçilmek istenmesi halinde bu belgeler zamanı dolmuş olarak kabul edilmektedir. 7 yıldan sonra duruşma/dosya avukatı olmak isteyen kişilerin ilgili sınavları vererek bilgilerini yenilemeleri gerekmektedir.

Dosya Avukatları (Solicitor) açısından Mesleki Kursa başlamadan önce öğrencilerin,

1. Öğrenci kayıt başvurusunu tamamlamaları ve Akademik Dönem Eğitim Formu'nu tamamlamaları,
2. Bunları Düzenleme Kurulu'na sunmaları,
3. 80 Pound başvuru ücretini ödemeleri gerekmektedir.

Duruşma Avukatları Mesleki Kursuna (BVC) başlamak isteyen öğrencilerin de yine aynı şekilde bu onay yazısını almaları ve mevcut olan 4 adet "Inn" den birisine başvurmaları gerekmektedir. Yine bu başvuruda da 85 Pound'luk başvuru ücretini ödemeleri gerekmektedir.

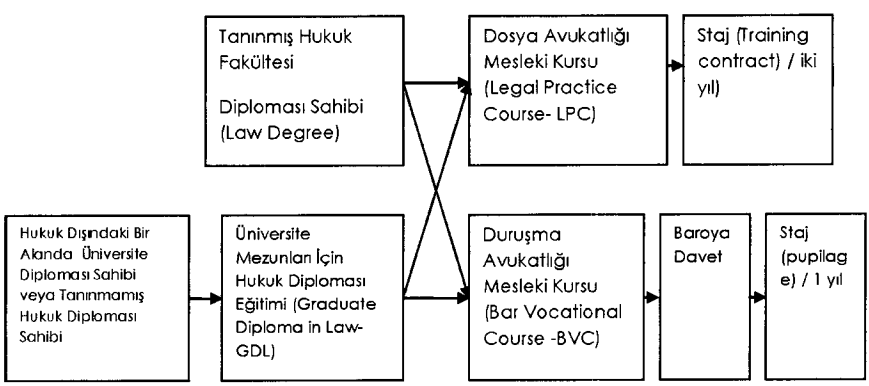
Öğrencilerin herhangi bir meslek içi eğitim programına ya da tam zamanlı staj sözleşmesine/dönemine başlamadan önce Düzenleme Kurullarının yazılı onayını beklemeleri gerekmektedir.

Tüm bu açıklamalar arasında mutlaka ifade edilmesi gereken bir husus vardır ki, hukuk fakültesi eğitimi ve meslek içi eğitimler İngiltere ve Galler'de de son derece yoğun olarak verilmekte ve dolayısıyla öğrenciler açısından her iki aşamada da %50'lik bir bırakma söz konusu olmaktadır.

3. İNGİLTERE VE GALLERDE STAJ ÖNCESİ EĞİTİM

Yukarıdaki kısımlarda da ayrıntılı olarak izah edildiği üzere İngiltere ve Galler'de hukuk mesleği Barrister (Duruşma Avukatı) ve Solicitor (Dosya Avukatı/danışman/hukuk müşaviri) olarak ikiye ayrılmış durumdadır. Hukuk mesleğindeki bu ayrışma pek doğal olarak mesleğe giriş ve hukuk eğitimi aşamalarında da ayrışmalara neden olmuştur. Aşağıdaki şemada sürece ilişkin izlenen yollar ana hatlarıyla ortaya konulmaya çalışılmıştır.

Hukuk Müşaviri / Dosya Avukatının (Solicitor) İzlediği Yol



Duruşma Avukatının (Barrister) İzlediği Yol

Şekil-2

3.1. 3 Yıllık Hukuk Fakültesi Eğitimi

Yukarıdaki tabloda kısaca özetlemeye çalıştığımız üzere gerek Barrister gerekse de Solicitor olarak faaliyet gösterebilmek için öncelikle ilgili meslek kuruluşlarının yetkili organları (Solicitor Düzenleme Kurumu - Solicitor Regulation Authority / Baro Standartlar Kurulu - Bar Standards Board) tarafından tanınmış bir eğitim kurumunda / üniversitede 3 yıl süren bir hukuk eğitimi yüksek başarı ile tamamlanmış olmalıdır. Lisans eğitiminin başarıyla tamamlanmış olması staj öncesi mesleki eğitime kabul açısından önem arz etmektedir.

3.2. Hukuk Dışındaki bir Alanda Üniversite Mezunları İçin Hukuk Diploması Eğitimi (Graduate Diploma in Law-GDL)

3.2.1. *Giriş*

Yukarıda kısaca özetlemeye çalıştığımız ana yola ilave olarak hukuk fakültesinden mezun olmamakla veya adı geçen mesleki düzenleyici kurumlarca tanınmış bir hukuk fakültesi diplomasına sahip olmamakla birlikte, halihazırda yine Solicitor Düzenleme Kurumu *(Solicitor Regulation Authority)* veya Baro Standartlar Kurulu *(Bar Standard Board)* tarafından kabul edilmiş bir üniversitede başka bir alanda eğitim almış olan veya yine aynı kurumlarca Muteber Akademik Sertifika *(Certificate of Academic Standing)* verilen kişilere yönelik Hukuk Dışındaki bir Alanda Üniversite Mezunları İçin Hukuk Diploması *(Graduate Diploma in Law-GDL)* eğitimi düzenlenmektedir.

Kuşkusuz Hukuk Dışındaki bir Alanda Üniversite Mezunları İçin Hukuk Diploması eğitimi düzenleyen kurumların da Solicitor Düzenleme Kurumu ve/veya Baro Standartlar Kurulu tarafından tanınmış olması gerekmektedir.

3.2.2. *Programın Amacı*

Programın temel amacı hukuk mesleğine başka alanlarda akademik eğitim almış kişilerin girişini temin ederek mesleğin kalitesini artırmak, uzmanlaşmamanın önünü açmaktır.

3.2.3. *Kabul Koşulları*

Başvuran kişinin ya Solicitor Düzenleme Kurumu ve/veya Baro Standartlar Kurulu tarafından tanınmış bir üniversiteden mezun olması ya da yine aynı kurumlarca kendisine bir Muteber Akademik Sertifikanın *(Certificate of Academic Standing)* verilmiş olması gerekmektedir.

Resmi dili İngilizce olmayan bir ülkede akademik eğitimini tamamlamış kişilerin IELTS (7.0), TOEFL (old – 600 / 250), TOEFL IBT (new – 100) belgelerinden birisine sahip olmaları gerekmektedir.

3.2.4. *Eğitim Süresi*

Eğitim süresi tam zamanlı olup 1 yıldır. Buna karşın çalışan öğrenciler için yarı zamanlı ve 2 yıl süreli alternatif bir yolda mevcuttur.

3.2.5. *Eğitimin Mahiyeti ve Kapsamı*

Normal koşullarda tam zamanlı olarak 1 yıl sürecek olan eğitim sırasında 7 temel alanda eğitim faaliyeti yürütülmektedir:

- Sözleşme Hukuku
- Ceza Hukuku
- Birlik ve Tröstler
- Avrupa Birliği Hukuku
- Toprak Hukuku
- Kamu Hukuku
- Tazminat Hukuku

Amaç kısaca 3 yıllık hukuk fakültesi eğitimini bir yıllık yoğun bir eğitime sığdırmak ve bu süre içersinde öğrencinin 3 yıllık hukuk eğitimine eşdeğer hukuk bilgisine sahip olmasını sağlamaktır.

Eğitimler konu hakkında eğitimli akdemiysen ve pratisyenler tarafından verilmektedir.

Bu raporun hazırlanması öncesinde Londra ve Birmingham'da yapılan bir dizi görüşmelerde eğitmenler ve öğrenciler 1 yıllık sürenin kısa bir süre gibi gözükmekle birlikte, öğrencilerin hali hazırda başka bir disiplinde akademik arka plana sahip olmaları ve ne istediklerini bilerek, bilinçli bir şekilde bu eğitimi almayı tercih ettikleri gerekçesiyle 1 yıllık eğitimin son derece verimli ve 3 yıllık akademik eğitime eşdeğer olduğunu belirtmişlerdir.

3.2.6. *Eğitimin Değerlendirilmesi*

Öğrenciler normal koşullarda 36 hafta ve iki ayrı sömestrden oluşan eğitim dönemini tamamlamaları sonrasında her bir ders için sınavlara girerler.

Öğrenciler her bir ders için en fazla 3 kez sınava girme hakları bulunmaktadır.

Başarı notu 100 üzerinden 40'dır.

3.3. Dosya Avukatlığı Mesleki Kursu (Legal Practice Course- LPC)

3.3.1. *Giriş*

Hukuk fakültesi eğitimleri sırasında veya Hukuk Dışındaki Bir Alanda Üniversite Mezunları İçin Hukuk Diploması Eğitimleri sırasında Solicitor olmaya karar veren öğrenciler 2 yıllık staj dönemi *(two year contract)* öncesinde ara bir eğitim sürecini daha tamamlamak durumundadırlar. Dosya Avukatlığı Mesleki Kursu olarak adlandırılan bu eğitim ancak Solicitor Düzenleme Kurumu *(Solicitor Regulation Authority)* tarafından tanınan kurumlar tarafından verilebilmektedir.

3.3.2. *Amaç*

Dosya Avukatlığı Mesleki Kursu *(Legal Practice Course –LPC)* olarak adlandırılan bu süreç hukuk alanında taze akademik bilgilerle donanmış olan öğrencinin uygulamadaki işleyiş ile tanıştırılmasını amaçlamaktadır.

3.3.3. *Eğitime Kabul Koşulları*

Başvuran öğrenci Solicitor Düzenleme Kurumu tarafından tanınmış bir üniversiteden mezun olmalı (A derecesi ile) veya Solicitor Düzenleme Kurumu tarafından tanınmış Hukuk Dışındaki bir Alanda Üniversite Mezunları İçin Hukuk Diploması *(Graduate Diploma in Law-GDL)* eğitimini başarıyla tamamlamış olmalıdır. Deniz aşırı ülkelerde hukuk eğitimini tamamlanmış olan öğrencilerin öncelikle Solicitor Düzenleme Kurumuna başvurarak hukuk diplomalarının yeterli olduğunu onaylayan bir belgeyi temin etmeleri gerekmektedir.

3.3.4. *Eğitim Süresi*

Eğitim süresi tam zamanlı olup 1 yıldır. Buna karşın çalışan öğrenciler için yarı zamanlı ve 2 yıl süreli alternatif bir yolda mevcuttur.

3.3.5. *Eğitimin Mahiyeti ve Kapsamı*

Dosya Avukatlığı Mesleki Kursu'nun amacı öğrencilerin uygulama hakkında gerekli bilgi ve tecrübeyle donatılmasını sağlamaktır. Öğrenciler akademisyenlerden ziyade uygulamadan kopmamış olan kıdemli ve deneyimli Solicitorlar tarafından eğitilmektedirler.

Öğrenciler çalışmak istedikleri alana göre değişik tercihler yapabilse de temel olarak üç ana eğitim modeli bulunmaktadır :

- Şirket avukatlığı
- Ticari ve serbest avukatlık
- Kamu hukuku hizmetleri

Eğitim teorik bilgilerin bir takım eğitim modülleri (internet ve video) ile uygulamaya en etkin bir biçimde dönüştürülmesini amaçlamaktadır. Eğitim tüm alanlarda başlıca aşağıda aktarılan beş alt bölüme ayrılmaktadır:

Temel Alanlar:

- Mesleki faaliyet

- Meslek ahlakı
- Beceriler
- Vergi
- Avrupa Hukuku
- Vasiyet işleri ve Mülklerin idaresi

Zorunlu Alanlar:

- Ticaret hukuku ve uygulaması
- Mamelek hukuku ve uygulaması
- Dava yürütümü ve avukatlık

Yaygın Alanlar:

- Hesaplar (Solicitor ve iş/müvekkil hesapları)
- Mesleki yürütüm ve müvekkil işleri (mali hizmetler de dahildir)
- Avrupa Birliği Hukuku
- İnsan Hakları
- Gelir Hukuku
- Mahkeme sistemi
- Deliller

Beceri Alanları:

- Hukuki araştırma
- Dilekçe yazma, dokümantasyon ve numaralandırma
- Görüşme yapma ve danışmanlık hizmeti verme

Seçmeli Alanlar:

3.3.6. *Eğitimin Değerlendirilmesi*

Öğrenciler 1 yıllık eğitim süresince bir dizi yazılı ve sözlü değerlendirmelere tabi tutulur. Öğrencilerin etkin bir şekilde çalışabilmeleri için bilgisayara destekli eğitim çok büyük bir rol oynamaktadır. Bir çok öğrenci i-eğitim *(i-tutiorial)* olarak tanımlanan eğitim sayesinde pek çok dersi uygulamalı olarak internet ortamında takip edebilmektedir.

Eğitim sonrasında başarılı olan öğrenci, hali hazırda bağlantı kurmuş olduğu hukuk firmasındaki 2 yıllık stajına başlamak üzere şirkete dahil olur.

3.4. Duruşma Avukatlığı Mesleki Kursu (Bar Vocational Course –BVC)

3.4.1. *Giriş*

Hukuk fakültesi eğitimleri veya "Başka Bir Alanda Üniversite Mezunları İçin Hukuk Diploması Kursu" sırasında Barrister olmaya karar veren öğrenciler 1 yıllık staj dönemi *(pupilage)* öncesinde ara bir eğitim sürecini daha tamamlamak durumundadırlar. Duruşma Avukatlığı Mesleki Kursu olarak adlandırılan bu eğitim Baro Stan lartlar Kurulu *(Bar Standards Board)* tarafından tanınan özel eğitim kurumları tarafından verilebilmektedir.

3.4.2. *Amaç*

Duruşma Avukatlığı Mesleki Kursu *(Bar Vocational Course–BVC)* olarak adlandırılan bu süreç hukuk alanında taze akademik bilgilerle donanmış olan öğrencinin uygulamadaki işleyiş ile tanıştırılmasını, uygulama becerileri edinmesini sağlamayı amaçlamaktadır.

3.4.3. *Eğitime Kabul Koşulları*

Başvuran öğrenci, Baro Standartlar Kurulu tarafından tanınmış bir üniversiteden mezun (A derecesi ile) olmalı veya yine Kurul tarafından tanınmış Başka Bir Alanda Üniversite Mezunları İçin Hukuk Diploması

(Graduate Diploma in Law-GDL) eğitimini başarıyla tamamlamış olmalıdır. Deniz aşırı ülkelerde hukuk eğitimini tamamlanmış olan öğrencilerin öncelikle Baro Standartları Kurulu'na başvurarak hukuk diplomalarının yeterli olduğunu onaylayan bir belgeyi edinmeleri gerekmektedir.

Bütün bu şartlara ek olarak Barrister olmak isteyen öğrenci Duruşma Avukatlığı Mesleki Kursu başvurusunu yapmadan önce bir *İnn*'e üye olmak zorundadır.

3.4.4. *İnn'e Üye Olmak*

Duruşma Avukatlığı Mesleki Kursuna başlamadan önce bir öğrenci mevcut olan dört adet "İnn" den birisine katılmak zorundadır:

- Lincoln's Inn
- Inner Temple
- Middle Temple
- Gray's Inn

İnnler öğrenciyi barristerlik mesleğine/baroya davet edecek tek makamdır[4]. İnnler temel olarak akedemik niteliği olmayan buna karşın Barrister ve öğrenci/stajyer Barristerler için eğitim ve destek faaliyetleri yürüten sivil toplum birlikleridir. Kütüphane, yemek birimleri, ortak alanlar ve bahçelerin kullanımlarından sorumludurlar. İnn'ler ayrıca barrister olmak isteyenlere, çeşitli aşamalarda burslar temin de etmektedir. Aynı zamanda bir kariyer danışmalık bürosu gibi faaliyet gösteren İnn'ler Duruşma Avukatlığı Mesleki Kursu başvurusu, özgeçmişlerin hazırlanması, staj *(pupilage)*, görüşme provaları da dahil olmak üzere pek çok açıdan öğrenci Barristerlara danışmanlık ve destek hizmeti sunar.

4 Baroya davet veya çağrı Anglosakson hukuk sistemini benimsemiş pek çok ülkede kullanılan avukatlık sanatına ilişkin bir hukuki terimdir. Baroya davet edilmek veya çağrılmak köklerini Kraliyet çağrısından almaktadır. Monark takdir yetkisi uyarınca bir kişinin Kraliyet (Yüksek) Mahkemelerinde görev yapmaya uygun olduğunu o kişilere gönderdiği çağrı ile bildirir. Bugün itibariyle Kraliyet Mahkemelerinde sadece barristerler değil bir takım ek eğitimden geçen solicitorlar'da avukatlık yapabilmektedir. Ek eğitimden geçerek yüksek mahkemelerde avukatlık yapma hakkına sahip olan ve baroya çağrı alan solicitorlar, solicitor advocate olarak adlandırılırlar. Kısaca baroya çağrı mesleğe kabul anlamına gelmektedir.

Barrister olmak isteyen bir öğrenci Duruşma Avukatlığı Mesleki Kursuna başvurmadan önce bir İnn'e üye olmak zorundadır. Buna karşın pek çok öğrenci daha hukuk eğitimlerinin başında İnnler tarafından düzenlenen faaliyetlere katılabilmek, kütüphaneyi kullanabilmek amacıyla İnnler'e üye olmaktadırlar.

3.4.5. *Duruşma Avukatlığı Mesleki Kursu Başvurusu*

Duruşma Avukatlığı Mesleki Kursuna katılmak isteyen bir öğrenci İnn üyesi olduktan sonra Baro Standartlar Kuruluna yerleştirme başvurusu yapmaktadır. Her yıl 1.500 mevcut yer için 2.500 yerleştirme başvurusu yapılmaktadır. Başvurular her yıl en geç 31 Mayıs'a kadar yapılmalıdır.

3.4.6. *Eğitim Süresi*

Eğitim süresi tam zamanlı olup 1 yıldır. Buna karşın çalışan öğrenciler için yarı zamanlı ve 2 yıl süreli alternatif bir yol da mevcuttur.

3.4.7. *Eğitimin Mahiyeti ve Kapsamı*

Öğrenci kurs boyunca gerek medeni hukuk yargılaması gerekse de ceza yargılaması alanında kapsamlı eğitime tabi tutulmaktadır. Bu aşamalara deliller ve cezalandırma süreci de dahildir. Bu eğitimler sonrasında öğrenciler farazi duruşmalar düzenlemekte, gerçek duruşmaları gözlemlemektedirler. Eğitimlerin temel amacı daha çok avukatlık sanatı hakkında öğrenciyi yetiştirmektir.

Eğitim alanları şu şekilde gruplanabilir:

Mesleki etik ve yürütüm

Bilgi alanları

- Medeni hukuk yargılaması
- Ceza yargılaması ve cezanın ferdileştirilmesi
- Delil

Beceri alanları

- Dava dosyası
  - Davaya ilişkin olayların yönetimi
  - Hukuki araştırma
- Dilekçe becerileri
  - Görüşlerin derlenmesi
  - Dilekçe yazımı
- İletişim becerileri
  - Avukatlık sanatı/hitabet
  - Konferans becerileri
  - Müzakere
  - Müvekkille iletişim

Seçimlik

Öğrencilerin yukarıda belirtilen meseleleri uygulamaya taşımalarını sağlayacak faaliyetleri kapsamaktadır. Örneğin ücretsiz Barristerlık hizmeti veren merkezlerde çalışmak, kapsamlı medeni hukuk yargılaması, kapsamlı ceza hukuku yargılaması, alternatif çatışkı çözümü ve arabuluculuk, ticari uygulamalar, aile hukuku uygulamaları, mülteci hukuku uygulamaları, yargısal denetim uygulamaları, ücretsiz adli yardım, iş hukuku uygulamaları gibi alanlar bunlardan bazılarıdır.

Toplamda genel olarak 13 değerlendirme olmaktadır. Uygulama alanındaki sınav (değerlendirmeler) avukatlık sanatı, araştırma, dilekçe yazımı, konferans becerileri, müzakere, medeni ve ceza hukuku yargılamaları, delil ve cezaların ferdileştirilmesi alanında yapılmaktadır.

Öğrencilerin sınavları ve bu sınavların değerlendirmesi kuşkusuz Baro Standartlar Kurulu'nun belirlediği kurallar ve yöntemler uyarınca eğitimi veren kurumlarca yapılmaktadır.

Yıllara Göre Baro Mesleki Kursu

BMK / Yıl	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08
Başvuru Sayısı	2370	2252	2119	2067	2570	2883	3211	3227	2550 sadece ilk başvuru döneminde)
Kabul Edilenler	1487	1403	1379	1332	1406	1665	1745	1932	
Başarılı Olanlar	1206	1082	1188	1121	1251	1425	1515	1425	

Tablo -1

Duruşma Avukatlığı Mesleki Kursunu başarılı bir şekilde tamamlayanlar 1 yıllık stajlarına başlamak üzere çoğunlukla hukuk eğitimleri sırasında başvurdukları ve kabul edildikleri Dairelere *(Chambers)* katılırlar.

4. İNGİLİZ HUKUK SİSTEMİNDE STAJ SÜRECİ

İngiliz hukuk sisteminde avukatlık mesleğinin iki farklı uzmanlık alanına bölünmüş olması, baro yapılanmasında olduğu gibi eğitim ve staj dönemlerinin de farklılaşmasına neden olmuştur. Zira, meslek mensupları farklı konularda müvekkillerine hizmet sağlayacaklarından farklı şekillerde eğitimden geçmeleri bu durumun doğal bir sonucudur. Yukarıda İngiliz hukuk sistemindeki bu iki alternatif yol şekil-2 ile gösterilmeye çalışılmıştır.

Bu tabloda da görüldüğü üzere Dosya Avukatı ve Duruşma Avukatı için farklı staj uygulamaları mevcuttur. Duruşma Avukatlığı stajını yapanlara "PUPIL" Dosya Avukatlığı stajını yapanlara ise "TRAINEE SOLICITOR" adı verilmektedir. Türkçe de her iki kelime de stajyer anlamında kullanıldığından bu çalışma kapsamında orijinal İngilizce ifadeler kullanılmıştır.

Dosya Avukatı Yolu

Hukuk Diploması: 3 yıl veya Hukuk Dışı üniversite+2 yıl veya 1 yıl Hukuk Dip. Tamamlama

Hukuk Uygulamaları Kursu: 1 ile 2 yıl

Staj Kontratı: 2 yıl

Toplam minimum: 6 yıl maksimum 9 yıl

Duruşma Avukatı Yolu

Hukuk diploması: 3 yıl veya Hukuk Dışı üniversite+2 yıl veya 1 yıl Hukuk Dip. Tamamlama

Mesleki Baro Eğitimi: 1 ile 2 yıl

Stajyerlik dönemi: 1 yıl

Toplam minimum: 5 yıl maksimum 8 yıl

4.1. Pupil

Pupiller ile Trainee Solicitorlar arasındaki farklılaşmanın başladığı yer Pupillerin ve Trainee Solicitorların Mesleki Baro Eğitimi/ Hukuk Uygulamaları Kurusu sürecinde ve sonrasında aldıkları eğitimlerdir. Mesleki eğitim süreci ile ilgili olarak Pupillerin tabi olduğu Mesleki Baro Eğitimi, bu kişileri hakim veya jüri karşısında yapacakları münazaralara odaklanmış bir eğitimdir. Bu süreç sayesinde Pupiller mesleki kariyerlerinin başında dahi kendilerini ifade etme ve uygulayacakları münazara yöntemleri hakkında ciddi eğitimlere tabi tutulmaktadırlar.

Trainee Solicitorlar ise Pupillerin aksine münazara becerileri eğitiminden ziyade müvekkillere bürolarda hukuki görüş hazırlanması ve Dosya Avukatlarının genel rolleri üzerinde eğitimler almaktadırlar. Solicitor Traineeler temel olarak müvekkil odaklı uygulama eğitimler almaktadırlar.

Pupiller, Mesleki Baro Eğitimlerini tamamladıktan sonra, 1 yıllık ek bir staj eğitiminden daha geçmektedirler. Yukarıda da izah edildiği üzere bu eğitimleri düzenlemekle görevli kuruluş Baro Standartları Heyeti'dir. Bu bir yıllık eğitimin ilk altı ayında Pupiller mensubu oldukları "Inns of Court" larda veya "Circuit" lerde münazara becerileri konusunda yoğunlaştırılmış eğitimler alırlar. Buna ek olarak adli münazara ve uygulamaya yönelik eğitimlere tabi tutulurlar. Buradaki temel amaç yine Pupilleri ikinci 6 aylık sürece en iyi şekilde hazırlamaktır.

İkinci 6 aylık dönemde Pupiller bir Duruşma Avukatı yanında çalışarak staj eğitimlerini sürdürürler. Her Pupilin staj gördüğü yerde kendisinden sorumlu olan bir rehber Duruşma Avukat vardır. Pupiller rehber Duruşma Avukatlarının adeta gölgesi gibi sürekli onları izlemekte, zor ve karmaşık konuların araştırılmasında rehber Duruşma Avukatlarına bilgi ve belgeler sunmakta, raporlar hazırlamakta ve duruşmalar öncesinde rehber avukatlara yardımcı olmaktadırlar. Bu ikinci altı aylık süreç boyunca tüm Pupiller belirli mahkemelerde savunmada bulunma ve duruşmalara girme hakkına sahiptirler

4.2. Trainee Solicitor- Stajyer Dosya Avukatı

Trainee Solicitorlar, Hukuk Uygulaması Eğitimlerini bitirdikten sonra iki yıllık bir stajyer sözleşmesi dönemi geçirmek zorundadırlar. Stajyer sözleşmesi döneminde Trainee Soliciitorlara, işveren Dosya Avukatı tarafından para ödenmek zorundadır. Para ödeme zorunluluğu nedeniyle uygulamada Trainee Solicitorlar yanlarında staj eğitimini tamamlayacakları Dosya Avukatı bulmakta zorlanmaktadırlar. Ancak Hukuk Uygulamaları Eğitimi ve Mesleki Baro Eğitimlerinin de ücretli olduğu ve öğrenciler tarafından bu ücretlerin karşılanması gerektiği göz önünde bulundurulduğunda, Trainee Solicitorlara ücret ödenmesi sistemin zorlayıcılığı ile kendiliğinden ortaya çıkmaktadır.

İleride Dosya Avukatı olmak isteyen hukuk öğrencileri hukuk öğrenimlerinin daha ilk yıllarında stajyer sözleşmesi ile çalışabilecekleri yerleri araştırmaya başlamakta ve iş başvuruları yapmak durumunda kalmaktadırlar. Zira kimi büyük firmalar başarı buldukları öğrencilerle

daha okulun ilk yıllarından başlamak üzere anlaşmakta ve bu öğrencilerin Dosya Avukatı olana kadarki süreçteki masraflarının tamamını karşılamaktadırlar. Üniversiteden yeni mezun olmuş hukuk öğrencilerinin karşı karşıya oldukları ücrete dayalı bu eğitim süreci gerçekten öğrenciler üzerinde ciddi bir baskıya neden olmakta, öğrenciler öğrencilik dönemlerini iş arayarak geçirmektedirler.

Trainee Solicitorların her birine 2 yıllık sözleşme süreci boyunca bir rehber Dosya Avukatı rehberlik etmektedir. Bu süreç içerisinde Solicitor Traineeler dosyaları incelemekte, dosyalarla ilgili olarak Duruşma Avukatlarına görüş bildirilmesine yardımcı olmakta ve duruşma aşaması öncesinde dosyanın hazırlanmasına katkı sağlamaktadırlar.

Traineelerin Solicitor staj sözleşmeleri boyunca en az 3 farklı alanda staj yapmaları zorunlu kılınmıştır. Ayrıca Traineeler Solicitor 1994 yılı yazında yapılan bir değişiklikle mesleki beceri kurusunu tamamlamak zorundadırlar. Bu kursu başarı ile tamamlamayan Trainee Solicitorların Dosya Avukatı olabilmeleri mümkün değildir. Bu kurs parçalar halinde sunulan ve Trainee Solicitorun Hukuk Uygulaması Eğitimi ve staj sözleşmesi döneminde istenilen gerekli eğitimleri alıp almadığının tespiti ve eksik kalan yönlerin tamamlanmasını sağlamaya yöneliktir. Trainee Solicitorların çalıştığı firmalar bu kursa ilişkin ücretleri karşılamak durumundadırlar. Bu kurs çerçevesinde Trainee Solicitorlar 3 ana başlıkta eğitim alırlar.

- Finans ve mesleki beceriler,
- Müzakere ve iletişim becerileri,
- Müvekkilin korunması ve mesleki standartlar,

Trainee Solicitorlar yukarıda sayılanlardan sadece finans ve mesleki beceriler kursu sonunda yazılı sınava tabi tutulmakta diğer konularda ise böyle bir sınav zorunluluğu bulunmamaktadır. Ayrıca Trainee Solicitorlar bu konuların dışında 24 saatlik seçmeli dersleri de tamamlamak durumundadırlar. Bu kursun süresi stajyer sözleşmesi tam zamanlı ise en fazla 20 gündür. Fakat her bir eğitim modülü farklı farklı zamanlarda da alınabilmektedir. Alanlarında uzmanlaşmış çok büyük yapılı Dosya Avukatlığı firmaları bu eğitimleri kendi bünyelerinde

hazırladıkları programlarla yürütmekte ve staj sözleşmesinin başlangıcında tüm Trainee Solicitorların bu eğitimlerden geçmesini zorunlu tutmaktadırlar.

5. İNGİLTERE VE GALLERDE SÜREKLİ MESLEK İÇİ EĞİTİM (CPD)

5.1. Sürekli Meslek İçi Eğitim (Continuing Professional Development)

İngiltere ve Galler'd ...ı dosya avukatları ve hukuki hizmet vermekte olan tüm Avrupa Birliği avukatları Dosya Avukatları (Solicitors) Düzenleme Kurumunca ana şartları belirlenen sürekli mesleki eğitim programına ı vmakla yükümlüdürler. Bu program İngiltere ve Galler'de avukatlık mevzuatına 1985 yılında getirilmiş ve halihazırda da uygulanmaktadır. Yine aynı şekilde duruşma avukatları/ Barristerler için de benzeri bir yapılanma 1997 yılında oluşturulmuş olup tüm duruşma avukatları için 2005 yılından bu yana zorunlu hale getirilmiştir. Sistemin uygulama şartları ise her iki meslek türü açısından aynıdır.

Sürekli Meslek İçi Eğitim programı tüm avukatlar için 1 Kasım tarihinde başlar ve aynı yıl 31 Ekim tarihinde sonlanır. Mesleğe yeni kabul edilmiş avukat ile kayıtlı Avrupa Birliği avukatları için ana kural mesleğe kabul tarihlerinden itibaren aynı yılın 31 Ekim tarihine kadar tam zamanlı olarak çalıştığı her ay için 1 saat kurs alımı olmakla birlikte diğer avukatlar için uygulamadaki genel kural her yıl minimum 16 saatlik meslek içi eğitim planının tamamlaması şeklindedir. Bu zorunluluk yarı-zamanlı çalışan dosya avukatları ve diğer yabancı avukatlar için sınırlandırılmıştır. Yine dosya avukatları mesleğe girişlerini takip eden ilk 3 yıl içerisinde Düzenleme Kurumunca belirlenen şartlara göre ilgili diğer kursları da tamamlamakla yükümlüdürler. Bu kursların en önemlisi Yönetim Kursu *(Management Course)* olarak belirtilebilir. Bu kursta, dosya avukatları (Solicitors) – Avrupa Birliği avukatları dahil değildir - üçüncü Sürekli Mesleki Eğitim yıllarının bitiminden

önce Düzenleme Kurumu Yönetim Kursu 1nci Derecesini tamamlamak zorundadır.

Bu kursta minimum 7 saat devam zorunluluğu aranmaktadır. Bu kurs bazı eğitici kurumlarca 1 tam gün olarak bazılarında ise modüler halde verilmektedir. Aşağıda verilmiş olan konu başlıklarından en az 3 tanesinin bu kurs içerisinde alınması zorunludur:

- Firmanın idaresi
- Finans İdaresi
- Müvekkil ilişkileri idaresi
- Bilginin İdaresi
- Kişilerin İdaresi

Sürekli Meslek İçi Eğitim programı sadelik ve esneklik prensibi üzerine kurulmuştur:

- Avukat kendi mesleki gelişimlerinin sorumluluğunu üstlenmelidir; kendi eğitim ve gelişim ihtiyaçlarını analiz etmelidir,
- Bu analiz yapıldıktan sonra, Sürekli Meslek İçi Eğitim içerisinde bu ihtiyaçlara en uygun olanlar seçilmelidir,
- Tüm eğitim ve gelişim faaliyetleri kişisel eğitim kayıtları olarak avukatlarca tutulmalıdır. Bu konuda tüm örnekler Düzenleme Kurumunun internet sayfalarında verilmektedir.

Sürekli Meslek İçi Eğitim programı kapsamında seminer, panel ve benzeri faaliyetlere katılma, makale, tebliğ gibi yayınlar hazırlama, eğitmen olarak eğitim verme gibi pek çok farklı şekilde 16 saatlik kredi tamamlanabilmektedir. Ancak en az eğitimin %25'lik bir kısmının akredite olmuş eğitim kurumlarınca verilen eğitimlere katılarak tamamlanması zorunludur. Kalan %75lik kısmın ise yine bu şekilde verilen eğitimlere katılma şeklinde tamamlanması mümkün olmakla birlikte farklı faaliyet başlıkları altında da tamamlanabilir.

Örneğin,

- Akredite kurslara katılma : Hazırlama, Sunma ya da Katılma şeklinde 30 dakikadan az 60 dakikadan fazla olmayan kursun tamamlanması
- Akredite olmamış kurslara katılma : Hazırlama, Sunma ve Katılma şeklinde 30 dakikadan az olmayan kursun tamamlanması
- Mevzuata ya da Uygulamaya Yönelik Yayın Hazırlama: Hukuk kitapları özeti yapma, Jurnalleri tarama, gazete ya da dergilerde ve hatta internet ortamında yazı yayınlama gibi.
- Araştırma yapma : Her tür yazılı doküman, memorandum, anket araştırmaları yapma
- Yetkilendirilmiş eğitim kurumlarınca verilen görsel/işitsel materyallerin izlenmesi ya da dinlenmesi
- Uzaktan eğitim uygulamalarına katılım ve benzerleri.

Söz konusu akreditasyon eğitim kurumlarınca 14 konu başlığı altında verilmektedir. Değerlendirme ve akreditasyon tamamıyla Düzenleme Kurumunun kontrolü altındadır. Yukarıda bazı uygulama biçimleri belirtilmiş olduğu üzere eğitimlere katılma, yayın hazırlama ve benzer şekilde yapılan bir çalışmanın program kapsamında değerlendirilip değerlendirilemeyeceği Düzenleme Kurumuna değerlendirmesine tabidir. Yıllık 16 saatten fazla bir kursun tamamlanmış olması halinde bu kısım bir sonraki yıla devredilememektedir.

Sürekli Meslek İçi Eğitim programları zorunludur ve kursların öngörülen şekilde tamamlanması avukatların sorumluluğu altındadır. Avukatların çalıştığı firmaların ya da diğer işverenlerin bu kurslara yönelik giderleri çalışanları adına karşılama zorunluluğu bulunmamaktadır. Maddi durumu bu kursları karşılamaya yeterli olmayan avukatlar için ise farklı yöntemler önerilmektedir. Örneğin, Solicitor Düzenleme Kurumunun (SRA), en yakın temsilcisi ile

irtibata geçmek ve uygun koşullarla SRA tarafından verilen bazı kurslara katılmak, uzaktan eğitim kursları almak ya da firma içi eğitim kurslarına katılmak gibi. Bu konuda akredite olmuş pek çok firma kendi deneyimli avukatlarını eğitici olarak kullanmak ya da dışarıdan eğitici çağırmak suretiyle firma içi eğitim sağlamaktadır. Bu programlar gereğince tamamlanması gereken saatlerin tamamlanmaması avukatlar açısından disiplin prosedürlerinin işlemesine ve/veya ruhsatlarının yenilenmesinde gecikmelere yol açabilmektedir.

Sürekli Meslek İçi Eğitim kurslarının kayıtlarının tutulması gerekmektedir. İzleme ve değerlendirme amacıyla Düzenleme Kurumları bu eğitimlerin kayıtlarını görmeyi eğitimi takip eden 6 yıllık süre boyunca isteyebilir. Düzenleme Kurumları avukatların tamamladıklarını bildirdikleri eğitimlere ilişkin detaylı doküman bulundurmaz. Bunlara ilişkin evrakları saklamak avukatların kendi sorumlulukları altındadır. Buna karşın dava avukatları ve duruşma avukatları tamamlanan kursa ve kaç saat tamamlandığına ilişkin Kuruma bildirim yapmakla yükümlüdürler.

EXPERTS' REPORT ON THE LEGAL EDUCATION AND TRAINING SYSTEM N TURKEY

EXPERTS' REPORT ON THE LEGAL EDUCATION AND TRAINING SYSTEM IN TURKEY

PROMOTING CIVIL SOCIETY DIALOGUE BETWEEN BARS THROUGH LEGAL EDUCATION

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21 July 2009

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INTRODUCTION

This report outlines the findings of a group of European experts on the Turkish legal education and training system following scoping visits to seven different regions of Turkey: Adana, Ankara, Denizli, Elaziğ, İstanbul, Samsun and Şanlıurfa.

The scoping visits took place in November 2008 and constituted the first practical activity of a joint project between the Union of Turkish Bars (*Türkiye Barolar Birliği* - TBB), three other project partners – The Council of Bars and Law Societies of Europe (CCBE), the French *Conseil National des Barreaux* (CNB) and the Law Society of England and Wales (LSEW) – and four project associates – the Spanish *Consejo General de la Abogacía Española* (CGAE), the Italian *Consiglio Nazionale Forense* (CNF) the Polish *Krajowa Rada Radców Prawnych* (KRRP) and the Österreichischer Rechtsanwaltskammertag (ÖRAK) of Austria. This 18-month project is funded by the European Union under the Civil Society Dialogue programme.

The general objectives of the "Promoting Civil Society Dialogue between Bars Through Legal Education" project are to review the legal education and training system in Turkey in the light of other European experiences and best practice and to foster an evidence-based debate within the Turkish legal profession, prior to reforming the initial education and training system as well as introducing a continuous professional education system.

This report contributes to the above-mentioned objectives in several ways. It includes in its annexes individual reports on the seven scoping visits, relying on a methodology of direct observations, interviews and discussions with the various stakeholders identified (bar association officials, practising lawyers, trainers and trainees, court and police officials). The body of the report, resulting from subsequent discussions between experts and Union of Turkish Bars officials, offers a description of the current legal education and training system in Turkey and provide a "gaps and needs" analysis in light of other European experiences and best practice. Finally, the report will be translated into Turkish and used in subsequent project activities, notably regional workshops as well as the project closing conference, so as to foster an evidence-based debate on the issue within the Turkish legal profession.

THE TURKISH LEGAL AND EDUCATION SYSTEM

The Turkish legal education and training system will be developed at length in the main body of the report. It can however, for the purposes of introductory information, be summarised as follows:

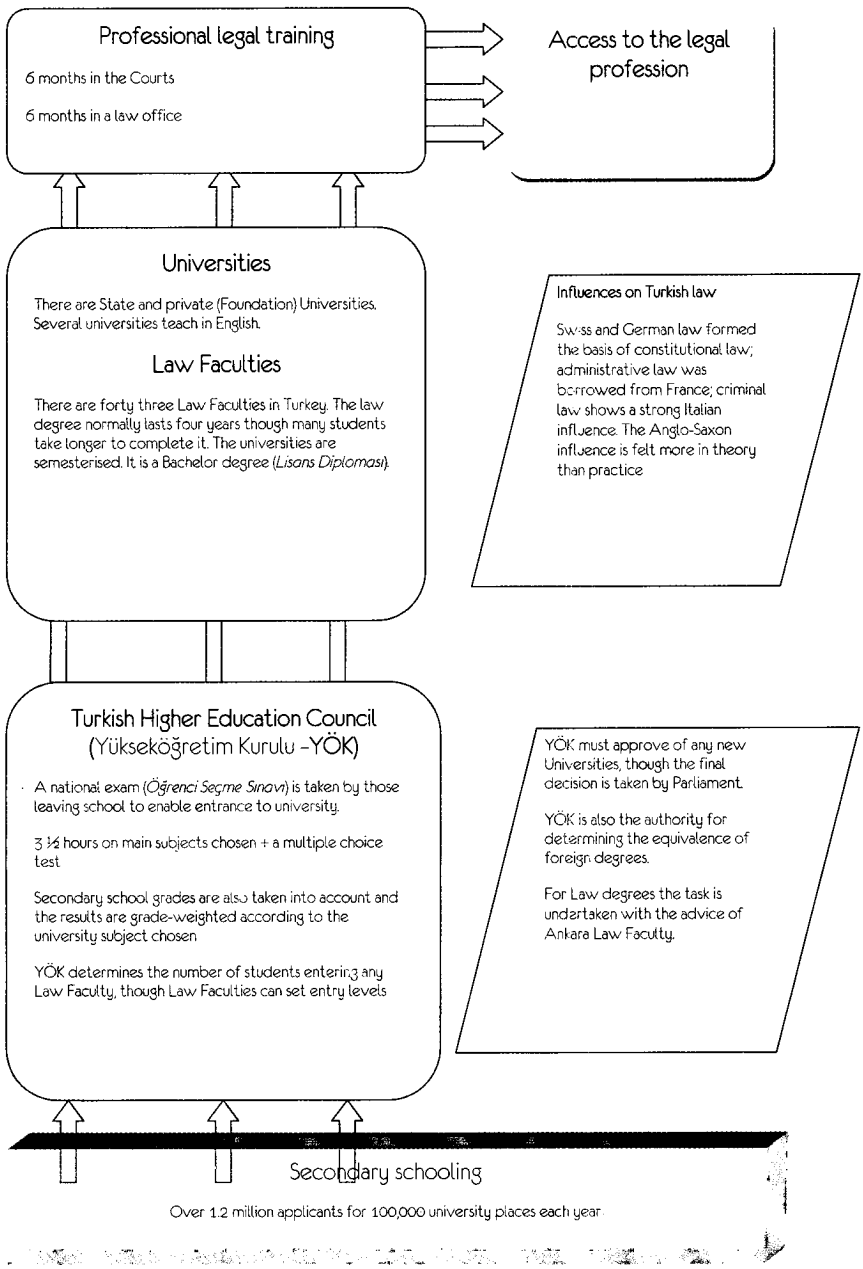
The initial training requires the completion of:

- a four-year law degree; and
- a one-year training period which includes:
    - six-months spent in courts under the supervision of a judge or a prosecutor and
    - a subsequent six months spent in a law office under the supervision of an experienced lawyer.
- There was, briefly, a bar examination conditioning access to the profession of Avukat at the end of the initial education and training period but this exists no longer.

There is no formalised continuous professional education system in Turkey.

The structure is set out in flow charts below.

Access to the profession of Avukat in Turkey


Professional legal training
6 months in the Courts
6 months in a law office
Access to the legal profession
Universities
There are State and private (Foundation) Universities. Several universities teach in English.
Law Faculties
There are forty three Law Faculties in Turkey. The law degree normally lasts four years though many students take longer to complete it. The universities are semesterised. It is a Bachelor degree (Lisans Diplomasi).
Influences on Turkish law
Swiss and German law formed the basis of constitutional law; administrative law was borrowed from France; criminal law shows a strong Italian influence. The Anglo-Saxon influence is felt more in theory than practice
Turkish Higher Education Council (Yükseköğretim Kurulu -YÖK)
A national exam (Öğrenci Seçme Sınavı) is taken by those leaving school to enable entrance to university.
3 ½ hours on main subjects chosen + a multiple choice test
Secondary school grades are also taken into account and the results are grade-weighted according to the university subject chosen
YÖK determines the number of students entering any Law Faculty, though Law Faculties can set entry levels
YÖK must approve of any new Universities, though the final decision is taken by Parliament.
YÖK is also the authority for determining the equivalence of foreign degrees.
For Law degrees the task is undertaken with the advice of Ankara Law Faculty.
Secondary schooling
Over 1.2 million applicants for 100,000 university places each year

Many stakeholders have expressed discontent at this state of play. This project is therefore seen as an opportunity to learn about other European experiences so that the Turkish legal profession can reform its education and training system according to best practice.

THE EUROPEAN CONTEXT

Any discussion on Turkey cannot evade the issue of its application for EU membership. Turkey achieved candidate status in 1999. It has since October 2005 opened negotiations with the European Union on a variety of chapters of what constitute the *acquis communautaire*, i.e. the body of primary and secondary legislation that makes EU law. Some parts of the *acquis* would have an impact on the legal and education training system and would need to be taken into account in any discussions over reforms.

However, EU membership does not mean (and has not meant for current member states) uniformity of approach as far as legal education and training systems are concerned. Some countries would strongly favour an academic education of considerable length while others put more emphasis on vocational skills acquired through taught courses and/or training periods. Likewise, some countries have a common system for legal and judicial professions while the separation is strictly enforced in others. Most countries would have examinations and/or other quality assurance mechanisms set at various stages of the initial and training period but not all.[1]

EU membership has nevertheless meant that internal market principles are applied to the legal profession and in particular the principle of mutual recognition of professional legal qualifications, however diverse the routes to qualifying are between Member States.

Directive 89/48/EEC on mutual recognition of professional qualifications,[2] recently replaced by Directive 2005/36/EC on the

1 For a comparative overview of legal education and training systems in Europe, please refer to the work of the CCBE (Council of Bars and Law Societies in Europe) Training Committee: CCBE Comparative Table on Training of Lawyers in Europe:
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/comparative_table_en1_1183977451.pdf .

2 Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0048:EN:HTML .

recognition of professional qualifications,[3] has provided for an equivalence examination (or an adaptation period) enabling lawyers qualified in one Member State to re-qualify in another one without having to start from the beginning. There is currently no system in Turkey that enables a foreign lawyer to re-qualify as a Turkish *Avukat* (indeed, Turkish citizenship is actually a condition for qualifying as a lawyer) and this would need to be reviewed.

Likewise, the European Court of Justice decision in the 2003 *Morgenbesser* case provides that "would-be" lawyers who are not fully qualified as a member of a legal profession coming from one Member State but in the process of doing so, can request access to legal training in another Member State.[4] The only current form of pre-qualification recognition of equivalence in Turkey is done at the academic level (mainly for law degrees coming from the territory known in Turkey as the Turkish Republic of Northern Cyprus) but this would need to be extended to post-university education and training as well.

The Sorbonne-Bologna Process, which consists of a structural alignment of higher education across Europe towards a bachelor-masters-doctorate structure (The "3 – 5 – 8" rule), may also impact one day on the Turkish legal education and training system and particularly on the structure of the law degree.[5] The Sorbonne-Bologna Process is not strictly confined to the European Union but rather open to Council of Europe Member States that are also party to the European Cultural Convention of the Council of Europe. Turkey became a signatory to the 1998 Bologna accords in 2001. Although the implementation of the Process has been uneven across EU member states and is yet to impact on some Member States' legal education systems, this factor should be considered in any debates on reforming the Turkish legal education and training systems.[6]

3 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/02005L0036200701011_1190190901.pdf

4 Case C-313/01 *Christine Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova* [2003] ECR I-13467. See also CCBE guidelines on the *Morgenbesser* case: http://www.ccbe.org/doc/En/morgenbesser_guidance_en.pdf

5 For further information on the Sorbonne-Bologna Process, please refer to the various websites set up for the conferences taking place every two years: Berlin 2003 http://www.bologna-berlin2003.de, Bergen 2005 http://www.bologna-bergen2005.no/, London 2007 http://www.dcsf.gov.uk/londonbologna/ and Leuven/Louvain-la-Neuve 2009 http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/index.htm/

6 For information on the implementation of the Sorbonne-Bologna Process in Turkey, please refer to: http://www.bologna.gov.tr/index.cfm?action=index&lang=TR (Turkish version) or http://www.bologna.gov.tr/index.cfm?action=index&lang=EN (English version).

The operation of the Lisbon Agenda has meant, inter alia, that the EU is creating a European Qualification Framework which national qualification frameworks will be latched into thus allowing a clearer view of the equivalence of educational qualifications in Europe. This is having a significant impact on the way the legal professions are viewing education and training, as it requires national frameworks which establish learning outcomes for particular educational programmes. The emphasis is in establishing what individuals can "do" once they have completed a course rather than how long they have been learning.

Despite the impact of EU membership and of the Sorbonne-Bologna Process on EU Member States, diversity rather than uniformity in the legal education and training process reflects the true picture and is likely to remain so for the foreseeable future. There has however been an impetus to share and develop best practice among the members of the Council of Bars and Law Societies of Europe (CCBE) and the work of its Training Committee is of great relevance to the subject of this report. The CCBE has 31 full members (EU and EEA Member States and Switzerland), two associate members (Turkey and Croatia) and 8 observer members (from the Western Balkans and Former Soviet Union areas).

The CCBE has over the years adopted recommendations (i) on the training of lawyers, namely the 2000 CCBE Resolution on training for lawyers in the EU[7] and, adopting the approach of the above-mentioned European Qualification Framework, the 2007 CCBE Recommendation on Training Outcomes for European Lawyers[8] and (ii) on continuing education, namely, the 2003 CCBE Recommendation on Continuing Training[9] and the 2006 CCBE Model Scheme on Continuing Training.[10]

Among the more recent recommendations, the 2007 CCBE Recommendation on Training Outcomes for European Lawyers sets out the knowledge, skills and competences to be expected of newly-qualified lawyers along three sections:

7 http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/form_enpdf1_1183977205.pdf
8 http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf
9 http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/ccbe_recommendation_1_1183977067.pdf
10 http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf

- Who lawyers are? (knowledge and understanding of ethics and professional rules);
- What lawyers do? (theoretical and practical knowledge that lawyers should have in order to perform their functions;
- How lawyers should work (technical skills necessary to perform the functions of a lawyer more effectively).

The 2006 Model Scheme on Continuing Training aims to provide practical assistance to CCBE members in setting up a continuous professional education system. In the CCBE's words, "it offers a framework for the development of guidelines or regulations on continuing training, covering inter alia the activities which can qualify as continuing training and credits systems".

Although these recommendations are not mandatory, they represent best practice in the CCBE Member States and should also be taken into account in the debate to reform the Turkish legal Education and Training system.

THE SCOPING VISITS

As previously mentioned, experts from seven project partners and associates undertook scoping visits on 15-17 November 2008 in seven different regions of Turkey: Adana, Ankara, Denizli, Elaziğ, İstanbul, Samsun and Şanlıurfa.

The experts are listed below next to the organisation they represented and the region they visited as part of the scoping visits:

CCBE	Dr Julian Lonbay Birmingham University (UK) Chair of the CCBE Training Committee	Ankara
CNB	Dr Florence Lec Amiens University (France) Me Florence Legrand Me Marc Jobert	İstanbul
LSEW	Mickaël Laurans, International Policy Manager Law Society of England and Wales (UK)	Denizli
CGAE	Abogada Marta Isern Barcelona (Spain)	Şanlıurfa
CNF	Avvocato Roberto Sorcinelli Cagliari (Italy)	Adana
KRRP	Radca Prawny Agata Adamczyk Kraków (Poland)	Elaziğ
ÖRAK	Rechtsanwalt Franz Markus Nestl Vienna (Austria)	Samsun

Table 1: names of experts, organisations and regions visited.

The individual scoping visit reports are annexed in Appendix 1.

STRUCTURE OF THE REPORT

This Report sets out in its Introduction the Experts' view of the current training regime for young lawyers in Turkey. It briefly indicates the European context of the Report and lists the series of scoping visits made by the experts to various Turkish Bar districts. The full scoping reports are set out in the Annexes.

After the initial introduction the Experts' Report sets out its view on access to the legal profession in Turkey, concentrating on the various training stages undergone and commenting on their strengths and weaknesses and giving examples from their own jurisdictions where appropriate. The review of access to the legal profession in Turkey starts with a short overview, followed by a more in depth look at the university stage of legal training, including an analysis of access to law schools. This is followed by sections on admission into the profession of *avukat*, including analysis of access to the first and second stages of training (at the court and in the law office, respectively), a view on how these operate and a critique of some aspects of the training regime. A brief review on continuing training is followed by a set of conclusions and a view on improving training standards for the Turkish legal professions.

ACCESS TO THE LEGAL PROFESSION

Access to the legal profession in Turkey is regulated by article 3 of the Advocacy Act under the title *"Admission into the profession of Avukat"*.[11]

REQUIREMENTS TO ACCESS THE PROFESSION OF AVUKAT:

1. To be a citizen of the Republic of Turkey.

2. To be in possession of a diploma attesting to graduation from a Turkish law school or faculty (*Lisans Diplomasi*) after a four year curriculum; or being a graduate of a faculty of law in a foreign country and having passed further examinations in the necessary courses in the curriculum of Turkish faculties of law.

3. To be in possession of an Apprenticeship completion certificate certifying that the applicant has completed the one-year apprenticeship period (6 months at the Court and 6 months at a law office).–

4. To apply to the Bar Association of the district in which the applicant has residence which is often the same Bar Association from whom the applicant received the apprenticeship completion certificate.

5. To meet the character and fitness requirements.

6. For a short period there was potentially a bar examination provided for in the law which was been rescinded by Parliament before being put into action. There are currently no further requirements apart from those stated above, nor is there any compulsory continuous legal education to be able to continue practising.

11 Advocacy Act No. 1136, dated 19 March 1969, implemented by the Advocacy Act Regulations of the Union of Turkish Bars, made in accordance with article 182 of the Advocacy Act.

UNIVERSITY LEGAL EDUCATION IN TURKEY

1,300,000 students are admitted to university in Turkey every year. There are around 85 state and 30 private universities. Access to university is organised via a centralised examination system run by the Turkish Higher Education Council (*Yükseköğretim Kurulu - YÖK*). The examination (*Öğrenci Seçme Sınavı* or *ÖSS*) takes the form of a multiple choice test in several subjects, some of them compulsory and others reflecting a choice of specialisation (in literature, sciences, etc) by the student.[12] The marks they obtain as well as the relevance of the subjects for the university education they would like to pursue will condition their access to the university and degree subject of their choice. Not unlike many other countries, law is considered a noble subject and a desirable occupation and competition for entry into the best law faculties of the country is strong. The university law degree usually takes four years to complete.

The best law faculties accept only the candidates with the highest grades. Law faculties can set the level of grades necessary for admission but they cannot control the numbers of students admitted. Some law faculties have seen the number of students to be admitted massively increased (Gazi: from 150 students to 300 last year, Ankara: from 400 to 600 students) at very short notice. No additional state funding is attached to the extra students. The private law schools can (at least partially) recoup costs from students (who pay fees of approximately 14,000TL/annum at Başkent University in Ankara, sometimes more in İstanbul). This is not an option open to state law faculties where the fees are set at approximately 400TL/annum. This situation gives clear cause for concern. Law faculties are increasingly unable to fulfil their educational mission.

12 In the acceptance exam for university (*OSS*) there lots of different coefficients applied to the marks depending on the student's area of speciality and their faculty choice. For example a science student wishing to go to Faculty of Pharmacy each of his answers in "biology, chemistry, mathematics" will have the value of 0.5 points. But if the same student wants to go to Faculty of Law same answers will worth 0.2. Student's GPA is important but his schools average GPA and his schools average success in *OSS* is also important. They are adding points depending to those factors. It is almost impossible to get enough points in OSS if pupils wish to enrol in a school, which is not in their graduation area. It should be remembered that last year 1,643,000 people applied to OSS. Only 1% of them have the chance to enter a respected faculty. Because of that, the exam is extremely competitive not only by questions but also in terms of bureaucratic semi-invisible barriers.

Fifteen years ago there were just four law faculties. There are now 43 law faculties, 32 of which are currently able to accept students. The remaining faculties are still waiting for YÖK accreditation. In addition 10-15% of the law graduates training as *avukatlar* come from Turkish Cypriot universities. There are 4 law faculties in the (territory known in Turkey as the) Turkish Republic of Northern Cyprus for a population of about 100,000 -150,000 inhabitants. These universities are alleged to be of a lower level of quality of education than Turkish universities.

The expansion of law degree providers, necessary to accommodate a young and growing population, has however threatened the quality of academic education received by students. There are considered to be too few law professors with good qualifications. YÖK has set up minimum standards for university lecturers that are enshrined in statutes, namely to have a masters degree and a PhD, proficiency in a foreign language and a track record of publications (books and articles) in Turkey and abroad. Apart from these minimum standards, there exists no other assessment system related to the qualifications and practice of the university lecturers. There is also insufficient financial wherewithal for the university law faculties who often have numbers of student increased with no automatic increase in funding levels.

University legal education is said to be of a rather theoretical character, lacking any practical application of the law. The personal relationship between the professor and students is mostly lacking and there is relatively little learning in small groups. The classes have a form of formal lectures *ex catedra* without any significant interaction on the part of the audience or their active participation in a discussion. Furthermore, only written exams are being carried out which deprives the students of the opportunity to acquire at least the basic oratorical skills. There exist no debating clubs similar to those existing in the British system, although there exist some but not many moot courts. The practical skills are deemed to be acquired by young lawyers only later, during the training preparing to the profession of judge, prosecutor or advocate.

It was frequently mentioned to the experts on their scoping visits that the promotion of learning of foreign languages is not at a sufficient level. Some private law schools insist on knowledge of a second language prior to admission. Some courses in private universities are conducted

in English language and at all states universities English courses are compulsory for one year.

There is no formal mechanism for input from the Union of Turkish Bars into the curriculum of university legal education necessary to obtain to qualify as a lawyer, unlike, for example, the role of the Joint Academic Stage Board of the Solicitors Regulation Authority and the Bar Standards Board in England and Wales in issuing a statement on what constitutes a "qualifying law degree" and guidance to providers of recognised legal education. Academic independence is considered sacrosanct although concerns have been voiced about political interference in the appointments of senior university officials. It seems that the cooperation between the Bar, judiciary and academics teachers, which could improve the quality of legal education, has not been sufficiently developed.

The law degree lasts for four years but often takes longer to achieve. Students are allowed to retake a year but the main rule is that they must graduate in a maximum of seven years. Grading is done by continuous assessment as well as end of year exams, although the latter are changing fast to semester exams following the Bologna process.

There is no final grade at the end of the degree but the student must have achieved enough credits. It is possible to calculate an overall grading but it would only be informative. If a student feels unjustly graded he or she may sue the university. The Court will request the marking scheme from the University and alternate professors will re-mark the exam script.

As previously mentioned, there is currently no Bar examination in Turkey, a matter reverted to later in the section on IMPROVING Training Standards for the Turkish Legal profession.[13]

13 See below page 42.

THE APPRENTICESHIP

THE STAGES OF TRAINING

Completing an apprenticeship period is one of the conditions set by Article 3 of the Advocacy Act to qualify as an a*vukat*. Article 15 of the Advocacy Act provides that the overall duration of this apprenticeship period is one year: the first six months are spent in courts under the authority of judges and prosecutors and the second are spent in a law office under the supervision of an *avukat* with at least five years of experience. It is further prescribed in Article 23 of the Advocacy Act that the apprenticeship period must be served without any interruption. However, some individuals with legal experience of a prescribed duration obtained in courts as judges or prosecutors, in academia or in government agencies can apply to be exempted from the apprenticeship period[14].

14 Article 4 Advocacy Act.

APPLICATION AND CHARACTER AND FITNESS CHECK

Candidates must first apply in writing to the Bar Association where they will serve their apprenticeship. Pursuant to Article 17 of the Advocacy Act, their application must include originals and certified copies of their qualifications, a personal statement that the candidate is free of any circumstances deemed incompatible with the practice of *avukat*[15], the written consent of an experienced *avukat* with whom apprenticeship will be served and a character reference drawn up by two *avukatlar* practising with the relevant bar association. Article 4 of the Advocacy Apprenticeship Regulations further requires evidence of identity, of residence in the district of the bar association in which registration is sought as well a criminal record check and medical evidence that they do not suffer from a physical or mental handicap hindering them from practising advocacy permanently "in an appropriate manner".

After receiving the letter of application, the President of the Bar Association will assign one of the *avukatlar* enrolled with the Bar Association with the task of investigating whether the apprentice candidate possesses the requisite qualifications for admission into the profession of *avukat* and whether he/she is engaged in any activities incompatible with advocacy. This *avukat* will prepare a report on the outcome of the investigation and submit it to the Bar within a period of fifteen days. The Bar Association may also require further medical evidence if it deemed it necessary.

Once the Bar Association is satisfied with the application, there will be an a so-called "announcement" phase[16], whereby the application will be made publicly known and everyone is given the opportunity to object to the to the candidate's application. Only then could the Bar Association enter the candidate in the apprenticeship list.

15 Article 3(f) and 5(a) Advocacy Act.

16 Article 7 of the Advocacy Apprenticeship Regulations.

THE FIRST STAGE OF TRAINING

After being admitted into the apprentice roster, the candidate has to apply to the Judicial Committee in order to begin his/her apprenticeship with courts. Sequence and periods of apprenticeship are then regulated by Article 12 of the Advocacy Apprenticeship Regulations:

"Apprenticeship with courts and judicial offices will be served in the following sequence and periods:
a) Public prosecutors' offices: One month.
b) High criminal court: One month.
c) Criminal court of first instance: Fifteen days.
d) Criminal court of peace: Fifteen days.
e) Civil court of peace: Fifteen days.
f) Civil court of first instance (including commercial, business, property records courts): One-and-a-half months.
g) Enforcement court and enforcement office: One month.
The judicial committee may change this sequence at its discretion and may allow an apprentice to serve with commercial, business or property records courts upon his/her request.

If there are administrative tribunals in the district of the bar association where apprenticeship is served, the apprenticeship will be served fifteen days each with public prosecutors' offices and administrative tribunals».

The core tasks which the apprentice is obliged to undertake are specified in article 13 of the Advocacy Apprenticeship Regulations: the apprentice must attend trials, on-site viewings, investigations and the debating and writing of the decision. He/her has to study the files and decisions given to him/her and will prepare reports.

Practical prescriptions on the supervision of the apprenticeship are also given in article 13. According to this, it is provided for the keeping of an apprenticeship book and an attendance sheet in the Justice Hall[17]; the apprenticeship sheet has to be signed by the apprentices every day. However, there are indicated specific events that can exempt the apprentices from signing the attendance sheet, such as conferences, panel discussions, and symposiums organised by the bar association; in

17 See a sample of such a document in Appendix 2.

such cases the apprentices have to provide documentation supporting their excuses.

It is then provided that upon the completion of each of the two periods of apprenticeship, a report has to be prepared, showing the apprentice's days of absence, if any; the assignments given to the apprentice, his/her general level of interest and performance and the apprentice's propensity to observe the principles and rules of profession. According to article 24 of the Advocacy Act, the first report has to be completed by the judges and prosecutors with whom the apprentice served the first period, whereas the host *avukat* will issue two reports, one at the end of the third month and a final one.[18]

A good point is that there is a compulsory scheme of lectures, conferences and seminars for trainee lawyers. However, this provision is not always effective. According to articles 22[19] and 23[20] of the Advocacy

18 Apprenticeship reports Article 24 – <Amended as per Article 2178/5 dated 30 January 1979>
Apprenticeship will be served under the supervision of the judicial committee, the bar association, and the host avukat.
The judges and public prosecutors with whom the apprentice serves will issue a report evaluating his/her performance as an apprentice, professional interest, and moral character.
The host avukat will issue a report at the end of the first three months and a final one at the completion of the apprenticeship period evaluating the performance of the apprentice, his/her professional interest, and moral character.

19 Apprentice training duty of the Bar association Article 22 –
Every Bar association conducts apprentice training activities within its own organization in order to produce independent and free avukatlar who are dedicated to the principles of the profession, capable of resolving real-life issues in the light of the principle of the state of law and the rules of the supremacy of law, and operating as one of the constituents of jurisdiction with the goal of achieving just and effective jurisprudence.
Bar associations may form apprentice training units for discharging the duty of training apprentices assigned to them as per the provisions in the Advocacy Act and the Regulations in the light of scientific principles and on a regular basis. The establishment, operation, powers and responsibilities, and other affairs of these units will be defined by house regulations to be adopted by the general assembly of each bar association as provided for in these Regulations.
For apprentices serving their apprenticeship with bar associations lacking the necessary and sufficient means to offer apprentice training on a systematic and scheduled basis, this training will be given at the apprentice training units to be established in Ankara by the Union of Turkish Bars. The establishment, operation, powers and responsibilities of these units will be defined by regulations to be prepared by the Council of the Union of Turkish Bars.
The training to be given to apprentices at apprentice training units will be counted towards the period of apprenticeship to be served with an *avukat* and may not be interpreted as being contradictory to the rule of non-interruption of apprenticeship.

20 Article 23 –
Ensuring the service of apprenticeship in a manner compliant with the "Purpose" Article of these Regulations, providing apprentices with a knowledge of Advocacy Act and professional rules, and developing their skills of applying professional knowledge to real-life situations make up the basic principle of *avukat* apprentice training.
In view of this principle, apprentice training of at least one-hundred-and-twenty hours in the course of a one-year *avukat* apprenticeship term will be given at the apprentice training units under an annual training

Apprenticeship Regulations issued by the Union of Turkish Bars, the local Bars are in charge of organising specific training activities and apprentice training of at least 120 hours in the course of a one-year attorney apprenticeship term will be given at the apprentice training units under an annual training program prepared and announced in advance. Moreover, at least sixty hours of this training period will be regularly allocated to the principles and rules of the profession and "the attorney in practice."

However, it seems that the system of supervision over this stage of apprenticeship and, particularly, over the attendance to courses and seminars organised by the Local Bars, is lacking effectiveness: there is not a real control on attendance by the Trainee *Avukatlar* to the events and this provision seems not to be completely applied in practice.

SECOND STAGE - APPRENTICESHIP WITHIN A LAW OFFICE

INTRODUCTION

Part four of the Advocacy Apprenticeship regulations of the Union of Turkish Bars deals with the second six-month period of training, which takes place within a law office.

Article 23 Advocacy Act "Serving the apprenticeship and the duties of the apprentice"

The apprentice is under the obligation to attend hearings together with the avukat, to conduct the avukat's business with courts and administrative offices, to manage lawsuit files and correspondence, to participate in training activities organized by the bar association, and to perform other tasks assigned by the Council of the bar association and to be designated in regulations . Apprentices have to abide by the rules of the profession and the principles set forth in regulations.

program prepared and announced in advance. At least sixty hours of this training period will be regularly allocated to the principles and rules of the profession and "the *avukat* in practice."
Additionally, bar associations will prescribe in the house regulations they will prepare the manner how apprentice training will be conducted and the topics to be covered, taking into consideration the particular characteristics of their local area. Seminar activities will also be conducted and cultural activities such as panel discussions and symposiums organized.

RULES CONCERNING THE SECOND STAGE OF TRAINING

After having completed the training with the Court, the trainee starts the second part of his training which takes place at a law office. Article 14 and 15 set the conditions required for an avukat to be able to become a trainer.

According to article 14:

> "The remaining six months of advocacy apprenticeship will be served with an avukat enrolled with the bar association, having a minimum seniority of five years in the profession (including the length of service spent as prescribed in Article 4 of the Advocacy Act) and having an independent office. Apprenticeship may be served within a lawyer partnership if an avukat having these qualifications is available in the partnership".

Thus, as stated in article 14, having a minimum of five years in the profession and having an independent law office are the two conditions required for the avukat who wants to be a trainer.[21]

It is the duty of each respective Bar association to decide whether the avukat with whom the training will be completed possesses the qualifications provided for in the above-mentioned regulations.[22]

Article 16 sets up the framework and the rules for the commencement of the training. The Council of the Bar association has to provide a "letter on the commencement of training with an attorney" which contains the necessary guidelines for the training. This letter shall contain

> "[...] information on the apprentice training program and request cooperation in ensuring the apprentice's participation

21 Article 15 sets further conditions for becoming an avukat-trainer:
Firstly,"the avukat with whom apprenticeship will be served must not be the subject of a decision to initiate final investigation for an offense constituting an impediment to Advocacy, or punished with a fine or dismissal from employment by a decision of the disciplinary board which has become final during the last five years".
Secondly, "the avukat with whom apprenticeship will be served will be identified by the president of the bar association in the event that the avukat with whom apprenticeship is currently being served is prohibited from practice as a precaution by a decision of the disciplinary board in accordance with Article 153 of the Advocacy Act".

22 Cf Article 21:
"The Council of the Bar association or, if authorized, the apprenticeship board will also inspect throughout the apprenticeship period whether apprenticeship is being served in accordance with the training goals prescribed in the "Purpose" Article of these Regulations and the rules of the profession".

> therein, stating also the precautions to be taken to ensure that the apprenticeship is served in compliance with the provisions in the Regulations, and the rules of training and evaluation that must be applied".

The obligations of the trainer are listed in article 17 of the Advocacy Apprenticeship regulations of the Union of Turkish Bars.

The avukat is obliged to

> "train the apprentice to become an independent and free avukat dedicated to the principle of the supremacy of law and the principles and rules of the profession, and capable of applying his/her legal knowledge to specific cases".

This is a very interesting provision, especially the part concerning "the independent and free avukat" stipulation. This obligation is important in a country where attorneys complain about the difficulties and the pressure they face in their everyday activities and where corruption can be present. The respect of this provision is also controlled by the Council of the Bar association that has the power able to inspect throughout the training period whether the training is completed in accordance with the rules of the profession.[23]

In order to respect this obligation, article 17 provides for a list of tasks imposed on trainee lawyers: The trainee has to accompany the avukat during prison consultations, has the possibility to follow up contacts with the Court and administrative offices and prepare lawsuit files and correspondence.

The trainer has finally a duty to supervise the participation, the regular attendance and satisfactory performance of the trainee in the training activities of the bar association.

Also, similarly to the first part of the apprenticeship training, the training has to be completed without interruption.[24]

23 Article 21 *Id.*

24 Article 18 provides: "The apprentice will attend and observe trials in the company of the avukat provided that this does not interfere with the apprentice training activities. The apprentice may appear as counsel in the trials in the courts stated in the Advocacy Act with the written consent of the avukat.
The apprentice will conduct business in courts and administrative offices prepare lawsuit files, carry out research as may be needed, manage correspondence, conduct enforcement proceedings, and participate actively in the stages of enforcement law. Apprentices will be under the obligation to comply with the principles and rules of the profession and the rules in the Regulations in serving their apprenticeship.

Article 19 sets the tasks that the trainees may perform. Thus, the trainee may, with the written consent and under the supervision and responsibility of his/her supervisor

> "attend hearings concerning the court actions and other business being conducted by their host avukat in civil courts of peace, criminal courts of peace, and enforcement courts as well as conduct business at enforcement offices".

Article 19 specifies that this power will terminate with the issuance of the training completion certificate or deletion from the apprentice roster.

It is then provided in article 20 that the supervisor has to issue 2 reports: the first one at the end of the three months and the second upon full completion of the training period (the last report will be the final one). According to article 20, the reports

> "will evaluate the attendance of the apprentice, interest in the profession, propensity to observing the principles and rules of the profession, the trials participated in, the work conducted with a certificate of authorisation, research and practical work done, and similar activities".

The Turkish training system is very similar to several European Member States systems. For instance, the French system also requires six month training in a law office.[25] In a similar way as in Turkey, the French supervisor is required to have a minimum of 4 years experience in order to be a trainer. The French trainee has very similar duties as the Turkish trainee: he has to attend meetings with clients, hearings in front of different courts, prepare lawsuit files, carry out research as may be

Apprenticeship is served without interruption. The days of absence with a valid excuse will be authorized to be served to completion by the decision of the chairperson of the judicial committee in the case of apprenticeship with courts, and the decision of the Council of the bar association in the case of apprenticeship with an avukat, provided that an application to that effect is made during the one month following the cessation of the excuse.
In the presence of a valid excuse, the president of the bar association may grant the apprentice a leave of absence not to exceed thirty days by receiving also the opinion of the avukat with whom the apprenticeship is being served and the apprenticeship board.
An apprentice in military service who is on leave of absence from his military unit may continue serving his apprenticeship in civilian attire from where he left off.

25 *Cf* la loi n°71-1130, 31 déc. 1971, art.12 et le décret n°91-1197 du 27 novembre 1991, article 57 and article 58 and le décret 2004-1386 2004-12-21 art. 49 I.

needed, manage correspondence, conduct enforcement proceedings.[26]

One difference is the lack of remuneration during training. The Turkish system not only does not provide for any remuneration during the training in a law firm but it prevents the trainees from engaging in any other job activity. According to article 5 d) of the Advocacy Act, it is an impediment to admission into the profession *"to be engaged in occupations not compatible with the profession of avukat"*. Since trainees are not usually paid during this training, they cannot have access to the Social Security System either.

OATH

Finally, the Licence to practice as an Avukat is issued by the Union of Turkish Bars, although the license will not be issued until the oath is taken.

CONTINUING PROFESSIONAL DEVELOPMENT/ CONTINUING LEGAL EDUCATION

As the Council of Bars and Law Societies in Europe indicated in 2006[27]

> *"Continuing training is of great importance to lawyers and their clients. For everyone seeking legal advice, it is important that that their lawyer is familiar with the latest developments in the fields in which they practise. The CCBE recognises this importance, and therefore considers that all lawyers in Europe should participate in Continuing (Professional) Training programmes, and that the Bars and Law Societies of the CCBE should all develop, in their own specific way, programmes and/ or regulations for Continuing Training"*.

Continuing training refers to training which is undergone after the completion of professional training for the purpose of maintaining, perfecting and assuring the quality of the service provided to end users, whether it is obligatory or not. Training for a recognised specialised status and its maintenance is also included here. In those countries in

26 See Appendix 5 for a note of the relevant parts of the French system

27 *CCBE Model Scheme for Continuing Professional Training* http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf

which additional training or exams are compulsory in order to have a right of audience before superior courts the training undertaken for that aim shall be considered continuing education.

There is no compulsory continuous or permanent training for lawyers in Turkey, as we were told in our scoping visits. Most lawyers we had the chance to interview told us about the need of a continuous training and how difficult it was to carry it out and to implement it.

Continuing Professional Development is a duty of the Union of Turkish Bars[28] and could be developed along the lines suggested by the CCBE in its Recommendation and Model Rules on continuing training.[29] This

28 ***Part Nine /Union of Turkish Bars/.Section One/General Provisions.***

Duties of the Union:
Article 110: *The duties of the Union of Turkish Bars are the following:*

1. *Ensuring the precipitation of a majority opinion by finding out the respective opinion of each bar association in matters concerning bar associations by means of mutual discussions.*
2. *Promoting the professional of Advocacy by coordinating the efforts of bar associations in order to reach a common goal.*
3. *Safeguarding the interests of large of the members of bar associations and the ethics, order, and traditions of the profession.*
4. *Strengthening professional ties by introducing Turkish bar associations and their members to each other.*
5. *Making efforts to have bar associations established in every province capital to instill in citizens a conviction as the necessity and benefits of having their lawsuits filed and cases defended thorough the agency of avukatlar.*
6. *Disseminating recommendations and publications to have the laws developed and enforced in keeping with the requirements of the country, and developing preliminary drafts if necessary.*
7. *Voicing its views with authorities in matters concerning bar associations.*
8. *Submitting reports covering its views and ideas on legal and professional topics queried by the Ministry of Justice, agencies with judicial or legislative power, and bar associations.*
9. *Taking all kind of measures to encourage and ensure the professional development of avukatlar.*
10. *Cooperating with the Ministry of Justice and judicial authorities in order to have court opinions systematically compiled and published.*
11. *Making efforts toward the realization of the rights conferred, and the thorough and honourable discharge of the duties imposed upon avukatlar by statutes.*
12. *Setting up libraries, publishing periodicals, organizing conferences, and offering incentives to the creation of original translated works to heighten the scientific and professionals levels of the members of bar associations.*
13. *Hold occasional meetings to discuss solutions and measures for rendering the profession more attractive and reaching the stated goals in this area.*
14. *Displaying an interest in, and making contact with boards and organizations related to jurisprudence in the country.*
15. *Keeping the contact with foreign bar associations, lawyers' unions, and legal institutions and participating in international conferences.*
16. *Defining and recommending the mandatory rules of the profession.*
17. *(Added as per article 4667/59 dated 2 May 2001) Defending and safeguarding the supremacy of the law and human rights, and promoting the functionality of these concepts.*
18. *Exercising other powers conferred by statutes."*

29 See appendix 10

is an ongoing process across Europe with many States (e.g. Denmark, France, Italy and Austria) recently adopting modes of continuing legal education obligations for lawyers.

CONCLUSIONS

The division of the apprenticeship into two separate periods, one of which is served with judges and prosecutors and the other with an avukat, is perceived as giving to the apprentice a good knowledge of the different perspectives of the persons involved in the trial and, ultimately, in the administration of justice. However, this is not without any criticism, especially for the first stage, served with judges and prosecutors. Indeed, often the apprentices feel that there is not a real interest for judges and prosecutors to follow step by step their learning: this is probably because of the huge charge of work that judges and prosecutors have to face and for this they materially do not have the opportunity to commit sufficient time to this task. It is worth to refer to the statistic - that the average judge has around 50-60 cases on his calendar of causes per day. The advocates point out that the single hearing lasts around 2-3 minutes and moreover the judges are very reluctant to encourage any oral performances. Therefore, the procedure is mainly of a written character and the oratorical skills of the trainees are not encouraged.

There is a general concern about the rapid increase in the number of lawyers in Turkey. This concern is strengthened by the fact that the Bar examination has been abolished in Turkey. Moreover, as has been discussed above, there is no selection at the beginning of the apprenticeship period and any candidate who fulfils the prescribed requirements can serve the apprenticeship. This results in considerable overcrowding, especially during the first six months when trainees are competing for space in courts and the attention of the public prosecutors and judges supervising their training. There is insufficient time to train all the candidates effectively. There is insufficient space in the court-rooms to accommodate them all. Some judges are known to leave the sign in sheet in the Registry allowing some trainees to sign off whole blocks of time in one go.

It seems that in principle a first period of training to be served with judges and prosecutors is highly desirable in order to give to future avukatlar a touch of the different perspectives involved in the administration of justice. However, this period could be better organised especially as regards the system of controls and supervision.

Moreover, it seems that also the compulsory scheme of lectures and seminars during the apprenticeship period should be more effective: there is a lack of control from the local Bars, which are in charge both for organising the events and to control the participation of the apprentices.

STAGE 2

Generally the second stage of training to be completed with an attorney provides for a system that is not very different from many European systems. The Apprenticeship Regulations contain numerous provisions concerning the obligations of the supervisor, the tasks that the trainees have to perform, as well as a body of rules concerning ethics to be respected during the training. From this point of view, the system is fairly sophisticated.

PAY

Another big issue is related to the Social Security system. According to the article 16 of the Advocacy Act, only those who do not have any engagement to keep them to serving an uninterrupted apprenticeship and are not impeded by any other circumstances can apply to serve their apprenticeship.[30] During the period of apprenticeship, apprentices are prevented from doing any other job activity,[31] and are not paid for serving

30 Qualifications required Article 16 – <Amended as per Article 4667/11 dated 2 May 2001>
Of those having the qualifications stated in Article 3, Subparagraphs a, b, and f, the ones who do not have other engagements to keep them from serving an uninterrupted apprenticeship and are not impeded by the circumstances mentioned in Article 5 will apply in writing to the Bar association where they will serve their apprenticeship.

31 According to article 5, letter d), of the avukat Law, it is an impediment to admission into the profession of avukat and to apply for apprenticeship to be "engaged in occupations not compatible with the profession of Advocacy".
Impediments to admission into Advocacy Article 5 –
The request for admission into Advocacy shall be denied in the presence of any one of the circumstances below:
a) <Amended as per Article 4667/5 dated 2 May 2001> Having been definitively sentenced to imprison-

the apprenticeship. Indeed, there is no obligation, in fact the contrary, for their supervisor to pay them. Apprentices, consequentially, cannot have access to the Social Security system, nor other means of support. The "pay" experience of Poland is outlined below for comparison.

The issue of access to the Social Security system for apprentices should be resolved: it should be permitted to them to apply for it even in a voluntary way and even in the absence of any contribution from the state or their supervisor. There seems no obvious reason for judicial and prosecutorial trainees to receive funding whilst trainee lawyers are unable to receive any support.

The lack of any remuneration and the absence of an access to a Social Security System is a serious issue. Despite the fact that some trainees receive remuneration from generous supervisors, many trainees appear to live in precarious situations. Moreover, we have been informed that some trainees are obliged to infringe the regulations and to have a job activity in parallel with their training in order to live decently. We have been told about instances where the trainee was disqualified from becoming a lawyer because he or she had worked a part time job outside the profession.

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ment in excess of two years with the exception of crimes of negligence or heavy imprisonment in excess of one year or having been convicted of one of the infamous crimes such as simple and aggravated embezzlement, malversation, bribery, theft, swindling, fraud, betrayal of confidence and fraudulent bankruptcy as well as smuggling, with the exception of smuggling for the purpose of use and consumption, and bid rigging.

b) <Amended as per Article 3256/2 dated 22 January 1986> Having forfeited one's eligibility for the posts of judge, public servant or avukat as a result of a disciplinary sentence that has become final.

c) Having an unsavory reputation for misconduct not becoming a member of the profession of Advocacy.

d) Being engaged in occupations not compatible with the profession of Advocacy.

e) Having been declared incompetent by a court.

f) Not having one's credit restored after bankruptcy (Those convicted of negligent and fraudulent bankruptcy shall not be admitted even if their credit has been restored).

g) Not having had a formerly issued certificate of insolvency rescinded.

h) Having a bodily or mental handicap hindering one from practicing Advocacy permanently in an appropriate manner.

<Amended as per Article 4667/5 dated 2 May 2001)> Those who have been convicted of one of the infamous crimes enumerated in Subparagraph a of the first paragraph shall not be admitted into Advocacy even if their sentences have been deferred, commuted to a fine, or pardoned.

<Amended as per Article 3256/2 dated 22 January 1986)> The decision regarding a candidate's request for admission into Advocacy may be suspended pending the completion of a prosecution in the event that one has been initiated against him/her for an offense punishable by one of the penalties stated in Subparagraph a of the first paragraph.

However, the request shall be decided upon without waiting for the conclusion of the prosecution in instances where the request should be denied regardless of the outcome.

stage of the apprenticeship and dire financial position of trainees does weed out some, but perhaps not the correct trainees, from the running. Thirdly a high standard in the training of lawyers benefits all the citizens of Turkey and would help to guarantee the effective legal protection of individuals and the proper functioning of justice.

We recommend that the Union of Turkish Bars reflects on the training outcomes that it feels would be most desirable for its future lawyers. A local articulation of training standards could help influence training receive in law schools and in the apprenticeship phases of training. Good relations need to be fostered with law schools and the Ministry of Justice to try and promote the interests of its future members. In particular the inadequate financial position of trainee lawyers needs to be addressed urgently.

Once a set of standards are in place the Bar can consider how to enforce them. If the university law graduates from some or all law faculties are inadequate measured against an expected standard, then some entry control to the vocational stage could be considered or an accreditation system devised to screen candidates prior to entry to the vocational stage. This should not be seen as an (anti-competitive) control of entry numbers but be based on objective articulated standards. The 2007 CCBE training outcomes could be helpful here. Additionally the work on national qualifications frameworks in Europe could be helpfully used.[33] As the CCBE Resolution of November 2000 indicates:

> *1. - The harmonisation of the training quality does not necessarily imply a harmonisation of its content. The priority aim is to be harmonised quality.*

Both accreditation regime and examination systems can promote equality of opportunity as well as the generalised beneficial effects that good training of lawyers brings to a society. Should Turkey enter the EU it will need an articulated set of standards in relation to the Lisbon

33 An overview of the entry regime for solicitors in England and Wales is found in Appendix 6. The English Quality Assurance Agency law degree standards can be found in Appendix 7 and the Legal Practice Course standards at Appendix 9. The Spanish system is described in Appendix 9.

Agenda[34] as well as in order the implement the legal requirements for mutual recognition of the qualifications of both lawyers and trainee lawyers. As the CCBE noted in its 2007 Training Outcomes Recommendation:

> .... the exercise of the profession of lawyer requires a very high standard of professional competence ... Such a high standard of professional competence of lawyers is a cornerstone for the furtherance of the rule of law and democratic society; and .... all CCBE Bars and Law Societies embrace and wish to promote through their training the core principles recognised in the *CCBE Charter of Core Principles of the European legal profession*; ... Bars and Law Societies recognise the need to promote, through training, the essential deontological rules and practices of the legal profession ...

With this in mind, the Union of Turkish Bars should also consider steps to implement continuing legal education obligations as part of its legal training reform plans. As many European Bars know, the improvement of legal education and training is a constant work.

SUMMARY OF RECOMMENDATIONS

- Consider establishing a Turkey-wide working group to consider how:
    - to engage representatives from the Ministry of Justice and University Law Faculties and well as members from Bar Training Committees on matters concerning the education and training of lawyers
    - to improve relations with University Law Faculties and to work with them and in a mutually beneficial fashion (better Law Faculty education improves the future lawyer)
    - to develop training standards, in particular;

34 See page 13 above.

        - to devise and improve the standards and develop the content of vocational training on matters such as professional ethics, legal drafting, advocacy and the like

- Consider lobbying to allow

    - trainee lawyers to receive some form of financial support during their training either from their own part-time work, or from social security; or from lawyers or from the same source as funds trainee prosecutors and trainee judges

- Consider undertaking the first steps in developing a regime for continuing training along the Austrian or Swedish models initially, using the CCBE model scheme as a guideline

APPENDIX 1: THE SCOPING VISITS

SCOPING VISIT REPORT - JULIAN LONBAY

PROMOTING CIVIL SOCIETY DIALOGUE BETWEEN BARS THROUGH LEGAL EDUCATION

Ankara, Turkey

15-17 November 2008

My scoping visit was well organised and I would like to thank Musa Toprak for accompanying me and translating discussions (as necessary) as well as for driving me around the sometimes fierce Ankara traffic and generally for being helpful and pleasant company.

We had no prior briefing on the system of legal education and qualification in Turkey. Please bear in mind that a short visit such as this cannot lead to cast iron correctness in its conclusions. The overall system that can be roughly gauged and the atmosphere can be absorbed as well as the feelings and views of the persons one met. No additional research has been undertaken. Nevertheless one can hope that some general trends and issues can be identified about legal education and training in Turkey

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E. j.l.lonbay@bham.ac.uk In the course of my visit I met with those

responsible for many stages of the legal education and training available in Ankara (see Annex 1). In initial meetings with members of the Ankara Bar, which included a trainee lawyer, I got a good overview of the system, which briefly comprises:

- Access to university via a centralised examination system run by YÖK
- University law degree (4 years minimum Bachelor degree, but normally takes longer to complete)
- A one year training regime with
    - An initial six month "stage" in the courts
        - Trainees sign a work sheet twice a day to show attendance
        - Includes one month in a prosecutor's office
        - Meetings at least three times a week in court
        - Judge must sign off that the trainee is suitable (or not)
    - A further six month "stage" in the offices of a lawyer
    - Final interview with three lawyers (rarely failed)
- Enrolment as a lawyer (no Bar exam)
    - Qualification and security checks are made by the Ministry of Justice
    - Trainees apply to their local Bar for registration as a lawyer
        - The Union of Turkish Bars (TBB) must approve
        - The Ministry of Justice (MoJ) can veto
            - The Directorate for Advocates of the MoJ fulfils this role. There are judges and civil servants in the directorate but no lawyers.

        - The TBB informs the local Bar of the decision on admission

    - Lawyers must practice in the territory of the local Bar where they are registered. Occasional practice elsewhere is allowed. One can switch Bars, though this is costly (approximately 500TL).

    - Once enrolled lawyers can return to the profession at any time with no controls even if they have not practiced law for a long time

- No mandatory continuing legal education

Issues arising

During the meetings it became clear that there was considerable dissatisfaction with this training regime, for several reasons, outlined below.

Entry to university

- Entry to university is controlled by the YÖK which organises national exams for all school leavers.

- Law Faculties can control the level of exam (and school) success that leads to admission but cannot control the numbers of students' admitted.

    - Some Law Faculties have had numbers of students to be admitted doubled or massively increased (Gazi: from 150 students to 300 last year, Ankara: from 400 to 600 students) at very short notice.

- No additional State funding is attached to extra students. The private law schools can (at least partially) recoup costs from students (who pay fees of approximately 14,000TL/annum (at Başkent University) more in İstanbul). This is not an option open to public Law Faculties where the fees are set at approximately 400TL/annum. This situation gives clear cause for concern.

The University law degree

- The proliferation of Law Faculties and the low number of law professors have caused concern about the quality of training young law students receive.
- The relatively recent (last 15 years) proliferation of law Faculties (from four originally and now numbering forty-three) has led to a shortage of law professors.
    - Many prominent professors are attracted by the higher wages and generally smaller class sizes offered by the private universities.
    - There is a reliance on (under-paid) research associates for a great deal of teaching.
    - Universities control recruitment of professors
- The law Faculty curriculum is largely controlled by the Faculties themselves with university approval procedures.
- It seems that the Bar Associations have no input on the curricula but must accept law graduates regardless. It seems that there is little formal contact between law Faculties and the Bar Associations.
    - This could be improved, starting with voluntary co-operation in areas of mutual interest:
        - Some practical or expert legal training at the university by lawyers for example,
        - Some input by university staff into continuing legal training at the Bar too, e.g. from Ankara Law Faculty's Banking and Insurance Institute
        - Perhaps lawyer helping lobby for increased funding to law Faculties to permit better staffing
        - Perhaps law Faculties enticing members of the legal profession to help with initiatives such as the Ankara Training School for Paralegals

- Law degrees are awarded by the university under powers granted by the law
- On substance of the law degree there should be scope for European university co-operation as there is a considerable influence of German and Swiss law in the area of constitutional law, French law in the field of administrative law and Turkish criminal law was much influenced by Italian law.
- At Gazi university Law Faculty the curricula covered
    - Turkish legal traditions
    - Civil law
        - Persons
        - Family
        - Success
        - Obligations
    - Private law
        - Commercial law in the following fields
            - Company law
            - Insurance law
            - Marine law
            - Banking law
        - Procedural law
        - Private international law
        - Debt collection
    - Public law
        - Constitutional law

        - Criminal law
        - Criminal procedural law
        - Administrative law
        - Public international law
        - Philosophy of law
        - General public law
            - History of Turkish law
            - Roman law

- It seems that university exams are controlled by the relevant Faculties and professors. There is no system of external monitoring or examinerships.
    - It is apparently not at all uncommon for students, upset at their exam results, to sue the university over their marks received. The Administrative court will ask the University for the Marking Scheme and will appoint an expert (another professor) to re-mark the script. The university decision can then be reversed, but often the student must re-sit the course and take the exam again.

- There seems to be little awareness amongst most of those I met of the Sorbonne-Bologna process with its structural impacts and transparency measures nor the Lisbon Agenda and the European Qualification Framework, though Ankara has implemented ECTS. Generally, little discussion seems to have taken place about learning outcomes and how Turkish legal education might fit into the Qualification Frameworks being discussed and adopted.

- Cypriot (Turkish Republic of Northern Cyprus) Law Faculties, with many Turkish students attending, provide a large number of law graduates. The Cypriot law degree complies with YÖK requirements (?) and therefore the law graduates have access to the next stage of legal training in Turkey. Some expressed

doubt about the quality of the legal education provided in these law schools.

Post university training

Training in the Courts

There are several areas of concern:

- Firstly, trainee lawyers are not allowed to be employed. There are also barred from receiving any social security or social assistance payments. They receive no remuneration (unlike trainee judges and trainee prosecutors). This poses considerable practical difficulties for trainees. It clearly favours the well-off.
    - Since 2001 the TBB has a system of cheap loans of approximately 170 euro (250TL)/month as a partial (but insufficient) remedy
- Secondly the training itself is not strong.
    - There is a great deal of overcrowding in the Courts and there is insufficient room for all the trainees. This is largely a question of very large numbers overwhelming the system. The court rooms themselves simply could not hold the numbers of trainees as it is estimated that 30% of trainees in Turkey come to Ankara.
    - Many judges do their best to overcome this but are limited by physical and time constraints
    - Moreover many trainees have no final intention of becoming a lawyer; just 30% of trainees actually enrol as lawyers. It is used as a security blanket in case an alternative career does not come off. As a registered trainee the time spent counts towards seniority in public sector law jobs.
    - Prosecutors have no space to deal with lawyer trainees; they already have 600-800 judicial and prosecutorial trainees to deal with

- There was a feeling that judicial and prosecutorial trainees (who are paid during training) also received more attention and help.
- It seems that the signing in regime is open to abuse
    - It seems that trainees can sometimes sign off a whole month in one go never to re-appear (or be missed); this is mainly because some judges leave the signing in sheet at the court registry
    - The keen trainees do have the opportunity of observing matters in court and can often help out in the Registry thus gaining an insight into court-house files and dealings

Training in the law firms

- There seems to be little regulation in this area beyond the requirement of the six month "stage". [35]
    - There seems to be no selection of trainers, though they must have 5 years standing
    - There seem to be no detailed requirements as to what should be covered in the training
        - Trainers must Report on the trainees after three months when they should have been exposed to the main principles arising from court cases and been able to follow case files and can include debt collection work
        - The second three months should include preparing a case, writing a petition to the court of appeal and debt collection.
        - There seems to be little training prescribed

35 **Article 15** – <Amended as per Article 2178/4 dated 30 January 1979>
The duration of avukat apprenticeship is one year. The first six months are served in courts and the remaining six months with an avukat with a minimum of five years in the profession (this five-year period is calculated by including the time spent in the services mentioned in Article 4 of this Law.)
The courts and judicial offices where apprenticeship will be served and the manner how will be specified in the relevant regulations.
Law number 1136 – Passed 19 March 1969; Published 7 April 1969 in Official Gazette issue 13168 Volume 5, number 8, page 1694

regarding transactional work, office accounts, and no formal courses on matters such as interviewing skills, how to plead etc.

- Many trainees are sent to collect debts and other time-consuming but not particularly formative tasks (though some such training would seem desirable)
- With a good lawyer "patron" trainees are exposed to clients, cases, case files and analytical duties (such as writing client newsletters), but this is left to chance as there are many many trainees
- Trainees at this stage still cannot be employed or receive financial assistance from social welfare regimes

Post admission training

Only the İstanbul and Ankara Bar Associations have training centres. Training is provided on a voluntary basis. Lawyers at the start of their career are vulnerable and struggle to make ends meet. This could pose risks for the solid application of ethical constraints. Lawyers have the right (and duty) to refuse cases if they feel that they are not competent to deal with them (Article 38).[36]

36 Avukat Law; **Article 37** – Avukatlar may refuse without stating a reason a commission offered to them. The refusal must be communicated to the client without delay.
A person whose offer of commission has been refused by two avukatlar may request the president of the bar association to assign an avukat for him/her.
<Amended as per Article 4667/25 dated 2 May 2001> The avukat thus assigned is under the obligation to render services at the fee decided by the president of the bar association.
Statutory refusal of commission
Article 38 – Avukatlar are under the obligation to refuse a commission if,
a) They find the commission irregular or unjust when it is offered, or later arrive at this conclusion;
b) They have given their services or opinion as an avukat to a party with conflicting interests in the commission offered;
c) ***<Amended as per Article 4667/26 dated 2 May 2001>*** They have previously been involved in the commission offered as judge, arbitrator, public prosecutor, expert witness, or clerk;
d) They find themselves in the position of claiming the invalidity of a bond or a contract drawn up earlier by themselves;
e) ***<abolished as per Constitutional Court decision 43/84 dated 2 June 1977>***
f) The commission they have been offered contradicts the policy of professional solidarity and order laid down by the Union of Turkish Bars.
The circumstances for statutory refusal apply to the avukatlar' partners and other avukatlar in their employ.
<Third paragraph abolished as per Constitutional Court decision 19/9 dated 21 January 1971>
<Last paragraph abolished as per Constitutional Court decision 43/84 dated 2 June 1977>
Law number 1136 – Passed 19 March 1969; Published 7 April 1969 in Official Gazette issue 13168; Volume 5, number 8, page 1694

Annex 1 People interviewed:

Meeting with lawyers (Members of Ankara Bar Association)

Av. Cemal Dursun

Av. Habibe İyimaya Kayaaslan

Av. İnanç Oğuz

Av. Levent Aydaş

Av. Müge Bulut

Av. Saadet Özfırat Van Delft

Av. Umut Kurman

Av. Özlem Karadayı

Stj. Av. Ece Yılmaz (Trainee)

Saadet Özfirat

Lunch/Dinner with members of TBB Executive Board and TBB Committee of the Environment

Başkent University Faculty of Law

Ms. Elif Küzeci, research associate

Gazi University Faculty of Law

Prof. Dr. İhsan Erdoğan, Dean

Ankara University Faculty of Law

Prof. Dr. Mustafa Akkaya, Dean

Dr. Hakan Furtun Assistant Manager of Ank. Uni. Training School of Paralegals

Oğuzhan Güzel Elected Student Representative

Ankara Bar Association

Salih AKGÜL, Deputy President of Ankara Bar Association

Yılmaz UĞURLU, President of Judicial Council of Ankara

Levent TACER, Vice Chief Prosecutor of Ankara (in charge of Court House's administration including trainee lawyers' issues for the first sixth month period)

Salih Akgül, Deputy President of Ankara Bar Association,

Hava Orhon, Secretary General of Ankara Bar Association,

Sitare SAĞSEN, Head of Committee of Traineeship.

Interviews with a Judge and a Chief Officer of a Court

Leyla Elen KÖKSAL, President Judge of 3rd Commercial Court of First Instance of Ankara

Tülin Temel ÇELİK, Chief Officer of 4th Civil Court of First Instance

Lunch with

Salih Akgül, Deputy President of Ankara Bar Association,

Hava Orhon, Secretary General of Ankara Bar Association,

Sitare SAĞSEN, Head of Committee of Traineeship.

Ankara Bar's Training Centre for Trainee Lawyers

Interviews with trainees and trainers

Visiting lawyers at their offices

Attorney at Law Senay ERTEM and Attorney at Law Celal ERTEM

Attorney at Law Sabiha YALÇINTEKİN

Ankara Bar's Training Centre for Lawyers

Interviews with lawyers and trainers incl.

Rahime Hande KARAMANLIOĞLU

SCOPING VISIT REPORT - MARTA ISERN

PROMOTING CIVIL SOCIETY DIALOGUE BETWEEN BARS THROUGH LEGAL ASOCIATION

Scoping visits report, November the 15th, 16th and 17th, 2008 at Şanlıurfa 's Bar Association

Marta Isern. CGAE. Interpreter: Mr. Serkan Çatalpınar

Meeting Schedule:

In all the visits Mr. Yahya Demirkol, President of Şanlıurfa Bar Association was present, except for the meeting with the ethical committee board members because he declined his assistance.

November the 16Th

- Members of the Board of Sanlıurfa Bar Association
- Members of the Disciplinary board committee of Sanlıurfa Bar Association
- Two ex President of Şanlıurfa Bar Association (as Mr. Yahya Demirkol) has just been elected one month ago as the new Dean for the next two years.

November the 17th

- Meeting with women barristers (20) of Şanlıurfa Bar Association and the president of their committee.
- Meeting with 5 of the Presidents out of 10 of Şanlıurfa Bar Districts.
- Meeting with 20, out of 45, trainees at Şanlıurfa Bar.

November the 18th

- Meeting with prosecutors and President of the High Criminal Court of Şanlıurfa district
- Meeting with young barristers of Şanlıurfa Bar Association
- Meeting with clients
- Meeting with the Chief House Police Department

Şanlıurfa Bar Association framework: President and 10 board members elected for two years with no limit of times.

There are 350 barristers associated and 50 out of them are women

10 Districts depending on Sanlıurfa's Bar

The scoping visits took place at the Bar House, except for the meetings of November the 18th that took place at the Court House of Şanlıurfa .

Interviews related to the above, I must thank, first of all, the level of excitement and involvement in the project of all participants, starting with the President of the Association and its board members, as well as by the group of trainees, Districts Delegates, the Commission of women lawyers, the disciplinary committee, and so on.

I'd like to thank also and specially, to Mr. Serkan Çatalpınar, Ankara's barrister, enthusiastic involvement in the scoping visit. Without his previous legal Turkish system knowledge, that was so helpful to my global comprehension, and his permanent and translating job, none of this would had been possible.

After this premise thanks, and after the interviews that could maintain, I got precious information about the phases of legal Training in Turkey that were given to me by all of the involved people I met.

As previous item, there's no University at Şanlıurfa , but as far as there're concerned, there are 47 Law Faculties and there has been a

high increase of them in the last five years. Specially disappointed feel about de Cyprus Law Faculties, private one, increasing further more the total number of it, and where the access level to them is very low, so it is lawyers graduated at them.

As I was told, Legal training at University takes four years. After that period, and in application of Attorney ship Law number 1136, trainees have to serve 1 year of traineeship: six months attending to Court with judges and prosecutors and another six months attending to a Law firm.

Mostly lamented about the low practical level of Legal Training at University as well as lacking in relevance and effectiveness of the training period in the Court that define it well for several reasons:
1 .- Attendance of judges, prosecutors and trainee lawyers at the same time and matter.
2.- No mentor or trainer is assigned to them
3. The lawyers at this stage only serve to hearings, without further practices.

The success of the second period of apprenticeship with a lawyer, depends on the quality and time that he devote to the trainee. It is rated as more effective but lacks a minimum of control, and final evaluation is just formal.

In this period, trainees get deontological or ethical lessons or seminars at Bar Association within a regularity of period three days per week (two hours aprox.) during three months

Control on this Vocational period Training has to be done by local Bar itself, although as it's been told, this control is discretional and with no other supervision or mandate to be followed.

Moreover, they lament that there is no Bar exam. In the Attorney ship Law was regulated its existence, but in 2000 was repealed, even before its entry into force.
They consider essential the implementation of this exam to regulate access to the profession, both in the number of aspirants, as in the degree of competition and level of the same.
The profession itself believes that barristers are least prepared, in comparison with other professions related to law and justice (judges, prosecutors, etc.).

November 17

Customers have an excellent perception of the lawyer profession. Trust them, even more than what they do in the judges themselves. Not perceived as an expensive legal services and know their rights as users, including the right to attend them by law to make complaints to the Bar Association of conduct for lawyers in the exercise of the profession unethical. To highlight the commendable work being done by the President of the Bar itself institutes in informing students and their families on the exercise of the profession, its mission and the obligation to exercise it subject to ethical standards laid down by law.
The meetings with Judges and Prosecutors were focused on the vocational training period at Court.

They recognised the system needs to improve, specially, because judges and prosecutors haven't the time necessary to attend and train them properly. Also because, while barrister's vocational training period at Court is taking part, so it's the trainees judges and prosecutors training period.

Also agreed, as all interviewed did, about the need top introduce CPD system as compulsory and also a Bar exam, too keep lawyers competent.

Marta Isern

Scoping visit at Şanlıurfa Bar Association.

CGAE

SCOPING VISIT REPORT - ROBERTO SORCINELLI

PROMOTING CIVIL SOCIETY DIALOGUE BETWEEN BARS THROUGH LEGAL EDUCATION

Scoping Visits Report – Roberto Sorcinelli

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Groups of People contacted:

1. Adana Bar Association – President and Administrative Board
2. Adana Bar Association – Disciplinary Board
3. Adana Bar Association – Trainee lawyers
4. Adana Bar Association – Senior and Junior Lawyers
5. Judge of the Criminal Court of First Instance
6. Prosecutor
7. Chief of the Court House Police Department
8. Dean of Faculty of Law – Çağ University

****

The Scoping Visits have been focused on Legal Education in its different aspects, starting from the University stage to the phase of the Legal (initial) Training, arriving to the Continuing Professional Development for Lawyers. Some other aspects have been discussed, such as the perception of the profession of lawyer from the people contacted or the role of the women in the legal profession.

Before discussing with the people interviewed, a brief explanation of the project has been made to everyone. Particular attention has been paid to highlight the role of the European Union, the CCBE, the Union of Turkish Bars and the National Bars in the project. This has been deemed to be necessary in order to give the right consideration to every participating entity.

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15th November 2008

Meetings with:

President of Adana Bar Association: *Av. Aziz ERBEK*
Administrative Board of Adana Bar Association*: Av. Veli KÜÇÜK, Av. Abbas BİLGİLİ, Av. Duran ZARARSIZ, Av. Fevzi ÇAKIT, Av. Hüseyin SAYGILI, Av. M. Hakan ÖNENLİ, Av. Cem KÖSEMEN, Av. Osman OLCAY.*
Disciplinary Board of Adana Bar Association

The first Scoping Visits have been made with the President of the Adana Bar Association and the whole A[illegible]istrative and Disciplinary Boards, within the premises of the [illegible]ociation in the Courthouse of Adana.

Here I have collected precious information regarding all the phases of the legal training, starting from the University stage, passing through the Legal Training to Contin ing Professional Development. Other issues have also been discussed, particularly in respect to disciplinary, deontology and ethics.

As regards to the Academic phase of the Legal Training, lawyers from the Adana Bar Association lamented a too theoretical approach, both at the under-graduated and post-graduated level. Particularly, this has been highlighted with regards to the LLM courses, which should have a much more practical approach and be organised with the cooperation of professionals and the local Bars.

Relating to the phase of Vocational Training, I have been reported the modalities and the control operated by the Bar itself. In application of the Attorneyship Law No 1136, Trainees have to serve one year of Legal Training, the first half with Judges and Prosecutors, the second half with a lawyer. During this phase Trainees have to attend to a total of 120 hours of lectures, events and seminars. Control on this has to be done by the Local Bars, but it seems to be a high discretional supervision by the Bars or their Training Committees.

They lamented the absence of a Bar examination, which in their opinion has to be introduced in order to grant more selection for the access to profession. The number of Lawyers in Turkey is felt as excessive and overtaking any effective needs, in relation to the developing of Economy.

Moreover, the topic of CPD has been discussed. Also to this regards, the President and the representative from the Administrative and Disciplinary Boards highlighted the absence of a compulsory scheme of CPD for all lawyers, which in their opinion is desirable to be introduced.

Finally, as regards disciplinary issues, they've also been addressed. It has been discussed about the existence of any ethic or deontological rule addressing the problem of competence. As this rule exists, this is however not interpreted by Disciplinary Boards of Local Bars – who are in charge for their application and issuing of sanctions – as a specific obligation to undergo to specific programs of legal education.

16th November 2008

Meetings with:
Lawyers of Adana Bar
Trainee Lawyers of Adana Bar

There have been two separate meetings with Lawyers and Trainee Lawyers of Adana Bar.

The meeting with the Trainee Lawyers has been focused mainly with the phase of Vocational (Legal) Training and the stage of University Training, whereas the other meeting has been centralised on themes related to the Continuing Professional Development.

As Trainee Lawyers pointed out, the stage of Academic Training – even considering postgraduate courses in Law (LLMs) – is missing an important aspect of practical development of legal issues. They also highlighted a substantive lack of Professors, as many of them are teaching in more than one University.

As regards the phase of Legal Training, the two phases of this have been distinguished: the first to serve with judges and prosecutors, and the second to serve with a lawyer.

The first stage is mainly lacking of effectiveness, according to people interviewed. This is because most judges or prosecutors lack the time necessary to dedicate to teach to and guide trainees. The good result of this first approach to apprenticeship is strictly dependent on the person

who is in charge for the mastering, on his or her disposition. There are also lacks on controls of effective serving of apprenticeship, while the final evaluation is frequently just formal.

There has been highlighted an important problem that Trainee Lawyers feel urgent to solve: the absence of any Social Security System available to them. Precisely they are impeded to access to this System because they cannot as Trainee lawyers and even they cannot do any other job during the apprenticeship period.

The meeting with Lawyers of Adana Bar has been focused on the theme of Continuing Professional Development: they declared to be positive on the introduction of such a scheme as compulsory.

They also pointed out the necessity of a high selective system to access to the profession, such as the introduction of a Bar Exam.

17th November 2008

Meetings with:
Judge – Court of Adana *– Mr Vahit Baltaci*
Prosecutor – Court of Adana *– M. Hakan Uyar*
Chief of Court House Police Department *– Court of Adana*
Former President of Adana Bar Association
Lawyers – Adana Bar Association
Çağ University – Adana – Dean of Faculty of Law *– Prof. Dr. Yücel ERTEKİN*

The meetings with the Judge and the Prosecutor have been focused on the stage of Legal Training, for which they are also in charge according to the system existing in Turkey. They agreed that this stage of the training is very important in order to give to future lawyers a different perspective of their incoming tasks. However, they also recognised that that system is still to be improved, as there are many judges and prosecutors that lack the necessary time to dedicate to mastering the trainees.

All the people interviewed recognised the need to introduce a scheme of compulsory Continuing Professional Development as a mean of granting a high quality level of the profession of Lawyer.

Especially the Chief of the Police Department pointed out on the necessity of introducing also of Human Rights courses in the scheme of CPD, as they are a crucial point for Turkey in general and they feel that the availability of Lawyers specialised in such matters is important to this regard.

Finally, the meeting with the Dean of the Çağ University in Adana has been centered on the stage of the Academic Education.

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SCOPING VISIT REPORT - AGATA ADAMCZYK

Agata Adamczyk – Scoping Visit: Elaziğ, Ankara

I headed for Elaziğ and Ankara within the framework of the Project „ Promoting civil dialogue in bars through legal education" – aiming at getting acquainted with the actual, everyday difficulties of the Turkish advocates and with the organization of the education system of young entrants of the law art.

I encountered exceptionally warm welcome from the part of the local advocacy self-government and I had the opportunity to experience touching Turkish hospitality. Every single hour of my visit was accurately planned with an immense care, the aim of which was that the meetings would enable me to [illegible] acquainted with the reality of the lawyers' exist[illegible]

Du[illegible] visit the local
cc[illegible]rt judge
[illegible]urs

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prestige of the profession since the quality of the providing ser[illegible]
complain of the excessive amount of undue qualified lawyers th[illegible]
beneficial character. Both the practicing advocates as well as the trainees
their opinion harmoniously consent that the modification was of the
the advocate's exam was taken, however the advocates asked about
Several years ago the decision as to the resignation of caring out
[illegible] and they do not have the social insurance.
[illegible] that period of time they are depended on
[illegible] that the financial
[illegible] establishes a high
[illegible] any

and students as well the tradition of teaching in small groups. Moreover, the cooperation between the advocacy self-government, representatives of the judicial system and academic teachers, which could contribute to the improvement the quality of education, has not been sufficiently developed. It was also frequently mentioned that the promotion of teaching of foreign languages is not of the sufficient level. Each year mass of young lawyers leave the walls of the university, however their preparation to the practical performance of the profession raises serious doubts. There in no general, nationwide program of the traineeship for students and the whole weight of filling of this gap rests with the promoters of the apprentices' training. During the studies solely written exams are being carried out, which deprives students of the opportunity to acquire at least basic oratorical skills. Besides it is worth to refer to the statistic which for me personally was absolutely crushing– I learned that the average judge has around 50-60 on his calendar of causes per day (sic!).The colleagues advocates pointed out that the single hearing lasts around 2-3 minutes and the judges are very reluctant to any oral performances. Therefore, the procedure is of the written character and the oratorical skills of the attorney fell into oblivion.

The advocates apprentices' training in Turkey lasts one year, during the first six months of which the trainee practices in the court and another six in the advocate's office. Within the abovementioned period of time the apprentice shall acquire all skills required in his further individual performance of the profession. There is no final exam at the end of the apprentices' training, still the apprentice after completion of the training and providing the necessary documents is entered into the register of advocates. The advocate apprentice is free of charge, however the trainee during his or her practice must not rec[illegible] remuneration. Therefore, the apprentices pointed [illegible] aspect of the preparation to the advo[illegible] inconvenience to them. Wi[illegible] their famili[illegible]

decreases. The Turkish advocates regretfully stated that this profession does not enjoy the public respect in contrast to the judge's and of the prosecutor's occupation.

The performance of the profession of the judge requires the distinct training and taking a tough professional exam. The percentage of the persons passing the exam amounts to around 40 % and therefore numerous positions remain vacant due to the deficiency of candidates representing appropriate knowledge and preparation to the profession.

Not only splendor is inherent to the occupation of the judge and prosecutor but also the luxury financial conditions. Besides high remuneration, the judges enjoy privileges such as discounts for goods and services provided in selected centers, lower prices for the cultural events, access to the social life inaccessible for other citizens.

The profession of the advocate in Turkey is currently neither tied to the substantial splendor nor to the extraordinary income. I learned that it is actually impossible for the advocate running individual practice, who complies with all the public duties and charges, to acquire an income comparable to the income of a judge.

The abovementioned reasons result in the fact, as my colleagues advocates explained me, that the „good blood" flows to the judge profession and unfortunately the young advocates recruit currently among the weaker adepts of law. Simultaneously the advocates themselves regretfully admitted that there were individuals among the advocates who in a result of their unethical behavior and the involvement in the vague businesses casted a shadow on the opinion of this occupation.

This contributes as well to the sorrowful reflection about the unfavourable changes of the structure of advocacy.

Among the advocates I met, there were women as well. Although Elaziğ is situated in the eastern part of Turkey, more traditional and religious than the western regions - the women advocates I got to know were treated by men in the same way as women in Europe or USA are treated: with a full respect and equity. When I inquired about the discrimination of the women-lawyers, I encountered solely negative replies. The women even stated that when it comes to some types of cases, particularly family or criminal ones, the clients prefer to employ a female advocate.

The local Bar encounters as well some financial problems, difficulties with offices and organizational problems resulting from the imperfection of the state's subvention system. The advocates obliged to provide legal services *ex officio,* are entitled to lower remuneration (several times lower than the market fees) and moreover they do not receive fair reimbursement of the travel expenses, which, taking into consideration the broad area the advocates are obliged to act, leads to their loss.

The observations I made during my visit lead me to the conclusion that Turkey encounters similar problems like other European countries. Therefore European Union may learn a lot from the Turkish experiences and Turkey on the other side may derive from the knowledge of the lawyers of the community states. Our common efforts may result in the fact that the profession of the advocate will represent appropriate substantial and ethical level and the performance of it will be an honor. Therefore every signal as to the decrease of the level of both the university and apprentices education shall be taken into consideration in each member state, so the irregularities are eliminated on their early stages.

Persons met:

Advocates :

Rüstem Kadri Septioğlu

Sema Incidelen

Necip Cem Iscimen

Ali Basbuğ

Judges:

Judge of the Labour Court

Judge of the Higher Criminal Court

Chief of the Police

Advocate Trainees

Public Prosecutors

SCOPING VISIT REPORT FRANZ MARKUS NESTL

My visit in Turkey was bringing me to the beautiful Black Sea, the city of SAMSUN with approximately 500.000 inhabitants. SAMSUN could be divided in the old and the new city where in the latter everyday a new building activity starts.

I came as a partner of the CCBE to see and learn about legal education, rules, standards and the acceptance of the legal system. After having spoken to many people - who were outstanding friendly - I left with the impression that the Turkish legal system is working accordingly.

a) My understanding of the University issue was:

- The University basically controls the CV, the quality seems to be high and everybody has to pay for themselves. A few scholarships are around but not too many people of SAMSUN got the chance to obtain one.

-

b) Women percentage among attorneys

- Women have picked up at the percentage rate and it seems they are getting more and more every year. SAMSUN does not have a law faculty and therefore it was a little harder to find out about the current female percentage. I was only finding out that there are already 183 women among a total number of 603 attorneys in SAMSUN which equals a third. In the BAR of SAMSUN two women are representing leading positions as well.

c) I want to summarise the post University, Bar exam, Bar disciplinary procedure, judges, police and state attorney in one structured paragraph because I spent 12 hours in one day with all these professions together and my notes are structured according to the comments which were first coming from the participants rather than going through the questionnaire as it is structured.

conflict might arise but not worth to be mentioned. In these cases usually the state attorney (met with the general state attorney professionally and we spoke over dinner) tries to calm the situation. If a search warrant is issued against an attorney a representative of the Bar has to be present. Police has no right to investigate in cases against attorneys. These investigations are privileged to the state attorneys only. The state attorney only orders search warrants in writing to the police and the police have the duty to inform the state attorney about everything that goes on.

- The state attorney can only receive a political order if the prosecution is directed against a crime and against an official (state) employer. The agreement has to be found with the Governor and in cities with more than 300.000 people the super major has to get the approval of the Inner Ministry. If the state attorney wants to oppose this decision the Court of Cassation is deciding. Exception exists if the accused official person was freshly caught in the act – no approval is required. The general state attorney knew in his time about one single case which led to an arrest.
- 30 % percent of the attorneys are female and increasing (currently 183 out of 603). The female attorneys I spoke to have no problems at all. Neither with colleagues, judges, state employees or the regular people.
- Attorneys don't have compulsory liability insurance. Currently this issue is being drafted and by the end of 2008 beginning of 2009 such law will be enforced. It si unclear how the factors of the liability insurance will look like.
- I was meeting in the chambers of the SAMSUN Bar next to police, state attorney with the President of the first chamber of the SAMSUN court house. According to his statement the attorney-standard seems very good and professional. My personal impression was that the relationship between the attorneys and the judges as well as the state prosecutors was excellent.
- There is no such thing as a full independence of judges, even though there is basically no interference through the Justice Ministry. The judges make their independence themselves

such as the judges that are feeling self confident; but the only psychological influence is that judges are reappointed at a different town nearly every two to four years. After time judges receive in the society a standing where they oppose a re-appointment and very often successfully. There was a law out in the sixties where it gave a right the judges to oppose such transferral but was cancelled again in the seventies.

- Since the fifties there is an independence act of the judges in Turkey. The only influence is taken by the justice ministry in the appointment committee of judges and state attorneys. The committee is set up of seven people while the Justice ministry is represented by the Justice Minister (chairperson) and his vice minister, three people of the court of cassation and two of the administrative court.
- Speaking with the trainees there was a general satisfaction with the traineeship. However, there is no bar exam since 2001, nobody controls them or their specialisation which will usually be achieved after traineeship. The only criticism was that education is too short (especially in court - six month). The education is usually paid by the families. Sometimes the educating attorneys pay for but that is rather the exception. Proposal was to set up an internship system for trainees in the EU and I was promising that I was advocating this point in the CCBE meeting and the Austrian Bar. The trainees would expect experience, accommodation and a little salary. Their only fear of such experience would be the lack of language skills.
- In Turkey every educator has to have five years of experience.
- There is a trainee-commission existing but in fact does not play any major role. They offer a program everybody has to join and if they don't the education takes up to three month longer. In the end of the traineeship the attorney writes a report. The trainees have to attend seminars three times a week each for two hours. The educators are professors, experienced lawyers or lawyers with a special knowledge. Those educators are not traineeship educators.

- Speaking to five trainees two of them were women. The trainees also mentioned that the education system is unequal with the educating becoming judges. The judges in training make € 1000,-- a month whilst the attorneys in training basically – if not lucky – make nothing. Further there is no insurance of the state for the trainees (health insurance and retirement acknowledgement). The proposal for the Justice Minister would be that more money for the education – e.g. like judges - should be provided. Subsidies of any kind should not be refundable as well. One trainee was working with 12 lawyers, received a loan of the Turkish Bar Association which was basically spent for expanses of travelling, but no other payments are covered.
- One leading attorney in private wanted to state clearly that he or the legal system should not be narrowed down to Muslims, minorities if there is such a big effort done in the last years to "please" the EU and other international organisations. He also stated – which I personally have to agree with – Turkey would be an equal partner and not somebody who would have to "beg" to join.

Promoting Civil Society Dialogue Between Bars Through Legal Education

SCOPING VISIT REPORT - MICKAËL LAURANS

Denizli, Turkey

14-17 November 2008

This report summarises findings on the Turkish legal education and training system resulting from a scoping visit to Denizli by Mickaël Laurans of the Law Society of England and Wales and Avukat Serkan Cengiz of the İzmir Bar Association and representing the Union of Turkish Bars. I would like to thank the Union of Turkish Bars and the Denizili Bar Association for the organisation of the scoping visit, the Denizli Bar and in particular President Adil Demir, General Secretary Hakan İlhan and Council Members Canan Ulutürk and Ali Doğan for their warmest welcome. I would also like to thank Avukat Serkan Cengiz for his readiness to answer all my questions, his patience, his interpreting skills as well as his companionship over the four days of the scoping visit. Needless to add, any factual errors in the description and interpretation of the Turkish legal education and training system are all mine.

Mickaël Laurans

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INTRODUCTION

To help me understand the legal education and training system in Turkey, the Denizli Bar Association kindly organised a busy schedule of meetings with various stakeholders (lawyers, trainees, judges, prosecutors, police officials) and visits to various locations of interest. **Annexes A and B** lists our schedule and the people we talked to over these four days.

Instead of reporting on each meeting and visit, I have summarised my understanding of the Turkish system below and have elaborated on some comments made to us during the scoping visit.

In most of the meetings we went to, curiosity and interest were reciprocal and I was invited to describe at length the English legal education and training system as well as broader points on the English judicial system. This resulted in a request for a more formal presentation which I gave at the Denizli Court House on 17 November and is included in **Annex C**.

Finally, it is inevitable in this type of exercise that comparisons will be drawn with the legal and education system in one's own country, whether this is done explicitly or implicitly. This can on no account be a way to criticise or disparage one system over another but is actually a useful means to shed new light on what the perceived problems and issues are in a given system.

THE TURKISH LEGAL EDUCATION AND TRAINING SYSTEM

I. Academic Education

Access to university is organised via a centralised examination system run by an organisation called YÖK. At the end of secondary school education, Turkish school leavers take a multiple choice examination on three or four chosen subjects. The marks they obtain as well as the relevance of the subjects for the university education they would like to pursue will condition their access to the university and degree subject of their choice. Not unlike many other countries, law is considered a noble subject and a desirable occupation and competition for entry into the best law faculties of the country is harsh.

The university law degree usually takes four years to complete. There is no input from the Union of Turkish Bars into the curriculum of university legal education necessary to obtain to qualify as a lawyer, unlike the role of the Joint Academic Stage Board of the Solicitors Regulation Authority and the Bar Council, for example in issuing a statement on what constitutes a "qualifying law degree" and guidance to providers of recognised legal education. Academic independence is considered sacrosanct although concerns have been voiced about political interference in the appointments of senior university officials.

Pamukkale University, the local university in Denizli, does not currently have a Law Faculty. Its Rector Prof. Dr. Fazıl Necdet Ardıç is however considering applying to open a Law department for the next academic year. This reflects the growing educational needs of a country with an overwhelmingly young population but this does not go without challenges, notably in terms of the provision of qualified teaching staff and the standards of academic education. Concerns over standards are widespread and the increasing number of graduates coming from private universities in Turkey or universities from the territory known in Turkey as the Turkish Republic of Northern Cyprus.

Teaching remains theoretical, leaving little room at this stage for the acquisition of vocational skills (advocacy skills, drafting documents, dealing with clients, etc) as provided, for example, through the Legal Practice Course and Bar Vocational Course in England and Wales.

During meetings and in the debate following the presentation I gave, some comments were made as to whether one should increase the law degree to five years. The rationale behind this was to aim at restricting the number of law graduates able to qualify as lawyers, something of a recurrent theme in many conversations. However, little consideration was given to:

- what should be the educational content of this additional year (theoretical or more vocational?);
- the impact of the so-called "Sorbonne-Bologna process" – inviting, for example, national university systems to realign along a 3 (bachelor's degree) – 5 (master's degree) – 8 (PhD) model of university education;
- the currently existing possibility for students to pursue a more specialised university education by completing a master's degree or a PhD in law;
- the impact on social diversity in access to the profession if financial support for another year must be secured.
- the fact that the focus of educational reform should be on raising standards rather than limiting number of entrants into the profession (the two are arguably linked but not in a systematic way).

II. Post University Training

Following the completion of the university degree, applicants register with the courts and the local bar association to start a one-year training period, comprising six-month in courts and six-month in a law office.

The trainee lawyers are not paid during this one-year traineeship, although they can apply to the Union of Turkish Bars for a small loan. They do not get access to the social security system either. These two elements combined have an impact on access to the profession but diversity and social mobility do not (yet) seem to be concerns to the Turkish profession. Rather, the main concern seems to be the ever increasing number of entrants into the profession and what to do to put a check to this.

A. First phase: 6-month training in courts

The initial six-month training period is organised by the Court Service. Trainee lawyers are expected to rotate between the various courts and the prosecution office for two- to four-week stints. Attendance is checked upon but, beyond that, there is little evidence of a quality assurance system to ensure that a training process actually occurs and there are no examinations at the end of this first six-month period.

Observation and shadowing can be powerful learning and development techniques but Turkish trainee lawyers can be faced with at least two difficulties:

- The reliance of Turkish law on written procedures rather than oral advocacy, meaning that knowledge and understanding derived from court hearings can be fragmented unless there is access to written submissions. This can be mitigated when the trainees are offered the possibility to help out at the court registry but this is not done in a structured way.

- "Who lawyers are?" Deontology and professional rules
- "What lawyers do?" Legal competence and professional skills
- "How lawyers should work?" Business management and client care.

Annex A: Schedule of Scoping Visit

Denizli

14 – 17 November 2008

Friday 14 November

- Meeting with Trainee Lawyers

Saturday 15 November

- Meeting with Training supervisors
- Meeting with Denizli Bar Association:

President Adil Demir, General Secretary Hakan İlhan, Council Member Canan Ulutürk, Council Member Ali Doğan

- Dinner with Denizli Bar General Secretary and Council Members

Sunday 16 November

- Lunch with Denizli Bar Association, Court Judges, Prosecutors and Police Superintendent.
- Visit of a local police station
- Visit of "Police House"

Monday 17 November

- Presentation at the Denizli Court House on "Education and Training issues in England and Wales".
- Meeting with Police Superintendent.
- Meeting with Pamukkale University Rector Prof.Dr.Fazıl Necdet Ardıç

Annex B: List of People Interviewed

Meeting with trainee lawyers

Özlem Akyol

Seçil Akman

Ayşegül Göcen

Raziye Taşkırmaz

Hüseyin Kara

Mehmet Demirsoy

Serhat Pişkin

Ferhat Pişkin

Aliye Sevcan Tekin

Ferhat Kocakaya

Kerem Onur

Mehmet Kocatürkmen

Dilek Sallamacı

Ahmet Tarakcı

Yıldıray Demirci

Mustafa Üstek

Seray Mengüaslan

Kürşat Karaman

Fulya Sarmaşık

Gizem Taşkın

Savaş Yılmaz

Erhan Balaman

Sultan Banaz

Visit of a local police station

Visit of "Police House"

Meeting with Training supervisors

President Adil Demir

General Secretary Hakan İlhan

Council Member Canan Ulutürk

Council Member Ali Doğan

as well as 20 trainers.

Meeting with Denizli Bar Association

President Adil Demir

General Secretary Hakan İlhan

Council Member Canan Ulutürk

Council Member Ali Doğan

Dinner with Denizli Bar General Secretary and Council Members

General Secretary Hakan İlhan

Council Member Canan Ulutürk

Lunch with Denizli Bar Association, Court Judges, Prosecutors and Police Superintendent.

President of the 3rd Assisses Court (3. AĞIR CEZA MAH.BAŞK.) Judge Tamer Bingöl

Denizli Police Superintendent (Denizli Emniyet Müdürü) Muzaffer Erkan

Meeting with Police Superintendent.

Denizli Police Superintendent (Denizli Emniyet Müdürü) Muzaffer Erkan

Visit of Pamukkale Üniversitesi

Rektör Prof. Dr. Fazıl Necdet Ardıç

Annex C:

Presentation on "Education and Training Issues in England and Wales"

Denizli Court House

Monday 17 November 2008

SCOPING VISIT REPORT - MARC JOBERT & FLORENCE LEC

CONSEIL NATIONAL DES BARREAUX

Scoping Visits Report- 15th, 16th and 17th November 2008- İstanbul

The visit of the French experts in Turkey took place in İstanbul and it lasted three days. The French experts sent to İstanbul were Mrs Florence Legrand, member of the Conseil National des Barreaux, Marc Jobert, deputy-president of the European and International Commission of the Conseil and CCBE expert and Florence Lec.

We encountered several logistical diffculties. In addition, the programme which had been given to us by TBB was not followed. It seems that our main host Mr. Ertugrul Yezilatay, member of the board of the İstanbul Bar, was only informed of visit at the last minute.

Nevertheless, the İstanbul Bar went to a great deal of effort to welcome us and find activities for us. We would like to thank all those who took time off from busy professional schedules and their families to be with us during the 3 days.

Mr. Ertugrul Yezilatay was our guide during our stay. We were also accompanied by Mehtap Arslan from TBB as well as an interpreter. The interpreter was superbly qualified having studied law both in France and in Turkey.

Saturday 15th November

Mr. Ertugrul Yezilatay, picked us from the hotel and led us to our first meeting which took place in the İstanbul Law School.

- Meeting at the Bar School

We attended an English law course with nearly 40 student lawyers (40 students is a maximum for such a class). The course was divided into two parts, first of all the teacher gave English vocabulary on specific topics (like IPIT). Then, the students worked on tort cases; the breach of privacy rights being one of them.

We able to address the class and briefly describe the French system and to answer several questions.

We had the opportunity to discuss with the teacher during a break. He told us that during the week he was practicing as a lawyer, and that during the weekend he was teaching for free at the Bar School. Each teacher appointed by the Bar has no educational guidelines and is left alone to manage his seminars. Moreover, the materials are produced by the teacher. Despite these difficulties, the professor did not seem to mind this system. We suggested that could be more control over the quality of the courses as well a more organised form of professor evaluation while recognising that this is difficult when one relies only on unpaid volunteers.

- Meeting with the deputy-president of the İstanbul Bar

At lunch time, we met the deputy-president of the İstanbul Bar, who expressed his surprise about the fact that the scoping visit took place during the weekend. The lunch gave us the opportunity to present to our hosts (the deputy-president and Ertugrul Yezilatay) the EU project that they seemed to have little information about.

After the traditional Turkish coffee, the deputy-president of the Bar invited us to the Bar House. We visited the building and were showed the very modern ele network existing in the İstanbul Bar. Due to a secure access on the İstanbul Bar website each İstanbul lawyer is able to have access to the court's decisions of the cases in which he has been involved.

A formal meeting followed this brief visit of the Bar House premises. The deputy-president gave us English and Turkish books containing the fundamental principles which apply to a Lawyer and selected

courses decisions. We collected precious information regarding all the phases of the legal training, starting from the University stage, passing through the Initial training and ending with some consideration about the Continuing training. All this information was of course connected to the rules applying in İstanbul.

We were informed that there are 78 local Bar associations in Turkey, representing around 58 000 lawyers. Thus, with 24 000 lawyers, the İstanbul Bar is the most important Bar in Turkey and represents almost 40% of the overall Turkish lawyers. Out of these 24 000 lawyers, 11 000 are less than 30 years old and the women represent 57% of them. The İstanbul fees amount to 200€ per year, but we have been told that 35% of the lawyers do not pay these fees and that there are no penalties for this.

We understood that, in order to be a lawyer in Turkey, it is required first to be graduated from Turkish law faculties. There are several law faculties in İstanbul, among them the most famous, Galatasaray

The Initial training

After graduating from university, there is a period of one year compulsory traineeship. This year is divided into two periods of six months, each one of them involving training with different actors: the first half with Judges and Prosecutors, the second half with a lawyer who has been in the profession for at least five years. If the trainee has difficulties to find an internship, the Bar association will help him.

In addition, Bar associations provide vocational training during this first year. Trainees have to attend a total of 120 hours of lectures and seminars split on a period of 45 days. The İstanbul association provides also dance courses, as well as oral ability techniques seminar.

The İstanbul Bar is aware of some issues that the trainees have to face during this year. First of all, the trainees regularly lamented the absence of health insurance. Secondly we have been also informed that there was no compulsory duty to pay the intern during his/her internship in a law firm. These elements show that the student lawyers have a very fragile status and difficult life conditions in a city where cost of living is high.

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APPENDIX 2 APPRENTICESHIP ATTENDANCE SHEET

Apprenticeship File N°: ..... **APPRENTICESHIP ATTENDANCE SHEET**
Apprenticeship Commencement Date: .....

DATE	MORNING	EVENING	DATE	MORNING	EVENING
06/10/2008	Signature	Signature	29/10/2008	Holiday	Holiday
07/10/2008	Signature	Signature	30/10/2008	Signature	Signature
08/10/2008	Signature	Signature	31/10/2008	Signature	Signature
09/10/2008	Signature	Signature	01/11/2008	HOLIDAY	HOLIDAY
10/10/2008	Signature	Signature	02/11/2008	HOLIDAY	HOLIDAY
11/10/2008	HOLIDAY	HOLIDAY	03/11/2008	Signature	Signature
12/10/2008	HOLIDAY	HOLIDAY	04/11/2008	Signature	Signature
13/10/2008	Signature	Signature	05/11/2008	Signature	Signature
14/10/2008	Signature	Signature	06/11/2008		
15/10/2008	Signature	Signature	.../.../2008		
16/10/2008	Signature	Signature	.../.../2008		
17/10/2008	Signature	Signature	.../.../2008		
18/10/2008	HOLIDAY	HOLIDAY	.../.../2008		
19/10/2008	HOLIDAY	HOLIDAY	.../.../2008		
20/10/2008	Signature	Signature	.../.../2008		
21/10/2008	Signature	Signature	.../.../2008		
22/10/2008	Signature	Signature	.../.../2008		
23/10/2008	Signature	Signature	.../.../2008		
24/10/2008	Signature	Signature	.../.../2008		
25/10/2008	Holiday	Holiday	.../.../2008		
26/10/2008	Holiday	Holiday	.../.../2008		
27/10/2008	Signature	Signature	.../.../2008		
28/10/2008	Signature	Holiday	.../.../2008		

DOCUMENT TO BE ISSUED PURSUANT TO THE ATTORNEYSHIP LAW ARTICLE NO 24 AND THE ATTORNEYSHIP REGULATION ARTICLE NO 20

NAME AND SURNAME OF THE ATTORNEY APPRENTICE	Apprentice to Law, C
PLACE OF APPRENTICESHIP	The 10th ENFORCEMENT COURT
APPRENTICESHIP STATUS	Good
PROFESSIONAL INTEREST AND MORAL CHARACTER	He/she is hardworking, respectful and successful.

Judge or Head of Division: Gülüzar Eren

Seal and Signature : signature and seal

APPENDIX 3 PART FIVE OF ATTORNESHIP LAW NO 1136: ATTORNEYSHIP EXAMINATION:

Examination

Article 28.- *The attorneyship examination is commissioned to the student selection and Placement Centre (ÖSYM) by the Union of Bar Associations of Turkey. Those who have not received an apprenticeship completion certificate will not be allowed to take the examination.*

Eligibility for the examination

Article 29.- *Those who are eligible for the examination will be issued an examination application from by the board of directors of the bar association in whose apprentice roster they are registered. A list of apprentices thus issued application form will be submitted to the Union of Bar Associations of Turkey.*

An apprentice who has failed six times in the attorneyship examination will not be allowed to take the examination again.

Circumstances where a valid excuse is recognised by the Union of Bar Association of Turkey, notwithstanding, apprentices will have four years to use all of their chances to take the examination as of the date the apprenticeship completion certificate was issued.

The Nature and topics of the examination

Article 30.- *:The purpose of the attorney ship examination is to evaluate the apprentices knowledge of professional rules and their proficiency in applying legal principles and jurisprudence to cases.*

The examination is given twice a year: The examination dates are determined by dividing the year into two equal parts to the extent possible.

The determination and announcement of examination dates, the examination topics, passing grade, expenditures, etc. will be indicated in regulations to be promulgated by the Union of Bar Associations of Turkey.

Examination Results

Article 31.- *Examination results will be communicated to the Union Of Bar Associations of Turkey, the respective bar associations of the apprentices , and the apprentices themselves by the student Selection and Placement Centre (ÓSYM)*

APPENDIX 4 REGARDING TURKISH ATTORNEY DISCIPLINARY REGULATIONS

I INTRODUCTION & BACKGROUND

- The Turkish disciplinary council exists of five attorneys and a remedy against a decision is being handled by the Turkish Bar Association (only attorneys).

- The most common "conviction" is the attorney client relationship. Currently 57 cases are pending in SAMSUN. If there is a the same time an investigation of the state attorney or the court running, the disciplinary procedure requires to interrupt their trial to await the outcome of the state institutions (Art 141 of the Turkish Bar Regulations). The investigation and the outcome are binding.

- To start an investigation against an attorney the Justice Ministry of Turkey has to al-low such before starting any actions.

- The state attorney is not allowed to call an attorney as witness or as an accused with-out prior allowance of the Turkish Justice Ministry.

- In a civil or criminal (administrative) case the attorney does not have to testify. If the clients allows it or wants the attorney to testify he can but the attorney still can always in any case keep everything under the confidential attorney client relationship.

- Next to disciplinary, criminal charges attorneys can also be trialled for compensation which happened already a couple of times but numbers of the amount were not available.

- At this point I have to mention that the disciplinary statues as well as the criminal procedure laws are taken over by the German corresponding laws[37]. When we discussed cases over a friendly dinner there did indeed not seem to be any difference in the way how cases are approached at all.

- Disciplinary code follows the breach of honour and respect of attorneys as well as the duties to fulfil their profession.

37 http://www.rechtsanwaelte.at/www/getFile.php?id=81 – all relevant laws of Austria for comparison reasons, such as an overview of the German law societies and their legal links http://www.brak.de/seiten/09.php and http://www.brak.de/seiten/06.php.

II CORRESPONDING RULES

A ATTORNEYSHIP LAW REGULATIONS[38] OF THE UNION OF BAR ASSOCIATIONS OF TURKEY

Article 20 - Attorneys are under the obligation to be dressed in the official attire designated by the Union of Bar Associations of Turkey when they appear in court, when they are on duty on the **disciplinary** boards of bar associations and the Union of Bar Associations of Turkey, and when attending a ceremony for an attorneyship oath...

Review Article 22 – The board of directors of the bar association applied to will do the following upon receipt of the **application for transfer**:

a) Inform the bar association that the attorney is currently enrolled with of the application for transfer; and inquire whether the attorney owes any membership dues and old age insurance premium to his/her current bar association, whether he/she is under **disciplinary prosecution**, and any other matters deemed relevant. ...

Decision Article 23 – If the board of directors of the **receiving bar association** determines that the attorney owes membership dues to his/her current bar association, and old age insurance premium to the Social Security Association, or is under **disciplinary prosecution** at the time of application, it will decide to take no action until such impediments are removed; and will inform the attorney that his/her debts must be cleared and/or **disciplinary prosecution** concluded before a decision can be made as to his/her request for transfer. If the attorney is not in debt of the aforementioned type to the bar association he(she is currently enrolled with, or if the clearance of the debt upon notification has been evidenced by a document drawn up by the bar association to which the attorney was in debt; if the attorney is not under disciplinary prosecution, or if the conclusion of the **disciplinary prosecution** has been evidenced by a letter drawn up by the prosecuting bar association, the board of directors of the bar association to which transfer is requested will review the request for transfer and make a decision to accept or reject the application.

38 The present Regulations have been published in the Official Gazette issue 24790 dated 19 June 2002.

Regular meetings Article 32 – The regular meetings of bar associations will be held in the first week of the month of October every other year. The agenda of these meetings will be prepared by the board of directors of the bar association.

The following items must appear in the agenda as a requirement:

a) Opening of the meeting and election of the chairing panel of the general assembly.

b) Reading, discussion and decision on the report of the board of directors on activities conducted during the past term and the report of the board auditors.

c) Reading, discussion and adoption of next year's budget.

d) Election of the president of the bar association, and the regular and alternate members of the board of directors, the **disciplinary board**, and the board auditors whose terms of office have expired; and of the delegates to the Union of Bar Associations of Turkey. The general assembly may not decide the addition of a new item on the agenda upon request. This provision will not apply to a decision to hold a new meeting.

Books to be kept Article 51 – The presidential council and the board of directors of the bar association will take the necessary measures to manage the affairs of the bar association in the most effective manner, and will identify the books and files to be kept. It is mandatory that books be kept in the following areas:

a) Minutes and decisions of the general assembly.

b) Decisions of the board of directors.

c) Incoming and outgoing documents.

d) **Disciplinary decisions merits.** ....

Article 62 – Should the board of directors and the **disciplinary board** of the Union of Bar Associations of Turkey find deficiencies in a file they review in connection with an objection, they may return the file for completion to the board that made the decision objected to. In such a case, no review will be conducted until the deficiencies are remedied

and the decision making period of the Union of Bar Associations of Turkey will not start

PART ELEVEN **Disciplinary Actions**

General rule Article 63 – In **disciplinary prosecutions**, the allegations must be communicated to the person concerned clearly and in writing, the person's defense requested, and a minimum of ten days granted for the defense. **Disciplinary actions** consist of two parts, investigation and disciplinary prosecution. In order that a decision can be made to initiate or not to initiate **disciplinary prosecution**, an investigation must be conducted first. Conduct in contradiction of the Attorneyship Law and the Professional Rules will require **disciplinary prosecution**.

Investigation Article 64 – Investigation on an attorney will be conducted,

a) Upon a report or a complaint by whom it may concern,

b) Upon the request of the public prosecutor,

c) When deemed necessary by the board of directors of the bar association.

Report or complaint Article 65 – A report or a complaint may be verbal or in writing.

a) A verbal report or complaint will be considered as having been made when an individual contacts the bar association, identifies the attorney he/she will report or complain against, and disclose his/her allegations.

b) A verbal report or complaint will be made by delivering a letter to the bar association. In either case, the identity and address of the complainant, the identity of the attorney reported or complained against, the grievance at hand, the material circumstances, and the date of the report must be indicated. In the case of verbal reports or complaints, these points will be recorded in a memorandum to be signed by the president of the bar association or a member of the presidential council, the individual submitting the report or complaint, and the clerk. The president of the bar association may ask the complainant to advance a sum for expenditures considering the nature and scope of the complaint.

Action may be withheld until the requested advance payment and the amount requested to be completed have been paid by the party concerned.

Initial review Article 66 – Pressing cases notwithstanding, the board of directors of the bar association will review the report or the complaint in its first meeting to be held after the report or complaint has been submitted. Complaints not including the identity, address, and signature of the individual submitting the report or the complaint will not be processed. However, the board of directors may conduct an investigation of its own motion on the grievance reported or complained against in cases it deems necessary.

Investigation process Article 67 – The grievance reported or the matter that is the subject of a complaint or a request will be reviewed by one of the members of the board of directors to be designated by the board for this purpose. This member will collect the evidence; and may hear the party submitting the report or the complaint, and may take the sworn depositions of persons he/she considers relevant. The lawsuit and enforcement files serving as a basis, or those that are considered relevant, will be submitted to the board of directors together with an investigation report after they have been reviewed by the designated member, and the attorney reported or complained against has been heard or the period granted for a hearing has expired. Should the board of directors consider the investigation report incomplete, it may task the originally designated member or another member with completing the report. The board of directors is under the obligation to make a decision on disciplinary prosecution with precedence and, at any rate, within a maximum of one year from the date of the report, complaint, or request.

Decision not to initiate disciplinary prosecution Article 68 – The board of directors will decide not to initiate disciplinary prosecution if it determines as a result of its review of the file and the report that the grounds do not exist for a disciplinary prosecution to be initiated on the attorney against whom a report or a complaint has been received. This decision will indicate the name and address of the complainant, the identity of the attorney complained against, the allegation, the review conducted, and the evidence, together with a reason. The decision will be reported to the public prosecutor by an official letter to which the relevant file will be appended. It will also be communicated to the attorney investigated on and, if available, the complainant.

will be applied by analogy to overseers of legal affairs, as well, the provisions of Provisional Article 17 of the Attorneyship Law being reserved. Overseers of legal affairs may not be transferred to another place in the district of the bar association they are listed with or of another bar association unless the number of attorneys and attorneys without a law degree in their location reaches three in accordance with the fourth paragraph of Article 17 of the Attorneyship Law. The certificate of authorisation to be issued to overseers of legal affairs will be prepared according to a standard certificate to be designed by the Union of Bar Associations of Turkey.

ATTORNEY PARTNERSHIP REGULATIONS[39] OF THE UNION OF BAR ASSOCIATIONS OF TURKEY

Liquidation Article 29 – An attorney partnership that dissolves by statute will get into liquidation. An attorney partnership that gets into liquidation will retain its legal personality until the completion of the liquidation on a basis restricted to business relevant to the liquidation. It may not continue its professional activities. The partners to an attorney partnership that gets into liquidation may render professional services independently. The provisions of Article 42 of the Attorneyship Law will apply by analogy to an attorney partnership that gets into liquidation, if necessary. The status of an attorney partnership that gets into liquidation will be recorded in the attorney partnership register of the bar association. The liquidation actions will be conducted by the managing partner or the managing partners unless a specific procedure has been prescribed in the basic contract of the partnership for the appointment of a liquidator. The liquidators or the managing partners appointed in accordance with the basic contract may be dismissed by the board of partners at any time. The board of directors of the bar association may also appoint replacements for liquidators upon the request of a shareholder supported by rightful grounds. Upon assuming his/her duty, the liquidator will promptly determine the condition and status of the partnership and report his/her findings to the board of directors of the bar association. The board of directors of the bar association will assess a fee to be paid to the liquidator by taking into consideration the status report submitted by the liquidator. The manner of payment of this fee will be decided by the board of directors of the bar association. The partners in liquidation will be under the obligation to deposit the fee fixed by the board of directors of the bar association in the account to be designated by the bar association in proportion to their shares in the partnership. Non-payment of the fee will constitute a disciplinary offense. The board of partners may unanimously decide the division of the movable and immovable assets owned by the partnership among the partners on the condition of the liquidation of the debts of the partnership. The liquidator will pay all the expenses incurred in connection with the suits and cases filed by or against the partnership in liquidation out of the assets of the partnership. At the end of the liquidation process, the assets of the partnership remaining

39 The present Regulations prepared by the Union of Turkish Bars have been published in the Official Gazette issue 24594 dated 25 November 2001.

after the payment of the debts will be divided among the shareholders in proportion to their shares. The attorney partnership will be deleted from the attorney partnership register of the bar association upon a notification by the liquidator as to the completion of the liquidation process.

Disciplinary Provisions And Final Provisions

Criminal liability Article 40 – The partnership may not be the subject of a **disciplinary prosecution** independent of the disciplinary prosecution of the partners. Every partner and the attorneys employed by the partnership will be under the obligation to act in compliance with the Attorneyship Law and the professional rules. Those acting in contradiction of the Law and the professional rules will also be personally liable for their acts. In the event that the act or acts of the partner(s) and the attorney(s) employed by the partnership which constitute a **disciplinary offense** have been committed by a decision of the board of partners or under the instructions of the managing partner, or that the partnership fails to take the necessary action against those of its partners or employed attorneys who have gotten into the habit of committing acts or actions in contradiction of the Law and the rules, **disciplinary punishments** will be imposed as prescribed in the Law depending on the gravity of the acts.

Legal liability Article 41 – Attorney partnerships will have unlimited joint and several liability for the acts, actions, and debts of the partners and the employed staff in connection with their professional duties, together with the said partners and staff. The right of the partnership to revert to the person concerned will be reserved.

DISCIPLINARY BOARD OF THE UNION OF BAR ASSOCIATIONS OF TURKEY

Composition Article 129 – The disciplinary board of the Union is composed of **seven members elected by the general assembly of the Union of Bar Associations of Turkey** from among its members by closed vote. Seven alternate members will also be selected. The **disciplinary board** will elect a chairperson from among its members in its first meeting after the election.

Term of duty Article 130 – Members of the disciplinary board of the Union will be elected for **four years**. A member may be reelected after completing his/her term.

The provisions of the second, third, fourth, fifth, and sixth paragraphs of Article 90 and the provision of Article 92 will apply by analogy to the members of the disciplinary board of the Union.

Meetings Article 131 –The **disciplinary board** of the Union will hold its regular **meetings once a month**. In **emergencies**, the board may always be called to an **extraordinary meeting** upon the request of the president of the Union, or the chairperson of the disciplinary board of the Union, or a member of the disciplinary board. The provisions of the second and third paragraphs of Article 120 will apply by analogy to the disciplinary board of the Union, as well. The disciplinary board of the Union will convene with absolute majority of the full number of members and pass decisions with at least four members uniting on a vote. In the case of a tie, the side taken by the chairperson will carry the vote.

Duties Article 132 – The disciplinary board of the Union will perform the duties assigned and exercise the powers conferred by the present Law.

BAR ASSOCIATION ARBITRATION BOARD REGULATIONS[40] OF THE UNION OF BAR ASSOCIATIONS OF TURKEY

General Provisions

Composition, Duties, And Powers

Composition of the arbitration board Article 3 – The arbitration board will be composed of the **senior civil judge of first instance** in the jurisdictional area where the bar association is located and **two attorney members** to be elected by the board of directors of the bar association. The civil judge of first instance will be the chairperson of the arbitration board. The attorney members of the arbitration board must possess the qualifications and must not be impeded by the conditions precluding eligibility for membership on the board of directors as stated in the first and second paragraphs of Article 90 of the Attorneyship Law, number 1136, dated 19 March 1969. Those serving as president or as members on the boards of directors, the disciplinary boards, and the boards of audit of the Union of Bar Associations of Turkey or bar associations may not be members on the arbitration board. However, if no members are available for appointment to the arbitration board, appointments may be made to the arbitration board from among those serving in the entities of the bar association. When a member of the arbitration board is elected to any of the positions mentioned above, he/she must choose between the two positions. If the member does not exercise his/her right to choose within ten days after his/her election, his/her membership on the arbitration board will be terminated automatically. In the event of an attorney membership post on the arbitration board being vacated for any reason, the board of directors of the bar association will elect a new member within ten days to replace the former member. An adequate number of alternate members, not to be fewer than two depending on the workload of the arbitration board, will be elected by the board of directors of the bar association together with the regular members, to step in as replacements in the event of a member's temporary incapacitation from actively or legally discharging his/her duties or inability to discharge his/her duties properly and in a timely manner for such reasons as rejection, withdrawal, or medical condition. The

40 The present Regulations prepared by the Union of Turkish Bars have been published in the Official Gazette issue 24583 dated 14 November 2001.

conditions for eligibility and the terms of duty of the regular members will also be applicable to the alternate members. The term of duty for an elected member will be three years. Regular and alternate members whose term has expired may be reelected. In the event of a vacancy in any of the posts of the regular or alternate members, the replacing member will serve out the term of the former.

ATTORNEY APPRENTICESHIP REGULATIONS[41] OF THE UNION OF BAR ASSOCIATIONS OF TURKEY

Impediments Article 15 – The attorney with whom apprenticeship will be served must not be the subject of a decision to initiate final investigation for an offense constituting an impediment to attorneyship, or punished with a fine or dismissal from employment by a decision of the disciplinary board which has become final during the last five years.

The attorney with whom apprenticeship will be served will be identified by the president of the bar association in the event that the attorney with whom apprenticeship is currently being served is prohibited from practice as a precaution by a decision of the disciplinary board in accordance with Article 153 of the Attorneyship Law.

GENERAL REASON[42]

Article 40 – The circumstances when **disciplinary penalties will be imposed** in accordance with Article 134 of the Attorneyship Law have been modified with the addition of "contradicting the professional rules of attorneyship."

Article 42 – Article 138 of the Attorneyship Law has been revised by adding to the first paragraph the expression "**This provision will not be applied to the period of apprenticeship,**" meaning that disciplinary prosecution may be initiated even if the acts and conduct during the apprenticeship period may not be punishable with disbarment.

Article 43 – The third paragraph of Article 141 of the Attorneyship Law on the initiation of disciplinary prosecution has been reworded to **explain the general authority to prosecute since the elaborate procedural provisions** regarding the initiation and conduct of the prosecution were not considered necessary.

Article 45 – The first paragraph of Article 144 of the Attorneyship Law has been amended by the addition of the expression "**The file**

41 The present Regulations have been published in the Official Gazette issue 24615 dated 19 December 2001.

42 Reason for Law number 4667 dated 2 May 2001, Term: 21, Legislative Year : 2, The Grand National Assembly of Turkey (Number 413).

forwarded to the disciplinary board will contain also the attorney's professional record."

Article 46 – The second paragraph of Article 153 of the Attorneyship Law has been amended by the addition of the expression "However, separately **inviting and hearing an attorney is not obligatory** if notice could not be served to the attorney at the address he/she had given to the bar association," thereby preventing the delaying of disciplinary board decisions due to the difficulty of serving notice to attorneys who do not communicate their changes of address or cannot be found at their declared address.

Article 50 – The second paragraph of Article 158 of the Attorneyship Law has been expanded by the addition of the expression "**professional rules**" to the principles to be taken into consideration in deciding disciplinary penalties.

JUDICIAL COMMITTEE REPORT

The Judicial Committee of the

Grand National Assembly of Turkey

24 April 2000

Draft Bills 1/422, 1/41, 2/317

Decision number: 24

TO: THE CHAIRPERSON, GRAND NATIONAL ASSEMBLY OF TURKEY

Article 67 of the Proposed Bill calls for the amendment of Article 105 of the Attorneyship Law. The amendment to the first paragraph has been deleted since the election of the members of the disciplinary board for a two-year term as prescribed in the current wording was considered appropriate. The words "clerk" and "provision" in the second paragraph have been replaced with "secretary" and "provisions," respectively and the Article has been adopted as Article 57 after being rewritten in accordance with these revisions.

The expression "by the Board of Directors of the Union of Bar Associations of Turkey" in the second paragraph of Article 154 of the Attorneyship Law, proposed to be replaced with "by the Ministry of Justice" as per Article 47 of the Draft Bill, has been changed to "by the Disciplinary Board of the Union of Bar Associations of Turkey" and the Article has been adopted as Article 72 with this revision.

The seventh and eighth paragraphs of Article 157 of the Attorneyship Law, proposed to be amended as per Article 89 of the Proposed Bill, have been rewritten to ensure the administrative supervision of the Ministry of Justice on decisions made by the Disciplinary Board of the Union of Bar Associations of Turkey on objections and Article has been adopted as Article 74 with this revision.

LAW ON ATTORNEYS BENEFIT FUND

Law number 6207 – Passed 21 December 1953

Published 29 December 1953 in Official Gazette issue 8595

Article 5 – *Amended as per Article 1136/193 dated 19 March 1969*

Attorneys determined to have received the value of the stamps from their client, or have failed to fulfill or complete the missing portion of their obligation in respect of stamps despite a warning and the setting of an appropriate deadline by the authority concerned in contradiction of the first paragraph of Article 3 will be fined with 50 Turkish Liras in the first instance and 100 Turkish Liras at every reoccurrence by a decision of the disciplinary board of the bar association. Such fines will be collected in accordance with Article 162 of the Attorneyship Law and marked as revenue for the Fund.

APPENDIX 5 THE FRENCH SYSTEM FOR REMUNERATION OF TRAINEES

The remuneration of trainees in France has recently been made obligatory by the *arrêté du 10 octobre 2007 portant extension de l'accord professionnel national du 19 janvier 2007 conclu dans le secteur des cabinets d'avocats.* [43]

According the article 1 of this *arrêté*,

> *Sont rendues obligatoires, pour tous les employeurs et tous les salariés compris dans le champ d'application de l'accord professionnel national, les dispositions dudit accord professionnel national du 19 janvier 2007 relatif aux gratifications des stagiaires des cabinets d'avocats".*

Since the 1 November 2007, the French trainee receives a remuneration which is calculated on the basis of the size of the law office.

- Between 1 and 2 employees (who are not attorneys), the trainee receives 60% of the SMIC (minimum salary in France) which was of **792.61€** per month in 2008.
- Between 3 and 5 non attorney employees, the trainee receives 70% of the SMIC which was **924.71€** per month in 2008.
- For more than 6 employees, the trainee receives 85% of the SMIC, **1122.87 €** per month in 2008.

Previously, most trainees received about 350 euro on a voluntary basis. In addition, the apprentice has access to a quality Social Security System.

According to the *Accord du 19 janvier 2007* entre les organisations

43 *JO 17 octobre 2007.*

d'employeurs des cabinets d'avocats et les fédérations syndicales,

> les gratifications, avantages en nature inclus, versées au stagiaire ne sont pas assujetties à cotisations dans la limite de 12.50% du plafond horaire de sécurité sociale (qui s'élève à 21 € en 2008) multiplié par le nombre d'heures effectuées en stage durant le mois considéré (art. D. 242-2-1 du code de la sécurité sociale), soit, pour un stage d'une durée de 35 heures hebdomadaires (151.61 h/mois), la somme de 398.13 €/mois en 2008.
>
> En cas de gratification supérieure à cette somme, seule la fraction excédentaire est assujettie à cotisations patronales et salariales, y compris CSG et CRDS.
>
> Dans tous les cas, il n'y a ni cotisations ASSEDIC, ni cotisations de retraite complémentaire.

Finally, the Bar school covers the medical care (*couverture sociale*) of the trainee during the entire duration of the training which lasts 18 months. During the second training period, the trainee benefits from the article L.412-8, 2b) of the social security code in case of work accident. These stipulations are applicable on the entire territory of France.

APPENDIX 6 OVERVIEW OF THE ENTRY REGIME FOR SOLICITORS IN ENGLAND AND WALES

Appendix 6

Qualification Process for solicitors in England and Wales

The Training Regulations 1990 govern the education and training of solicitors in England and Wales.

There are 2 components to the training

- The academic stage
- The vocational stage which comprises the legal practice course and the training contract

The academic stage

The academic stage can be completed by:-

- A qualifying law degree or
- Common Professional Examination(CPE)/Graduate Diploma in Law(GDL)

Students must gain no less than 240 credits in the study of legal subjects in a 360 or 480 degree programme. Assessment is usually by way of a mix of summative and formative assessments from a range of assignments and examinations.

The degree may be taken over three or four year full time or four to six years on a part time programme. Students must pass each of the seven foundations of legal knowledge with a minimum mark of 40%.

The CPE/GDL is an intense, condensed programme of study specifically designed for graduates or students who have acquired equivalent academic/vocational qualifications.

Students must pass each of the seven foundations of legal knowledge with a minimum mark of 40%.

The joint statement on qualifying law degrees, prepared jointly by the Law Society and the Bar Council, sets out the conditions a law degree must meet in order to be termed a "qualifying law degree". This applies to all law degrees commenced after September 2001.

http://www.sra.org.uk/documents/students/academic-stage/academicjointstate.pdf

The vocational stage

The Legal Practice Course - current

Compulsory Areas

Each of the three compulsory areas should be assessed by way of one subject assessment. A subject assessment may be split into two papers and each paper may be scheduled on separate days.

Elective Areas

Each elective should have one subject assessment. If the subject is of at least three hours duration it may be split into two papers and each paper may be scheduled on separate days. ,

http://www.sra.org.uk/documents/students/lpc/standards.pdf

The Legal Practice Course - with effect from September 2009

The SRA has set out the minimum standards for the assessment of

students on a LPC, including the vocational electives. Providers' assessment strategies must comply with these requirements.

http://www.sra.org.uk/documents/students/lpc/info-pack.pdf

The training contract

The training contract is a period of supervised work experience in an authorised firm regulated by the SRA. Trainees have regular reviews and at least 3 appraisals are prescribed during the training period. Each authorised firm has a Training Principal who is responsible for the training programme.

The trainees and firms work towards the standards set out in "Training Trainee Solicitors" Firms are monitored by the SRA to ensure that standards are maintained.

As part of the admission process, the Training Principal or authorised person signs off the trainee as having completed their training in accordance with the standards. We are currently in the process of piloting a new way of assessing the work place training for solicitors. If implemented, the new approach will involve formative and summative assessments of trainees against a clear set of standards. A trainee will not be able to qualify as a solicitor unless they pass the final assessment.

http://www.sra.org.uk/documents/students/training-contract/requirements.pdf

ETU

03.03.09

APPENDIX 7 THE ENGLISH AND WELSH QUALITY ASSURANCE AGENCY LAW BENCHMARK STATEMENTS

[Copyright clearance awaited]

SUBJECT BENCHMARK STATEMENTS
LAW

Honours benchmark statements index

PDF version

CONTENTS:

- Subject benchmark statements
- 1. Academic Standards - Law degrees in England, Wales and Northern Ireland
- Appendices
- 2. Academic Standards - Law degrees in Scotland
    - 2.1 Text for employers and general public
    - 2.2 Text for law schools
- Law benchmarking group membership

SUBJECT BENCHMARK STATEMENTS

Subject benchmark statements provide a means for the academic community to describe the nature and characteristics of programmes in a specific subject. They also represent general expectations about the standards for the award of qualifications at a given level and articulate the attributes and capabilities that those possessing such qualifications should be able to demonstrate.

This subject benchmark statement, together with the others published concurrently, refers to the **bachelors degree with honours**.

Subject benchmark statements are used for a variety of purposes. Primarily, they are an important external source of reference for higher education institutions when new programmes are being designed and developed in a subject area. They provide general guidance for articulating the learning outcomes associated with the programme but are not a specification of a detailed curriculum in the subject. Benchmark statements provide for variety and flexibility in the design of programmes and encourage innovation within an agreed overall framework.

Subject benchmark statements also provide support to institutions in pursuit of internal quality assurance. They enable the learning outcomes specified for a particular programme to be reviewed and evaluated against agreed general expectations about standards.

Finally, subject benchmark statements are one of a number of external sources of information that are drawn upon for the purposes of academic review* and for making judgements about threshold standards being met. Reviewers do not use subject benchmark statements as a crude checklist for these purposes however. Rather, they are used in conjunction with the relevant programme specifications, the institution's own internal evaluation documentation, together with primary data in order to enable reviewers to come to a rounded judgement based on a broad range of evidence.

The benchmarking of academic standards for this subject area has been undertaken by a group of subject specialists drawn from and acting on behalf of the subject community. The group's work was facilitated by the Quality Assurance Agency for Higher Education, which publishes and distributes this statement and other benchmarking statements developed by similar subject-specific groups.The statement represents the first attempt to make explicit the general academic characteristics and standards of an honours degree in this subject area, in the UK.

In due course, but not before July 2003, the statement will be revised to reflect developments in the subject and the experiences of institutions

and academic reviewers who are working with it. The Agency will initiate revision and, in collaboration with the subject community, will establish a group to consider and make any necessary modifications to the statement.

* academic review in this context refers to the Agency's new arrangements for external assurance of quality and standards. Further information regarding these may be found in the *Handbook for Academic Review*, which can be found on the Agency's web site.

1. ACADEMIC STANDARDS - LAW DEGREES IN ENGLAND, WALES AND NORTHERN IRELAND

1.1 TEXT FOR EMPLOYERS AND GENERAL PUBLIC

This ***Statement*** is set at the bottom of the third class honours degree. It sets out what an employer, student or funder can reasonably expect to be the minimum achievement of a graduate with an honours Bachelors degree in Law or Legal Studies.

The Statement covers all university education in law and legal studies. It is not limited to qualifying law degrees.

PURPOSE

This document sets out the minimum achievement which a student should demonstrate before s/he is awarded an honours degree in Law. The vast majority of students will perform significantly better in many aspects. To find out a more accurate picture of the profile of students from a particular university or higher education institution, you are advised to consult the statements of standards produced by it, eg in its published Programme Specification.

TO WHICH DEGREES DOES THIS STATEMENT APPLY?

This statement applies only to those students who have studied at least 180 credits[1] of legal subjects as part of their programme of study. In relation to other students, you should refer to the Benchmark Statement which the institution states is the most appropriate to their programme of study.

LEVELS OF ACHIEVEMENT

The standards set out in the next section are a minimum level of performance required to pass an honours degree in any institution. A student at the very bottom of the Honours class will have satisfactorily demonstrated achievement in each area of performance on a sufficient number of occasions or over a sufficient range of activities to give confidence that they have the ability or skill which is claimed for graduates in law. Each institution will have its own method of determining what is appropriate evidence of this achievement, but the external examiner system and the academic reviewer system established by the Quality Assurance Agency for Higher Education monitor adherence to these minimum standards.

AREAS OF PERFORMANCE

Any student graduating in Law must show achievement in all of the following areas of performance, thereby demonstrating substantially all of the abilities and competences identified in each area of performance.

SUBJECT-SPECIFIC ABILITIES

1. Knowledge: A student should demonstrate a basic knowledge and understanding of the principal features of the legal system(s) studied, viz s/he:

- should be able to demonstrate knowledge of a substantial range of major concepts, values, principles and rules of that system;
- should be able to explain the main legal institutions and procedures of that system;
- should be able to demonstrate the study in depth and in context of some substantive areas of the legal system[2].

2. Application and problem-solving: A student should demonstrate a basic ability to apply her or his knowledge to a situation of limited complexity in order to provide arguable conclusions for concrete problems (actual or hypothetical).

3. Sources and research: A student should demonstrate a basic ability

- to identify accurately the issue(s) which require researching;
- to identify and retrieve up-to-date legal information, using paper and electronic sources;
- to use primary and secondary legal sources relevant to the topic under study.

GENERAL TRANSFERABLE INTELLECTUAL SKILLS

4. Analysis, synthesis, critical judgement and evaluation: A student should demonstrate a basic ability:

- to recognise and rank items and issues in terms of relevance and importance;
- to bring together information and materials from a variety of different sources;
- to produce a synthesis of relevant doctrinal and policy issues in relation to a topic;
- to make a critical judgement of the merits of particular arguments;
- to present and make a reasoned choice between alternative solutions.

5. Autonomy and ability to learn: A student should demonstrate a basic ability, with limited guidance:

- to act independently in planning and undertaking tasks in areas of law which she or he has already studied;
- to be able to undertake independent research in areas of law which he or she has not previously studied starting from standard legal information sources;
- to reflect on his or her own learning, and to seek and make use of feedback.

KEY SKILLS

6. Communication and Literacy: Both orally and in writing, a student should demonstrate a basic ability:

- to understand and use the English language (or, where appropriate, Welsh language) proficiently in relation to legal matters;
- to present knowledge or an argument in a way which is comprehensible to others and which is directed at their concerns;
- to read and discuss legal materials which are written in technical and complex language.

7. Other key skills: numeracy, information technology and teamwork: A student should demonstrate a basic ability:

- where relevant and as the basis for an argument, to use, present and evaluate information provided in numerical or statistical form;
- to produce a word-processed essay or other text and to present such work in an appropriate form;
- to use the World-wide web and e-mail;
- to use some electronic information retrieval systems.
- to work in groups as a participant who contributes effectively to the group's task.

[1] Credits: A programme of study is divided into 120 credits per level. For a full-time student, these 120 credits will be studied in a single year. On a traditional, three-year, full-time degree programme, a student would study a total of 360 credits worth of courses. On a four year scheme, the total would be 480 credits.

[2] The breadth and depth of coverage will vary according to the amount of law studied by the student in his or her programme.

1.2 TEXT FOR LAW SCHOOLS

INTRODUCTION

1. The purpose of these Benchmark standards is

a. to guide institutions (eg Law Schools[1]) in reporting clearly and accurately to the wider public (students, parents, teachers, funders and employers) the nature of their provision in a standard way;

b. to provide a basis for institutions to devise their own learning outcome statements compatible with these Benchmark statements;

c. to set as a minimum certain achievements which a student must demonstrate to be awarded an undergraduate honours degree in Law.

2. The Law Benchmarking Panel has decided to set out the national standard for Law by way of a ***Threshold Statement*** which is set at the bottom of the third class honours degree. It defines the minimally acceptable graduate. These standards are concerned to ensure that those to whom an honours degree in law are awarded have demonstrated achievement in all the stated areas of performance by the time the award is made.

3. This statement covers all university education in law and legal studies. It is not limited to qualifying law degrees. The statement is limited to students who take at least 180 credits of legal subjects in their programme. No institution would be required to demonstrate that other students taking fewer credits in law have met the standards set out here. QAA intends to develop a range of benchmark standards in other disciplines. Institutions teaching a programme with less than 180 credits in legal subjects will have to choose a benchmark standard appropriate to it.

4. The QAA is also developing ***Programme Specifications***, which are standard ways in which information on programmes of study can be presented. Within such specifications, there will be a section in which institutions will set out 'What a graduate should know and be able to

do on completion of the programme'. This will be one place in which a Law School can set down its own statement of standards. Such a Programme Specification will also be the place in which a Law School would state how the minimum proportion of legal subjects which would be studied in the programme and whether it qualifies a student for any specific route towards a career.

5. ***The nature of a Threshold Statement***: The ***Threshold Statement*** is set at the bottom of the third class honours degree. Few Law Schools will probably be content simply to describe the achievements of their students at this level. Most will prefer to describe the achievement of the typical student, rather than the minimally acceptable graduate. A description of the achievement of such a typical student is described here as a 'modal statement'. Such a ***Modal Statement*** would typically be set at the 2.1/2.2 boundary. (An example of a modal statement can be found in Appendix A.)[2] Nothing in this statement precludes a Law School from setting out its own statement of standards at modal level, provided that this is at least as high as the national threshold statement.

6. These benchmark standards are set out as *learning outcomes* which must be satisfied by the time a degree is awarded. The standards do not specify the mode of study nor the learning methods by which a student is able to achieve these outcomes. No distinction is made between full-time and part-time study. Some of the outcomes could be achieved by prior learning which is accredited as part of a degree programme. (Here the awarding institution warrants that the student has achieved the requisite outcome.) But, in all cases, these standards are concerned to ensure that those to whom an honours degree in law are awarded have achieved all the stated requirements by the time the award is made. Prior learning and (in respect of some key skills) study of non-law subjects may be the route adopted by some students, whilst for others all the learning may be the result of study in the Law School. Whatever the route to these outcomes, the degree-awarding institution must be satisfied that the student has achieved the requisite outcomes. Where achievement is demonstrated by prior learning, an institution is expected to warrant that the achievement is still sufficiently current to feature in a statement of what a student is able to do by the time the degree award is given.

7. ***Learning outcomes***: Many Law Schools are familiar with the articulation of express statements of learning outcomes and marking criteria derived from them which are communicated to students. These help to make clear to students what is expected from them and to assist them in measuring their own progress. There is no requirement that institutions use this form of statement to articulate their own standards. The Subject Benchmarking Panel recognise that a significant number of institutions are not used to using learning outcome statements and it has included some illustrations of how the outcomes might be demonstrated and assessed within this text and in Appendix B.

[1] In this statement 'Law School' is used as a shorthand to describe any higher education institution which provides a programme of study which includes a substantial law content. It makes no assumptions about the organisation within that institution through which the programme is delivered.

[2] See further, the ***Report on Graduate Standards in Law*** which was distributed to Law Schools in December 1997 (available on the Internet: http://www.law.warwick.ac.uk/ncle).

LEVELS OF PERFORMANCE

8. The minimum standard set here at the bottom of the third class would be treated by many institutions as disappointing performance, given the entry qualifications of their students, and it is not the outcome expected of them. But, since the students are graduating with an honours degree, which is itself a significant level of educational achievement, this statement tries to set out positively what minimally acceptable graduates are able to do. Relative to other graduates, they may be deficient; but they have demonstrated an important level of attainment which justifies the social standing of a graduate and the public and private investment in higher education. Appendix B illustrates different levels of achievement in the various areas of performance. Appendix C reproduces criteria published in one of the papers for the HEQC Graduate Standards Report which shows the sorts of criteria which are used by institutions to award particular classes of degree. These two

appendices may help institutions to relate this Threshold Statement of Benchmarks to their normal criteria used in assessment.

The concept of 'satisfactorily' demonstrating achievement is critical and can only partly be captured in words. It depends on the professional judgment of examiners, informed especially by external examiners. They have to review the evidence presented by the student through the structure of the programme followed, the assessment on modules, progress files, student records and other processes and decide whether this is sufficient to meet the claims which this statement of standards makes for the minimum achievement of graduates.

Each institution will have to develop its own assessment criteria, appropriate to the activities through which students are expected to demonstrate their achievement in each one or combination of areas. These criteria, agreed with externals, will provide an objective basis on which an institution can claim that its students have reached the requisite standard.

AREAS OF PERFORMANCE

9. The standards set out in the section on 'Areas of Performance' are a minimum level of achievement required to pass an honours degree in any institution. In devising the statements of what their own graduates can do at the end of their own programmes of study, institutions are expected to include all the features listed below. However, institutions will also wish to describe the outcomes expected of their students in terms appropriate to their mission.

10. This statement does not set out any requirements about the study methods which students will have to adopt in order to achieve these outcomes, nor does it make requirements about the way courses are structured. The activities which students undertake as part of their learning in the Law School must, however, be designed in such a way as to provide evidence that the student has attained the requisite standard in all required areas of performance.

11. ***Does everything have to be assessed?*** It is for institutions to decide on the appropriate form of evidence they require to be satisfied that a student has an appropriate level of achievement in a required area of performance. For the statement to be satisfied, it is sufficient that a student has passed the requisite standard in that area. There is no prescription about the form of evidence provided by a student nor of the form of record kept by the institution. In one institution, a student might show knowledge and general intellectual skills through passing sufficient law subjects, but might show key skills through activities recorded in tutorial reports, a student file, or a record of achievement or progress file. Other institutions may prefer to integrate assessment of key skills into performance on particular modules. Some outcomes, eg teamworking, may even be demonstrated by extra-curricular activities of which the student has provided sufficient evidence to the Law School. The Benchmark statement expresses no preference as to the form of evidence. In relation to some areas of performance, the structure of the learning activity itself may provide evidence that a student has achieved a requisite level. For example, a dissertation or project module might well be so designed as to require every student to demonstrate the necessary research skills and autonomy in order to pass it. But at all events an institution must have in place mechanisms which provide it with reliable evidence that students have reached the minimum standard in each area of performance. External examiners and QAA academic reviewers will expect to be informed of these mechanisms and to make judgements about their sufficiency.

12. As a preliminary exercise in reviewing how their existing programmes relate to these benchmark standards, institutions may find it useful to map their provision onto the areas of performance. In this way, they would be clearer as to how students are currently required to demonstrate achievement in the relevant areas and whether they do indeed have evidence in relation to all areas.

13. ***How much must be achieved?*** The statement makes it clear that a student should demonstrate achievement in all of the seven area of performances. Within each area of performance there are often a number of specific items. Not all of these items must be demonstrated, but a student must have a sufficient level of achievement in that area

taken as a whole and sufficient reliability of performance that a Law School can confidently state that s/he has substantially demonstrated the outcomes of that area of performance. Ultimately the question of sufficiency is a matter of judgement exercised by internal and external examiners.

14. **Knowledge**:

Legal system studied: This statement applies to the study of any legal system for which an English, Welsh or Northern Irish university awards its degrees, even if is not in the law of that jurisdiction. The panel has not taken a view on the legitimacy of law degrees awarded by an HEI which are not in the law of a UK jurisdiction. Since validation is recognised as a legitimate activity for HEIs, then institutions may wish to validate law degrees in other jurisdictions. Should this be the case, this statement applies with equal force as in respect of degrees in English and Northern Irish laws.

Questions have been raised as to whether an ability to compare the law in one jurisdiction with others should be a requirement. We believe this is desirable, but not a minimum requirement for graduation with an honours degree in every HEI.

The law of the European Union and of the European Convention on Human Rights and Fundamental Freedoms are relevant to most European legal systems as part of their domestic law and are not specified as separate requirements here.

Principal Features: The statements requires an overview of the main features and ideas involved in a legal system, rather than requiring detailed knowledge of every major branch of law. Within such a broad framework of knowledge, students can be selective as to the areas in which they engage in detailed study.

Study in depth: Unlike professional requirements, this statement does not require students to demonstrate depth of study in particular branches of law. This is for the student to choose within the framework established by a particular HEI.

Study in context: Within different kinds of degree programme, there will be different emphases on the context of law. Each institution would specify the kinds of context to which they would expect their students to

relate their knowledge of substantive law. Study in context includes that a student should be able to demonstrate an understanding, as appropriate, of the relevant social, economic, political, historical, philosophical, ethical, and cultural contexts in which law operates, and to draw relevant comparisons with some other legal systems;

15. Application and problem-solving: An ability to apply knowledge and to solve problems need not be demonstrated in relation to each subject studied. It is sufficient that a student can demonstrate with sufficient frequency an ability to apply knowledge. A student might demonstrate application through moots, law clinics, tutorial work, as well as through conventional problem questions in unseen examinationThe Ormerod Report suggested that one of the three features of the academic stage of legal education was to develop an ability to handle facts and apply abstract concepts to them. This is certainly one of the aspects which Law Schools would wish to test in the area of application.

16. Sources and research: There are a variety of ways in which this can be demonstrated. A dissertation may well be used in some law schools whereas others will set a number of assignments or projects over the course of the degree which enable a student to demonstrate ability to use primary sources and to undertake legal research. The structure of taught modules may require students to undertake independent research for seminars, even though the final assessment is by terminal written examination. The essential point is the evidence of research activity. In particular areas, it may well be appropriate to require students to engage in research which involves non-legal sources and materials, as well as legal sources.

17. Analysis, synthesis, critical judgment and evaluation: These general intellectual skills are likely to be demonstrated pervasively through a programme of study, particularly in the final years. The essential point is that students should be required to undertake exercises (assignments, coursework, or examinations) which enable them to demonstrate that they have such abilities.

The skill of analysis requires, inter alia, that students be able to discriminate between the legally relevant and the irrelevant. Synthesis can be demonstrated through a variety of tasks, whether it be bringing

together material studied in lectures, seminars and wider reading, or in bringing together material from different assigned reading or research.

Critical analysis is recognised as a key attribute of graduates. It involves the ability to identify flaws in an argument. This can be demonstrated in relation to a variety of tasks, e.g. commentary on a new case or article. In evaluation, ability to offer reasons for a point of view is essential, though the depth and fullness of the justification will not be very great. The panel considers it sufficient that the student can choose between the views of authors by adopting one of the perspectives with limited further justification, rather than requiring a developed personal point of view.

18. Autonomy and ability to learn: This is perhaps the key feature of graduateness. The ability to learn and make use of learning in an independent fashion is what is generally taken to distinguish the final year student from the first year student. The learning activities required by a Law School should be such that students should be required to demonstrate what they can do independently, rather than just demonstrating that they have learnt what they have been told. This can be demonstrated by the structure of a particular module. For example, all students may be required to study a module without lectures and which requires them to prepare material for seminars, not all of which is directed by the teacher. This could provide a basis of evidence on whether individual students are able to learn on their own with limited guidance.

Limited Guidance: Obviously, an independent learner will need some support and some broad structure within which to operate. The extent of guidance required will depend on a student's stage of development in the field and the complexity of the material. The independent graduate should be able to take the initiative to seek support and feedback.

Ability to reflect critically: A student should be able not only to learn something, but to reflect critically on the extent of her or his learning. At a minimum, a student should have some sense of whether s/he knows something well enough or whether s/he needs to learn more in order to understand a particular aspect of the law.

KEY SKILLS[3]

19. Communication and Literacy: Law students are expected to be good at both written and oral communication. Whereas written communication is assessed heavily by formal examinations, oral communication is demonstrated by a variety of compulsory and voluntary activities, e.g. tutorial performance or mooting.

Law students are expected to be able to read complex primary materials and to find the key statements from them. As such the statement here adds little to the requirement under sources and research, but merely makes clear the broader applicability of the skills used in that activity.

20. Numeracy: Typically, law students demonstrate their ability to make use of numerical and statistical information in a variety of ways. Many legal subjects presuppose an ability to understand and make use of numerical and statistical information in sophisticated ways. In company law, succession or trusts, the student needs to be able to understand proportions in order to comment on the allocation of shares in companies, estates or trust arrangements, issues on the measure of damages also require understanding of numerical information. In subjects such as English Legal System or criminology, statistics might be used to demonstrate the effectiveness of civil justice or forms of crime prevention. The concern here is not the ability to undertake complex calculations, but to be able to use and evaluate the information provided as the basis of an argument.

21. Information technology: Given the background of many students, many aspects of performance may well have been achieved before they arrive in university. The requirement is fairly limited. In terms of word-processing, the essential skills required are to be able to produce a word-processed essay or other text and to present such work in an appropriate form. Information retrieval systems may, but need not, include LEXIS. Standard information retrieval systems would include electronic library catalogues.

22. Teamworking: A variety of activities can be used to demonstrate that students can work together in teams. Group projects are a typical way in which individual students provide evidence of their teamworking

skills, but team negotiations or student-led tutorials would be other alternatives. Teamwork can be demonstrated not only by activities in class, but also on work placements or student-led court visits, as well as in some extra-curricular activities.

[3] Further articulation of what might be involved in setting standards and assessing key skills can be found in the report of the Law Discipline Network on General Transferable Skills in the Law Curriculum (available on the Internet: http://www.law.warwick.ac.uk/ncle)

APPENDICES

APPENDIX A

Illustration of possible modal statement (adapted from the report on Graduate Standards in Law)

Area of Performance	***Specialist (single subject)***
Subject knowledge	a) Students should have knowledge of the principal features of the legal system studied, including general familiarity with its institutions and procedures; b) know principles & values in wide range of topics extending beyond the core; c) some in-depth knowledge of specialist areas; d) able to demonstrate insider's understanding of how law fits together and operates.
Area of Performance	***Several disciplines (mixed degree)***
	a) Students should have knowledge of the principal features of the legal system studied, including general familiarity with its institutions and procedures; b) know principles in a range of core areas; c) very little in-depth study expected; d) able to demonstrate insider's understanding of how law fits together and operates, but also able to discuss alternative perspectives.

Area of Performance	*Law as subsidiary* a) Students should have accurate knowledge of the rules and legal system in the specific areas which are relevant to their study; b) rules are stated with accuracy; c) in-depth study will probably not be in legal areas; d) law understood essentially as data; able to discuss legal solutions from an external perspective as relates to their field of study.
Area of Performance	*Vocational* a) Students should have a comprehensive knowledge of rules and principles in areas relating to professional practice; b) accurate knowledge of large range of substantive and procedural topics in terms of their rules and operational technicalities; c) broad detailed knowledge of practice and procedure in a wide range of subject areas; d) law studied as a range of technical rules and procedures which a student is expected to master.
Area of Performance	*Specialist (single subject)*
Subject application/ problem-solving	Able to apply knowledge to situations which engage with doctrinal disputes; problems conceived as opportunities to demonstrate familiarity with doctrinal and conceptual difficulties and to provide own solution to unresolved debates. Able to demonstrate this application over a wide number of legal areas.

Area of Performance	*Several disciplines (mixed degree)*
	Able to apply knowledge to fairly standard situations which relate to doctrinal disputes; problems conceived as opportunities to demonstrate basic familiarity with doctrinal and conceptual difficulties and to provide own solution to unresolved debates.
Area of Performance	*Law as subsidiary*
	Able to identify legal solution in straightforward situations; problems offer opportunities to classify situations in terms of rules learnt and to apply unproblematic solutions to them.
Area of Performance	*Vocational*
	Able to bring together knowledge of law and procedure in complex technical situations. Problems offer opportunities to identify relevant legal and procedural issues from a large body of facts which are poorly differentiated. [This may take the form of a live legal clinic situation.]
Area of Performance	*Specialist (single subject)*
Subject sources and research	Able to identify and use primary legal sources and journals relevant to topic under study; able to identify contemporary debates and engage with these while accurately reporting the law in an area.
Area of Performance	*Several disciplines (mixed degree)*
	Able to use primary legal sources as directed and to supplement these; independent research expected only to encompass a limited range of areas of law.

Area of Performance	*Law as subsidiary*
	Able to work from secondary sources (textbooks) and to use these efficiently to identify appropriate rules of law.
Area of Performance	*Vocational*
	Able to find technical solutions to complex problems with independence and accuracy from a wide range of professional texts and information retrieval systems; research working within a clearly defined framework.
Area of Performance	*Specialist (single subject)*
Analysis, evaluation, critical judgement and synthesis	• Able to identify issues in terms of policy and doctrinal importance; able to produce clear doctrinal synthesis and summary of policy issues. • Able to evaluate law both independently in terms of doctrinal coherence and in relation to other policy perspectives which have been taught specifically. Able to create new or imaginative solutions through approaching a problem or using material in different ways.
Area of Performance	*Several disciplines (mixed degree)*
	• Able to identify issues in terms of policy and doctrinal importance; able to produce doctrinal synthesis and summary of basic policy issues.

- Able to evaluate law in terms of doctrinal coherence within the framework of core subjects and in terms of policy perspectives from their other disciplines. Able to create new or imaginative solutions through approaching a problem or using material in different ways.

Area of Performance ***Law as subsidiary***

- Able to identify central features of the area of law studied; able to produce a coherent summary of material drawn from a variety of secondary sources.
- Able to offer reasoned criticism from own disciplinary background. Able to use this background to offer new or imaginative solutions or approaches to problems.

Area of Performance ***Vocational***

- Able to identify issues in technical terms and to integrate new material.
- Able to evaluate in terms of doctrinal and practical coherence; able to present alternatives from a client's perspective. Able to create new or imaginative solutions through approaching a problem or using material in different ways.

Area of Performance ***Specialist (single subject)***

Autonomy

Can act independently in planning and managing tasks with limited guidance in areas which they have studied; able to identify own resources.

Can reflect on own learning; can seek and make use of feedback

Area of Performance	*Several disciplines (mixed degree)*
	Can act independently in planning and managing tasks with limited guidance in areas which they have studied; able to identify own resources.
	Can reflect on own learning; can seek and make use of feedback
Area of Performance	*Law as subsidiary*
	Works within a strongly directed framework; self-motivated.
	Can reflect on own learning; can seek and make use of feedback and guidance.
Area of Performance	*Vocational*
	Can act independently in planning and managing complex tasks with limited guidance within a defined framework; able to identify own resources.
	Can reflect on own learning; can seek and make use of feedback.
Area of Performance	*Specialist (single subject)*
Communication and literacy	Can engage in academic debate in a professional manner; able to use a range of formats, mainly written, to present specialist material.
	Able to write fluent and complex prose, using legal terminology correctly; able to read a range of complex works within and about law and to summarise their arguments accurately.

Area of Performance	***Several disciplines (mixed degree)***
	Can engage in academic debate in a professional manner; able to use a range of formats, mainly written, to present specialist material.
	Able to write fluent and complex prose, using legal terminology correctly; able to read a range of complex works within and about law and to summarise their arguments accurately.
Area of Performance	***Law as subsidiary***
	Conforms to general academic standards in professional manner; able to present knowledge clearly and accurately.
	Able to write fluent and complex prose, using basic legal terminology with reasonable accuracy; able to read basic legal texts and to summarise accurately.
Area of Performance	***Vocational***
	Able to present knowledge with range of professional presentation skills (oral and written) demonstrated.
	Able to write fluent and technically sophisticated prose, using legal terminology accurately; able to read a range of complex works within and about law and to summarise their arguments accurately.
Area of Performance	***Specialist (single subject)***
Other key skills	• Proficient use of word-processing; standard library and information retrieval systems, and WWW resources. Able to specify technological tools needed for personal support.

- Can identify and collate relevant statistical or numerical information and use in a report.
- Able to work in groups as a participant who contributes effectively to the group's task (low priority area).

Area of Performance ***Several disciplines (mixed degree)***

- Proficient use of word-processing; standard library and information retrieval systems, and WWW resources.
- Able to specify technological tools needed for personal support.
- Can identify and collate relevant statistical or numerical information and use in a report.
- Able to work in groups as a participant who contributes effectively to the group's task (low priority area).
- Proficient use of word-processing; standard library and information retrieval systems, and WWW resources, and CAL packages. Able to specify technological tools needed for personal support.

Area of Performance ***Law as subsidiary***

- Can identify and collate relevant statistical or numerical information and use in a report.
- Able to work in groups as a participant who contributes effectively to the group's task (low priority area).

- Proficient use of word-processing; standard library and specialist information retrieval systems, and WWW resources; familiarity with spreadsheets. Able to specify technological tools needed for personal support in a professional environment.

Area of Performance ***Vocational***

- Can identify and collate relevant statistical or numerical information and use in a report.

- Able to take initiative in team as a member or leader; able to set deadlines and identify resources others will needs; able to perform team role recognising the roles and responsibilities of others.

Appendix B

Knowledge

Very proficient

- Able to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and able to explain the reasons for the relationships between them in a number of complex areas.
- Able to give reasons for the major legal institutions and procedures of English law.
- Able to demonstrate a comprehensive and accurate knowledge and understanding of the detail of the law and the theoretical issues involved in areas studied and their relationship to the relevant economic, social, commercial or political context.

Proficient

- Able to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and able to explain the relationships between them in a number of particular areas.
- Able to explain accurately the major legal institutions and procedures of English law.
- Able to demonstrate a sound and generally accurate knowledge and understanding of the law and its context in relation to most areas of law which have been studied.

Pass

- Passed modules which, taken together, require identification and explanation of principal major concepts, values, principles and rules of English law.
- Can explain the basic structure of courts, legal professions and main features of criminal, civil and administrative law procedures.

- Able to demonstrate some general knowledge and understanding of some areas of English law which includes most of the major principles, supported by some important case-law and statutes and with appropriate, though brief, references to their economic, social, commercial or political context.

Application *Very proficient*

- Able to apply knowledge to difficult situations of significant legal complexity, to analyse facts and to produce well-supported conclusions in relation to them.

Proficient

- Able to apply knowledge to complex situations, able to recognise potential alternative conclusions for particular situations, and provide supporting reasons for them.

Pass

- Able to apply existing knowledge to situations of limited complexity and produce arguable conclusions, treating the situation as an exemplification of established rules and lacking awareness of more sophisticated issues.

Sources and research *Very proficient*

- Able to recognise sophisticated legal and related non-legal issues and to formulate a clear and coherent research plan.

- Effective in using a range of research sources to produce up-to-date information.

- Able to produce a clear and accurate presentation of the law on a topic directly from primary sources and to use techniques of legal interpretation to complex issues arising from them.

Proficient

- Able to select key relevant issues for research and to formulate them with clarity.
- Effective in the use of standard paper and electronic resources to produce up-to-date information.
- With the assistance of secondary sources, able to integrate material from primary sources using standard techniques of legal interpretation to provide a substantially accurate picture of the state of the law.

Pass

- Able to identify principal issues for research on the basis of similarity to previously encountered situations or those well-established in case-law or doctrine.
- With substantial reliance on secondary sources, able to read cases and statutes and identify the principal rules which they lay down and to apply basic techniques of legal interpretation to them.

Analysis, synthesis, critical judgement & evaluation

Very proficient

- Able to produce and justify own ranking of relevance and importance of issues.
- Able to demonstrate insight in presenting materials drawn from a wide variety of primary and secondary sources and doctrinal commentary.
- Able to produce a synthesis of doctrinal and policy issues in relation to a topic which offers a personal perspective on a topic.

- Able to offer a personal and informed criticism in relation to arguments arising in wider reading, including comments on reliability, validity and significance; able to come to conclusions based on contradictory or incomplete information.

Proficient

- Able to rank relevance and importance within unfamiliar arguments in the light of the established law.
- Able to bring together and present in a coherent way materials from various primary and secondary sources in an integrated way.
- Able to offer an accurate summary of the current state of doctrinal and policy debate in an area.
- Able to make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question.

Pass

- Able to rank relevance and importance of standard arguments based on well established orthodoxies in the area of law.
- Able to bring together mainly relevant materials from cases and statutes but not in a well focused way.
- Able to produce a brief statement of the principal doctrinal and policy issues in relation to a topic drawn exclusively from secondary sources.
- Able to see flaws in an argument in a well-established area of law.
- Able to make a choice between positions based on the adoption of the arguments of one of the protagonists with limited supporting reasons.

Autonomy ***Very proficient***

- In areas of law which she or he has already studied, able to take initiative in design of own project and find own sources (both legal and non-legal).
- In areas of law which he or she has not previously studied, able to use a wide range of information (both legal and non-legal) sources and able to identify complex issues in a topic.
- Able to make independent assessment of own progress, able to present work in timely fashion for feedback and assistance, to establish a programme of action based on feedback given.

Proficient

- In areas of law which she or he has already studied, able to negotiate the definition of own project and to identify independently a wide range of legal materials and standard non-legal sources.
- In areas of law which he or she has not previously studied, able to use a full range of legal sources to identify the principal controversial issues in a topic.
- Able to make reasonably accurate assessment of own progress, to identify and formulate issues on which assistance is needed and to act on feedback given.

Pass

- A basic ability, with limited guidance, to produce own information (cases, statutes and bibliography) from standard within the framework of an agreed task in areas of law which she or he has already studied.
- In areas of law which he or she has not previously studied, able to use basic sources (e.g. textbooks, Halsbury's Laws and Current Law) to identify the principal legal rules on a topic.
- A basic ability to make some assessment of own progress, to ask for help when needed and to follow guidance given by way of feedback.

Commu-nication and literacy

Very proficient

- Able to use the English language and legal terminology at all times with scrupulous care and accuracy.
- Able to present arguments to a variety of audiences and moderating presentation to suit the needs of each.
- Able to read with care and discuss a range of complex works about law and other subjects.

Proficient

- Able to write and use orally fluent and complex prose, using legal terminology correctly.
- Can relate material appropriately to the concerns of the intended audience.

- Able to read a range of complex works within and about law and to summarise their arguments accurately.

Pass

- Able to understand presentations in English using legal terminology, to write and speak in generally comprehensible English using legal terminology with satisfactory accuracy.
- Able to present largely expository material such that the major points are focused relevantly on the question asked.
- Able to read and discuss the contents of standard legal textbooks, cases and statutes showing a basic understanding of their content.

Other basic skills

Very proficient

- Able to generate own numerical or statistical information from either primary data or by combining information from other sources.
- Able to create a WWW home page and to produce HTML documents; able to set up and manage email discussion groups.
- Able to customise own word-processing formats; able to make design the layout and use of spreadsheets to present information; able to specify technological tools needed to support desired tasks.
- Able to make use of unfamiliar electronic retrieval systems; able to use such systems to conduct complex searches.
- Able to take initiative as a participant or leader of a group, and able to identify the needs of others in the group.

Proficient

- Able to make relevant use in an argument of numerical and statistical information derived from primary sources.
- Able to conduct efficient searches of websites to locate relevant information; able to exchange documents by email and manage information exchanged by email.
- Able to use a wide range of formatting and other techniques within a standard software package; able to make limited use of spreadsheets.
- Able to conduct searches efficiently using a number of electronic retrieval systems.
- Able to work in groups as a participant who contributes effectively to the group's task.

Pass

- Able to make some relevant use in an argument of numerical and statistical information derived from secondary sources.
- Able to locate WWW sites from given web addresses and retrieve information from them; able to send and receive basic email messages.
- Able to produce the text of an essay with footnotes and basic formatting using a standard software package.
- Able to perform basic searches on standard electronic retrieval systems in the institution.
- Able to perform adequately assigned tasks within a group setting and to take part in group discussion.

APPENDIX C

(from Assessment in Higher Education and the Role of Graduateness HEQC 1997)

Appendix C presents two examples of contemporary guidance on, and of the characteristics seen as defining, levels of graduate achievement. The first came from one of the institutions whose law faculties formed part of the sample. It could have come from any of them; indeed with a few changes of reference, it corresponds closely to the guidance of 'class' characteristics distributed by central administrations in all the universities visited. The second is published with the kind permission of the British Psychological Society; it is an example of recommended good practice with respect to the awarding of different classes of degree.

Example 1

FIRST CLASS (70+%)

A first class answer has a thoughtful structure, a clear message displaying personal reflection informed by wider reading of articles and/or other commentaries and a good grasp of detail (as evidenced by the choice of relevant examples which are well integrated into the answer's structure). Complete with no errors or omissions.

First class answers are ones that are exceptionally good for an undergraduate and which excel in at least one and probably several of the following criteria:

- comprehensiveness and accuracy;
- clarity of argument and expression;
- integration of a range of materials;
- evidence of wider reading;
- insight into the theoretical issues.

Excellence in one or more of these areas should be in addition to the qualities expected of an upper second class answer. Although there is no expectation of originality of exposition or treatment, a first class answer is generally expected to spot points rarely seen. A high first (75+%) is expected to display originality and excel in most if not all the aforementioned criteria.

UPPER SECOND CLASS (60-69%)

An upper second class answer generally shows a sound understanding of both the basic principles and relevant details of the law, supported by examples which are demonstrably well understood and which are presented in a coherent and logical fashion. The answer should be well presented, display some analytical ability and contain no major errors or omissions. Not necessarily excellent in any area.

Upper second class answers cover a wider band of students. Such answers are clearly highly competent and typically possess the following qualities:

- generally accurate and well-informed;
- reasonably comprehensive;
- well-organised and structured;
- provide evidence of general reading;
- demonstrating a sound grasp of basic principles;
- demonstrating a good understanding of the relevant details;
- succinctly and cogently presented;
- displaying some evidence of insight.

One essential aspect of an upper second class answer is that it must have competently dealt with the question asked by the examiner. In problem questions - i) all the major issues and most of the minor issues must have been spotted; ii) the application of the legal rules must be accurate and comprehensive, iii) the application of the legal rules must be insightful

(ie, the candidate must demonstrate that s/he can both distinguish cases on their facts and argue by analogy); iv) there should be a conclusion that summarises the legal position of the relevant parties.

LOWER SECOND CLASS (50- 59%)

A substantially correct answer which shows an understanding of the basic principles.

Lower second class answers display an acceptable level of competence, as indicated by the following qualities:

- generally accurate;
- providing an adequate answer to the question based largely on textbooks and lecture notes;
- clearly presented;
- no real development of arguments;
- may contain some major error or omission.

A lower second class answer may also be a good answer (ie, an upper second class answer) to a related question but not one set by the examiner.

THIRD CLASS (40-49%)

A basic understanding of the main issues but not coherently or correctly presented.

Third class answers demonstrate some knowledge or understanding of the general area but a third class answer tends to be weak in the following ways:

- descriptive only;
- does not answer the question directly;

- misses key points;
- contains important inaccuracies
- covers material sparsely, possibly in note form;
- assertions not supported by authority or evidence.

PASS (37- 39%)

A pass represents the minimum acceptable standards at the bottom of the third class category. There is just sufficient information to indicate that the student has a general familiarity with the subject area. Such answers typically:

- contain very little appropriate or accurate material;
- only cursorily cover of the basic material;
- are poorly presented without development of arguments.

BORDERLINE FAIL (34-36%)

Not a category as such but answers in the range usually contain some appropriate material (poorly organised) and some evidence that the student has been to one or two lectures and done a bare minimum of reading.

CLEAR FAIL (0-33%)

EXAMPLE 2

FIRST CLASS

It is recognised in all marking schemes that there are several different ways of obtaining a first class mark. First class answers are ones that are exceptionally good for an undergraduate, and which excel in at least one and probably several of the following criteria:

- comprehensive and accurate coverage of area;
- critical evaluation;
- clarity of argument and expression;
- integration of range of materials
- depth of insight into theoretical issues;
- originality of exposition or treatment.

Excellence in one or more of these areas should be in addition to the qualities expected of an upper second.

UPPER SECOND CLASS

Upper second class answers are a little easier to define since there is less variation between them. Such answers are clearly highly competent and a typical one would possess the following qualities:

- generally accurate and well-informed;
- reasonably comprehensive;
- well organised and structured;
- displaying some evidence of general reading;
- evaluation of material, though these evaluations may be derivative;
- demonstrating good understanding of the material;
- clearly presented.

LOWER SECOND CLASS

Such answers show an acceptable level of competence, as indicated by the following qualities:

- generally accurate, though with some omissions and errors;
- an adequate answer to the question, largely based on lecture material and required reading;
- a good answer to a related question, but not the one set;
- clear presentation;
- no real development of arguments.

THIRD CLASS

Such an answer demonstrates some knowledge and understanding of the area, but tends to be weak in the following ways:

- does not answer the question directly;
- misses key points of information;
- contains important inaccuracies;
- coverage of material is sparse, possibly in note form;
- does not support assertions with proper evidence.

PASS

This grade is used in some but not all courses to indicate an answer which narrowly avoids the fail category. For markers unfamiliar with this grade, it represents the minimum acceptable standard at the bottom of the third class category. There is just sufficient information presented to indicate that the student has general familiarity with the subject area.

Such answers contain:

- very little appropriate or accurate material;
- cursory coverage of the basic material, with numerous errors, omissions or irrelevances;
- loose structure;
- poor or non-existent development of arguments.

BORDERLINE (COMPENSATABLE) FAIL

Again, this is not a category that is always used; it corresponds to the top end of the Fail category. Such answers involve:

- some appropriate material, but poor coverage;
- evidence that the student has been to one or two lectures or done a bare minimum of reading;
- disorganised or sketchy essays;
- inappropriate material;
- lack of argument.

2. ACADEMIC STANDARDS - LAW DEGREES IN SCOTLAND

2.1 TEXT FOR EMPLOYERS AND GENERAL PUBLIC

2.1.1 HONOURS LAW DEGREES

This Statement is set at the bottom of the third class honours degree. It sets out what an employer, student or funder can reasonably expect to be the minimum achievement of a graduate with an honours Bachelors degree in Law or Legal Studies. This Statement covers all university education in law and legal studies.

PURPOSE

This document sets out the ***minimum*** achievement which a student should demonstrate before s/he is awarded an honours degree in Law. The vast majority of students will perform significantly better in many aspects. To find out a more accurate picture of the profile of students from a particular university or higher education institution, you are advised to consult the statements of standards produced by it, e.g. in its published Programme Specification.

TO WHICH DEGREES DOES THIS STATEMENT APPLY?

This statement applies only to those students who acquire at least 50% of the credits in their programme of study in legal subjects. In relation to other students, you should refer to the Benchmark Statement which the institution states is the most appropriate to their programme of study.

LEVELS OF ACHIEVEMENT

The standards set out in the next section are a minimum level of performance required to pass an honours degree. A student at the very bottom of the Honours class will have satisfactorily demonstrated achievement in each area of performance on a sufficient number of occasions or over a sufficient range of activities to give confidence that they have the ability or skill which is claimed for graduates in law. Each institution will have its own method of determining what is appropriate evidence of this achievement, but the external examiner system and the Academic Reviewer system established by the Quality Assurance Agency monitor adherence to these minimum standards.

AREAS OF PERFORMANCE

Any student graduating in Law must show achievement in all of the following areas of performance, thereby demonstrating substantially all of the abilities identified in each area of performance.

SUBJECT-SPECIFIC ABILITIES

1. Knowledge: A student should have ***a broad overview of*** at least one legal system(s) studied, viz. s/he

- should be able to demonstrate ***in-depth*** knowledge of a substantial range of major concepts, values, principles and rules of that system ***and the context*** in which that system operates;
- should be able to explain the main legal institutions and procedures of that system;

2. Application and problem-solving: A student should be able to apply her or his knowledge in order to provide answers to ***complex problems*** (actual or hypothetical).

3. Sources and research: A student should be able

- to identify accurately the issue(s) which require researching;

- to identify and retrieve up-to-date legal information, using paper and electronic sources;
- to use primary and secondary legal sources relevant to the topic under study.

GENERAL TRANSFERABLE INTELLECTUAL SKILLS

4. Analysis, synthesis, critical judgment and evaluation: A student should be able

- to recognise and rank items and issues in terms of relevance and importance;
- to bring together and integrate information and materials from a variety of different sources;
- to produce a ***substantially accurate synthesis*** of relevant doctrinal and policy issues in relation to a topic;
- ***to undertake the analysis of factual information in a systematic way***;
- to make a critical judgement of the merits of particular arguments;
- to present and make a reasoned choice between alternative solutions.

5. Autonomy and ability to learn: A student should be able, with ***minimal guidance***,

- to act independently in planning and undertaking tasks in areas of law which she or he has already studied;
- to be able to undertake independent research in areas of law which he or she has not previously studied starting from standard legal information sources;
- to reflect on his or her own learning, and to seek and make use of feedback.

KEY SKILLS

6. Communication and Literacy: Both orally and in writing, a student should be able

- to understand and use the English language proficiently in relation to legal matters;
- to present knowledge or ***a sustained argument*** in a way which is comprehensible to others and which is directed at their concerns;
- l to read and discuss legal materials which are written in technical and complex language.

7. Other key skills: numeracy, information technology and teamwork: A student should be able

- where relevant and as the basis for an argument, to use, present and evaluate information provided in numerical or statistical form;
- to produce a word-processed essay or other text and to present such work in an appropriate form;
- to use the World-wide web and e-mail;
- to use some electronic information retrieval systems.
- to work in groups as a participant who contributes effectively to the group's task.

2.1.2 ORDINARY LAW DEGREES

This ***Statement*** is pitched at the level of a bare pass in an Ordinary degree. It sets out what an employer, student or funder can reasonably expect to be the minimum achievement of a graduate with an Ordinary Bachelors degree in Law or Legal Studies. This Statement covers all university education in law and legal studies.

PURPOSE

This document sets out the *minimum* achievement which a student should demonstrate before s/he is awarded an Ordinary degree in Law. The vast majority of students will perform significantly better in many aspects. To find out a more accurate picture of the profile of students from a particular university or higher education institution, you are advised to consult the statements of standards produced by it, e.g. in its published Programme Specification.

TO WHICH DEGREES DOES THIS STATEMENT APPLY?

This statement applies only to those students who acquire at least 50% of the credits in their programme of study in legal subjects. In relation to other students, you should refer to the Benchmark Statement which the institution states is the most appropriate to their programme of study.

LEVELS OF ACHIEVEMENT

The standards set out in the next section are a minimum level of performance required to pass an Ordinary degree. A student with a bare pass in the Ordinary degree will have satisfactorily demonstrated achievement in each area of performance on a sufficient number of occasions or over a sufficient range of activities to give confidence that they have the ability or skill which is claimed for graduates in law. Each institution will have its own method of determining what is appropriate evidence of this achievement, but the external examiner system and the Academic Reviewer system established by the Quality Assurance Agency monitor adherence to these minimum standards.

AREAS OF PERFORMANCE

Any student graduating in Law must show achievement in all of the following areas of performance, thereby demonstrating substantially all of the abilities identified in each area of performance.

SUBJECT-SPECIFIC ABILITIES

1. Knowledge: A student should demonstrate a basic knowledge and understanding of the principal features of the legal system(s) studied, viz. s/he

- should be able to demonstrate knowledge of a substantial range of major concepts, values, principles and rules of that system;
- should be able to explain the main legal institutions and procedures of that system;
- should be able to demonstrate study in depth and in context of some substantive areas of the legal system.[1]

2. Application and problem-solving: A student should demonstrate a basic ability to apply her or his knowledge to a situation of limited complexity in order to provide arguable conclusions for concrete problems (actual or hypothetical).

3. Sources and research: A student should demonstrate a basic ability

- to identify accurately the issue(s) which require researching;
- to identify and retrieve up-to-date legal information, using paper and electronic sources;
- to use primary and secondary legal sources relevant to the topic under study.

[1] The breadth and depth of coverage will vary according to the amount of law studied by the student in his or her programme.

GENERAL TRANSFERABLE INTELLECTUAL SKILLS

4. Analysis, synthesis, critical judgment and evaluation: A student should demonstrate a basic ability

- to recognise and rank items and issues in terms of relevance and importance;
- to bring together information and materials from a variety of different sources;
- to produce a synthesis of relevant doctrinal and policy issues in relation to a topic;
- to make a critical judgment of the merits of particular arguments;
- to present and make a reasoned choice between alternative solutions.

5. Autonomy and ability to learn: A student should demonstrate a basic ability, with limited guidance

- to act independently in planning and undertaking tasks in areas of law which she or he has already studied;
- to be able to undertake independent research in areas of law which he or she has not previously studied starting from standard legal information sources;
- to reflect on his or her own learning, and to seek and make use of feedback.

KEY SKILLS

6. Communication and Literacy: Both orally and in writing, a student should demonstrate a basic ability

- to understand and use the English language proficiently in relation to legal matters;
- to present knowledge or an argument in a way which is comprehensible to others and which is directed at their concerns;

- to read and discuss legal materials which are written in technical and complex language.

7. Other key skills: numeracy, information technology and teamwork: A student should demonstrate a basic ability

- where relevant and as the basis for an argument, to use, present and evaluate information provided in numerical or statistical form;
- to produce a word-processed essay or other text and to present such work in an appropriate form;
- able to use the World-wide web and e-mail;
- to use some electronic information retrieval systems.
- to work in groups as a participant who contributes effectively to the group's task.

2.2 TEXT FOR LAW SCHOOLS

2.2.1 HONOURS LAW DEGREES

INTRODUCTION

1. The purpose of these Benchmark standards is

(a) to guide institutions (e.g. Law Schools[1]) in reporting clearly and accurately to the wider public (students, parents, teachers, funders and employers) the nature of their provision in a standard way;

(b) to provide a basis for institutions to devise their own learning outcome statements compatible with these Benchmark statements;

(c) to set as a minimum certain achievements in areas of performance which a student must demonstrate to be awarded an undergraduate honours degree in Law.

2. The Law Benchmarking Panel has decided to set out the national standard for Law by way of a ***Threshold Statement*** which is set at the bottom of the third class honours degree. It defines the minimally acceptable graduate. These standards are concerned to ensure that those to whom an honours degree in law are awarded have demonstrated achievement in all the stated areas of performance by the time the award is made.

3. This statement covers all university education in law and legal studies. The statement is limited to students who take at least 50% of their credits in their programme as legal subjects. No institution will be required to demonstrate that other students taking fewer credits in law have met the standards set out here. QAA intends to develop a range of benchmark standards in other disciplines. Institutions teaching a programme with less than 50% of the credits in legal subjects will have to choose a benchmark standard appropriate to it.

4. The QAA is also developing a template for ***Programme Specifications***, which are standard ways in which information on programmes of study can be presented. Within such specifications, there will be a section in

which institutions will set out 'What a graduate should know and be able to do on completion of the programme'. This will be one place in which a Law School can set down its own statement of standards.

5. ***The nature of a Threshold statement***: The ***Threshold Statement*** is set at the bottom of the third class honours degree. Few Law Schools will probably be content simply to describe the achievements of their students at this level. Most will prefer to describe the achievement of the typical student, rather than the minimally acceptable graduate. A description of the achievement of such a typical student is described here as a 'modal statement'. Such a ***Modal Statement*** would typically be set at the 2.1/2.2 boundary[2]. Nothing in this statement precludes a Law School from setting out its own statement of standards at modal level, provided that this is at least as high as the national threshold state6. These Benchmark standards are set out as ***learning outcomes*** which must be satisfied by the time a degree is awarded. The standards do not specify the mode of study or the learning methods by which a student is able to achieve these outcomes. No distinction is made between full-time and part-time study. Some of the outcomes could be achieved by prior learning which is accredited as part of a degree programme. (Here the awarding institution warrants that the student has achieved the requisite outcome.) But, in all cases, these standards are concerned to ensure that those to whom an honours degree in law are awarded have achieved all the stated requirements by the time the award is made. Prior learning and (in respect of some key skills) study of non-law subjects may be the route adopted by some students, whilst for others all the learning may be the result of study in the Law School. Whatever the route to these outcomes, the degree-awarding institution must be satisfied that the student has achieved the requisite outcomes. Where achievement is demonstrated by prior learning, an institution is expected to warrant that the achievement is still sufficiently current to feature in a statement of what a student is able to do by the time the degree award is given.

7. ***Learning Outcomes***: Many Law Schools are familiar with the articulation of express statements of learning outcomes and marking criteria derived from them which are communicated to students. These help to make clear to students what is expected from them and to assist

them in measuring their own progress. There is no requirement that institutions use this form of statement to articulate their own standards. The Subject Benchmarking Panel recognise that a significant number of institutions are not used to using learning outcome statements and it has included some illustrations of how the outcomes might be demonstrated and assessed within this text and in the Appendices.

[1] In this statement 'Law School' is used as a shorthand to describe any higher education institution which provides a programme of study which includes a substantial law content. It makes no assumptions about the organisation within that institution through which the programme is delivered.

[2] An example of a modal statement can be found in the Report on Graduate Standards in Law which was distributed to Law Schools in December 1997 (available on the Internet: http://www.law.warwick.ac.uk/ncle).

LEVELS OF PERFORMANCE

8. The minimum standard set here at the bottom of the third class would be treated by many institutions as disappointing performance, given the entry qualifications of the students, and it is not the outcome expected of them. But, since the students are graduating with an honours degree, which is itself a significant level of educational achievement, this statement tries to set out positively what minimally acceptable graduates are able to do. Relative to other graduates, they may be deficient; but they have demonstrated an important level of attainment which justifies the standing of a graduate and the public and private investment in higher education.

The concept of 'satisfactorily' demonstrating achievement is critical and can only partly be captured in words. It depends on the professional judgment of examiners, informed especially by external examiners. They have to review the evidence presented by the student through the structure of the programme followed, the assessment on modules, progress files, student records and other processes and decide whether this is sufficient to meet the claims which this statement of standards makes for the minimum achievement of graduates.

Each institution will have to develop its own assessment criteria, appropriate to the activities through which students are expected to demonstrate their achievement in each one or combination of areas. These criteria, agreed with externals, will provide an objective basis on which an institution can claim that its students have reached the requisite standard.

AREAS OF PERFORMANCE

9. The standards set out in the section on 'Areas of Performance' are a minimum level of achievement required to pass an honours degree in any institution. In devising the statements of learning outcomes for their own programmes of study, institutions are expected to include all the features listed below as part of their programme. However, institutions will also wish to describe the outcomes expected of their students in terms appropriate to their mission.

10. This statement does not set out any requirements about the study methods which students will have to adopt in order to achieve these outcomes, nor does it make requirements about the way courses are structured. The activities which students undertake as part of their learning in the Law School must, however, be designed in such a way as to provide evidence that the student has attained the requisite standard in all required areas of performance.

11. ***Does everything have to be assessed?*** It is for institutions to decide on the appropriate form of evidence they require to be satisfied that a student has an appropriate level of achievement in a required area of performance. For the statement to be satisfied all that is required is a statement that a student has passed the requisite standard in that area. There is no prescription about the form of evidence provided by a student nor of the form of record kept by the institution. In one institution, a student might show knowledge and general intellectual skills through passing sufficient law subjects, but might show key skills through activities recorded in tutorial reports, a student file, or a record of achievement or progress file. Others may prefer to integrate assessment of key skills into performance on particular modules. Some outcomes, e.g. teamworking, may even be demonstrated by

extra-curricular activities of which the student has provided sufficient evidence to the Law School. The Benchmark statement expresses no preference. In relation to some areas of performance, the structure of the learning activity itself may provide evidence that a student has achieved a requisite level. For example, a dissertation or project module might well be so designed as to require every student to demonstrate the necessary research skills and autonomy in order to pass it. But at all events an institution must have in place mechanisms which provide it with reliable evidence that students have reached the minimum standard in each area of performance. External examiners and QAA academic reviewers will expect to be informed of these mechanisms and to make judgements about their sufficiency.

12. As a preliminary exercise in reviewing how their existing programmes relate to these benchmark standards, institutions may find it useful to map their provision onto the areas of performance. In this way, they would be clearer as to how students are currently required to demonstrate achievement in the relevant areas and whether they do indeed have evidence in relation to all areas.

13. ***How much must be achieved?*** The statement makes it clear that a student should demonstrate achievement in all of the seven area of performances. Within each area of performance there are often a number of specific items. Not all of these items must be demonstrated, but a student must have a sufficient level of achievement in that area and sufficient reliability of performance that a Law School can confidently state that s/he has demonstrated that outcome. Ultimately the question of sufficiency is a matter of judgement exercised by internal and external examiners.

14. **Knowledge**:

Legal system studied: This statement applies to the study of any legal system for which a Scottish university awards its degrees, even if it is not in the law of that jurisdiction. The panel has not taken a view on the legitimacy of law degrees awarded by an HEI which are not in the law of a UK jurisdiction. Since validation is recognised as a legitimate activity for HEIs, then institutions may wish to validate law degrees in other jurisdictions. Should this be the case, this statement applies with equal force as in respect of a degree in Scots law.

Questions have been raised as to whether an ability to compare the law in one jurisdiction with others should be a requirement. We believe this is desirable, but not a minimum requirement for graduation with an honours degree in every HEI.

Principal Features: The statements require a broad overview of the main features and ideas involved in a legal system, including an *in-depth* knowledge of a substantial range of major concepts, values, principles and rules in that system and the context in which that system operates. Nevertheless, there is no requirement that the *study in depth* be in particular branches of law. This is for the student to choose within the framework established by a particular HEI.

Study in context: Within different kinds of degree programme, there will be different emphases on the context of law. Each institution would specify the kinds of context to which they would expect their students to relate their knowledge of substantive law. Study in context includes that a student should have [some in-depth???] understanding, as appropriate, of relevant social, economic, political, historical, philosophical, ethical, and cultural contexts in which law operates, and to draw relevant comparisons with some other legal systems;

15. Application and problem-solving: An ability to apply knowledge and to solve problems need not be demonstrated in relation to each subject studied. It is sufficient that a student can demonstrate with sufficient frequency an ability to apply knowledge to problems of a complex nature. A student might demonstrate application through moots, law clinics, tutorial work, as well as through conventional problem questions in unseen examinations.

16. Sources and research: There are a variety of ways in which this can be demonstrated. A dissertation may well be used in some law schools whereas others will set a number of assignments or projects over the course of the degree which enable a student to demonstrate ability to use primary sources and to undertake legal research. The structure of taught modules may require students to undertake independent research for seminars, even though the final assessment is by terminal written examination. The essential point is the evidence of research activity. In particular areas, it may well be appropriate to require students to engage in research which involves non-legal sources and materials, as well as legal sources.

17. Analysis, synthesis, critical judgment and evaluation: These general intellectual skills are likely to be demonstrated pervasively through a programme of study, particularly in the final years. The essential point is that students should be required to undertake exercises (assignments, coursework, or examinations) which enable them to demonstrate that they have such abilities.

The skill of analysis requires, inter alia, that students be able to discriminate between the legally relevant and the irrelevant. Synthesis can be demonstrated through a variety of tasks, whether it is bringing together material studied in lectures, seminars and wider reading, or in integrating material from different assigned reading or research.

Critical analysis is recognised as a key attribute of graduates. It involves the ability to identify flaws in an argument. This can be demonstrated in relation to a variety of tasks, e.g. commentary on a new case or article. In evaluation, ability to offer reasons for a point of view is essential. The panel considers it sufficient that the student can choose between the views of protagonists by adopting one of the perspectives, provided that he or she can provide a measure of justification for that choice. It is not essential that the student have developed a personal viewpoint of his or her own on the issues.

18. Autonomy and ability to learn: This is perhaps the key feature of graduateness. The ability to learn and make use of learning in an independent fashion is what is generally taken to distinguish the final year student from the first year student. The learning activities required by a Law School should be such that students should be required to demonstrate what they can do independently, rather than just demonstrating that they have learnt what they have been told. This can be demonstrated by the structure of a particular module. For example, all students may be required to study a module without lectures and which requires them to prepare material for seminars, not all of which is directed by the teacher. This could provide a basis of evidence on whether individual students are able to learn on their own with minimal guidance.

Minimal Guidance: Obviously, an independent learner will need some support and some broad structure within which to operate. The extent of guidance required will depend on a student's stage of development in the field and the complexity of the material. However, by the honours stage the teacher input should indeed be small. The independent undergraduate should be able to take the initiative to seek support and feedback.

Ability to reflect critically: A student should be able not only to learn something, but to reflect critically on the extent of her or his learning. At a minimum, a student should have some sense of whether s/he knows something well enough or whether s/he needs to learn more in order to understand a particular aspect of the law.

KEY SKILLS [3]

19. Communication and literacy: Law students are expected to be good at both written and oral communication. An honours student can be expected to be able to provide a comprehensible and sustained argument both orally and in writing. Whereas written communication is assessed heavily by formal examinations, oral communication is demonstrated by a variety of compulsory and voluntary activities, e.g. tutorial performance or mooting.

Law students are expected to be able to read complex primary materials and to find the key statements from them. As such the statement here adds little to the requirement under sources and research, but merely makes clear the broader applicability of the skills used in that activity.

20. Numeracy: Typically, law students demonstrate their ability to make use of numerical and statistical information in a variety of ways. Many legal subjects presuppose an ability to understand and make use of numerical and statistical information. In company law, succession or trusts, the student needs to be able to understand proportions in order to comment on the allocation of shares in companies, estates or trust arrangements, issues on the measure of damages also require understanding of numerical information. In subjects such as Scottish Legal System or criminology, statistics might be used to demonstrate the effectiveness of civil justice or forms of crime prevention. The concern here is not the ability to undertake complex calculations, but to be able to use and evaluate the information provided as the basis of an argument.

21. Information technology: Given the background of many students, many aspects of performance may well have been achieved before they arrive in university. The requirement is fairly limited. In terms of word-

processing, the essential skills required are to be able to produce a word-processed essay or other text and to present such work in an appropriate form. Information retrieval systems may, but need not, include LEXIS. Standard information retrieval systems would include electronic library catalogues.

22. Teamworking: A variety of activities can be used to demonstrate that students can work together in teams. Group projects are a typical way in which individual students provide evidence of their teamworking skills, but team negotiations or student-led tutorials would be other alternatives. Teamwork can be demonstrated not only by activities in class, but also on work placements or student-led court visits, as well as in some extra-curricular activities.

[These guidance notes are based very closely on those drawn up by John Bell for the English and Welsh Benchmark standards for law, in October, 1998]

[3] Further articulation of what might be involved in setting standards and assessing key skills can be found in the report of the Law Discipline Network on General Transferable Skills in the Law Curriculum (available on the Internet: http://www.law.warwick.ac.uk/ncle).

2.2.2 ORDINARY LAW DEGREES

INTRODUCTION

1. The purpose of these Benchmark standards is

(a) to guide institutions (e.g. Law Schools[1]) in reporting clearly and accurately to the wider public (students, parents, teachers, funders and employers) the nature of their provision in a standard way;

(b) to provide a basis for institutions to devise their own learning outcome statements compatible with these Benchmark statements;

(c) to set as a minimum certain achievements in areas of performance which a student must demonstrate to be awarded an undergraduate degree in Law.

2. The Law Benchmarking Panel has decided to set out the national standard for Ordinary Scots law and legal studies degrees by way of a ***Threshold Statement***. It is pitched at the level of a bare pass in an Ordinary degree and defines the minimally acceptable graduate. These standards are concerned to ensure that those to whom an Ordinary degree in law are awarded have demonstrated achievement in all the stated areas of performance by the time the award is made.

3. This statement covers all university education in law and legal studies. The statement is limited to students who take at least 50% of their credits in their programme as legal subjects. No institution will be required to demonstrate that other students taking fewer credits in law have met the standards set out here. QAA intends to develop a range of benchmark standards in other disciplines. Institutions teaching a programme with less than 50% of the credits in legal subjects will have to choose a benchmark standard appropriate to it.

4. The QAA is also developing a template for ***Programme Specifications***, which are standard ways in which information on programmes of study can be presented. Within such specifications, there will be a section in which institutions will set out 'What a graduate should know and be

able to do on completion of the programme'. This will be one place in which a Law School can set down its own statement of standards.

5. ***The nature of a Threshold statement***: The ***Threshold Statement*** is set at the level of a bare pass in an Ordinary degree. Few Law Schools will probably be content simply to describe the achievements of their students at this level. Most will prefer to describe the achievement of the typical student, rather than the minimally acceptable graduate. A description of the achievement of such a typical student is described here as a 'modal statement'. Nothing in this statement precludes a Law School from setting out its own statement of standards at modal level, provided that this is at least as high as the national threshold statement.

6. These Benchmark standards are set out as ***learning outcomes*** which must be satisfied by the time a degree is awarded. The standards do not specify the mode of study or the learning methods by which a student is able to achieve these outcomes. No distinction is made between full-time and part-time study. Some of the outcomes could be achieved by prior learning which is accredited as part of a degree programme. (Here the awarding institution warrants that the student has achieved the requisite outcome.) But, in all cases, these standards are concerned to ensure that those to whom an Ordinary degree in law are awarded have achieved all the stated requirements by the time the award is made. Prior learning and (in respect of some key skills) study of non-law subjects may be the route adopted by some students, whilst for others all the learning may be the result of study in the Law School. Whatever the route to these outcomes, the degree-awarding institution must be satisfied that the student has achieved the requisite outcomes. Where achievement is demonstrated by prior learning, an institution is expected to warrant that the achievement is still sufficiently current to feature in a statement of what a student is able to do by the time the degree award is given.

7. ***Learning outcomes***: Many Law Schools are familiar with the articulation of express statements of learning outcomes and marking criteria derived from them which are communicated to students. These help to make clear to students what is expected from them and to assist them in measuring their own progress. There is no requirement that institutions use this form of statement to articulate their own standards.

The Subject Benchmarking Panel recognise that a significant number of institutions are not used to using learning outcome statements and it has included some illustrations of how the outcomes might be demonstrated and assessed within this text and in the Appendices. [1] In this statement 'Law School' is used as a shorthand to describe any higher education institution which provides a programme of study which includes a substantial law content. It makes no assumptions about the organisation within that institution through which the programme is delivered.

LEVELS OF PERFORMANCE

8. The minimum standard of a bare pass at Ordinary level would be treated by many institutions as a disappointing performance, given the entry qualifications of the students, and it is not the outcome expected of them. But, since the students are graduating with an Ordinary degree, which is itself a significant level of educational achievement, this statement tries to set out positively what minimally acceptable graduates are able to do. Relative to other graduates, they may be deficient; but they have demonstrated an important level of attainment which justifies the standing of a graduate and the public and private investment in higher education.

The concept of 'satisfactorily' demonstrating achievement is critical and can only partly be captured in words. It depends on the professional judgment of examiners, informed especially by external examiners. They have to review the evidence presented by the student through the structure of the programme followed, the assessment on modules, progress files, student records and other processes and decide whether this is sufficient to meet the claims which this statement of standards makes for the minimum achievement of graduates.

Each institution will have to develop its own assessment criteria, appropriate to the activities through which students are expected to demonstrate their achievement in each one or combination of areas. These criteria, agreed with externals, will provide an objective basis on which an institution can claim that its students have reached the requisite standard.

AREAS OF PERFORMANCE

9. The standards set out in the section on 'Areas of Performance' are a minimum level of achievement required to pass an Ordinary degree in any institution. In devising the statements of learning outcomes for their own programmes of study, institutions are expected to include all the features listed below as part of their programme. However, institutions will also wish to describe the outcomes expected of their students in terms appropriate to their mission.

10. This statement does not set out any requirements about the study methods which students will have to adopt in order to achieve these outcomes, nor does it make requirements about the way courses are structured. The activities which students undertake as part of their learning in the Law School must, however, be designed in such a way as to provide evidence that the student has attained the requisite standard in all required areas of performance.

11. ***Does everything have to be assessed?*** It is for institutions to decide on the appropriate form of evidence they require to be satisfied that a student has an appropriate level of achievement in a required area of performance. For the statement to be satisfied all that is required is a statement that a student has passed the requisite standard in that area. There is no prescription about the form of evidence provided by a student nor of the form of record kept by the institution. In one institution, a student might show knowledge and general intellectual skills through passing sufficient law subjects, but might show key skills through activities recorded in tutorial reports, a student file, or a record of achievement or progress file. Others may prefer to integrate assessment of key skills into performance on particular modules. Some outcomes, e.g. teamworking, may even be demonstrated by extra-curricular activities of which the student has provided sufficient evidence to the Law School. The Benchmark statement expresses no preference. In relation to some areas of performance, the structure of the learning activity itself may provide evidence that a student has achieved a requisite level. For example, a dissertation or project module might well be so designed as to require every student to demonstrate the necessary research skills and autonomy in order to pass it. But at all

events an institution must have in place mechanisms which provide it with reliable evidence that students have reached the minimum standard in each area of performance. External examiners and QAA academic reviewers will expect to be informed of these mechanisms and to make judgements about their sufficiency.

12. As a preliminary exercise in reviewing how their existing programmes relate to these benchmark standards, institutions may find it useful to map their provision onto the areas of performance. In this way, they would be clearer as to how students are currently required to demonstrate achievement in the relevant areas and whether they do indeed have evidence in relation to all areas.

13. ***How much must be achieved?*** The statement makes it clear that a student should demonstrate achievement in all of the seven area of performances. Within each area of performance there are often a number of specific items. Not all of these items must be demonstrated, but a student must have a sufficient level of achievement in that area and sufficient reliability of performance that a Law School can confidently state that s/he has demonstrated that outcome. Ultimately the question of sufficiency is a matter of judgement exercised by internal and external examiners.

14. **Knowledge**:

Legal system studied: This statement applies to the study of any legal system for which a Scottish university awards its degrees, even if it is not in the law of that jurisdiction. The panel has not taken a view on the legitimacy of law degrees awarded by an HEI which are not in the law of a UK jurisdiction. Since validation is recognised as a legitimate activity for HEIs, then institutions may wish to validate law degrees in other jurisdictions. Should this be the case, this statement applies with equal force as in respect of a degree in Scots law.

Questions have been raised as to whether an ability to compare the law in one jurisdiction with others should be a requirement. We believe this is desirable, but not a minimum requirement for graduation with an Ordinary degree in every HEI.

Principal Features: The statements require an overview of the main features and ideas involved in a legal system, rather than requiring detailed knowledge of every major branch of law. Within such a broad framework of knowledge, students can be selective as to the areas in which they engage in detailed study.

Study in depth: Unlike professional requirements, this statement does not require students to demonstrate depth of study in particular branches of law. This is for the student to choose within the framework established by a particular HEI.

Study in context: Within different kinds of degree programme, there will be different emphases on the context of law. Each institution would specify the kinds of context to which they would expect their students to relate their knowledge of substantive law. Study in context includes that a student should be able to demonstrate an understanding, as appropriate, of relevant social, economic, political, historical, philosophical, ethical, and cultural contexts in which law operates, and to draw relevant comparisons with some other legal systems;

15. Application and problem-solving: An ability to apply knowledge and to solve problems need not be demonstrated in relation to each subject studied. It is sufficient that a student can demonstrate with sufficient frequency an ability to apply knowledge. A student might demonstrate application through moots, law clinics, tutorial work, as well as through conventional problem questions in unseen examinations.

16. Sources and research: There are a variety of ways in which this can be demonstrated. A dissertation may well be used in some law schools whereas others will set a number of assignments or projects over the course of the degree which enable a student to demonstrate ability to use primary sources and to undertake legal research. The structure of taught modules may require students to undertake independent research for seminars, even though the final assessment is by terminal written examination. The essential point is the evidence of research activity. In particular areas, it may well be appropriate to require students to engage in research which involves non-legal sources and materials, as well as legal sources.

17. Analysis, synthesis, critical judgment and evaluation: These general intellectual skills are likely to be demonstrated pervasively through a programme of study, particularly in the final years. The essential point is that students should be required to undertake exercises (assignments,

coursework, or examinations) which enable them to demonstrate that they have such abilities.

The skill of analysis requires, inter alia, that students be able to discriminate between the legally relevant and the irrelevant. Synthesis can be demonstrated through a variety of tasks, whether it be bringing together material studied in lectures, seminars and wider reading, or in bringing together material from different assigned reading or research.

Critical analysis is recognised as a key attribute of graduates. It involves the ability to identify flaws in an argument. This can be demonstrated in relation to a variety of tasks, e.g. commentary on a new case or article. In evaluation, ability to offer reasons for a point of view is essential, though the depth and fullness of the justification will not be very great. The panel considers it sufficient that the student can choose between the views of authors by adopting one of the perspectives with limited further justification, rather than requiring a developed personal point of view.

18. Autonomy and ability to learn: This is perhaps the key feature of graduateness. The ability to learn and make use of learning in an independent fashion is what is generally taken to distinguish the final year student from the first year student. The learning activities required by a Law School should be such that students should be required to demonstrate what they can do independently, rather than just demonstrating that they have learnt what they have been told. This can be demonstrated by the structure of a particular module. For example, all students may be required to study a module without lectures and which requires them to prepare material for seminars, not all of which is directed by the teacher. This could provide a basis of evidence on whether individual students are able to learn on their own with limited guidance.

Limited Guidance: Obviously, an independent learner will need some support and some broad structure within which to operate. The extent of guidance required will depend on a student's stage of development in the field and the complexity of the material. The independent graduate should be able to take the initiative to seek support and feedback.

Ability to reflect critically: A student should be able not only to learn something, but to reflect critically on the extent of her or his learning. At a minimum, a student should have some sense of whether s/he knows something well enough or whether s/he needs to learn more in order to understand a particular aspect of the law.

KEY SKILLS[2]

19. Communication and Literacy: Law students are expected to be good at both written and oral communication. Whereas written communication is assessed heavily by formal examinations, oralprovide a comprehensible and sustained argument both orally and in writing. Whereas written communication is assessed heavily by formal examinations, oral communication is demonstrated by a variety of compulsory and voluntary activities, e.g. tutorial performance or mooting.

Law students are expected to be able to read complex primary materials and to find the key statements from them. As such the statement here adds little to the requirement under sources and research, but merely makes clear the broader applicability of the skills used in that activity.

20. Numeracy: Typically, law students demonstrate their ability to make use of numerical and statistical information in a variety of ways. Many legal subjects presuppose an ability to understand and make use of numerical and statistical information. In company law, succession or trusts, the student needs to be able to understand proportions in order to comment on the allocation of shares in companies, estates or trust arrangements, issues on the measure of damages also require understanding of numerical information. In subjects such as Scottish Legal System or criminology, statistics might be used to demonstrate the effectiveness of civil justice or forms of crime prevention. The concern here is not the ability to undertake complex calculations, but to be able to use and evaluate the information provided as the basis of an argument.

21. Information technology: Given the background of many students, many aspects of performance may well have been achieved before they arrive in university. The requirement is fairly limited. In terms of word-processing, the essential skills required are to be able to produce a word-processed essay or other text and to present such work in an appropriate form. Information retrieval systems may, but need not, include LEXIS. Standard information retrieval systems would include electronic library catalogues.

22. Teamworking: A variety of activities can be used to demonstrate that students can work together in teams. Group projects are a typical way in which individual students provide evidence of their teamworking skills, but team negotiations or student-led tutorials would be other alternatives. Teamwork can be demonstrated not only by activities in class, but also on work placements or student-led court visits, as well as in some extra-curricular activities.

[These guidance notes are based very closely on those drawn up by John Bell for the English and Welsh Benchmark standards for law, in October, 1998]

[2] Further articulation of what might be involved in setting standards and assessing key skills can be found in the report of the Law Discipline Network on General Transferable Skills in the Law Curriculum (available on the internet: http://www.law.warwick.ac.uk/ncle)

LAW BENCHMARKING GROUP MEMBERSHIP

Professor S Bailey University of Nottingham

Professor J Bell University of Leeds

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Mr J Campbell The Law Society of Scotland

Mr M Cuthbert University College Northampton

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Professor B Lee University of Wales, Cardiff

Mr A O'Donnell Glasgow Caledonian University

Professor A Paterson University of Strathclyde

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APPENDIX 8 LEGAL PRACTICE COURSE WRITTEN STANDARDS (ENGLAND AND WALES)

[PDF file] [27 pages] to be inserted when final and all a pdf, attached separately for now

APPENDIX 9 THE SPANISH TRAINING SYSTEM

LEGAL PROFESSION IN SPAIN

A legal profession is a profession that is involved in making and enforcing the law and therefore requires special legal training. A legal practitioner must hold a qualification attesting to specialised legal knowledge.

All legal practitioners must have an academic qualification (usually a law degree) attesting to the necessary knowledge of the law. They must also be members of a professional law association that ensures that those engaged in the profession practise it correctly, both in the public interest and that of the members.

Generally speaking, each of the legal professions has a monopoly of the activities it engages in, although some of these activities may also be carried out by other professionals provided they are sufficiently qualified.

Legal professionals are engaged in two main areas: the prevention and settlement of disputes.

The main professions in the area of prevention of disputes are those that ensure legal certainty through advice, documentation or registration services.

The main professions engaged in the settlement of disputes are those involved in litigation. Some of these (usually the liberal professions) direct and represent the parties, while others, members of the judiciary who form part of the public administration, direct legal proceedings and decide on disputes.

The following professions practise in the area of prevention of disputes:

- Lawyers (ABOGADOS), who provide legal advice.
- Notaries, who provide documentation, attestation and advisory services.
- Property and commercial registrars, who keep public registers recording important legal acts that may affect third parties, check that documents entered in the register conform to legal requirements and advise persons wishing to make entries in the register.

The following professionals practise in the area of settlement of disputes:

- Lawyers, who direct the parties to litigation and settle disputes through the alternative systems in place.
- Court lawyers (PROCURADORES), who represent the parties in court.
- Court clerks (SECRETARIOS JUDICIALES), who are responsible for documentation and for expediting legal proceedings.
- Judges (JUECES and MAGISTRADOS – MAGISTRADOS are judges sitting in higher courts), who rule on disputes.

In addition to the professions listed above, there are other professionals who have to deal with legislative matters and who are therefore required to hold a special qualification (not necessary a law degree) in a particular area of law and be a member of a professional association.

THIS CATEGORY INCLUDES THE HOLDERS OF CERTAIN DIPLOMAS, E.G. "graduados sociales" (CONSULTANTS ON LABOUR AND SOCIAL SECURITY MATTERS WHO HANDLE THESE MATTERS FOR COMPANIES, INDIVIDUALS, ETC.). HOLDERS OF THESE QUALIFICATIONS WHO BELONG TO THE RELEVANT PROFESSIONAL ASSOCIATIONS MAY REPRESENT THE PARTIES IN LABOUR LAW PROCEEDINGS.

TO BECOME A LAWYER NOWADAYS IN SPAIN

At present when students obtain their Law degree they automatically become legal practitioners. Any Law-degree holder (the course is completed over a five-year period), may be admitted to the Bar Association as from the next day he or she finishes his or her studies and from that very moment he or she may act as legal counsel in any matter regardless of its nature, complexity or amount.

The requirements for qualifying as barrister (ABOGADO) in Spain are as follows:

- To be a Spanish national or a national of another EU Member State or of a country that is a party to the 1992 Agreement creating the European Economic Area.
- To be of age and not disqualified for any reason from practising as a lawyer.
- To hold a Spanish degree in law (5 years at University) or an equivalent foreign degree that has been officially approved.
- To be a member of the COLEGIO DE ABOGADOS (Bar Association) for the district in which the sole or main professional domicile is located, in order to practise anywhere in Spain.
- **There's nor training period after University neither a bar exam.**

However this situation is due to change by October the 30th, 2011.

The entry into the legal professions of advocate and solicitor is regulated in the Act 34/2006, of 30th October, of entry into the professions of advocate and court lawyer, although it won't get into force until October the 30th of 2011, after its definitive approval, so as to respect the expectations of students who were currently studying law by the time the Act or Law was published.

The tasks that the Spanish advocate performs are essentially the legal defence of clients before courts. The court lawyer tasks are merely the representation of clients in courts (without legal defence).The Act 34/2006, distinguish between the University Law Degree and the Professional License of Advocate and Court lawyer. The qualifications necessary for obtaining the Professional License include having the

University Law Degree and passing the specialised training and the evaluation (these last two requisites are different whether they are for advocates or court lawyers).

The specialised training includes two training courses and a work experience placement or internship.That educational programme is giving by universities or legal practice schools of the Bar Association, or both university and Bar Association, but in any case, it 's necessary an agreement between University and the Bar Association, and also the official supporting/accreditation of the Ministry of Justice and the Ministry of Science and Education.

The evaluation is a State exam announced by both ministries, following consultation with the undertakings involved. This is an annual periodical state exam, with no limited number of places.

For practising these professions it is necessary to belong to the corresponding Professional

Association (advocates or court lawyers). There are professional associations at provincial level (occasionally at local level). **In the case of advocates, it is enough to join one Professional Association to be allowed to practice in the whole national territory**. Nevertheless, there are territorial restrictions for the court lawyer which is only allowed to practice in the territorial division of its association.

Foreigners that want to practice in the Spanish territory are also required to join the corresponding professional association.

Under Article 436 of the Organic Law on the Judiciary and Article 8 of the Lawyers' Statute approved by Royal Decree 658/2001 of 22 June 2001, lawyers (ABOGADOS) perform the following functions:

1. Advising and defending:
    - parties to all kinds of legal proceedings(civil, criminal, administrative, employment and military);
    - vis-à-vis administrative bodies, associations, corporations and public agencies of any kind;
    - vis-à-vis any private entity or individual where necessary in the exercise of their functions.

2. Legal advice and counselling.

Representation of the client unless this is reserved by law to other professions

LEGISLATION ADOPTED BY SPAIN TO ENSURE THAT LAWYERS ARE FREE TO PRACTISE, AND TO PROVIDE FOR THE MUTUAL RECOGNITION OF QUALIFICATIONS

Under the Lawyers' Statute, lawyers from other countries may provide professional services in Spain in accordance with the current legislation, which distinguishes between two different groups:

- Nationals of EU Member States and, under the Agreement creating the European Economic Area signed in Oporto on 2 May 1992 and ratified by Spain on 26 November 1993, nationals of the EEA States. In accordance with the principle of free circulation of persons and services in the Member States, there are at present various different alternatives:
    - The right to practise for an indefinite period with the qualification obtained in the country of origin, with the possibility of incorporation into the profession after three years' effective and regular practice.
    - Recognition of the professional qualification obtained in the country of origin, giving the right to practise on the same terms as holders of the Spanish qualification.
    - Occasional provision of professional services using the qualification obtained in the country of origin.
    - In addition, persons not qualified to practise in their country of origin but holding the foreign qualification required for access to the profession may apply for recognition of this qualification in Spain and subsequently enter a Spanish Bar Association.
- Persons who are not nationals of an EU or EEA Member State:
    - In order to become a member of a Spanish Bar Association, they must first have their qualifications

officially recognised and then apply for a DISPENSA LEGAL DE NACIONALIDAD (exemption on the grounds of nationality).

Lawyers are independent members of a liberal profession who provide a service to society. They are not civil servants and practise on the basis of free and fair competition (Article 1 of the Lawyers' Statute).

Lawyers must comply with

- laws and statues;
- the code of ethics and conduct for the profession.

The following bodies are responsible for ensuring that lawyers exercise their functions correctly:

- at national level, the General Council of Lawyers (Consejo General de la Abogacía Española)
- in each Autonomous Community, the Council of the Bar Associations in that Community
- in each province or city, the provincial or district Bar Associations.

Lawyers' fees are charged for the services provided and can be paid in the form of a fixed fee, periodic payments or fees per hour. Contingent fees are forbidden, i.e. agreements entered into by lawyers and their clients prior to the conclusion of a proceeding whereby the client undertakes to pay the lawyer only a percentage of the benefit obtained for the client when the proceeding concludes, regardless of whether this is a sum of money or some other kind of benefit, asset or value.

The amount of the fee can be fixed freely by the client and the lawyer provided it does not infringe the professional code of ethics or the rules of fair competition. If the lawyer and the client fail to agree on a fee there is an adversarial procedure, which is decided on by the judge to whom the case is referred.

Unless some other agreement has been reached or the client has been ordered to pay costs, fees are based on the tentative fees set by the Bar Association for the province in question, applied in accordance

with the Association's rules, practice and customs (Article 44 of the Lawyers' Statute).

Clients who do not have the necessary means to pay for lawyers' and court lawyers' services can request free legal aid .

MAIN LEGAL PROFESSIONS IN SPAIN

The following professions practise in the area of prevention of disputes:

- Lawyers (ABOGADOS), who provide legal advice.
- Notaries, who provide documentation, attestation and advisory services.
- Property and commercial registrars, who keep public registers recording important legal acts that may affect third parties, check that documents entered in the register conform to legal requirements and advise persons wishing to make entries in the register.

The following professionals practise in the area of settlement of disputes:

- Lawyers, who direct the parties to litigation and settle disputes through the alternative systems in place.
- Court lawyers (PROCURADORES), who represent the parties in court.
- Court clerks (SECRETARIOS JUDICIALES), who are responsible for documentation and for expediting legal proceedings.
- Judges (JUECES and MAGISTRADOS – MAGISTRADOS are judges sitting in higher courts), who rule on disputes.

In addition to the professions listed above, there are other professionals who have to deal with legislative matters and who are therefore required to hold a special qualification (not necessary a law degree) in a particular area of law and be a member of a professional association. This category includes the holders of certain diplomas, e.g.

"GRADUADOS SOCIALES" (consultants on labour and social security matters who handle these matters for companies, individuals, etc.). Holders of these qualifications who belong to the relevant professional associations may represent the parties in labour law proceedings.

JUSTICE

Justice emanates from the people and is administered on behalf of the monarch by the judges constituting the judicial power. Only judges can administer justice, i.e. only they can hand down judgments and ensure that they are enforced. Judges are independent of the other powers of the state and are subject only to the constitution and the law.

Judges are civil servants. There are three categories: JUECES, MAGISTRADOS (higher court judges) and MAGISTRADOS DEL TRIBUNAL SUPREMO (judges of the Supreme Court). Candidates for the category of JUEZ must pass a highly competitive examination and take a course of just under two years at the training college ESCUELA JUDICIAL DE BARCELONA. Promotion to the category of MAGISTRADO is by seniority although it is also possible to take an examination in certain specialised areas of law (administrative, employment or commercial). In addition, a quarter of the places for judges are reserved for lawyers with at least 10 years' experience, one third of whom must be court clerks. Most posts of MAGISTRADO of the Supreme Court, promotions to which are made by the CONSEJO GENERAL DEL PODER JUDICIAL (General Council of the Judiciary), are filled by MAGISTRADOS with at least 15 years' experience (including 10 as a MAGISTRADO), although one fifth are reserved for lawyers of recognised standing with at least 15 years' experience (see information sheet on Organisation of Justice).

FUNCTIONS OF THE PUBLIC PROSECUTION SERVICES

Public prosecutors (FISCALES) are civil servants. In order to become a FISCAL it is necessary to hold a law degree or doctorate and pass a competitive examination. Public prosecutors are attached to the FISCALÍA GENERAL DEL ESTADO (Crown Prosecution Service) and to the prosecutors' offices attached to each of the higher courts.

The functions of the public prosecutors are as follows:

1. They ensure that the judicial function operates efficiently in conformity with the law and within the stipulated time periods through the necessary actions, appeal procedures and other measures.

2. They perform the functions assigned them by law in defence of the independence of the judges and courts.

3. They ensure respect for the constitutional institutions and for fundamental rights and public freedoms by any measures required to defend them.

4. They are in charge of the criminal and civil actions arising as a consequence of criminal offences and where necessary oppose those brought by others.

5. They act in criminal proceedings by requesting the judiciary authority to take the necessary precautionary measures and the necessary procedures for ascertaining the facts.

6. They participate in proceedings concerning civil status and any other legally required procedures in defence of legality and the public or social interest.

7. They act in any civil proceedings required by law that affect the public interest or the interests of minors, the disabled or the underprivileged until the normal representation mechanisms are provided.

8. They ensure the integrity of the jurisdiction and competence of the courts and tribunals by raising matters of conflicts of jurisdiction or, where applicable, of competence, and intervene in cases of conflicts of jurisdiction brought forward by others.

9. They ensure that court judgements affecting the public and social interest are complied with.

10. They ensure that victims are protected in court proceedings by setting in motion the mechanisms that provide them with effective aid and assistance.

11. They intervene in protection proceedings.

12. They file appeals for the protection of constitutional rights, and act as required by law in procedures referred to the Constitutional Court in defence of legality.

13. They perform the functions assigned to them by the relevant legislation in relation to the criminal liability of minors, in the best interests of the minor.

14. They act, where and as required by law, in proceedings brought before the Court of Auditors, and defend the legality of administrative and employment court proceedings in cases in which the law provides for their involvement.

15. They ensure that international court protection is provided as required in international laws, treaties and agreements, if necessary by the public prosecutors.

16. They perform any other functions assigned to them by national law.

FUNCTION OF COURT CLERKS

Court clerks (SECRETARIOS JUDICIALES) assist the judges in their functions. They manage the paperwork for court proceedings, keep records of all stages of the proceedings (hearings, trials, etc.), and inform the judge of any documents submitted and of the deadlines for the various procedures. The clerk supervises the staff of the courts and tribunals.

Court clerks must hold a law degree and pass a competitive examination followed by a course at the training college CENTRO DE ESTUDIOS JUDICIALES. In order to guarantee their absolute independence, they

are subject to practically the same regime of incompatibilities and prohibitions as judges.

The court clerks come under the Ministry of Justice and the Government Secretaries of each of the higher courts of justice.

FUNCTION OF NOTARIES

Notaries are legal professionals whose main function is to perform the public service of conferring authenticity on documents in private legal transactions. They also help to draft these documents correctly and to formalise them with their authority and signature. The Notaries Law defines the notary as a civil servant authorised to authenticate contracts and other extrajudicial documents in accordance with the law. Notaries have a twofold role: advising individuals on the best legal means of achieving their ends and certifying facts, acts or transactions executed in their presence in documents drafted by them. This certification has public value. Individuals have the right to free choice of notary except in exceptional cases where the law specifies a particular notary. Notaries authenticate documents in the districts to which they are appointed, except where special authorisation has been granted. Their legal training and practical experience enable them to provide individuals with legal certainty. This training and experience guarantees the accuracy of notarial documents, which are enforceable and are treated as preferred evidence in lawsuits. One of their most important functions is to issue the documents required for making registrations in the Property or Commercial Registers. The documents that can be authorised by a notary are very diverse and fall into 12 categories: acts relating to civil status; wills; marriage contracts; contracts in general; declarations and requests by heirs; the formation, alteration and dissolution of partnerships and commercial undertakings; loans and recognition of simple, secured and mortgage debts; acquittances and discharges; powers of attorney of all kinds; protests of bills; declarations of intestate heirs; and legal documents in general.

Notarial records are particularly important. The originals or protocols of documents authorised by notaries are kept by them for 25 years from the date of issue. These protocols are then sent to the relevant District

Records, which are also kept by notaries. After 100 years they are sent to the Ministry of Education and Culture's Provincial Historical Records. Notarial consular documents are kept in the General Protocols Archives in Madrid.

In accordance with the Notarial Regulation of 2 June 1944, to become a notary it is necessary to pass an open competition. It is also necessary to have Spanish nationality, be over the legally required age and hold a law degree or doctorate.

Notaries belong to professional associations (COLEGIOS NOTARIALES), which support them in the exercise of their functions and supervise their activities. Each of these associations has powers in a particular region.

The COLEGIOS NOTARIALES are headed and coordinated by a General Council (CONSEJO GENERAL DEL NOTARIADO) which comes under the Ministry of Justice.

APPENDIX 10 CCBE DOCUMENTS

The following four CCBE docs to be added in the final PDF version

CCBE Recommendation on Training Outcomes for European Lawyers [2007-11-23] fr

CCBE Model Scheme for Continuing Professional Training

[2006-11-25]

CCBE Recommendation on continuing training

[2003-11-28] fr

CCBE Resolution on training for lawyers in the European Union.

[2000-11-25] fr

APPENDIX 11 THE AUSTRIAN TRAINING SYSTEM

The duration of training is four years; the *Diplomstudium* lasts at least eight semesters (i.e. four years in total) for the normal law degree. It takes at least two terms to conclude the first section and at least six terms to conclude the second one. But some faculties have now three sections, with at least two terms in the first, four terms in the second and two terms in the third section. The law degree (*Diplomstudium*) is divided into two sections (First and Second *Studienabschnitt*). University education is non-lawyer-specific. Courses are partly compulsory, partly optional. But some faculties have now three sections, with at least two terms in the first, four terms in the second and two terms in the third section.

First degree exam courses (compulsory):- Introduction to Legal Method - Roman Private Law - Austrian legal history and the basic features of the development of European law in consideration of social and economic history. - The basic feature of economics and politics.

Second degree exam – consists of 10 exams, differentiating between 3groups:

1st group / compulsory (oral & written exam)

- civil law

- criminal law

- constitutional law

- administrative law

2nd group / compulsory (these exams are oral unless the curriculum says

otherwise)

- civil procedure law

- trade law and law on security

- folk law

- labour law and social security law.

3rd group

- 2 topics out of optional courses list (these exams are oral unless the curriculum says otherwise) – includes six jurisprudence and economic

law subjects. Another group includes six jurisprudential economic and social topics. Students must choose a subject from every group to sit an exam in. In general, every university decides on compulsory courses. The sample above seems to represent the *Diplomstudium* – not bachelor degree - consisting out of two sections.

The *Universitätsgesetz* 2002 provides for that the universities have to organize a system of quality management and that there are (continuous; corresponding to the statutes of every university) internal and external evaluations. § 1 RAO sets out the conditions to practice as a lawyer, you can find the RAO on our website www.rechtsanwaelte.at. The professional (vocational) training regime for future lawyers is different from the professional training of judges or other legal professions. Most of the time 95% is paid by the training lawyer and 5 % is paid by the trainee.

To start the professional training there is no entry exam but it is i.a. required to have completed the *rechtswissenschaftliche Diplomstudium* and to take the degree *Magister der Rechtswissenschaften.* Also, the trainee lawyer must be an Austrian, EU, EEA or Swiss national (§ 30 RAO). About 100 courses per year with a duration of 1,5 day per course need to be followed. The courses deal with all topics which could be useful or are necessary to be a lawyer. The program of courses proposed by the AWAK (Academy for lawyers) includes "basic courses" and "special courses", the first of them being an obligatory and integral part of the training, which is especially useful for trainee lawyers who, CCBE – September 2005- 119/201 during their traineeship, do not practice those areas of law (for example criminal law courses for a trainee lawyer who works in a business law firm). The special courses are destined to complete the know-how of a trainee lawyer, but also to train certain skills, which are important for the exercise of the profession: rhetoric, lawyer-client relationship, etc. The courses are given by Lawyers, Judges, Psychologists and Law-Professors. There is no training regime, but training courses for trainers are offered and widely accepted.

The content of the training is to learn how to manage professional demands. The duration is at least three days per year. Before enlisted as an attorney there is an exam. The exam consists of a written and an oral part. For admission to profession there are no other requirements than mentioned above. Minimum periods of the professional training defined in § 2 RAO have to be spent with lawyers and with courts. There is no specialisation possibility during education.

Avrupa Baroları ve Hukuk Kuruluşları Konseyi

Türkiye Barolar Birliği

Fransa Barolar Birliği

İngiltere ve Galler Barosu

Avusturya Barolar Birliği

İspanya Barolar Birliği

Consiglio Nazionale Forense
İtalya Barolar Birliği

Polonya Barolar Birliği