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Legal education and legal professions in Hungary

In Hungary, the institutions of higher education are the public and private/denominational universities (egyetemek) and colleges (főiskolák) that are accredited and formally recognised by the State. These institutions provide organised courses in their particular field of specialisation, thus in our case jurisprudence (law) among other fields of social sciences. We must acknowledge that under the Hungarian law the so called colleges (főiskolák) are not entitled to grant law degrees. Additionally, in spite of the fact that Hungary participates in the „Bologna Process”, the system of our higher legal education lacks the division between BA and MA levels. The separation of BA and MA levels has been instituted just in *Public Administration* which – as a type of societal studies – is firmly distinct from courses granting „doctorate in law”.

The secondary school leaving certificate (érettségi bizonyítvány) is required by all institutions for entrance to higher legal education. Although theoretically it would be possible for law faculties to impose stricter selection criteria for admission, additional criteria (for example, a certificate in foreign languages, a qualification, etc.) are usually not required, due to decreasing number of applicants. Nevertheless, a certificate of a proficiency examination in a certain language and an excellent secondary school leaving certificate are crucially bound up with school fees paid by the students, because the State Budget fully finances – in a way of normative financing - charges of the best 500 law students receiving the highest points within the admission process. The aim of the Government when it applies this method of financial support is to ensure the improvement of certain quality standards and to enhance the competition among Law Faculties in Hungary. It follows from the above said that the major part of law students has to finance his/her tuition on his/her own by paying a tuition fee.

In Hungary, law school education consists of 10 university semesters, completed with a State Examination. Universities award the title of „Doctor of Law” to students who successfully complete a five-year course. There are two types of training coexisting nowadays: correspondence courses and full-time courses.

Degrees have a two-fold function, they incorporate academic and vocational qualifications. There have been several debates in the recent past on the adequate proportion of these masteries, and we can predict that many will occur in the future also. Hungary's traditional - „Prussian-type” system of education has been intensely emphasizing theoretical knowledge, alleging that practical skills should be gained by „empirical, real life observations” just on the basis of *book-learning*.

There are eight Faculties of Law in Hungary, each belonging to an officially registered university. Three of them are located in the capital city of Hungary (Budapest) and five in the countryside. Moreover, Károli Gáspár University of the Hungarian Reformed Church (Budapest) has also a site in Kecskemét.

The general aims of educational policy in Hungary

Educational policy remains a priority (field) within the Government's programme. The Government regards educational policy as an essential tool of economic development, social cohesion and well-being. Hungary can be successful in the future only if a competitive and highly qualified labour

force with modern knowledge and a capability of further improvement is present in the economy.ⁱ The challenge of creating a knowledge-based society in a European Union context is constantly posing a set of new functions and related packages of requirements to the domain of Hungarian higher education. Hence, the reform initiatives of the Hungarian higher education administration is inseparable from the principles of the Bologna process: the overall objective of the current reforms is the access to the European Higher Education Area, through the provision of EU-harmonisation and EU-compatible higher educational services to the teachers and students at all institutions of higher education.ⁱⁱ

Principle policy objectives include:ⁱⁱⁱ

- transparency in the institutional framework and financing of higher education;
- provision of the EU diploma-recognition principles;
- strengthening incentives for student mobility (both international and domestic, in geographic and academic dimensions);
- supporting quality management policies in the framework of European higher education cooperation;
- enhanced co-operation with social partners and the representatives of the labour market (employers);
- the modernization of the content of education focusing on the interactive relations of education, research and the economy;
- as a result of the integration of institutions of higher education, universities and colleges with several faculties have taken the place of the previous scattered institutional system. As a result one of the intended goals of institutional integration, i.e. to offer a wide range of academic branches for students has been achieved. A further goal is to diminish regional differences in the chance of participation in training;
- creating a true normative financing system in higher education. Standardization of management and administration within the institutions, creating an IT background;
- expanding the framework of the national students' loan system of low interest credit with various terms of expiration and methods of repayment;
- regarding salaries of lecturers, to protect present wages and conditions.

Bar Examination

This exam is a uniform one, which means that all representatives of different legal professions are required to take the same tasks/exercises.

In Hungary the Bar Examination is called "Jogi Szakvizsga", which can be translated as "Legal Profession Examination". This exam is composed of 3 parts: 1. Criminal Law, Criminal Procedural Law and Penal Law 2. Civil Law, Civil Procedural Law and Economy Law 3. Constitutional Law and Administrative Law, Law of the European Union and Labour Law which includes questions on Social Security Law also. After passing these exams the candidate can be an attorney or a secretary at the court or at the public prosecutor's office or a legal executive or may operate individually in any field of law (*see below*).

Legal professions in Hungary

1. Attorneys in Hungary^{iv}

Under the Hungarian law, only members of any of the regional bar associations may be engaged in legal practice.

Qualified jurists are entitled to use the title of Doctor of Law and if they want to take up a career as an attorney, they must find an employment with an attorney or a law firm. During their three years of clerkship within an employment relationship, articulated clerks participate in postgraduate training under the guidance of the attorney(s) employing them. During their studies, articulated clerks may not practice law individually, they may not have any clients of their own, and they may only perform sub-tasks under the guidance of the attorneys employing them in accordance with their qualifications and practice. To conclude their clerkship, articulated clerks must take four special oral and written examinations, organised by the Ministry of Justice, on the legislation in force.^v

Moreover, the Budapest Bar Association has stipulated further training programmes for articulated clerks employed by law firms registered in Budapest, in the framework of which practical skills and experience that cannot be acquired by reading rules of law and other technical literature are shared with young colleagues. At present, the BBA provides training to approximately 1,200 articulated clerks. To be admitted to a bar association and to engage in legal practice young colleagues are required to meet several criteria, the most important of which is to take the Bar Examination after three years of clerkship. Attorneys registered by any of the regional bar associations may represent their clients in court and before other authorities without any limitation on the entire territory of Hungary. An attorney may be the member of only one bar association at a time.^{vi}

The legal activities conducted on the territory of the Hungarian Republic, by attorneys arriving from other Member States where they had been authorised to practice law fall under harmonised (EU) rules. In order to become familiar with the Hungarian legal practice and terminology, persons establishing themselves in Hungary to practice law may at first operate and give legal advice as so-called European Community Lawyers exclusively under any of the respective professional designations acquired in their home countries (e.g. Rechtsanwalt, solicitor, barrister, advocate, avocat, avvocato, адвокат, advokát, Δικηγόρος, etc.). After three years' permanent practice in Hungary, European Community Lawyers may demonstrate their experience regarding the Hungarian rules of law and Hungarian legal terminology at a hearing organised by the Bar Association. On their successful hearing, our colleagues being citizens of the European Union are admitted to the regional bar association under the territorial scope of which they intend to run their legal practice in the future. By that act, European Community Lawyers become full-fledged Hungarian *ügyvéd* and may perform their respective activities on the entire territory of the Republic of Hungary, holding the same rights and obligations as their fellows of Hungarian citizenship.^{vii}

The operation in Hungary of *foreign legal counsels* arriving from outside the territory of the European Union (typically from the USA, Canada, and Australia) falls under different rules of law providing for a more limited scope of activities: foreign legal counsels may only provide legal advice concerning the law of their home country and international law (but definitely not Hungarian or Community law).

2. The Judiciary/Judges

In Hungary judges are appointed and dismissed by the President of the Republic. Recruitment to the judiciary consists of several stages. Candidates to judgeship must be Hungarian nationals with a right to vote, they must have a clean criminal record, a university degree in law and they have to pass the professional exam. University graduates generally work for three years as trainees and then for one year as court secretaries. After the professional exam has been passed and a special checking on the candidate's physical and psychical health has been done, -the President of the Republic appoints a judge for a three-year probationary period upon the recommendation of the president of the county court and upon the proposal by the National Council of Justice. Following an assessment of the judge's performance at the end of the probationary period, a re-appointment for an indefinite period may take place. Judges may pursue their judicial activities until the age of 70. The Constitution provides that judges shall be independent and subject only to the law. Judges are not allowed to pursue any political activity or enter any political party, furthermore they may not be

involved in business activities or to become members of an arbitration court. In order to ensure the accountability of judges and counteract corruption in public life since December 2001 judges have been required to make disclosure declarations on property which are collected and monitored by the National Council of Justice. As a basic guarantee of the independence and impartiality of the judiciary, at the beginning of 2002 a system of predefined distribution of cases was introduced for the courts, which significantly contributes to the transparency of court proceedings. To check the maintenance of professional knowledge of judges throughout their career, their judicial performance is evaluated twice in every 6 years

Non-professional judges (the so-called 'lay judges') shall also participate in cases and in the manner prescribed by law (through councils), but only professional judges may fill the office of single judges and presidents of council.viii

3. Prosecutorsix

According to the Constitution of the Republic of Hungary "The Prosecutor General and the Prosecution Service shall ensure the protection of the rights of the citizens, and shall steadfastly prosecute any act which violates or endangers the constitutional order, and the security and independence of the country." The Prosecution Service is the defender of public interest, and as such it participates in the enforcement of individual rights.

According to the Constitution the Prosecution Service is led by the Prosecutor General who is elected by the Parliament for 6 years on the base of the recommendation of the President of the Republic. Prosecutors are subordinated to the Prosecutor General and they may be given order (instructed) by the Prosecutor General and by the superior prosecutor exclusively.

Chief prosecutors are at the head of the Capital and County Prosecution Offices and 116 local prosecution offices operate under their direction. The number of the prosecution organisation is composed of 1600 prosecutors, of 140 junior prosecutors and of 330 trainees. Participation in the basic and further trainings is both a right and an obligation for the members of the prosecution service and is free of charge. Basic training takes five semesters during the three-year term of the trainee-period the aim of which is to prepare for the special legal examination or to acquire theoretical and practical knowledge to pursue prosecutorial work professionally. After the nomination of a junior prosecutor there is a two-semester special prosecutorial training at the end of which there is a professional prosecutor examination. From 1st January 2006. the basic training is provided by the Hungarian Centre for the Training of Prosecutors including the training of the instructors and trainees too. The further training of prosecutors is directed by the Department for Professional Training of the Office of the Prosecutor General. Annually almost 1000 prosecutors participate in organised further trainings. Their costs are covered by the budget of the prosecution service.

4. Members of the Constitutional Court^x

The Constitutional Court serves as the main body for the protection of the Constitution, its tasks being the review of the constitutionality of statutes, and the protection of the constitutional order and fundamental rights guaranteed by the Constitution.^{xi}

The Constitution declares that members of the Constitutional Court shall be elected by the Parliament. It also determines the rules of such elections. Impartiality is guaranteed by the rule according to which proposed members of the Constitutional Court are put forward by a nominating committee consisting of one member from each faction of parties represented in the Parliament and they shall be elected by a two-thirds majority of all Members of Parliament. With regard to the professional requirements to be met by judges of the Constitutional Court, the relevant rule provides that only jurists of outstanding theoretical knowledge or having at least twenty years of legal

practice may be elected members of the Constitutional Court. Membership is for a term of nine years and members may be re-elected once. The office of judges of the Constitutional Court comes to an end when they reach the age of 70 years. In order to guarantee the full independence of the Constitutional Court, the Act determines certain grounds for incompatibility. Members of the Constitutional Court may not be Members of Parliament, members of a local government body of representatives, heads of interest groups or members of a political party, and they may not pursue any other gainful occupation except for scientific, teaching, literary or artistic activities. Another means to guarantee the above independence is the right of immunity granted to judges of the Constitutional Court, equivalent to that of Members of Parliament. Only the Constitutional Court, when sitting in plenary session, has the power to waive such immunity. Judges of the Constitutional Court may not be recalled by the Parliament, they may only be removed from office by the above plenary session and in cases defined by the relevant Act of Parliament. The original idea was to elect, at three successive points of time, five judges each (i.e. fifteen judges) to the Constitutional Court. However, the Constitution was amended in 1994, whereby the number of judges of the Constitutional Court was reduced to eleven. The first five judges of the Constitutional Court were elected at the end of 1989, the second five following the parliamentary elections of May 1990. Since 1990 the Parliament has elected new judges to the Constitutional Court several times to replace those whose office was terminated, and in some cases the judges were re-elected to their office by the Parliament.

5. In-house legal counsels (company lawyers)^{xii}

The Association of Hungarian In-house Counsels (MAJOSZ) is a professional and representative organisation of Hungarian company lawyers. Prior to the establishment of the Association, there was no non-governmental organisation representing counsels or coordinating their work. Therefore, the establishment of the association ended a ten-year gap. The company lawyers and counsels work in the competition sphere or state-owned enterprises, in institutions or in the civil service, - regardless of sectors.

In consideration of the anachronistic statutory rule and executive order Title III. Legal Counselling Act of 1983, the long-term aim of MAJOSZ is to prepare the laws of legal counselling, to expand the scope of their working area (activity), and boost the prestige of their counselling career. The strategic goal of MAJOSZ is to serve as a precursor and so prepare the ground for the to-be-established organisation, the Bar Association of the Hungarian Counsels. Nowadays only a non-official register of legal counsels exists. This kind of registration – organised by the association mentioned above - is also available for those who are practising law at an economic organisation in order to be specialized in a field of law (obtain the bar examination).

6. Public officials and public servants

The change of the labour law system in 1992 was a necessary consequence of political changes. In the course of these changes, however, the necessity to divide labour law into two fields, i. e. that of the private and of the public sector occurred, which was coupled with controversies concerning the further partition of public service to public officials and to public servants (the public officials' legal relation is also called public service legal relation).^{xiii}

The first provisions in Act XXIII of 1992 on the Legal Status of Public Officials (hereinafter PO Act or Ktv.) and Act XXXIII of 1992 on the Legal Status of Public Servants (hereinafter PS Act or Kjt.) stipulate the persons they apply to, so the above mentioned Acts make a distinction between public servants and public officials. **Public officials** shall mean all persons subject to the Public Officials Act, including public officials in:

- the Prime Minister's Office,

- the ministries and organizations with nationwide competence,
- the central offices,
- the county (metropolitan) public administration office,
- the office of the representative bodies, the official administrative association and public land agency of the local self-government,
- the district notary office

Additionally but without limitation, the State Audit Office, the Office of the National Radio and Television Board, the Secretariat of the Hungarian Academy of Sciences also employs public officials. So this implies organizations that necessarily establish direct or indirect customer or legal relationship with the nationals and exercise public power. This includes for example the local administration office when it issues a passport for the national, the duties office when it levies the property acquisition duty for purchasing a flat, the Hungarian Tax and Financial Control Administration when it controls, audits and penalizes or the employment centre when it decides about wage support or pays unemployment benefit.^{xiv}

The public officials' - executives' and actual clerks' - activities cover public power, management, supply, control and supervision and they represent the state when they perform their duties.^{xv}

The public servant's legal relation is established by appointment for an indefinite term and the acceptance thereof, in writing.

According to KÖZIGTAD database (2005) 18% of public officials employed by a central public administration organization has a law degree. The rate of lawyers employed by territorial public administration organizations is 10%. The same index regarding lawyers employed by local self governments is at about 5%. Actually, the total number of lawyers officially engaged by institutions of public administration is more than 7000. Since then (2005) the number above has been increasing due to the numerical growth of those professionals who obtained a law degree as a second or third one during their employment by a public administration organization.^{xvi}

Public servants are, disregarding some exceptions, persons employed in the state and local government bodies and in the local self-governments to perform the public services these organizations are in charge of. They typically include those working in day-nurseries, elementary and secondary schools, teachers, educators, hospital workers. Some workplaces - e.g. the police, the border guards (armed forces, organizations of law enforcement), penal institutions - mainly employ professional staff, however these organizations also generate jobs where public servants or public officials are employed. Therefore in order to differentiate between public officials, public servants or other legal relations, the branch regulations pertaining to the specific organization shall also be observed.

Conditions for establishing legal relation

The public administration competition examination has been a condition for public officials since 15 July 2007. Only the person who passed the above examination may be a public officer, a leading officer or a leader. The competition examination shall apply to the leaders of central public administration agencies as from 1 March 2009, to the leaders of regional public administration agencies as from 1 July 2009 and all other officers as from 1 December 2009. No competition examination is needed for the maintenance of the legal relationship of those already in public employment on 15 July 2007. The public officer in public relationship on 15 July 2007 who was obliged to take the examination but failed to pass it by 15 July 2007 shall take the basic examination by 31 December 2009 with the exception of the case when he/she is exempted from taking the basic examination. Persons who are appointed to be leaders or public officers following 15 July 2007 but before the competition examination becomes obligatory shall take the basic examination within one year of his/her appointment unless he/she is exempted from it by that date. Tendering had not been obligatory in public service before the amendments came into force on 15 July and 1 September 2007 with the exception of notaries public and leaders. The new provisions

on compulsory tendering will come into force and will have to be applied gradually.

If the central public administration organization intends to employ a young graduate with high-level educational background as a public official in its basic activities, the graduate shall, in addition to the above, also have a language certificate acknowledged by the state in English, French or German. Some further conditions could also be set, for instance:

1. specific school graduation, qualification,
2. practice,
3. health and psychic adequacy.

This means that the appointment of e.g. a notary is subject to a degree in administration management or a law doctor's degree and in addition examination certificate in law or public administration (or exemption therefrom) and two-year practice in public administration. A majority of two-thirds of notaries has BA or MA in Public Administration, only one third of them possesses a law degree.

7. Public notaries

The civil law notaries provide different services regarding statements and transactions incorporated in notarial deed. They perform their activity – based on the tariff system fixed by law – independently and unbiassedly. There are approximately 300 civil law notaries in the Republic of Hungary.

Clerks are also obliged to have their three years of clerkship within an employment relationship. To conclude their clerkship, articulated clerks must take the Bar Examination (after three years of clerkship) which entitles them to be admitted to the Hungarian Chamber of Civil Law Notaries and to engage in legal practice as *assistant notaries or notaries*.

8. Others

In the Age of (Post)modernity many „lay” professions become more complex and intricate, which primarily and unavoidably means the growing need to meet requirements of constructing and construing of legal texts (documents). That's the reason why many professionals in the a wide range of fields (bookkeeping, sales managing, health-care, education, administration of business undertakings etc.) choose legal training (education) at a university level (as an additional degree).

ⁱ http://www.oki.hu/printerFriendly.php?tipus=cikk&kod=BefogadoIsk-Country_report

ⁱⁱ <http://www.okm.gov.hu/main.php?folderID=181&articleID=4265&ctag=articlelist&iid=1>

ⁱⁱⁱ <http://www.okm.gov.hu/main.php?folderID=181&articleID=4265&ctag=articlelist&iid=1>

^{iv} http://www.bpugyvedikamara.hu/attorneys_in_hungary/

^v http://www.bpugyvedikamara.hu/attorneys_in_hungary/

^{vi} http://www.bpugyvedikamara.hu/attorneys_in_hungary/

^{vii} http://www.bpugyvedikamara.hu/attorneys_in_hungary/

^{viii} Article 46. § (2) (3) of the Constitution of Republic of Hungary

^{ix} http://www.ejtn.net/www/en/html/nodes_main/4_1875_423/4_1949_443/5_1585_1269.htm

^x <http://www.mkab.hu/en/enpage5.htm>

^{xi} Article 32/A. (1) The Constitutional Court shall review the constitutionality of laws and attend to the duties assigned to its jurisdiction by law. (2) The Constitutional Court shall annul any laws and other statutes that it finds to be unconstitutional.

^{xii} <http://www.majosz.org/engine.aspx?page=history>

^{xiii} Közjogi Szemle 2008/3. István Horváth: Which Way Further? Proposals on the Establishment of a New Regulation for Public Service in Hungary (II)

^{xiv} The entire list of organizations subject to the Public Officials Act is supplied in the Attachment to Government Resolution 1085/2004 (VIII.27.). The Public Officials Act does not apply to:

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- the organizations of the Hungarian Armed Forces, the Hungarian Border Guards, the Police, the national security services, the Fire Department, catastrophe prevention, the Board of Customs and Excise, penal execution, civil defence and armed security guards (meaning that the staff working for these organizations are not public officials, however these organizations may also have some scopes of responsibilities met by public officials),
 - persons employed to provide the public services that are part of the responsibilities of the local self-government (they are public servants), the persons employed in non-profit and community service works, public works and with a temporary employment book (they are employees who work under the scope of the Labour Code).

^{xv} The persons who work for a public administration organization, are not in charge of actual duties but carry out administrative tasks related to practising the above activities are called administrators. In addition to public officials and administrators, these organizations also employ employees whose legal relation is governed by the Labour Code. The employees are in charge of e.g. collecting and posting the decisions and letters completed, cleaning, driving.

^{xvi} Rixer Ádám: Jogászok a közigazgatásban. In: De iurisprudencia et iure publico. 2007/3., www.dieip.hu