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Initial training of lawyers in the European Union

Germany

General description

Is initial training offered, if yes is it compulsory?

Yes, there is an initial training. Having passed the 1st state examination ("Erstes Staatsexamen") in law, one starts a compulsory legal clerkship ("Rechtsreferendariat") which is the practical part of the legal education, and lasts two years. In terms of structure and procedure, it varies from *Land* to *Land*, as do the 1st and 2nd state examinations themselves, the latter one being the final exam to qualify as a lawyer in Germany and to be eligible for admission to the Bar. Hence, this legal clerkship is compulsory, if one wants to qualify as a lawyer.

Does initial training differentiate between categories of trainees, e.g. for in-house lawyers and advocates?

There is no differentiation between professions. The legal clerkship is organized the same way, be it for future lawyers, in-house lawyers, judges and prosecutors.

Which entities are responsible for organising initial training?

Since the legal clerkship is divided in five different stages (see 3.2), different entities are responsible for organizing the initial training. The main responsible entities are the higher regional courts ("Oberlandesgerichte") for the respective *Land* in question.

What is the statutory basis for initial training?

The statutory basis is § 4 Nr. 1 Federal Lawyer's Act (Bundesrechtsanwaltsordnung – BRAO) read in conjunction with § 5 German Judiciary Act (Deutsches Richtergesetz – DRiG). Since education is regulated on the level of the respective *Land*, the 16 *Länder* determine the course and structure of the legal clerkship autonomously, according to the legal provisions of the *Land* in question.

Access to the initial training

Are there conditions for accessing the training?

In order to start the legal clerkship, one must have passed the 1st state examination in law. This examination completes the legal studies at a university. It usually takes five years to complete the programme, which includes mandatory subjects (e.g. criminal law, civil law, EU law) and areas of concentration with electives. Additionally, the student must provide evidence of having successfully attended a law course in a foreign language and have completed a three-month internship.

What is the main recruitment procedure? If it is competitive - who runs it?

In order to apply for a legal clerkship, one must send an application to the Higher Regional Court where the legal clerkship is to be carried out. The recruitment procedure is determined by the respective *Land* in which the legal clerkship is carried out. The main recruitment procedure is usually linked to the grade achieved in the first state exam. However, additional criteria like the proximity of the legal domicile to the location of the Higher Regional Court or other social criteria can be taken into account. In general, every applicant who successfully passed the first state examination is assigned a training place. Nevertheless, if there are not enough training places available, it is possible that an applicant has to wait for a certain period of time until he/she is assigned a training place in the area of his/her choosing.

Are there alternative access routes to the training?

Due to the Morgenbesser decision (Case C-313/01), the German Judiciary Act (Deutsches Richtergesetz – DRiG) also provides an access to the legal traineeship for applicants from EU member states, Switzerland and the European Economic Area (§ 112 a DRiG). The basic requirement is that the applicants must have the same professional qualifications as those with a first state examination. Hence, the applicant must undergo an examination of their diplomas, certificates and other relevant professional experience in order to determine the extent of knowledge of civil, criminal and administrative German law. For those areas of law in which the applicant cannot prove sufficient knowledge, he must pass a supplementary aptitude test.

Format and content of the initial training

What is the duration and time frames of the training?

The legal clerkship is a practice-oriented legal training in all areas of law: civil law, criminal law, administrative law and training with a law firm. The *Länder* determine the course and structure of the legal clerkship autonomously. An example of the structure would be a four-month training period with a civil court judge ("Zivilstation"), a four-month training period with a criminal court judge or a public prosecutor ("Strafstation"), a four-month training period in the public administration ("Verwaltungsstation"), a nine-month training period with a law firm ("Rechtsanwaltsstation") and a three-month training period which may be performed in a major subject of the legal trainee's choosing ("Wahlstation"). In all the stages of the legal clerkship, the legal trainees are assigned to a direct supervisor who instructs them and assigns them work relating to the relevant stage of the legal clerkship (e.g. preparing judgments, indictments or written observations for a lawsuit). Furthermore, the legal trainees ("Rechtsreferendare") take part in mandatory introductory courses and working groups ("Arbeitsgemeinschaften").

How is the training organised?

The organisation is decentralised, since the exact content of the legal clerkship depends on the respective *Land* and the higher regional court where one follows the legal clerkship.

Who are the trainers?

The trainers must be fully qualified legal professionals in the sense of having passed both the 1st and 2nd state examinations in law.

What is the content and objectives of the initial training?

Legal trainees are trained in civil, criminal and public law. Which subjects this includes in detail varies between the respective *Land*.

Who designs the initial training programmes?

The framework of legal education is set by the German Judiciary Act. Based on this, each of the 16 *Länder* has its own law on legal education (Juristenausbildungsgesetz/JAPO).

What methodology is used for the training?

The training includes courses where formalities of each station are taught to teach practical skills like preparing judgments, indictments or written observations for a lawsuit. The main training consists of accompanying the appointed practitioner and taking on some of his tasks. At the civil court the legal trainee participates in court hearings. The legal trainee may take over tasks like questioning witnesses under the supervision of the appointed judge and

drafting legal decisions. In the criminal law stage, the legal trainee may shadow either their appointed criminal judge or prosecutor. Regardless of whether the legal trainee is assigned to a judge or a public prosecutor, he/she may represent the public prosecutor's office in certain cases in the course of the criminal law stage. In the public administration stage, the legal trainee also shadows his appointed practitioner and takes over some of the tasks under his supervision. The same applies for the law firm stage and the elective stage.

What practical elements of the training are applicable to the trainees?

See above.

How are trainees evaluated/assessed? How often and by whom?

The legal trainees receive grades on their performance in the practical sections of the legal clerkship as well as on their performance in the working groups.

Are there any training activities carried out in conjunction with other legal professionals? If yes: How does it work?

No, as mentioned above, also future judges and prosecutors follow the same training in the course of the legal clerkship as future lawyers. In order to qualify as lawyer-notary specific training courses must be taken once one has been admitted to the Bar.

What are the specificities regarding, for example, EU law training and European components, participation in CCBE/others activities and linguistic training?

Basic features of EU law are a compulsory subject in all German *Länder*. Parts of the studies must be accomplished abroad or in a foreign language. [See: The German Judiciary Act, s. 5a (2)(3)]. During the two-year legal clerkship there is no mandatory training in EU-law. However, since as much as one third of German law is directly influenced by EU Directives and Regulations, EU law is a fundamental part of the legal clerkship as well.

How many trainees are accepted for training? Are the numbers of trainees adjusted annually and by who?

The number of potential trainees depends on the number of graduates of the 1st state examination. Thus, the number of potential varies. The number of trainees admitted depends on the number of training places available. In principle, every graduate of the 1st state examination is assigned a training place. However, it is possible that he/she has to wait for a certain period of time.

Termination of the initial training and qualification process

Does the initial training conclude with a final exam? How is it organised? Who is responsible for the exam?

At the end of the legal clerkship, the legal trainees have to pass the 2nd state examination which is divided into a written and an oral part. The number, content and timing of the examinations differs from state to state. The written exams take place before the elective stage. The legal trainees are required to take between seven and eleven supervised tests of five hours each in the core subjects of private law, criminal law and public law. The oral exam of the 2nd state examination is completed after the elective stage of the legal clerkship, where the legal trainees are examined in the above-mentioned core subjects as well. Moreover, the oral exam generally includes a 10-15 minutes case presentation to the panel of examiners. The overall grade of the exam is based on the results of the written and oral exam. The respective *Land* determines to which degree the written and oral examinations are reflected in the final grade. 60-75 percent of the overall grade is based on the grade achieved in the written exam and 25-40 percent of it is based on the grade achieved in the oral exam. The legal rating scale is from 0 points (F) up to 18 points (A*). Anyone achieving the minimum of 4 points passes the exam, whereas from 9 points upwards one passes with merits.

Is there a further recruitment procedure to become a lawyer upon completion of the initial training?

In principle, anyone who has passed the 2nd state examination is entitled to admission to the Bar, subject to a criminal record check. This entitlement is protected by Art 12 of the Grundgesetz (Constitution of the Federal Republic of Germany). Details result from the Federal Lawyers' Act (Bundesrechtsanwaltsordnung). Admission to the Bar must be applied for at the respective Bar. Admission to the Bar as a lawyer pursuant to § 4 BRAO is associated with the ability to practice before all local, regional, and higher regional courts.

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