

MASTER'S DEGREE IN LAW - PER ASPERA AD ASTRA BALTIC APPROACH

Dace Šulmane

University Turība, Latvia

Darijus Beinoravičius

University of Mykolas Romeris, Lithuania

Silvia Kaugia

University of Tartu, Estonia

Abstract. *The purpose of this article is to continue the discussion of experts and academic representatives on the necessary knowledge and examination formats in law studies in order to achieve the goal: providing the education of highly qualified lawyers to fully and responsibly implement the rule of law in democratic countries. Authors highlight the current trends and novelties in the Baltic States, which illustrate the transformation of the attitude of legislators and policymakers and the steps taken to ensure the highest standards in learning the legal profession. The article illustrates the differences in the procedure for obtaining a master's degree in Latvia, Lithuania and Estonia, which is related to the introduction of the national unified legal professional qualification exam in Latvia in 2021. The article summarizes the opinions of three academic staff and legal professionals from the Baltic States on how the master's degree acquisition process existing in the country provides guarantees for graduates' acquisition of quality education and the necessary professional skills.*

Keywords: *Centralized qualification exam, competences, examination methodology, legal education, transformations in the Higher Education, the Baltic States.*

Introduction

A master's degree in legal sciences in every European Union member state means the result of many years of study, which paves the way for a successful graduate of master's studies to further work in the legal professions. In the European Union, the jurisprudence study process has been harmonized following the Bologna system. This has actually meant that in a number of countries the time required to obtain a bachelor's and master's degree has shortened overall. In some cases, this has also meant the reduction in the number of lectures or academic contact hours, exclusion of several study themes or even whole courses from the study process. Not always the "old study model" is the best and most effective, which is proven by the entry of many new teaching methods into higher education, including the process of studying law. Future challenges must be prepared not only for Law Faculties in European Union

member states, but also for the future job market of lawyers: from private companies to courts.

The article discusses and substantiates the peculiarities of legal education as a qualification for specialists in the field of management in public authorities, when performing certain functions related to the implementation of public authority (primarily state authority), which can only be performed by persons with legal qualifications - and thus legal education.

Considering the topic discussed in the article, the historical-comparative method, as well as the descriptive method, is mostly used. Any change in the national regulatory framework that applies to the educational process requires an analysis of the historical context. On the other hand, policy formation in the regulation of higher education criteria and universities does not take place without the initiative or at least the consent of the academic staff. In this context, it is essential, using the descriptive method, to identify those turning points, which, hopefully, in all cases, have always practically resulted in well-thought-out reforms, which lead to an increasingly high-quality provision of the excellence of knowledge necessary for the legal profession in the Baltic States.

The national unified qualification exam introduced in Latvia in 2021 was created as a result of discussions organized over many years, which were not always accompanied by unequivocal support. Considering the experience of the three small and similarly legally structured Baltic states, this article helps to reveal the extent of academic symbiosis and whether the first steps taken by Latvia to raise the quality bar of legal qualifications have inspired Lithuania and Estonia to similar processes.

Qualification of a lawyer - equal status, different procedure

After regaining independence in all three Baltic states, the reform of the legal system, which meets the standards of a democratic and legal state, was an acutely important issue. This can only be provided by highly qualified lawyers who have mastered the legal methods and nature of law known in the Romano-Germanic family of law. This transition was primarily also facilitated by Latvian, Lithuanian and Estonian lawyers living abroad, who were ready to invest their knowledge in the development of legal thought in post-Soviet countries.

The relevance of the qualification of a modern lawyer is determined by the increasing legal regulation of social relations in a democratic society. Especially in the conditions of globalization, the previously prevailing non-legal nature of social relations is being radically changed by legal relations and their legal interpretation. It is no coincidence that the Constitutional Court of the Republic of Lithuania emphasizes that "in a democratic legal state, high demands are placed on the legal profession, because such demands help ensure such

fundamental legal values as the rule of law, justice, individual rights and freedoms, legal security and legal certainty, the right to a fair trial, etc." (LRKT, 2008). Thus, determining the requirements of legal education is an important part of public policy, and its management (administration) - the creation and justification of the system - is a prerequisite and at the same time a guarantee of effective public policy.

Based on the historical heritage, the main academic institution of higher education in Latvia was the University of Latvia, which was the only one that trained lawyers in the early 1990s. Therefore, in the regulatory acts, the legal qualification obtained at the University of Latvia - a master's degree - was the criterion for holding several positions in the highest legal professions. Given the high demand, the country developed a liberal approach to the creation of other universities where you can obtain a lawyer's qualification, however, the legal norms that assigned the diploma of the University of Latvia to an exclusive status did not change.

In Latvia, in 2002, the State Human Rights Office (now the Ombudsman) appealed to the Constitutional Court, pointing out the discrimination by which the laws of the University of Latvia had been placed "on a pedestal" in comparison with other universities for 10 years, for example, in the presence of the law's requirement that candidates for the positions of attorney, prosecutor and notary have a mandatory requirement have obtained a higher legal education at the Faculty of Law of the University of Latvia. If the education was obtained at another university, the opinion of the Faculty of Law of the University of Latvia on the scope and quality of the study program was required. The norms of the law, which were once objective and relevant to the specific situation - in the 1990ies when they were incorporated into the laws, the Faculty of Law of the University of Latvia was the only one that trained lawyers and could give professional opinions on their qualifications. As concluded by the Constitutional Court, "highest education in law in the State may be acquired at only one university type of higher schools – the University of Latvia and eight higher schools of the no university type. Thus, only on the basis of the above division any of the no university type higher schools may be considered as incomparable with the University of Latvia" (CC, 2002, para 4.1.).

Depriving the University of Latvia of its exclusivity rights in determining the compliance of education quality standards, the legal education market in Latvia was liberalized. For about 20 years, the fact of accreditation of the educational institution was the only procedural safeguard that maintained and guaranteed the quality of education.

Some years later (in 2008), the Constitutional Court of the Republic of Lithuania emphasized that persons aspiring to become judges must have acquired such a higher education that can be ensured only by the two-level sequential studies provided for in the legal acts of the Republic of Lithuania (i.e.

Bachelor of Law and Master of Law qualifications degrees) or integrated law studies, when the first and second-cycle university studies. Thus, a legal education, expecting the greatest career opportunities, severely limits the availability of such an education. Therefore both Baltic countries searched for the just solution of the legal regulation concerning the quality v availability of legal education in the country. In Lithuania, many law study programs are created in such a way that they meet the more strictly defined standards of higher university education for those seeking a career in the judiciary. At the same time, it narrows the opportunity for some citizens to gain a wider profile legal education, which includes the competencies required for civil service. Some Lithuanian authors defined this approach to legal studies as “conservative and traditional”, emphasizing that it has been “criticized for its inherent inability to recognize the need for a broader range of skills and competences necessary for a modern legal professional” (Pasvenskiene, Astromskis, 2020). While agreeing that the Constitutional court is legitimized to define the necessary qualification level of lawyers in order to ensure quality standards of the functioning of the state organs.

Quality of Legal Education – State Issue

Since the introduction of the Bologna process in higher education the EU country universities mutually recognize the diplomas issued by other EU state universities based on similar criteria and education standards. Nevertheless, in practice the quality might vary. It is no secret that in each of the Baltic states concerns have been raised whether the master’s diploma reflects the graduate's quality education and practical legal skills according to the methodology. Each of the Baltic states have approached this issue from a different perspective: from focus to the content of study process (Lithuania), by discussing on the general exam for candidates who wish to apply to state offices (judiciary, notary, advocate, prosecutor) in Estonia and, finally, by introducing a Uniform state professional qualification examination of a lawyer in Latvia.

As Beinoravičius, Vainiute and Bileišis (2015) have stressed, in Lithuania the discussion on the quality of legal education and the examination procedures have been closely linked with the discourse on the civil service in Lithuania, therefore shifting the focus from formal education to practice- oriented education. At the same time universities mostly orientate to such a content of a legal qualification that is most suitable for judicial branch of the state power. Applicants to the Lithuanian civil service must have a professional qualification. Only persons with a higher university education can apply for the position of the highest category (level A) civil servant. But in Lithuania law study programs prepare specialists for a wider labor market than just the state service. Accordingly, in the process of training specialists, higher education institutions

must accept deciding what part of the study process should consist of managerial and leadership and general competences and what part of professional competences. As demonstrated by the concepts of qualification analysis, all professions provide for the requirement to have certain organizational and self-management knowledge, abilities, and skills (Bileišis, Beinoravičius, Vainiutė, 2015).

In Estonia, both the content of legal education and the educational requirements of legal vocations have been debated for years. Over the years, ideas have been put forward on how to prepare lawyers who are better able to cope in practice. Already in 2011, Estonia's current Chancellor of Justice expressed concern about the negative effects of mass higher education and the fact that legal education does not always meet the needs of the labour market (Madise, 2011). Ten years later, on 3 May 2021, the Supreme Court published an analysis of legal education and the legal profession, which highlighted, among many other problems, the underfunding of legal education, the lack of clear national requirements for law curricula, the fact that 3+2 education does not guarantee proper quality, and the organisation of professional exams for lawyers is fragmented and geared towards over-specialisation (Riigikohus, 2021). This analysis was followed on 7 June 2021 by a public appeal on the quality of legal education and legal services by representatives of different legal sectors, expressing concerns about the quality of legal education and proposing solutions to improve the situation. Among the suggestions were, for example, that 3+2 studies should be replaced by comprehensive integrated studies, that the state should fund the training of lawyers with only academic qualifications and only at one university, and that a common professional examination should be established (Kõve, Pilving, Andresen, 2021). On 14.06.2021, the Supreme Court, the University of Tartu and the Estonian Academic Law Society organised a conference "The Future of Legal Education", where it was agreed that legal education should be reformed (KEE, 2021). Under pressure from legal practitioners, the Minister of Justice promised to set up a working group to discuss the possibility of organising a common basic examination for legal professions (the so-called "the lawyers' exam"), in addition to the professional examinations.

In 2022, Ministry of Justice came out with a draft proposal for the regulation of a common professional examination for legal professions. (JUREE, 2022) It requires that in the future, anyone wishing to work as a lawyer, prosecutor, judge, assistant judge, notary, bailiff or bankruptcy trustee will have to pass a the lawyers' exam (MJEE, 2022). The same requirement will apply to the representation of individuals in court. The lawyers' exam is intended for lawyers who have obtained a Master's degree in law from a higher education institution, in order to assess their ability to perform their work to the level of a holder of a Master's degree in law valid in Estonia, if they wish to apply for the

above-mentioned legal offices. Passing the examinations is also a prerequisite for a lawyer to be able to represent a person in court. The exam focuses on case law and assesses legal reasoning rather than factual knowledge. Law graduates who fail the exam can retake the exam for a fee. The exam is administered by the Supreme Court and conducted by an examining board. The idea behind this exam is to introduce a common exam for all legal professions to ensure free movement between professions. At present, each professional association (judges, lawyers, etc.) has its own professional standards, its own system of quality assurance, which is ensured by the exams organised by that association.

On 21.02.2023, the Ministry of Justice sent the draft Law on the Lawyer's Examination Act for approval, in principle in the form and with the justifications described in the drafting intention (EXLEX, 2022, Ministry of Justice, 2023). Chancellor of Justice Ülle Madise, among others, has expressed her opinion on the draft law, noting that the introduction of a single exam for lawyers will not solve the problems it is intended to solve, but will create additional resource costs. A state-recognised law degree should mean that a student has acquired sufficient knowledge of all branches of law, understands the structure of the legal order, is able to navigate legal sources and solve cases. Depending on your choice of specialisation, you will have to keep learning, specialise and, if necessary, take part in competitions. There is a definite need for narrowly specialised lawyers, but specialisation cannot take place before a 'classical' legal education. Specialisation does not mean a lack of legal education, but additional knowledge and skills in a specific field (Madise, 2023). In 2024, this law has not yet entered into force.

While in Estonia the discussions have not brought the deserved reforms yet, the first Uniform state professional qualification examination of a lawyer in Latvia took place already in 2021. It is a periodic procedure (winter and summer exams) held in universities in different cities. The examination is constructed in a five-cycle format - five exams in separate days on following fields (three theoretical questions and one practical case (task):

- a) law, philosophy of law, and history of the law of Latvia;
- b) civil law, rights of civil procedure, and commercial law;
- c) constitutional law, administrative law, and rights of administrative procedure;
- d) criminal law and rights of criminal procedure;
- e) international law and law of the European Union.

Successful candidate must pass each component of the fields (by receiving minimum grade 4 on a 10-point scale. Since the introduction of the exam, five exams have been held and 418 students have taken the exam. Of these, 230 or 55% have received a successful assessment. Among them, 116 students passed the exam on the first attempt (28% of all who tried to take the exam), and 114 - on a repeated attempt (27%) (JV, 2023).

The necessary preparatory materials are available (TMLV, 2023):

- a) framework annotations of the theoretical part (containing topics that may be asked in the national exam (not exact exam questions), for example: Means of coercive influence applicable to legal entities; Insurance contract, its conclusion, content, entry into force, counterparties, etc. subject rights and duties; Saeima. Composition and functions. Members of the Saeima: status, mandate, immunity of the member; The basic norm, the hierarchy of normative legal acts in Kelzen's works (legal positivism).
- b) The state exam questions and assessment guidelines are provided for the previous examinations.

One of the most prominent authors of the idea on the State examination is current judge to the European Court of Justice Prof. Ineta Ziemele, who has outlined several possibilities for the future development of the procedure of the examination:

- Creation of the database of theory questions, which would be accessible to everyone, as it would function also as a good teaching tool in practice in law faculties;
- To ensure greater unity in what and how study material is provided to students before the exam (annotation, sources), stressing that also doctrinal indications must be agreed upon (Ziemele, 2023).

An original viewpoint has been developed by A.Kriviņš, stressing that a comprehensive exam after 5 years of study is ineffective. Instead, the basic subjects such as theory of law, philosophy of law and history of law of Latvia could be examined already after completing the bachelor's program and successfully passed if evaluation "good" (7 out of 10) is obtained (Kriviņš, 2023). There are no signs that such a proposal might be discussed in the Ministry of Justice or wider legal academia.

Conclusions

When examining the concept of qualification of a lawyer, one has to rely on the general concept of qualification, in which the term "qualification" is understood from a narrow and broad point of view. When looking for the equivalent of these approaches in legal science, it is appropriate to refer to two categories of lawyers - legist and jurist, if law is identified with the law, then from the point of view of legal practice, priority is given not to justice, but to legality. The qualification of a lawyer based on the primacy of legality means a legal lawyer (lat. lex - law), who is required to have a good knowledge of laws, the procedures for their application, and to apply them accurately (to qualify acts contrary to the law, to form the texts of legal application acts, etc.). Therefore,

the qualification of a legal practitioner is the qualification of a more or less passive (in relation to the law) executor.

The three Baltic states currently exercise different approach towards examination procedures to obtain qualification of a lawyer (master's degree). As a reaction to concerns regarding the quality of legal education in Latvia a Uniform state professional qualification examination of a lawyer was introduced. Although the results of the graduates of the University of Latvia are generally higher, in author's opinion it is just a matter of time when other universities will find the best "know how" to prepare their students with equal or even better results. The necessity of the examination is undoubted. Although very similar problems regarding the quality of legal education (liberalization of legal education, high market demand which brought to lower criteria for obtaining master's degree) also were recognized in Estonia the policy makers have not found consensus on the form and organization of a state uniform examination (only for those persons who wish to enter the judicial professions – advocate, judge, notary etc).

In Lithuania, the procedure of obtaining the master's degree in law still remains in the hands of each University and no centralized examinations are foreseen in the nearest future. Although three different solutions might be recognized in three Baltic states, the quality of legal education is recognized as a crucial aspect of securing the rule of law in contemporary states oriented towards justice and European values.

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