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Legal education and the legal profession

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Chapter 4. Legal Education and the Legal Profession[1]

G.R. de Groot

1. Basic Legal Education[2]

Basic legal education in the Netherlands, which provides the qualifications necessary to enter into a legal profession, is provided exclusively by universities. There is no centrally-organized, state examination for admission to any of the legal professions. Moreover, each university conducts its own examination independently; in particular, there is no supervision of one university's examinations by external examiners from other universities.

Currently, nine law faculties have the authority to confer a law degree: the University of Amsterdam, the Free University (Amsterdam), the University of Groningen, the University of Leyden, the University of Maastricht, the Catholic University of Nijmegen, the Erasmus University (Rotterdam), the Catholic University of Brabant (Tilburg) and the University of Utrecht. In addition, the Open University (Heerlen) has a legal curriculum.[3] The universities are financed by the government. Students have to pay an annual fee of 2575 guilders (approximately 1600 US-dollars).[4]

There is no selection procedure for admission to a law faculty. Everybody who has a VWO[5] certificate may be admitted to read law. The aspiring student applies to a central admissions office which decides at which university the student may enrol. A student is allocated to a particular university according to his or her expressed preference, taking into account the student's economic and social connections with a certain region of the country.[6] There is no official ranking of the universities.

Law faculties have considerable autonomy in regulating their curricula, and Ministry of Education specifications as to the contents of the law curriculum are phrased in very general terms. These two factors cause the curricula of the law faculties to be rather disparate, thus trammelling the opportunity for students to switch universities during their studies.

1. In the first edition of this publication this chapter was written by G.W.M. Bodewes, judge at the *Arrondissementsrechtbank* Haarlem.
2. *Cf.* J. Lonbay: Report on the professional qualifications of the legal professions in the civil law jurisdictions of the European Communities, Institute of European Law, University of Birmingham 1990, for an extensive review of legal education in the Netherlands.
3. Furthermore, there is a faculty of law in Willemstad (Netherlands Antilles) and a faculty of law in Oranjestad (Aruba) with a curriculum on Netherlands Antillean and Aruban law respectively.
4. Under circumstances the annual fee can be higher (3500 guilders = approximately 2200 US-dollars). At the Open University students have to pay for every course they want to take (for each course 280 guilders (= approximately 175 US-dollars).
5. *Voorbereidend wetenschappelijk onderwijs*, comparable with British A-levels.
6. There is no policy of placing students away from home.

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The Ministry of Education regulations require a law curriculum to be four years in length. The curriculum is divided into two parts by a selective examination (*propaedeuse*) which takes place after the first year. Students who pass the *propaedeuse* are permitted to continue studying for the *doctoraal* degree which will fill the next three years. Both *propaedeuse* and *doctoraal* examinations are in stages after each course or group of courses; these examination stages are called *tentamens*. The selective examination at the end of the first year generally contains subjects such as legal theory, constitutional law, administrative law, criminal law and private law. Furthermore, economics and history of law are often part of the first year selective examination.

After the first year selective examination most students opt for the Dutch law programme (*studierichting Nederlands recht*). The final examination (*doctoraal*) of this programme is a basic prerequisite for the position of judge, public prosecutor or advocate. According to the *Advocatenwet* (Dutch Bar Act) this *doctoraal* examination must therefore contain private law (including civil procedure), criminal law (including criminal procedure) and at least one of the following subjects: constitutional law, administrative law (including administrative procedure) or taxation law.[7] The programmes of all universities offer a wide range of choice. The student selects a programme of courses within certain limits determined by the universities in the light of the conditions mentioned above. This freedom of choice makes it possible for the individual student to orientate the study towards a desired type of future employment. The successful *doctoraal* candidate does not obtain the degree of doctor, but the degree of *meester in de rechten* (*magister iuris*; master of laws; abbreviated, for both male and female candidates, to mr.).[8]

The University of Maastricht offers a special European Law School programme, also fulfilling the conditions of the *Advocatenwet*, which runs alongside to the Dutch law programme. The aim of the European Law School is to offer a legal education programme in which the Dutch domestic legal system is not the focal point but in which a European, comparative perspective emerges through which constant attention is paid to the common core of and the differences between the legal systems of the Member States of the European Union.

Most faculties offer a range of alternatives to the Dutch law programme; the successful completion of which also results in attainment of the degree *meester in de rechten* (*magister iuris*): a notarial programme (for those intending to become a *notaris*), a fiscal-juridical programme (for future tax-law specialists), an international law programme and finally the Antillian or Aruban law programme (for future specialists in the law of the Netherlands Antilles or Aruba). The title *meester in de rechten* (*magister iuris*) acquired by following one of these programmes is not a qualification to become a judge, public prosecutor or advocate in the Netherlands.

7. Art. 2 Dutch Bar Act of 23 Jun 1952, *Stb.* 365 (Advocatenwet); Arts. 35, 48, 59 b, 86 Act on the organization of the judiciary (*Wet op de rechterlijke organisatie*).

8. Art. 7.20 para 1 lit. c *Wet op het hoger onderwijs en wetenschappelijk onderzoek* (Higher Education and Academic Research Act). Art. 7.21 para 1 of the same Act expressly permits the use of 'Master' abbreviated as 'LLM' after the name instead of the abbreviation 'Mr.' in front of the name.

2. *Academic Career*

A successful *doctoraal* candidate may subsequently study for the degree of *doctor*[9] (abbreviated dr.) by writing a doctoral thesis (PhD) called *proefschrift* or *dissertatie*, which requires a considerable amount of research and usually takes four or more years. The thesis has to be published, and after publication has to be defended in a ceremonial academic session of the faculty. A candidate for this research degree need not be employed by a university, but there is a recent tendency for candidates to write their thesis while appointed as *assistent in opleiding* (junior researcher; abbreviated aio). This appointment is limited to a period of four years, with the possibility of a one year extension. In practice the extension is very often granted to law candidates. A special mandatory programme for candidates for a doctorate does not exist. The defence of a thesis at a Dutch university is possible without the candidate being registered as a student at the university involved. In order to obtain permission to defend the thesis, the manuscript has to be accepted by a professor. This professor acts as 'promotor' and requests the *rector magnificus* of the university (roughly equivalent to the British Vice-Chancellor) to install a committee of at least three experts (of which the majority must be professors), who have to examine the quality of the dissertation. If the quality of the dissertation is acceptable, this committee gives the qualification *verdedigbaar* ('can be defended') and subsequently the *rector magnificus* allows the manuscript to be printed. The final defence of the thesis during an academic session of exactly one hour has a purely ceremonial character. The thesis must be written in Dutch, English, French or German, or, with special permission of the *rector magnificus*, in another language.

The three grades of academic status, apart from the post of junior researcher (aio) mentioned above, are, in progressive order of seniority: university lecturer[10] (*universitair docent*, abbreviated ud), senior lecturer[11] (*universitair hoofddocent*; abbreviated uhd) and professor (*hoogleraar*). University lecturers, frequently, but not always, have tenure. It is an official rule of the Ministry of Education that persons appointed to any of these three university posts already have the doctorate. In fact this rule is honoured more in breaching it than in its observance, for a number of university lecturers are still working to attain the doctorate. In the Netherlands only the *hoogleraar* has the right to use the title professor. Moreover, the Dutch system of legal education has no stage comparable to the French *agrégation* or the German *Habilitation*.[12] Every person who has attained the doctorate is eligible to be appointed as professor.[13] However, a person with long professional experience as a legal practitioner or judge combined with a weighty publication record may be appointed professor even without the doctorate.

9. It is remarkable that most doctors in law in practice only use the title of mr. (*magister iuris*) and not the title of doctor. Perhaps this can be attributed to modesty.

10. In the U.S.A. the equivalent is an assistant professor.

11. In the U.S.A. the equivalent is an associate professor.

12. These are degrees which can be obtained after completing the doctorate.

13. *Cf.* G.R. de Groot, Recruitment of minds: selecting professors in the Netherlands, *American Journal of Comparative Law*, 1993, p. 701-708.

3. The Judiciary

A person who has obtained his law degree (*doctoraal*) may apply for a position as candidate judicial officer (*rechterlijk ambtenaar in opleiding*, abbreviated raio).[14] Only candidates with very high examination results are selected for these positions. During a training period of six years a candidate judicial officer is employed at the court (as a judge's assistant), at the office of the public prosecutor and at the bar, in order to acquire practical experience. During this period the candidate judge does not have to pass examinations. He has a supervisor who decides whether he should continue or stop the training. After a successful training of six years the candidate is eligible to be appointed judge (*Rechter*)[15] or public prosecutor (*officier van justitie*). Approximately 50% of the judiciary come into post via this route. The remainder are appointed after having practised as advocates, company lawyers, civil servants or university teachers.

Higher-level judicial appointments, to the post of *Kantonrechter* (in a *Kantongerecht*[16]) or the post of *Raadsheer* (in a *Gerechtshof*[17] and the *Hoge Raad*[18]), are made either from the pool of practising judges or by appointing individuals direct from legal practice or from universities. In the event of appointment direct from legal practice or academic life appointment is usually preceded by several years of part-time practice as a substitute judge (*rechter-plaatsvervanger*).[19]

4. Legal Practitioners: the Advocaat

The successful candidate of the Dutch law programme's *doctoraal* examination who wishes to become an advocate must apply for membership of the Dutch Bar Association (*Nederlandse Orde van Advocaten*). It is a pre-condition for admission to this Association that the candidate has been examined in, and graduated on the basis of subjects mentioned in the Dutch Bar Act, Article 3 (see above). In the first three years after admission the fledgling advocate has to practise under the supervision of an advocate of at least seven years' standing. Furthermore, before being able to practise without supervision, the trainee advocate has to follow courses and pass examinations in practitioner-relevant subjects such as evidence and legal drafting.[20] In order to update their knowledge every advocate has the obligation to annually take a certain number of courses organised by their professional

14. *Besluit opleiding rechterlijke ambtenaren* of 24 Oct 1985, *Stb.* 555.

15. Even though the *Kantongerecht* is the lowest instance court, normally the first appointment will be as judge in the *Arrondissementsrechtbank*. Because the *Kantonrechter* sits alone, this is considered an unsuitable task for a newly-appointed judge.

16. The lowest level court for civil and criminal matters.

17. The appeal court to which an appeal on a question of law or fact may be taken.

18. The highest court to which appeals on any question of law may be taken.

19. This also applies to appointments at lower level.

20. Art. 9 b Dutch Bar Act; see further the *Stageverordening* 1988, *Stcrt* 1988, 127 enacted by the Dutch Bar Association and *Examenreglement beroepsopleiding* of 4 Jul 1988, *Advocatenblad* 1988, p. 1-21, amended 8 May 1989, *Advocatenblad* 1989, p. 328.

association or by universities.[21] These post-graduate courses are not assessed, so they are only obliged to attend the courses.

A professional qualification as a lawyer which has been acquired in another Member State of the European Union has to be recognised in the Netherlands as a consequence of the European Directive 89/48/EEC. This directive introduced a general system for the recognition of higher educational diplomas awarded on completion of professional training of at least three years' duration. In principle the migrant-lawyer will be requested to do an aptitude-test before he or she is allowed to work as an independent 'advocate'.

Almost every advocate is *procureur* as well. The role of a *procureur* is to sign documents in civil cases and deal with formal aspects of civil procedure. A *procureur* is always attached to, although not employed by, a district court (*Arrondissementsrechtbank*) and can only act within that district. An advocate can act in other districts as well, but in such cases a local *procureur* must introduce him formally to the court. This local *procureur* also has to sign all the documents written by the advocate and has to send them to the court. In criminal cases the division between the function of advocate and *procureur* is not made. The qualifications required for admission to the position of *procureur* are the same as those for the position of advocate.[22]

Advocates have no legal monopoly on giving legal advice. Accordingly it is permissible for individuals to work as legal advisors (*rechtskundig adviseur*) without having any academic degree or other qualification. The absence of a monopoly on legal advice is conducive to the development of law centres (*rechtswinkels*), which are often sponsored by legal faculties and staffed by unqualified law students. Moreover, in courts, such as the *Kantongerechten* in which advocates/*procureurs* do not have a monopoly with respect to legal representation, legal advisors are permitted to represent their clients.[23]

Out of court, the advocate/*procureur*'s right-hand-man is the bailiff (*deurwaarder*), one of whose functions is to serve upon a defendant the summons or original application requiring the defendant to appear before the court or a summons requiring payment. The bailiff, who does not have a university education but will have successfully completed a state examination,[24] has a variety of functions.[25] In court the bailiff serves as an usher. Furthermore, he enforces judgments and notarial deeds. In the exercise of this function the bailiff is empowered to seize movables and sell them by public auction in order to obtain payment for the creditor. But the powers of the bailiff are limited to movable property; the enforced selling of real

21. *Verordening permanente opleiding*, *Advocatenblad* 1996, 43, 44.

22. Art. 64 Dutch Bar Act.

23. The position of these legal advisors should be compared with the very restricted powers of Mackensie advisors under English law, who are not permitted to address the court, but only to sit beside the client and advise about the conduct of the case.

24. Art. 34 *Deurwaardersreglement*, *KB* 27 Dec 1960, *Stb.* 562.

25. *Cf.* Arts. 14 and 26 *Deurwaardersreglement*.

estate has to be done by a *notaris*. Finally, it is not uncommon for a bailiff to give legal advice in straightforward cases or to represent litigants before the *Kantongerecht.*

5. Legal Practitioners: the Notaris

The Netherlands counts amongst those countries with a Latin notarial tradition.[26] The Dutch *notaris* is a more important figure than the notary who is found in common law countries, where most of the functions performed by the Latin *notaris* are performed by other legal practitioners. A *notaris* is appointed by the Crown. He or she is not, however, a government employee, but rather charges clients direct for services, the most important of which have fixed rates. The *notaris* is appointed for life; the appointment can only be terminated for reasons provided by law. This legal practitioner is a vital functionary in the administration of justice and can be compelled to render his or her services.

A person who wishes to be eligible for appointment as a *notaris* must, having passed at a university the *doctoraal* examination of a notarial programme (see above),[27] acquire at least three years' training as apprentice *notaris* (*kandidaat-notaris*) in the office of a *notaris*. During this apprenticeship the apprentice *notaris* has to follow special practitioner courses. Because the number of positions available for *notarissen* is limited to approximately one thousand, a candidate may have to wait many years before being appointed as *notaris*. A *notaris* has a monopoly in relation to *inter alia* last wills, marriage contracts, the transfer and mortgaging of real estate and the establishment of corporate status.[28]

26. The same practice exists in France, Belgium, Luxembourg, Italy, Spain, Greece, in most countries of Latin America and in a part of Germany.

27. *Cf.* Art. 20 a *Wet op het notarisambt* of Jul 1842, *Stb.* 20.

28. I wish to thank my colleagues of the University of Limburg, Dr C. Forder, LL.B (Nottm.), LL.B (Cantab.), and Dr H. Schneider for their critical comments on an earlier version of this text.