# The development of law studies in Germany towards an international subject: benefits and challenges

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Over the last decades, the keyword "internationalisation" has defined the reformation of the German law studies' curriculum and structure. While an increasing number of European Union acts as well as international agreements permeate all topics, enlarging the already crowded timetable, reformers call for faster graduation and the furthering of specifically international qualities.

## 1. The Internationalisation of law sources

From a German perspective the internationalisation of civil law turns out to be first and foremost an Europeanisation: During the past 30 years, the European Union started an avalanche of over 500 legislative acts concerning consumer rights, with over 30 in the area of protection of economic interests alone. European Community directives, which were aimed mainly at improving consumer rights,[1] impacted on the member states' law system and made frequent changes in national civil laws necessary. For instance, no German lawyer will forget the groundbreaking reformation of the law of obligations in 2002 (*Schuldrechtsmodernisierung*) which was partly due to the implementation of Council Directive 1999/44/EEC. In the remote future, this development might culminate in a European Civil Code inspired by the Draft Common Frame of Reference, a set of common definitions, principles and model rules, launched by the European Commission's action plan for a more coherent European contract law in 2003.

At the same time, two other classic fields of law, Criminal and Public Law, are by no means left out of this process. Criminal law is highly influenced by the vast body of jurisprudence of the European Court of Human Rights, which recently ruled the preventive detention of the German *Strafgesetzbuch* (criminal code) to be conflicting with the European Convention on Human Rights.[2]

Similarly, Public Law which traditionally deals with the hierarchy of laws is unalterably linked with the law of the European Union and the new constitutional foundations laid down by the Treaty of Lisbon that entered into force 1st of December, 2009.[3]

Thus, it cannot come as a surprise that the rules and provisions of already internationally aligned subjects like Conflicts of Law originate more and more from European legislative acts. In 2009, two Council Regulations, *Rome I* and *Rome II*[4] have virtually replaced the member states' Conflict of Law rules in the important fields of contractual and non-contractual obligations. In the area of Civil Procedural Law concerning cases with international background, the *Brussels I*

[1] For example the Directive 93/13/EEC on unfair terms in consumer contracts, the 1999/44/EC Directive on certain aspects of the sale of consumer goods and associated guarantees, or lately the Directive 2008/48/EC on credit agreements for consumers, to name just a few.
[2] ECHR, Judgment of 17 December 2009, No. 19359/04 – *Case of M v. Germany* – NJW 2010, 2495.
[3] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ C 306 of 17.12.2007, p. 1.
[4] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177 of 4.7.2008, p. 6–16 and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199 of 31.7.2007, p. 40–49.

*Regulation*[5] has already achieved the same result years ago, and several other Regulations have followed since. On a global level, international conventions drafted by the Hague Conference on Private International Law always mattered. For 2012, the European Union intends to conclude yet another convention that will play an important part in the transatlantic legal relations:[6] The Convention of 30 June 2005 on Choice of Court Agreements currently signed by the European Union and the United States and acceded to by Mexico.

Due to this process, International and European Law not only have to be integrated in the existing curriculum, but are bound to become core subjects in the future in order to take the relevance of European and International Sources into account.

## 2. Structural changes of the curriculum – promotion of international skills

Triggered by the inception of the *Bologna process* in 1999 as well as the federal education reform of law studies,[7] the *Bundesländer* (federal states) started legislation to integrate issues of international significance much earlier on in the curriculum, compared to the situation ten years ago.

The Bologna process can be described as an almost entirely European initiative, but only if one thinks of Europe as a geographical, not legal entity: from the Russian Federation to Portugal, from Iceland to Malta, the participating states totalled a number of almost fifty by December 2010. Its main objective is the creation of a Higher Education Area in Europe (EHEA) that provides for more comparable, compatible and coherent education systems.[8] To achieve this goal, the programme stipulates, inter alia, the advancement of mobility, quality management and the enhancement of the European Education Area's reputation.

Therefore, competences that are specifically aimed at the ability of students to compete internationally, such as knowledge of foreign languages and international mobility are now advanced on a much larger scale.

Taking the Freie Universität Berlin as an example, the design of law studies has changed significantly over the last years with a strong emphasis on internationalisation:
Before, only a small group of students chose International Law or Conflict of Laws as a *Wahlfach* (elective), whereas now those subjects are merged under the heading *Internationalisation of the Legal Order* to form one of only six *Schwerpunktbereiche* (main area of studies), making up 30 % of the overall grade. Also, the demand for key qualifications that imply inter alia participation in one of the five international moot courts as well as the acquisition of foreign language skills before taking the final exam, stresses the importance of an international alignment even further.

To intensify international contacts, several scholarship programmes for German students to study abroad are in place, with growing numbers of open spaces and exchange universities. During the last two years, the European Union's exchange programme *Socrates* was enlarged by 30 % alone. In addition, the Freie Universität cooperates with six universities in the United States and Australia. At the same time, students from all over the world come to Berlin to participate in the LL.M. programme of the Freie Universität, where an increasing number of courses are taught in English.

[5] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12 of 16.1.2001, p. 1–23.
[6] European Commission, Action Plan implementing the Stockholm Programme, 20.04.2010, COM (2010) 171 final, p. 28.
[7] Gesetz zur Reform der Juristenausbildung vom 11 Juli 2002, BGBl I 2002, 2592.
[8] See for more information the official website: http://www.ehea.info/.

Thus, it seems to be the logical conclusion of this development to provide for a completely international set of courses like the Center for Transnational Legal studies (CTLS) in London has to offer. Set up for the academic year 2008/2009 and coordinated by several renowned universities all around the globe, including the Freie Universität Berlin, this programme allows students to research cross-border legal issues in a multicultural and transnational setting. However, the prima facie compelling future of legal education by setting up a programme like CTLS can only be a – nonetheless important – addition to a still nationally characterised curriculum: Despite the before mentioned process of internationalisation, the fundamental principles of legal thinking still stem from the legal tradition of the individual national states and differ significantly.

### 3. Degree issues: Staatsexamen vs. bachelor's and master's degree

One question slowly emerges: How can such an enlargement of the curriculum be reconciled with remaining quality standards without prolonging the duration of studies? In turn, this problem cannot be answered without taking account of a controversial issue that the *Bologna process* has put on the reformers' agenda: the introduction of a system of comparable and comprehensible degrees that are recognised throughout Europe more easily, in short, the introduction of the two-tiered bachelor's/master's system.

To this day, law studies have been defined by the traditional *erstes* and *zweites Staatsexamen* (first and second state examinations), which are widely believed to be two of the most demanding exams of the higher education system in Germany at all. Supervised by each federal state and in cooperation with the universities, the first state examination provides for a uniform exam that offers a highly comparable degree, at least within that federal state. This result is achieved at the cost of a long revision period before the exam as well as a relatively high failure and drop-out rate. The second state examination is monitored by the federal state alone and includes a practitioner's time at court, with a state attorney, in the administration, and with a law firm. Having passed both exams qualifies a German examinee to start a carrier as a lawyer and – given that he or she meets the adequate requirements – to start working as a judge right away.

By contrast, the new degree system allows for a structure better fit to advance mobility but above all, to shorten the time needed for graduation. Thus, where universities installed new structures, they were justified on the one hand with the desire to modernise the degree, to make it more comparable and further the cooperation with universities abroad. On the other hand, fear that German law students take too long to obtain a degree – if they do at all –and consequentially start their career much later than students in other member states, was another decisive motive.

The need for comparable degrees was also recently mirrored in the jurisprudence of the European Court of Justice; in a decision concerning the European fundamental freedom "free movement of workers",[9] the Court seemed eager to strike a balance between the need to recognise other member states' legal degrees and the acknowledgement that as a result of differing duration and requirements a simple transfer of degrees is neither required nor desired.[10]

However, not everyone shares the assessment of the Federal Ministry of Education and Research, which praises the development as a contribution to a successful modernisation of higher education.[11] The apprehension is that giving up the first state exam in favour of a bachelor's system could not only decrease the comparability of students in Germany, but also lower the quality standards due to less study time envisaged before the exams; consequently, the new degree structure could fail to prepare students sufficiently for the second state exam. This fear does not

[9] Ex-Art. 39 EC Treaty, Art. 45 TFEU after the coming into force of the Treaty of Lisbon.
[10] ECJ, Judgement of 10 December 2009, C-345/08 – *Pésla* – OJ C 24 of 30.01.2010, p. 10.
[11] Website of the Federal Ministry of Education and Research, http://www.bmbf.de/de/3336.php.

seem to be completely unfounded if one considers the existing course contents and the growing influence of International Law as described above.

## 4. Perspectives for the next decade

The advantages of the internationalisation process are clear cut: Even if some law students might never work outside Germany, every student will benefit from soft skills like knowledge of foreign languages, and develop a deeper understanding of the German legal order by comparing it to others and relating it to the International and European legal order; besides, tolerance and understanding of different cultures goes hand in hand with understanding different legal systems.

As much as this international development opens the student's mind it also raises the question of how increasing work load and additional requirements impact on the educational quality on the whole. Therefore, it will be necessary to strike a balance between the wish for an internationally accepted, comparable degree, e.g. in the shape of a master's/bachelor's degree and the need for maintaining a high standard of quality, a demand shared by supporters of the internationalisation process and advocates of the traditional *Staatsexamen* alike. In order to achieve this result, we cannot simply label the existing degree differently or thin out the timetable so that students can graduate in a shorter period of time; instead, a thoughtful restructuring must take into account that an earlier specialisation and an improved study counselling and support might be needed to ensure high quality standards. At the same time, those fields of law aimed at understanding national law as an integral part of the European and International legal order must receive even more relevance; that way we can give students if not a detailed understanding, then at least a thorough idea of the ongoing internationalisation process early on in their studies without overburdening their timetable.

The development of law studies towards an international subject to all intents and purposes has considerable benefits; yet in the future, we will have to address the question of if and how the enlargement of the curriculum can be reconciled with a more compact degree of shorter duration. Otherwise, the educational standard of quality the German lawyer takes so much pride in might be jeopardised.