
Legal Professions in States Governed by the Rule of Law

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1. Introduction

Every state that has or claims to have a developed legal system has (or ought to have) specialists that are representatives of the legal profession.

Historical developments and tradition led all Western countries to establish their own systems of legal education and legal profession. They significantly differ from each other. There is no commonality even within the same legal family.¹ As such therefore, it is not possible to talk about a single or universal system of legal education.

The fact that there is no single universal notion of lawyer demonstrates the point made above. The term “jurist”,² that is relatively understandable in Continental Europe, is incomprehensible for common-law-states. The English term “lawyer” used in American legal language is not identical to “jurist”.

Despite significant differences, the following characteristics are typical to the legal professions of all developed Western countries:

- a) There are traditional legal professions with almost the same functions in all countries. These are, first of all, judges, prosecutors, advocates;
- b) There are strict and transparent rules for entering these professions laid down by the state in Continental Europe or recognized by the state in the UK or USA;
- c) Usually it is difficult to enter these professions and often theoretical education is not enough;
- d) In almost all Western countries, it is a privilege to represent a legal profession whether you are an advocate or judge.

2. Great Britain

The British legal profession has certain originality. However, a few common law countries share some of its features. The legal profession in England is divided into solicitors and barristers.

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¹ For example, French and German legal educational systems as well as legal professions significantly differ from each other. The same situation is in the English and American legal professions even though both are the common-law-states and have common methods of the work of judges.

² This word is of German origin and came into use in the thirteenth century with the establishment of new social groups with a legal background in European universities. *Chanturia*, Introduction to the General Part of the Civil Law of Georgia, Tbilisi, 1997, 14.

Solicitors, of which there are over 50 000,³ are advocates who render advice to clients and prepare necessary materials for trials. Solicitors have the right to participate only in Magistrates Courts or County Courts.

Contrary to French experience, Magistrates are justices of the peace and legal education is not a compulsory criterion for their appointment. They are selected from persons active in civil society - quite often pensioners. While the Queen formally appoints magistrates, actual appointment is by the Lord Chancellor on the recommendation of Local Commissions.⁴

County courts, which usually hear only significant civil cases, consist of professional judges selected from among the barristers. Here too the Queen on the recommendation of the Lord Chancellor appoints the judge.

Barristers as the advocates of higher qualification and wider competence have the right to appear in the courts of higher instances where solicitors do not enjoy such a right. It is noteworthy that the party to the trial may meet with a barrister only through his solicitor.

Importance of barristers is stressed by the fact that only barristers with at least ten years experience of work can be appointed as high court or county court. Correspondingly the number of barristers is relatively small – about 5 000.⁵ Among barristers there is a distinguished elite group called the Queen's Counsel. As a rule, judges are selected from among them. It is noteworthy that appointment as a High Court judge is considered the peak of a judicial career.

Another significance of the British system is that there is no special school for judges or prosecutors. The British system trains advocates (solicitors and barristers) not judges and prosecutors. Only barristers with a successful and long practice can become judges. In preparation, a barrister performs a judge's duty on a part time basis for several months before appointment. The age limit for barristers to become judges is fifty, although in exceptional cases it can happen with a forty year old candidate. In Britain one will not be successful in finding a young judge as in France, Germany and other countries of continental Europe, including Georgia.

The educational system for solicitors and barristers is unique as well. A bachelor's degree that one completes after studying three-years at university is not sufficient to become a solicitor or barrister, even if one graduates from Oxford or Cambridge. A person holding a BA must complete a nine-month specialist course at a law college. After passing the final examinations, a future solicitor must work unpaid in a solicitor's office. However, fees for tuition are deducted. One must afterwards work for three years as an assistant of the solicitor in order to gain permission to work as an

³ Just English, *English for Lawyers*, Moscow, 1996, 13.

⁴ *Zweigert/Kötz*, *Introduction to Comparative Jurisprudence in Private Law (In Georgian)*, Edited by *Ninidze*, Volume I, 2000, 226.

⁵ Just English, *English for Lawyers*, Moscow, 1996, 13.

independent solicitor.⁶ In total about nine years is required to work as an individual solicitor.

A similar system applies to barristers. They must pass a special qualification called the examinations of the Bar Council.

Both solicitors and barristers have professional bodies that in addition to other functions set training and educational standards.

3. France

The system of legal education is different in France. Unlike a British judge, a French judge or prosecutor achieves this position not because of long-term advocacy. It is initially meant to appoint a person on this position according to previously expressed personal desire. Thus to be a judge in France is not necessarily the pinnacle of one's legal career but a process where a novice is involved from the beginning.

At first glance, the French legal educational system, like the British one, is two-phased. The difference is that a university degree is not compulsory in England but established by practice, whereas in France it is. Future judges, prosecutors, advocates and notaries must complete four years of university study, pass exams and be awarded a law license (*licence en droit*).

Those who wish to become judges or prosecutors must pass entrance exams in the National School of Magistracy located in Bordeaux, established in 1958. It is a privilege to attend this school and only 150 out of about 4000 candidates gain entrance each year. Study takes two years with strong emphasis on practical training. After theoretical courses, students practice in courts and prosecutor's offices. Then they pass final exams and are appointed as prosecutors or judges.⁷ Unlike Britain where the magistrates are justices of the peace, in France prosecutors and judges are called magistrates.

Education of advocates is performed by the Advocates Chambers. They are open at residential places where the Appellate Courts (number of which is 35) and courts of high instances (182 such courts) are located.⁸

Those with a higher university degree and having been awarded with the "*maitrise en droit*" and certificate of validity are recruited to the Advocates Chamber as trainees. A student obtains this certificate for participation in seminars held by the Advocates Chambers and Law Faculties. A trainee must complete training for 2 years at one of the Law Offices. He is also assigned by the advocate and appears before the court on trials with

⁶ *Zweigert/Kötz*, Introduction to Comparative Jurisprudence in Private Law (In Georgian), Edited by *Ninidze*, Volume I, 2000, 237.

⁷ On the basis of experience of French National Master School was prepared the draft law of the High School of Justice of Georgia which the Parliament will hopefully adopt this year.

⁸ Law in France, Ministry of Justice of France, Tbilisi, 2001, 35, 41.

regard to cases of poor citizens. After training, without special examination the young advocate is enrolled in the Advocates Chamber after which he is authorized to practice law in any court other than the Court of Cassation and Council of State.⁹ In total 7 years of theoretical and practical background is needed to become an advocate. The advocate's profession is considered very prestigious and advocates as persons with special reputation.

French law is familiar with division of advocates according to the court instances. For example, *Avouées* participate only in Appellate Courts and only within the limits of the territory that their license applies.

Unlike the British system, the advocate's career in France is not connected with becoming a judge.

4. Germany

Unlike other countries of continental Europe, the common concept of jurist (*Volljurist*) is used in Germany. A jurist is a person who has completed general legal education and passed two state exams. He can hold the post of judge, prosecutor, advocate, notary or other administrative position without any additional special education.

Jurists are taught at law faculties in universities. The length of study at universities is determined by the Federal Law on Judges and is three and a half years but can be reduced if a person passes all subjects of the program earlier. However, study must last at least two years.¹⁰

The German educational system, unlike British one, makes a special accent on the judge. One, who meets the requirements set by the Federal Law on Judges, has the right to hold any legal post whether in public service or so-called free professions. This is the reason why the key principles and requirements of legal education are determined by the Federal Law on Judges.¹¹ The law stipulates subjects to be taught and their methodology. The law requires that study concept include court and administrative practise as well as providing legal advice.

After successfully passing the internal university exams the student must pass the first state exam with the Examination Boards of the Ministries of Justice or High Courts of Federal Lands.

After passing the first state exam, a graduate called a *Referendar* must work as a trainee in a mandatory placement such as court, prosecutor's office, administrative authority and bar. The *Referendar* also completes optional training in bodies such as legislative bodies

⁹ *Zweigert/Kötz*, Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts, 2. Aufl., 1984, 151-152.

¹⁰ *Fürst/Walther*, Richtergesetz: Kommentar und ergaenzenden Vorschriften, 1992, 32-33.

¹¹ §§ 5 ff. des Deutschen Richtergesetzes.

or a notary. This practice lasts two years. The *Referendar* should be trained in each compulsory placement for at least three months.

After completion of two years of training, a person passes the second state exam and fully qualifies as a jurist. This makes him eligible to become a judge. In total, it takes seven years to become a jurist, including the period of preparation for state exams.

Every law professor of the university is eligible to be a judge. One who meets the statutory requirements set for judges may become a prosecutor, advocate or notary.

To start advocating practice a jurist should obtain a permission from the court.¹² This permission is a formality in many respects. An advocate has the right of audience in all courts of Germany other than, for example, the Civil Cases Senate of the Federal High Court. There are thirty-one advocates, who form the Bar Chamber of the Federal High Court that have the right of audience in this Court.

5. United States

The American system of legal profession is unique and interesting. While American law belongs to the common law family, it differs from the British system. For instance in America there is no differentiation into solicitors and barristers. The word *lawyer* generally includes meaning of an advocate.

According to American lawyers the way to advocate's profession is quite long and arduous: first, one requires a graduate degree, then three years at law school. After law school in order to become a legal practitioner one must prepare for and pass the bar examination.¹³ This is similar in format to those tests that judges in Georgia recently took.

The majority of judges in America are highly skilled jurists. Practically all judges have legal education but only a small number of lawyers become judges. State judges, as a rule, are elected, while the US President with approval from the Senate appoints federal judges.

6. Georgia

In terms of its types of legal professions and methods of study the Georgian system is compatible with continental Europe. However, it incorporates some elements of the American system as well. Unlike Western developed countries, in Georgia it is unduly simplified to acquire legal professions. This is one of its principal deficiencies. The existing system of legal education does not provide sufficient theoretical or practical study.

¹² *Model/Creifelds*, Staatsbürgertaschenbuch, 30. Aufl., 409.

¹³ *Friedman*, Introduction to American Law, Moscow, 1993, 197.

The fact that a university or law school diploma is enough to start practising law is unknown in the West. A university degree must be followed by the special training like in France or by special exam like in USA. In one case the exam is conducted by the state and in another by non-governmental organization authorized by the state.

Methods of study at both university as well as post-university stages need to be thought through. Such problem with regard to judges and prosecutors is already solved by the draft-law on a High School of Justice. For other legal professions some elements of post-university study are partly available (e.g. exams of notaries and prosecutors) but in terms of the system it needs further sophistication.