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Report on the legal education in Poland

Joanna Śliwa

Legal Education in Russia: Building Institutional Will for Reform

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*Joanna Śliwa
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INTRODUCTION

Actually, what kind of a law school do they have in Poland? This is a question popular among foreigners but one which has certainly not been asked enough times by all the entities and individuals participating in the building of the Polish legal education. Much is being done, even more remains to be done and there is no time for a profound reflection about where we are at the moment and where (we think that) we are going, as far as lawyers' training is concerned. It seems that there are many good ideas but no real plan.

The purpose of this report is to provide an insight into the legal education in Poland, at its current stage. The report focuses on three main elements that comprise the core of the Polish legal education and that reflect the diverse image of a system which has already undergone fundamental changes but which is still in transition. First, the report provides information about the higher legal education and the internal structure of the institutions which provide it. Second, it describes the training run by the self-governments of legal profession, focusing on the apprenticeship of advocates, legal counsels, judges and public prosecutors. The third and final part sets forth the evolution of the public interest element in the teaching of law in Poland. The ending encompasses conclusions, based on the gathered materials.

Various data sources have been used in the course of the report's development, including: legal acts and regulations, court rulings, websites of the institutions, legal and economic newspapers, hard copy bibliography, materials from conferences and public speeches, research and surveys carried out by renowned institutions, as well as direct meetings and conversations with the representatives of different legal education environments and backgrounds.

The report has been prepared at the request of the Public Interest Law Institute (PILI), as a part of the project *Legal education in Russia: Building Institutional Will for Reform* and based on PILI's outline and guidance.

1. LEGAL EDUCATION IN POLAND

Poland is located in Central Europe, with access to the Baltic sea. Its total area is 312,700 square kilometers, which makes it the 68th largest country in the world and 9th in Europe. The population amounts to 38,167,300 (34th largest in the world). The density of population is 122 people per 1 sq km. The form of government is a republic. The country is divided into 16 voivodeships, with the other entities of local self-government being: districts and communes. GDP per capita (PPS) amounted to 56,4 in 2008.¹ Currently, there are 458

¹ Central Statistical Office: *Poland in Figures*, Warsaw 2010,

http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_f_poland_in_figures_2010.pdf, 20.09.2010; Wikipedia: *Polska*,

http://pl.wikipedia.org/wiki/Polska#Charakterystyka_polskiej_gospodarki, 20.09.2010; Central Intelligence

higher education institutions – 132 public and 326 private ones, which educate almost 2 million students. In accordance with the outcomes of the recruitment process in 2009/2010, 575,363 students were admitted, 399,278 of them to public schools and 176,085 to private schools. Law was the third most popular field of study with 26,581 candidates.² Based on the information provided by the Ministry of Science and Higher Education, in 2008 at the public law schools there were 3,815 regular and 2,420 evening graduates. The same data regarding the private law schools shows decidedly smaller numbers: 515 and 303.³

Legal education in Poland starts with the uniform 5-year master studies. The teaching is conducted by public and private higher education institutions⁴ in the form of regular and evening studies. The distinction between “public” and “private” mainly boils down to the legal status of the founding entity, the origin of the financial resources and some legal aspects of the institution’s creation and functioning. Regular students are those who have been admitted to a school as a result of the basic admittance procedure and who attend classes during the week. The higher education for regular students at public schools is free. Evening students, on the other hand, are admitted outside the main enrollment and the respective admission procedure is reduced and more lenient in comparison. They study during the weekends or in the evenings and pay tuition. At private schools, both regular and evening students are charged with fees.

After the completion of the studies, there are many options for pursuing one’s carrier path in law. Some decide on an academic position and focus solely on the scientific and teaching activity. Most graduates, however, go into various kinds of legal practice within one of the legal and near-legal professions, which are: judge, public prosecutor, notary, debt collector, receiver in bankruptcy, advocate, legal counsel, patent lawyer and tax advisor. All the legal professions constitute the, so called, public trust occupations, i.e. those, which pertain to the most valued and private interests of the clients and require special kind of discretion. In order to be able to obtain a vocational title, a lawyer needs to become a member of one of the legal professions, which are organized by way of self-government, meaning, a decentralized form of exercising some of the State’s power. The self-governance of public trust occupations is ensured by the Constitution.⁵ Judge, public prosecutor, notary, debt

Agency: *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/pl.html>, 20.09.2010.

²Ministerstwo Nauki i Szkolnictwa Wyższego, Departament Nadzoru i Organizacji Szkolnictwa Wyższego: *Informacja o wynikach rekrutacji na studia na rok akademicki 2009/2010 w uczelniach nadzorowanych przez Ministra Nauki i Szkolnictwa Wyższego oraz uczelniach niepublicznych*, http://www.nauka.gov.pl/fileadmin/user_upload/szkolnictwo/Dane_statystyczne_o_szkolnictwie_wyzszym/2010_0111_WYNIKI_rekrutacji_2009_GS.pdf, 20.09.2010.

³ For more detailed information concerning the number of law students in 2008 at each academic year and a comparison of the data with the year 2007, see: Table 1 of the Attachment.

⁴ The phrase “higher education institutions”, meaning of institutions providing higher legal education, is used interchangeably with the phrases “higher education entities” and “law schools” or “schools”. On the other hand, in accordance with the respective provisions, “university” is a higher education institution, which meets certain conditions with regard to the scientific promotion system; an Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 3.

⁵ Constitution of the Republic of Poland of 2nd April 1997, art. 70.

collector and receiver in bankruptcy are also public officers, i.e., a direct representative of the State.⁶ The obtaining of the vocational title is subject to meeting certain conditions. Those usually encompass entrance and final professional exams, as well as training run by the self-government bodies, referred to as an apprenticeship. Up till now, apprenticeships causing most controversy and debate were those pertaining to advocates, legal counsels, judges and prosecutors, thus they will be discussed in more detail in the course of the report. Practicing law is also possible outside the legal professions but the scope of the activities which may be carried out by lawyers without a vocational title remains unclear. One may also try to combine the academic life with professional practice, which results in a unique type of a legal experience but is formative of several problems such as the time shortage or the possible diminishing of scientific independence.

Having outlined a very basic framework of the legal education in Poland, it is crucial to note that there are several actors, or, one might say, stakeholders, visible in the educational structure and eligible to influence its ultimate form, also by way of introducing reform. Those are: higher education institutions, which, due to their autonomy, define the longest stage of legal education and create a market of educational services; self-governments of the legal professions, set forth the content of the professional training and influence the vocational admission procedure; the employers, who specify the requirements for the graduates and apprentices and assess the skills they have gathered; the clients and the marketplace - set forth the legal skills most desired and form expectations as to their quality and prices; the students and apprentices, who, by choosing law schools mark their quality and pressure the legal professions to open up; international organizations and entities, which develop the public interest element by way of introducing new educational methods, leasing experienced, high qualified teaching staff and offering additional founding, and, finally, the State, which touches on all aspect of legal education by introducing legal framework, specific actions of the executive branch and dispute settlement together with the balancing of interests.

The variety of the legal environments should be viewed as beneficial for the Polish legal culture. What seems to be missing though is their mutual animate dialogue and co-operation, with regard to the element common to all of them, i.e., the young lawyers' education and its future.

2. HIGHER LEGAL EDUCATION

2.1. The structure of higher education

The aims of both public and private higher education institutions set forth by the statute are the same and comprise: the education of students in order to prepare them for performing an occupation and bringing them up in the spirit of responsibility for their country, enhancing the principles of democracy and human rights, the performance of scientific research, development works and supplying research services, the education and promotion of the teaching staff, promotion of physical exercise among the students, the multiplication of the achievements of science, national culture and technology, also through the building up of various databases and, finally, education with regard to gathering and completing one's

⁶ An Act of 6 June 1997, Kodeks karny, Dz.U.97.88.553, art. 115.

knowledge.⁷ The said education entities also follow the statutory principles of the freedom of education, scientific research and artistic creation.⁸ The Minister of Science and Higher Education specifies the standards pertaining both to the content and organizational form of the education (e.g., the number of qualified teaching staff), at given fields of study and levels of education. Their maintenance is subject to the scrutiny of the National Accreditation Commission⁹. Its negative opinion gives rise to the withholding or revoking of the eligibility of teaching in the field.¹⁰ Currently, there are 15 public and 14 private higher education institutions, as well as one catholic university, entitled to teach law as a field of study.¹¹

Public schools are created by the State, in the form of a statute and represented by an appropriate public authority. On the other hand, private schools are founded by a natural or legal person, staying outside the State and local (territorial) self-government structure, on the basis of an application and the subsequent permission of the Minister of Science and Higher Education. The first permission is issued for five years and may be extended, subject to the positive opinion of the National Accreditation Commission.¹² Public schools may conduct economic activity but, contrary to private entities, they stay non-profit. The relations between the public school, seen as an administrative establishment, and its end users are that of an administrative character. What this means is that the school enjoys some of the State's power which has been passed on to it (decentralized) and exercises that power over those who stay within its scope. Consequently, the acts of the school are subject to the administrative and, subsequently, judicial course of instance. Conversely, the link between the private schools and their end users is grounded on a civil agreement for providing educational services. The mutual relation is, therefore, based in most part on the equality of the participants and governed by contract law.¹³

⁷ An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 13.

⁸ An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 4.

⁹ The National Accreditation Commission is appointed by the Minister of Science and Higher Education from among the candidates proposed by the Conferences of: the Academic Rectors and Rectors of the Vocational Schools, the Parliament of the Polish Students, the senates of the higher education entities, the national scientific association and the employers' organizations. The Commission submits to the Minister the opinions and motions pertaining to the teaching of particular study fields at a given educational levels, as well as conducts assessment of the teaching standards and the learning conditions. While performing its functions, the Commission may demand from the scrutinized entity information, data, clarification and explanation; an Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 48-49.

¹⁰ An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 9, 11.

¹¹ The data has been processed from the information kindly provided by the Ministry of Science and Higher Education, the Department of Supervision and Organization of the Higher Education, on the basis of the access to the public information procedure, regulated by the Act of 6 September 2001, Ustawa o dostępie do informacji publicznej, Dz.U.01.112.1198.

¹² An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 2, 18, 20.

¹³ The decision of the Constitutional Tribunal of 5 October 2005, SK 39/05, OTK Z.U. 2005 / 9A / 99.

Polish schools are similar to American ones, in that they enjoy much freedom. Their autonomy is ensured by the Constitution and the statute.¹⁴ They determine their own *curricula*, based on the standards provided by the Minister of Science and Higher Education. They also determine their examination, assessment and grading procedures and set their internal by-laws. What is more, the schools are legal persons, meaning, they can undertake acts in law and own property in their name. The rectors and deans are elected by the academic environment from among the teachers. The Main Council¹⁵ and the National Accreditation Commission are designed to maintain the standards of higher education but do not interfere much with the schools' functioning. Thus, the institutions are independent and can decide on the education they want to provide. While academic autonomy has various positive dimensions, such as the ease of introducing changes and innovations, the free development of science and the variety of the education offered, the other side of the picture is the lack of both a real external evaluation process and self study-study programs with regard to the schools' standards and teaching outcomes, enabling reflection on the content and method of education, as well as the missing practical standardization. The school authorities are the "first among equals" and do not exercise much power. The chairs are their own rulers and work separately.

As already indicated, the recent years have seen the opening of a large number of private law schools. This theoretically could give rise to a significant change in the higher education due, to the competitive pressures on the public entities, but thus far and for various reasons that has not really occurred. The idea of providing education for money and exchanging the entrance exam for tuition is still treated in Poland with a certain amount of mistrust. The public law schools decidedly have an advantage there, because of being viewed as upholding valuable traditions and standards of teaching. Also, the public schools prevail in that they have easier access to budget grants, international dialogue, qualified staff and infrastructure, *in addition to* the possibility of obtaining founding in the form of tuition. Often, the private schools tend to cling to the public entities and lease their staff and buildings instead of developing their own.¹⁶ Hence, the insufficient competition and the missing of the entailing need of a product improvement with regard to the public education. The general assessment of private law schools is difficult though, as they vary greatly among themselves. Some are managed extremely well and make an excellent use of the available founding. The range of subjects and the possibilities of development can be more abundant than at some public entities. The choice of studying there becomes no longer a result of being rejected by the public system but a conscious decision of people who have considered all their options and selected the one with the best possibilities.

¹⁴ Constitution of the Republic of Poland of 2nd April 1997, art. 70. An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 4.

¹⁵ The Main Council of the Higher Education is an elective entity, acting as a representative for the entirety of higher education in Poland. It co-operates with the Ministry of Science and Higher Education, as well as with other public entities in setting forth the educational policy. The Council expresses opinions on the matters submitted by the Minister, as well as on the bills and the budget share, regarding higher education. The members of the Council are: academic teachers with the highest scientific degrees and titles (professor and doctors with the post-doctoral dissertation) (21), doctors (6), students (4), doctor students (2), an Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 45-46.

¹⁶ A. Radwan: *Uczelniom potrzebny bat konkurencji*, Tygodnik „Przekrój” of 13 March 2008, p. 38-39.

Another issue connected with the structure of the public legal education and subject to a serious debate is the situation of the teaching staff members. Currently, many of them work part time at private schools, which tempt them with higher salaries, as the public ones do not exactly constitute a living wage (the basic remuneration for lower rank teaching staff amounts to *circa* 1.700-3.200PLN, while the professors earn from about 4.000PLN to 10.000PLN)¹⁷ (1 PLN *app.* = 4 EUR, 1 PLN *app.* = 3 USD)¹⁸ However, the academy still means prestige (mainly for the reasons listed in the section above) and the teachers do not want to give it up altogether. This way, they have to share their time between a massive amount of classes and students and do not have enough time to reflect upon the method and goals of their teaching. Moreover, the academics are usually not mobile and stay at one institution throughout their entire careers, a situation which is possible due to the scientific promotion system. The post-doctoral decree ensures a position at a given university, no matter the actual demand for the particular specialty and courses, which the teacher offers.¹⁹ Outside scholars, no matter how well qualified, seem to have difficulties in getting a job. Also, concern has been expressed about the existence and quality of peer review at Polish law schools.²⁰

Poland was one of the 29 countries which signed the Bologna Declaration in 1999 and implemented much of its ideas, such as the Diploma Supplement, Accreditation Commission's scrutiny as well as the system of ECTS points, all ensuring the transparency and standardization of European higher education. However, the legal studies, as one of the 11 fields of study (out of 118!)²¹, are still conducted exclusively as the uniform master studies, ending with the preparation of a master's thesis and a master's exam, contrary to the Bologna recommendations on multiple educational levels. In accordance with the views of some of the academy environment, this might be connected with the complexity of the field and the desire to protect future clients.²² Nevertheless, breaking of the studies into at least two parts, as has been done in most of the other cases, would result in the possibility of obtaining a complex education, standardize the stages of the studies and enable more intense

¹⁷ The resolution of the Ministry of Science and Higher Education of 22 December 2006, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie warunków wynagradzania za pracę i przyznawania innych świadczeń związanych z pracą dla pracowników zatrudnionych w uczelni publicznej, Dz.U.06.251.1852.

¹⁸ Data as of 23.09.2010. Narodowy Bank Polski: Kursy walut, http://www.nbp.pl/home.aspx?f=/kursy/kursy_archiwum.html, 23.09.2010.

¹⁹ Edukacja Prawnicza, A. Bergiel, M. Olkusz: „Przecież Ty nic nie potrafisz więc może idź na prawo” - rozmowy z prof. Barbarą A. Schatz, prof. Leah Wortham, prof. Catherine F. Klein oraz prof. Fryderykiem Zollem, http://www.edukacjaprawnicza.pl/index.php?mod=m_artykuly&cid=2&id=574, 09.08.2010. F. Zoll: *The Challenges of the Mass-University and the Civil Law Country Model of the Education – how far the Polish university may be open for the innovative way of teaching? Time of transition in clinical teaching.*

²⁰ A. Radwan: *Uczelniom potrzebny bat konkurencji*, Tygodnik „Przekrój” of 13 March 2008, p. 38-39.

²¹ The Regulation of the Ministry of Science and Higher Education of 12 July 2007, Rozporządzenie w sprawie standardów kształcenia dla poszczególnych kierunków oraz poziomów kształcenia, a także trybu tworzenia i warunków, jakie musi spełniać uczelnia, by prowadzić studia międzykierunkowe oraz makrokierunki, Dz.U.07.164.1166.

²² Edukacja prawnicza, J. Warylewski: *Problematyka edukacji prawniczej w Polsce*, http://www.edukacjaprawnicza.pl/index.php?mod=m_artykuly&cid=12&id=585, 09.08.2010.

international exchange, during the time when the students are most eager to travel. It remains to be seen which types of arguments will prevail in future. What is surprising, the latest research has shown that the students themselves are opponents of the full implementation of the Bologna process; 61,4% of the respondents were against it, while only 17,6% saw it as a definitely positive change.²³

Lately, the higher education institutions' entrance exam has given way to an admission procedure, based on the outcomes of the *new matura*, the high school finals. Therefore, the legal higher education entities are no longer able to set their own standards and modes of initial verification of the candidates' abilities and predispositions to study law, although they still get to define the amount of the *new matura* points needed to be obtained and submitted.

2.2. Higher education's founding

The Polish Constitution states that everyone has the right to education and that common and equal access thereto is ensured by public authorities, who, in order to achieve that goal, create and support systems of individual financial and organizational help for the pupils and students. Education in public schools is free but the public higher education entities may perform selected educational services against payment, on the basis of a more particular statutory regulation.²⁴ Due to much dispute connected with the ultimate form of Polish higher education, the respective legal framework has been subject to a profound interpretation of the Constitutional Tribunal. It has been adjudged that the principle of gratuitous public education is just one way of implementing the basic and further reaching aim, namely, the right to education, and the respective obligations of the State exceed by far the sole financial element of the education's provision. Simultaneously, the possibilities of the budget are restricted and the free access to education must be balanced with other interests. Nevertheless, gratuitous teaching has to stay the main form of providing higher education at public schools and the fees may only pertain to a certain, selected types of educational services. The said fees, however, may not be established arbitrarily but should reflect the school's crucial needs with regard to fulfilling the aim of unrestricted access to education, exclusively in the part, in which those needs are not covered by the state funding. It has also been voiced that the "payment" distinction should not, in any way, cause diversification of the provided education's quality, i.e., the evening students are fully entitled to the same educational standards, as the regular ones.²⁵ Later on, the Tribunal added that the setting forth of the fees charged by the public schools cannot be carried out as a simple equation involving certain

²³ Among the main flaws and risks connected therewith, the students listed the fact that the bachelor's degree does not constitute a sufficient indicator of one's knowledge (65.8%), the ECTS points system is inefficient (17.9%), the process is being implemented too rapidly (17%), the process tends to make uniform all the educational forms (11%), and the most talented will flee abroad (9,2%). The research was carried out in 2009 on a group of 977 III, IV and V year law students in 2009; ELSA, INDICATOR: *Wyniki badania na temat postrzegania rynku pracy przez studentów Wydziału Prawa i Administracji*, Warsaw, December 2009 (further on referred to as ELSA, INDICATOR 2009).

²⁴ Constitution of the Republic of Poland of 2nd April 1997, art. 70.

²⁵ The decision of the Constitutional Tribunal of 8 November 2000, SK 18/99, OTK Z.U. 2000 / 7 / 258.

expenditures in connection with the number of students but should be the result of a careful balancing of multiple factors.²⁶

Public schools are created on State or local (territorial) self-government real estates. They are financed by way of budget grants with regard to the performance of their specified, statutory obligations, i.e., among others, the education of regular students and training of the teaching staff, maintenance of the infrastructure and financial help for the students.²⁷ The means may also come from the school's own incomes. Those encompass, e.g., the fees for providing given educational services, which may be charged for: evening studies, repetition of classes, foreign language courses, classes outside the schedule of the studies, post-graduate and supplement courses. The height of all those fees is set forth by the rector but the price of the first two types of services cannot exceed the means needed for their provision.²⁸ On the other hand, private schools receive grants for the financial help for the students and *may* obtain grants for covering the tuition fees of regular students, as well as to other needs. Most of their founding comes for the tuition and other school incomes, though.²⁹ The cost of evening legal studies and legal studies at private institutions varies from 4.000PLN to 7.000PLN per year.³⁰

Students may apply for different types of scholarships: social, for the disabled, for scientific and sport achievements, for food and housing and for the special scholarships of the Minister for scientific and sport achievements. The money is awarded by the school (apart from the Minister's scholarships) but may also be provided by local self-governments and, in the field of science and sport, also by other natural or legal persons. The rules that those persons set with regard to the awarding of scholarships are subject to the Minister's supervision.³¹ The height of the scholarships awarded by the schools varies from *circa* 100 PLN to 500/700 PLN *per* month. The scholarship for scientific achievements is awarded to about 15% of the best students at a given institution.³² The Minister's scholarship in 2009 amounted to 1.300 PLN and was awarded to 1.137 students.³³

2.3. Forms of classes and teaching methods

The standards of the legal education, compiled by the Minister of Science and Higher Education on the basis of the propositions prepared by the subsequent, annual National Congresses of the Law Faculty Deans, set a minimum of 10 terms, 2,400 hours, 300 ETS

²⁶ The decision of the Constitutional Tribunal of 5 October 2005, SK 39/05, OTK Z.U. 2005 / 9A / 99.

²⁷ An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 94.

²⁸ An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 99.

²⁹ An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 94.

³⁰ Centrum Efekty, *Gdzie studiować prawo?* <http://www.nauczelni.pl/o-kierunkach/1330-gdzie-studiowac-prawo>, 27.09.2010; the websites of Polish public and private law schools.

³¹ An Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 173, 173b.

³² The data has been retrieved from the websites of various Polish higher education institutions.

³³ Ministerstwo Nauki i Szkolnictwa Wyższego: Sprawy studentów i doktorantów, <http://www.nauka.gov.pl/szkolnictwo-wyzsze/sprawy-studentow-i-doktorantow/system-pomocy-materialnej/stypendia-ministra/stypendia-ministra/arttykul/informacja-w-sprawie-stypendiow-ministra-nauki-i-szkolnictwa-wyzszego-za-osiagniecie-w-nauce-o-1/>, 20.09.2010.

points, intermediate knowledge of a foreign language, three weeks of internship and 60 hours of physical exercise. One third of the teaching should *not* be conducted as a lecture. There are 9 obligatory subjects: the basics of the jurisprudence, logics, civil, penal, administrative and constitutional law, civil, penal and administrative procedure.³⁴ Apart from that there are also the “basic” subjects, a given amount of which needs to be taken throughout the studies, and the facultative subjects, the taking of which is left to decision of the students, as long as the overall point requirement is met. It is crucial to note that the minimal standards are the same for public and private law schools which teach law, both with respect to their regular and evening students. However, while observing the minimal standards, the formal choice of subjects available for the evening students is less abundant due to organizational reasons connected with weekend or evening studies. Nevertheless, in majority of the cases, evening students may attend classes together with regular students, if they have the mind to. Simultaneously, the law provides that the amount of classes conducted as a part of the evening studies may not be less than 60% of the regular *curriculum* at a given school.³⁵

The main form of passing on knowledge remains the lecture. This has much to do with the vast amount of the students admitted to law schools each year³⁶ and the low costs of due preparation. The other educational form is a class (*ćwiczenia*). The goal of the classes is to provide the students with the possibility to solve practical problems and participate in discussion. This, however, is true only in some of the cases, while in the others, because of the number of the students and the varied engagement of the trainers, the classes often resemble the lectures. Apart from that, people conducting classes are the youngest faculty members, who, although sometimes quite brilliant, inevitably lack a big part of the necessary teaching experience.³⁷ As to its content, the teaching mirrors the Polish legal system and encompasses the legal acts, the legal doctrine, as well as the court rulings, although the latter in a smaller part. Emphasis on the court rulings is put during the post-graduate professional training (apprenticeship).

The obligatory internship may be completed in courts, law firms, prosecutor’s offices, administrative bodies and other entities. One month of a court internship is obligatory though and that’s where most of the students seem to conduct or plan their internship.³⁸ The organization of the internship is conducted both through agreements executed by the universities with the bodies of the justice system and by the students themselves, who seek an entity or a law firm which interests them most. The latter type of internship is subject to an obligatory university acknowledgement. The effects of the internship tend to vary greatly and are largely dependent on the engagement of a particular trainer (judge, prosecutor, advocate, legal counsel, head of an office, etc.). The students are assessed by the trainers but, ultimately,

³⁴ Regulation of 12 July 2007, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie standardów kształcenia dla poszczególnych kierunków oraz poziomów kształcenia, a także trybu tworzenia i warunków, jakie musi spełniać uczelnia, by prowadzić studia międzykierunkowe oraz makrokierunki, Dz.U.07.164.1166.

³⁵ Regulation of 12 July 2007, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie standardów kształcenia dla poszczególnych kierunków oraz poziomów kształcenia, a także trybu tworzenia i warunków, jakie musi spełniać uczelnia, by prowadzić studia międzykierunkowe oraz makrokierunki, Dz.U.07.164.1166.

³⁶ See: Table 1 of the Attachment.

³⁷ F. Zoll: *Jaka szkoła prawa?* Dom Wydawniczy ABC, Warsaw 2004, p. 11-14.

³⁸ See: Table 3 of the Attachment.

it only matters if one completes the internship or not. The trainers themselves are seldom evaluated. Many of the students decide to obtain some more professional experience by applying for a usually unpaid, additional internship at boutique law firms, courts near their place of residence, as well as big and international law firms.³⁹ A particularly interesting initiative with regard to obligatory internship has been developed at the University of Białystok Law Faculty, where, on the basis of an arrangement worked out between the school and the District Court, the students can attend a 10-week training consisting of three parts: theoretical, semi-practical and practical, during which they observe the court sessions, discuss the arose problems and, finally, conduct court simulations using the experience thus gathered.⁴⁰

As mentioned above, the teaching standards require also the finishing of one language course during the studies. The language most eagerly chosen is, of course, English and this is also the language which the students themselves claim to know best. Even though, the unrestrained and correct use of English legal terminology is still not that common and constitutes a valuable skill from the employers' point of view. The knowledge of other languages is varied. Research have shown that about one fifth of the surveyed students claim to possess a very good knowledge of French, German and Russian, while Spanish and Italian seem to be well known by, *circa*, one tenth.⁴¹

It would, however, do an injustice to the Polish law schools to stop here and say that the last fifteen years have brought no significant change. There have been many detached but quite effective initiatives adding to the variety of the teaching methods. The first and probably the most visible one are the clinics, which combine solving cases, writing legal briefs, meeting with clients and participation in workshops, together with a strong hint of the public interest element.⁴² Then, there are the foreign law schools, which have ceased to be just a feature of the biggest institutions, designed for the "chosen" students.⁴³ Those schools are an internal part of the law faculties, although usually exercise some freedom needed for the co-operation with the in-coming foreign professors and their home universities. The admittance procedure is most often carried out on the basis of an exam testing the linguistic skills and the use of foreign legal terminology. The schools teach in smaller groups, widely apply interaction and case method, as well as class-to-class preparation. They bring about not only familiarization with other legal systems but also other ways of looking and thinking about law and educational approaches. In addition to that, there is a growing number of courses conducted in foreign languages and touching the topic of other legal systems, as a part of the regular *curricula* or a learning offer for the incoming foreign students, open however also to Polish students. Finally, there are the negotiation workshops and moot court competitions,

³⁹ See: Table 3 of the Attachment.

⁴⁰ Marta Janina Skrodzka: *Centrum Praktyk Sądowych – symulacje rozpraw sądowych wpisane na stałe w działalność Studenckiej Poradni Prawnej*, in: *Klinika* 3 (7) 2007, <http://www.fupp.org.pl/download/EP-07-2007-KLINIKA.pdf>, 27.09.2010.

⁴¹ See: Table 4 of the Attachment.

⁴² For a more thorough description of the clinics' framework and functioning see: Chapter 4.2.

⁴³ For more details regarding the availability of foreign law schools at Polish universities and the number of participating students, see, respectively: Table 5 and 6 of the Attachment.

which number is growing.⁴⁴ All of the abovementioned new educational forms are provided by the higher education entities as optional subjects. Apart from the foreign language knowledge, there are seldom prerequisites as to which students might take them.

What is more, the Polish law schools undertake numerous cross-border educational initiatives⁴⁵. A project of its own kind is the strong and developing Erasmus program. Having started in Poland in 1998/99, Erasmus proved a tremendous success, due to the number of the participating students⁴⁶ and co-operating institutions, as well as the abundance of the teaching offer. In the course of the program, the participants spend one or two terms at a foreign school, studying together with the regular students. They are marked with the ECTS points (a set minimum is required in order to successfully graduate from the program), which are acknowledged by their home entities, and, therefore, the students do not need to make-up for the time spend abroad. Joining the EU made travelling faster and easier. More and more students consider at least one term of studies abroad as an innate part of their legal education. With regard to the students' mobility at Polish universities, there has also emerged a new initiative - the "BRIDGE" (*MOST*)⁴⁷. Its essence is very Erasmus-like and aims at enabling the students to learn at other national centers, than the home institution for a term or an entire academic year. The participating students follow an individually prepared schedule and are awarded ECTS points. The BRIDGE has been created in 1999 on the basis of an agreement executed between the rectors of the Polish universities and is run by the University Accreditation Commission.⁴⁸

A big part in defining the form of today's legal education has been played by the European Law Students' Association ELSA POLAND⁴⁹. This organization of an international background conducts the currently very popular Days of Legal Education and Work Markets where one can gather important information on the educational, internship and employment offers, as well as an adaptation camp for freshmen. Its yearly survey among students, carried

⁴⁴ For a detailed comparison of the international education offer at the Polish universities, see: Table 5 of the Attachment.

⁴⁵ See: Table 5 of the Attachment.

⁴⁶ For a more thorough description of the Erasmus Program at Polish Universities in 2007-2009, see: Table 7 of the Attachment.

⁴⁷ Uniwersytecka Komisja Akredytacyjna, Program MOST – System Mobilności Studentów, <http://www.uka.amu.edu.pl/most.php>, 18.08.2010.

⁴⁸ The University Accreditation Commission (UAC) was established on January 31, 1998 by way of a resolution of the Conference of Rectors of Polish Universities (CRPU) and on the basis of the Agreement of Polish Universities Concerning the Quality of Education of November 18th 1997. The Commission consists of vice-rectors or representatives of the schools-signatories of the Agreement appointed by the rectors of their schools, and two persons designated by CRPU. CRPU appoints UAC's chairman and two vice-chairmen. The goals of the Commission are: the creation of an accreditation system of courses of studies at universities and equalization of the standards of education quality at universities University Accreditation Commission, Mission, <http://www.uka.amu.edu.pl/english.php>, 21.09.2010, University Accreditation Commission, Resolution, <http://www.uka.amu.edu.pl/uchwala-eng.php>, 21.09.2010.

⁴⁹ European Law Students' Association ELSA POLAND, Działalność, <http://www.elsa.org.pl/dzialaln.htm>, 18.08.2010.

out since 2003 in co-operation with the renowned research entities and providing information on the students' perception of the legal education reality is the only one of this kind and has proved very helpful for the creation of this report. ELSA also organizes seminars and conferences in addition to numerous competitions such as the Moot Court, Elocution (orators' skills), Gloss-writing, Essay-writing and *Primus in Primis* (general legal knowledge). The projects tend to stress legal skills desired by both the students and the employers, which teaching is not yet that developed at Polish law schools. However, probably the most vibrant initiative of ELSA's in the everyday life of the students is the internship program, which constitutes a so far missing link between the education system and the market place.

The higher education institutions offer also a further academic carrier path in the form of post-graduate doctor studies (*doktorat*). Market studies have shown that upholding a bond with the academic structure continues to be a fairly popular option among the students.⁵⁰ Doing a *doktorat* in Poland lasts up to 4 years and ends with the preparation and defending of a doctoral thesis. A doctor of law, after meeting certain requirements, can commence the procedure of obtaining a postdoctoral degree, the most important part of which is the postdoctoral dissertation (*habilitacja*). Conditional to subsequent achievements in the field of both science and teaching methodology, one may be named "professor" by the President.⁵¹

2.4. Where are we going?

As far as the Polish education is concerned (legal education in particular) there is an ongoing, visible debate about the kind of knowledge the higher education institutions should provide. Some are of the opinion those institutions are a place which should take care of the universal development of the students, not only as lawyers but also as citizens and individuals, especially as the students begin their studies at a very young age of 18. Higher education is the last place where they will be able to obtain processed knowledge, passed on to them in a fairly simple and accessible manner, therefore that knowledge should be diverse and as multidisciplinary as possible.⁵² More particularly, not all law graduates seek to join a legal profession and carry out typical legal activities. If they need more detailed and practical legal abilities, they can learn them in no time in the course of their practice. What is more, the practical knowledge is to be provided subsequently, by the professional apprenticeship. Others deem the theoretical type of more general studies outdated and unnecessary. They imply that law is more of a skill and less of a humanistic subject and it cannot be taught in a big lecture room by way of an uninterrupted monologue. The classes should concentrate on

⁵⁰ See: Table 2 of the Attachment.

⁵¹ In the text, the term "professor" has been used in the meaning of a scientific title, but "professor" is also used to indicate a scientific-didactic title, indicating a position occupied at a given school. With regard to this second meaning, distinction should be made between "extraordinary" and "ordinary" professors. The first rank is a lower one and may be granted also to those with other scientific titles than the "professor" named by the President, whereas the other may not. The "ordinary professor" is the highest one gets as far as the Polish educational career path is concerned; an Act of 14 March 2003, Ustawa o stopniach naukowych i tytule naukowym oraz o stopniach i tytule w zakresie sztuki, Dz.U.03.65.595; an Act of 27 July 2005, Prawo o szkolnictwie wyższym, Dz.U.05.164.1365, art. 110.

⁵² A. Turska (red.): *Humanizacja zawodów prawniczych w nauczaniu akademickim*, LIBER, Warsaw 2002.

introducing skills needed in the lawyer's future, also because the professional apprenticeship does not fully reach that goal.

A lot might be said for both viewpoints. However, the undoubted truth is that students, after leaving a law school, do need to function in a given reality: get a job, earn money, etc. A vast majority of them (72,7%⁵³) plans a professional legal career, even if not within the self-government professions' structure. General type of knowledge is needed, just as in every other department, but this cannot cloud the vision as to the fact that law schools should, in the first place, teach legal subjects, using the most effective methods and taking into account that there is no other law than that applied in practice.⁵⁴

In accordance with both scholars and employers, a good lawyer should be able to recognize legal elements in the surrounding reality, communicate one's thoughts in a straightforward, accurate manner, both orally and in writing, find the necessary information fairly quickly, argue, make inferences and recognize his place in the team, *in addition to* a solid background of knowledge about the legal structures. The major law firms are of the opinion that law students fresh out of university lack the ability to effectively convey the quite decent knowledge they possess into practice, formulate short and clear legal briefs, create basic corporate documentation, move freely within the legal terminology of a foreign language and are short of lawyer-client communication skills. The universities could definitely do more to encourage creativity, unconventional approach and analytical thinking instead of learning things by heart.⁵⁵ Thus, higher education and its graduates, do not meet many of the employers' expectations.

The globalization and common access to information results in a mentality shift regarding thinking about lawyers: the practice of law is no longer a secret lore, inaccessible to ordinary humans. In consequence, Polish law students nowadays must broaden the scope of their skills and knowledge, so as to remain desired employees. In addition, the Communist era, when no one really cared about the effectiveness of the State's expenditures, is now long gone, meaning, the executive branch expects a thorough evaluation of each legal undertaking

⁵³ ELSA INDICATOR 2009.

⁵⁴ J. Podkovic: *The Role of Law Students' Associations in the System of Legal Studies in Poland*, in: *Review of Comparative Law*, Volume 12-13, Years 2007-2008, Wydawnictwo KUL, Lublin 2010, p. 213-214. Edukacja prawnicza; J. Warylewski: *Problematyka edukacji prawniczej w Polsce*, http://www.edukacjaprawnicza.pl/index.php?mod=m_artykuly&cid=12&id=585, 09.08.2010.

⁵⁵ Opinions voiced in legal press and a survey carried out among several major law firms by the Jagiellonian University School of American Law in 2008. S. Swenson: *Preparing Law Students for Work as Legal Professionals: the Development of Legal Skills Education in Poland*, in: *Review of Comparative Law*, Volume 12-13, Years 2007-2008, Wydawnictwo KUL, Lublin 2010, p. 141-142. *Gazeta Prawna*, Dodatek III, Ł. Guza: *Studenci powinni zdobywać praktyczne umiejętności*, http://www.whitecase.pl/fileadmin/user_upload/temp_/GAP_09_06_19_studenci_powinni.pdf 09.08.2010: W. Kwinta: *Zapotrzebowania rynku racy a oferta Szkoły Prawa Amerykańskiego UJ*, Szkoła Prawa Amerykańskiego, Wydział Prawa i Administracji Uniwersytetu Jagiellońskiego, Kraków 2008-2009.

and its anticipated effects, done by the lawyers themselves, with the use of modern economic analysis tools. Only then can a healthy legal environment be created.⁵⁶

The latest research has shown that even the students deem themselves not that well prepared for the reality of the marketplace.⁵⁷ Only 30% thought that a graduate is ready to start practicing law, while almost 45% said that he is not. As reasons for the lack of preparation, the students listed: not enough practical classes (71,7%), too large a number of students (23,7%), too many theoretical classes (21,6%), the similarity of lectures and classes (20%) and a too narrow range of subjects (8,3%). On the other hand, students see their strong points mainly in hard work and responsible approach (37,8%), the knowledge of foreign languages (34,3%), auto presentation (26,1%) and additional classes and courses (22,5%).

Taken into account the above, if the legal academic education wants to fulfill the requirements of its major actors, it needs a rapid intervention, mainly with respect to the following issues: teaching the legal method instead of the content of law; practical approach to legal problems and their solutions (e.g. case-work); legal writing; contract formation; economic analysis and other interdisciplinary subjects, necessary for the practice of law; legal research; legal terminology in foreign languages; team work; soft skills: negotiation, and mediation. Striving to cover those loopholes is already the goal of some universities, or better say, some individuals at the universities. Detached initiatives which strive to introduce the abovementioned missing elements are often successful but also insufficient to alter the legal education system as a whole. The lack of competitive pressure among the law schools slows the process down.

3. POST-GRADUATE APPREINTICESHIP

3.1. The clash of interests

As with the legal education, many individual new ideas come into being with regard to the professional training. Their scope, however, tends to be much wider, due to the structure of the self-government, encompassing the entirety of a given legal profession. Bigger scale makes the outcomes of the initiatives, which vary greatly as to their effect, more pronounced. Here again co-operation with other legal education bodies and a decided long-distance plan would be of invaluable use. At the same time, the apprenticeship of advocates, legal counsels and notaries is the subject of a consolidated, undying debate and a dispute triggered between various groups of interest. So far, there have emerged three main bones of contention.

The first one is the possibility to practice law outside the professional self-government, as *legal advisors*, in matters with respect to which the statute does not require performance by an advocate or counsel. The Constitutional Tribunal has adjudged that not all legal activities are subject to restrictions as to who performs them.⁵⁸ Hence, some actions

⁵⁶ Edukacja Prawnicza, *Jak nie dopuścić, aby szkoła przeszkadzała w kształceniu – rozmowa z dr Robertem Gwiazdowskim*, http://www.edukacjaprawnicza.pl/index.php?mod=m_artykuly&cid=2&id=664&p=1, 09.08.2010.

⁵⁷ ELSA, INDICATOR 2009.

⁵⁸ The decision of the Constitutional Tribunal of 26 November 2003, SK 22/02, OTK ZU Nr 9A/2003/97.

could be carried out without a professional title, in accordance with the rule of the freedom of economic activity⁵⁹. However, currently there is no telling which activities are which and the matter of legal advisors lacks legal regulation, meaning, there are no professional standards or rules of conduct regarding them. At the beginning of this year, a draft version of a statute pertaining, among others, to the legal advisors, has been submitted to the Parliament by the Ministry of Justice.⁶⁰ The respective decisions are still pending, though. At present, there exists a private organization, an Association of Legal Advisors, which promotes the performance of this new group of interest, comprising independent lawyers, usually with a narrow area of deep expertise.⁶¹ The research have shown that the 45% of the surveyed law students were of the opinion that legal advisors would be able to ensure a proper standard of provided services, while 34% thought the contrary. Simultaneously, 48% saw the advisors as competition for counsels and advocates, whereas 35% did not.⁶² Obviously, the opinions and assessment on that point are greatly divided.

The second controversial element pertains to the organization of the entrance and final exams for future advocates, counsels and notaries, an issue tantamount to the exercising of control over the accessibility to the legal professions. In Poland, the vocational self-governments definitely enjoy much freedom with regard to their internal affairs. Simultaneously however, the Constitutional Tribunal adjudicated that the recruitment for the apprenticeship constitutes a public matter, subject to statutory regulation and not an innate issue of the legal professions' self-government. It touches the constitutionally guaranteed right to choose one's occupation and, its restrictions, if needed, must be carried out in accordance with strict rules, irrespective of whether this actually falls under the category of "charge over the performing of the legal profession", i.e. the general scope of the self-governments' power.⁶³ In addition, the exams designed and carried out by the self-governments were said to be "prone to corruption and nepotism"⁶⁴. Consequently, the year 2005 saw a major change in the professional training of counsels, advocates and notaries namely, a state entrance exam, which rules have been additionally modified in 2009, in order to make it more friendly for the candidates. The first full professional state exams regarding the counsels and advocates were introduced in 2010, regarding the notaries – a year earlier.⁶⁵

⁵⁹ Article 22 of the Constitution of the Republic of Poland of 2nd April 1997.

⁶⁰ Monitor Prawniczy, *Egzaminy prawnicze, doradcy prawni*,

http://www.monitorprawniczy.pl/index.php?mod=m_aktualnosci&cid=16&id=2618, 07.08.2010.

⁶¹ Stowarzyszenie Doradców Prawnych, <http://www.doradcyprawni.org/>, 07.09.2010.

⁶² The research was carried out in 2008; the surveyed group consisted of 1139 III, IV, V year law students; with regard to the comparative data: in 2007 the tested group amounted to 1148 and in 2006 – to 1213); IPSOS Marketing, The Innovation and Brand Research Specialist: *Studenci prawa w Polsce 2008, Raport przygotowany dla European Law Students' Association ELSA POLAND*, December 2008 (further on referred to as ELSA, IPSOS 2008).

⁶³ The decision of the Constitutional Tribunal from 18 Luty 2004, P 21/02, OTK ZU Nr 2A/2004/9.

⁶⁴ An Act of 30 June 2005, Ustawa o zmianie ustawy Prawo o adwokaturze i niektórych innych ustaw, Dz.U.05.163.1361.

⁶⁵ An Act of 30 June 2005, Ustawa o zmianie ustawy Prawo o adwokaturze i niektórych innych ustaw, Dz.U.05.163.1361. The Act of 20 February 2009, Ustawa o zmianie ustawy - Prawo o adwokaturze, ustawy o radcach prawnych oraz ustawy - Prawo o notariacie, Dz.U.09.37.286; Edukacja Prawnicza, M. Rojewski:

The above constitute a decided answer to the common phenomenon of the legal professions' inward closing and their tendency to stay selective, exclusive and hardly accessible for most of the candidates, in order to gain supervision over the occupation's performance.

The final dispute refers to the merging of the two legal professions: counsels and advocates. The recent legislative changes broadening the counsels' eligibility for trial representation in penal cases, enhance the similarity of the two professions. There have long been voiced opinions that advocates' and counsels' self-government bodies should merge in order to form one strong and modern profession, especially in the face of the emerging of a new group of interest - the legal advisors. Also, the advocates and counsels already co-operate successfully on the market of the legal services' provision. The initiative emphasizes the simplicity of the solution and the elimination of unnecessary structures. The professionals themselves, however, seem reluctant, the advocates decidedly more so than the counsels. The merging of the two legal professions (and possibly of the notaries as well) has been one of the main topics of a draft widely known as "The New Bar" (*Nowa Adwokatura*) prepared at the request of one of the political parties by independent scholars and practitioners, as an answer to the growing confusion with regard to the professional training and the vocational conduct of lawyers. Apart from the unification issue, the ideas presented therein were: the elimination of the obligatory apprenticeship and introduction of one state exam admitting to the "Bar", strengthening of the internal self-government authorities by way of forming 11 big advocate chambers and reorganization of the vocational disciplinary proceedings. The two versions of the draft were executed in January/September 2007 and submitted for discussion to the Ministry of Justice. At the beginning of this year, 2010, the respective works were withheld, partially due to the resistance of the professional environment.⁶⁶

In accordance with the information provided by the Department of the Legal Apprenticeships' Supervision (Ministry of Justice), the data on the entrance procedure with regard to the legal counsels, advocates and notaries vary greatly over the last years. The most successful for the candidates was undoubtedly the year 2009, when a decided majority passed.⁶⁷ The professional state exams have not been conducted for long as yet and the tendencies remain to be assessed.⁶⁸ Despite the constant alterations in the approach to the

Aplikacja na nowych zasadach,

http://www.edukacjaprawnicza.pl/index.php?mod=m_artykuly&cid=60&id=501, 08.08.2010.

⁶⁶ A. Bodnar, Ł. Bojarski, F. Wejman: *Nowa Adwokatura. Założenia do nowego prawa o adwokaturze*. Wersja 2, zmieniona, Kraków-Warszawa, January 2007,

<http://www.isp.org.pl/files/14423090010793441001172491612.pdf>, 27.09.2010. A. Bodnar, Ł. Bojarski, F.

Wejman: *Nowa Adwokatura. Założenia do nowego prawa o adwokaturze*. Wersja 2, zmieniona, Kraków-Warszawa, September 2007, <http://www.rpo.gov.pl/pliki/12090429170.pdf>, 27.9.2010. Money.pl, *Radcy i adwokaci – będzie połączenie korporacji?*

<http://prawo.money.pl/aktualnosci/wiadomosci/artykul/radcy;i:adwokaci;-:bedzie:polaczenie:korporacji,216,0,593624.html>, 27.09.2010.

⁶⁷ For more thorough data pertaining to the results of the entrance exams in years 2007, 2008 and 2009, see Table 8 of the Attachment.

⁶⁸ As far as the professional exams go, the Ministry of Justice information only goes a couple of years back, due to the fact that previously, the exam was organized by the corporations. The first State exam with respect to the legal counsels took place in December 2009 and regarded only those who were admitted thereto on another basis than the apprenticeship training, i.e. doctors of law, law graduates with a given period of prescribed practice,

professional training, the latter still seems to be the most popular option chosen by the graduates.⁶⁹ Research has shown that the legal profession considered most prestigious is definitely the judge, while the ones most readily chosen are: advocate and legal counsel.⁷⁰

3.2. Apprenticeship of Legal Counsels and Advocates⁷¹

The training, conducted by the local self-government bodies, begins with a state entrance exam and lasts 3 years. It comprises lectures and internship in the bodies of the justice system. The training is quite expensive and costs, more or less, the same as a private schools' tuition, i.e. *circa* 5.000 PLN *per* year.⁷² The intern is assigned to a patron, who is supposed to be his mentor throughout the apprenticeship. After 6 months of training, the interns may act for the counsels and advocates in lower courts, law enforcement agencies and administrative bodies. Within the lapse of 1.5 year, the scope of representation is broadened so as to include all courts, apart from the Supreme Courts and the Tribunals. The final exam (now also of a state character) consists of five parts (test, civil, penal, commercial and

those who already passed the judicial, procurator's or notaries' exam or who worked as counsels at the State Treasury Solicitor's Office. There were 202 candidates, 81 of whom passed. The respective data for the advocates are: 79 and 22. In summer 2010 there took place the first full professional State exam. As far as the legal counsels go, the exam was taken by 1.224 candidates, with respect to the advocates – by 782. With respect to the notaries, the Ministry data goes through the year 2008, when the exam was taken by 28 candidates, admitted on another basis than the apprenticeship training, 6 of whom passed. The year 2009 saw the first two full professional State exams taken by a total of 163 notary trainees, 138 of whom passed. In 2010, there were 365 notary candidates, among whom 240 were successful; The data has been processed from the information kindly provided by the Department of Legal Apprenticeships' Supervision (Ministry of Justice), on the basis of the access to the public information procedure, regulated by the Act of 6 September 2001, Ustawa o dostępie do informacji publicznej, Dz.U.01.112.1198.

⁶⁹ In accordance with the ELSA, IPSOS 2008 research, in 2006, 64% of the respondents planned to take the entrance exam right after graduation, in 2007, 58%, and in 2008, 53%. A different survey (ELSA, INDICATOR 2009) shows that, in 2009, the number amounted to 63.7%. On the basis of the ELSA, IPSOS research, the legal profession considered the most prestigious to definitely be the judge, while the profession which the respondents would like to practice the most is the advocate. It is interesting to note that in the Communist era, the legal professions, including the judge, have been viewed as much more esteemed than today. This however might have come from the lack of an unrestricted access to information about the practice of law; *Edukacja prawnicza, Obecny kształt aplikacji prawniczych jest absurdalny. Rozmowa z Jerzym Stępnem, sędzią Trybunału Konstytucyjnego*,

http://www.edukacjaprawnicza.pl/index.php?mod=m_artykuly&cid=59&id=104, 08.08.2010.

⁷⁰ See: Table 9 of the Attachment.

⁷¹ Although, the respective apprenticeships are governed by different statutes, they are similar in many aspect and, thus, shall, be described cumulatively; an Act of 6 July 1982 Ustawa o radcach prawnych, Dz.U.02.123.1059; an Act of 26 May 1982, Ustawa o adwokaturze, uniform text, Dz.U.09.146.1188.

⁷² In particularly justified cases, the local professional self-government may exempt the apprentice from the payment of the fee or divided it by way of installments.

administrative law), stretched over five days. If particular conditions are met, there is the possibility to skip the training and just take the final exam in order to be able to work as a counsel (advocate).⁷³ In certain other cases, the legal professions may be performed without both the training and the final exam.⁷⁴ The exemptions are based on the previously obtained academic and vocational titles, as well as a prescribed period of specified practice.

The introduction of the state exams especially in their late, decidedly friendlier form, is considered a big step forward towards the transparency of the legal profession and the meeting of the candidates' and clients' demands. The first modified admissions of the kind proved very lenient – a decided majority of candidates passed them successful. However, the great number of interns added negatively to the standard of the training itself, which already was obsolete and deemed ineffective by many. The lectures and the material covered by them mirror in most ways the higher education. The teaching staff members, although good practitioners, mostly lack didactic preparation and support. The internship is scattered and executed with great variety in standards. The apprenticeship is viewed as too long and not bringing in much new for the apprentices, apart maybe from the concentration on the court rulings and the conducting of the exams.

Due to the above, and to the fact that pure practice in law firms seems to be simply more fruitful, the very point of the training's existence has been subject to questioning. Its undoubted and worthy goal is to ensure the standards of the services provided subsequently by the counsels and advocates, bearing in mind the complexity of the legal profession. What is more, the interns could really do well with some additional, practical back-up, especially taken into account the mostly theoretical approach of the academy. That said, the apprenticeship is in a bad need of a reform. The changes in the organization of the training itself and in the structure of the judiciary system, the EU requirements and standards and, finally, the alterations in the mode of the legal professions' performance, all enforce proper adjustments. Some of the self-government environments have already recognized the importance of those issues. The action plan set forth by the Warsaw Regional Chamber of Advocates includes the standardization of the *curricula*, creation of training centers run by managers, condensing the training in 11 cities (5-6 cities for specialist subjects), organization of an efficient system of scholarships, introducing legal writing classes, as well as language courses, soft skills, negotiation and mediation techniques, psychology, accountancy of a law firm, ethical elements seen from the practical point of view and the specificity of the *pro bono* activity, as optional courses. The teaching staff members should receive proper didactic training prior the apprenticeship and the basic form of a class should be a workshop. The efficiency of the teaching should be subject to constant evaluation of the apprentices.⁷⁵

⁷³ See: endnote 64.

⁷⁴ This is based on highest scientific degrees, the performance of activities under the vocational title of an advocate, counsel, judge, prosecutor or the counsel of the State Treasury Solicitor's Office, specific sort of practice and the combination of practice and a lower rank scientific degree.

⁷⁵ Okręgowa Rada Adwokacka w Warszawie: *Reforma systemu szkolenia aplikantów adwokackich. Tezy do projektu zmian programowych.*

3.3. The Polish National School of Judiciary and Public Prosecutors

The need for change has also been noticed with regard to the training of judges and prosecutors carried out by the State. Last year, the respective apprenticeships already commenced in accordance with the new rules, introduced by the 2009 Act on the Polish National School of Judiciary and Public Prosecutors.⁷⁶ The School's task is to conduct the training, consisting of two stages: the general apprenticeship and the two types of a particular apprenticeship (judicial and public prosecutors'). The School's authorities are: the Counsel, comprising the representatives of various legal environments⁷⁷, and the Director, appointed by the Ministry of Justice for a 5-year term. Prior to the commencing of each general apprenticeship's edition, the Minister of Justice sets forth a number of vacant places, defined on the basis of the prognosis, regarding the future needs of the justice system. Therefore, only the very best are allowed in.⁷⁸

The general apprenticeship lasts 12 months and includes training in the School's center in Cracow, as well as court internship under the supervision of a patron-coordinator. The number of points gathered throughout the year of the general apprenticeship is decisive as to the possibility of being admitted for one of the two particular apprenticeships (judicial and prosecutorial). Here also, only the best get through. The judicial apprenticeship lasts 54 months (30 months of training and internship followed by a judicial exam and 24 months of court residency). The prosecutors' apprenticeship constitutes 30 months of training and practice, ending with a prosecutors' exam. During the general, the prosecutors' and a part of the judicial apprenticeship, the apprentices receive scholarship. As court residents, they are employees and receive a salary. The training takes the form of lectures, seminars, workshops, moot courts, conducting certain trial activities and preparing various court decisions. Each part of the training is followed by respective practical classes in appropriate courts and then a partial exam. There are also optional foreign language courses.⁷⁹

⁷⁶ The Act of 23 January 2009, Ustawa o Krajowej Szkole Sądownictwa i Prokuratury, DZ.U.09.26.157.

⁷⁷ Those are, in more detail, the representatives appointed by: the Minister of Justice, the National Judiciary Counsel, the Prosecutors' Counsel by the General Prosecutor, the Main Chairman of the Supreme Court, the Chairman of the National Administrative Court, entities providing higher legal education and the Chairmen of the self-government bodies of advocates, legal counsel and notaries; The Act of 23 January 2009, Ustawa o Krajowej Szkole Sądownictwa i Prokuratury, DZ.U.09.26.157.

⁷⁸ Both in 2009 and 2010, which constitute the first years of the School's running, the limits amounted to 300 places for the general application and 150 for the particular applications, i.e. 75 per the judicial and the prosecutors. In 2009 there were 1,450 people who took the exam while 953 of them passed from the first test-stage to the second one in the form of case-solving. In 2010, 1,342 candidates took the exam, 589 of whom were admitted to the II round; Krajowa Szkoła Sądownictwa i Prokuratury, Nabór 2010, http://www.kssip.gov.pl/info/nabor_2010, 19.08.2010; Rzeczpospolita, Tylko 45 proc. Kandydatów zdało test na aplikację ogólną, <http://blog.rp.pl/goracytemat/2010/07/26/tylko-45-proc-kandydatow-zdalo-test-na-aplikacje-ogolna/>, 19.08.2010.

⁷⁹ The Resolution of the Ministry of Justice of 30 June 2009, Rozporządzenie Ministra Sprawiedliwości w sprawie odbywania aplikacji ogólnej, sędziowskiej i prokuratorskiej, **Dz.U.09.107.895**.

The School is a very brave step forward in the direction of a modern professional apprenticeship, building up on a combined international experience (among others: France and Spain). It strives to centralize and make uniform the standards of teaching which, up until now, have varied greatly. The selection is harsh and competitive but, simultaneously, it prevents the future graduates from eternal residency without the hope for promotion as a judge or prosecutor. It has actually been legally defined that the training takes place in various forms and that lectures can only be a part of it.⁸⁰ The sessions are organized thematically and accompanied by coordinated internship. The lecturers are the best practitioners in the country. In addition to professional training, the School has a tremendous opportunity to organize post-graduate education of high quality, apply for EU grants, organize conferences and meetings, as well as undertake publishing and international activity on a scale unobtainable for local centers.

However, the School is not free from flaws and well earned criticism, especially as its introduction constituted a significant financial effort for the State and, thus, should have probably been implemented with greater care. First, there are the logistic problems: the Cracow Center is situated on the very south of Poland and not easily accessible to the apprentices from other parts of the country, who are, in reality, supposed to either live in two places for the time of the apprenticeship or move to Cracow. Second, the School commenced activity in an unbelievable rush, its Center not being technically finished. There are still not enough places in the dorms prepared for the apprentices. Third, the training, especially, the judicial one, is extremely time-consuming (over 5.5 years) and the first new graduates will pile up with the residents from the previous system, in which the access to the profession was not restricted by the demand predications. What's more, throughout the majority of the apprenticeship, the interns are not provided with social welfare benefits. As yet, there has been no time for methodological preparation of the teaching staff. The opponents fear the negative selection of the candidates, meaning that the talented law students needed by the State will be driven away by the many obstacles. Next, the influence of the Minister of Justice over the School and the apprenticeships' program is very pronounced, which may lead to the questioning of the separation of powers between the judiciary and the executive branch. Finally, the statute outlining the School's existence has already been modified three times and there have been indications of further amendments.

It seems that, while the very idea of a "Judges' School" is praiseworthy, much remains to be done in terms of solid preparation, as well as rethinking its ultimate form.

4. PUBLIC INTEREST ELEMENTS IN POLISH LEGAL EDUCATION

Surprisingly, the expressions "public interest" or "social responsibility" are still treated in Poland with a certain amount of mistrust and doubt. This may have much to do with the legacy of the political regime before 1989, which used similar phrases much too often and usually for its own purposes. Nevertheless, the meaning of the abovementioned words is slowly changing, at least with respect to law and legal education. Their modern version encompasses such components as: professional ethics, participation in the public discussion on significant issues, social responsibility, transparency of professional conduct, sharing

⁸⁰ The Resolution of the Ministry of Justice of 30 June 2009, Rozporządzenie Ministra Sprawiedliwości w sprawie odbywania aplikacji ogólnej, sędziowskiej i prokuratorskiej, **Dz.U.09.107.895**.

experience, legal advertising, free legal aid and *pro bono* activity. Although public interest is not what one might call a regular, everyday element of the Polish legal education, subsequent training and, consequently, professional activity, the system is definitely in transition as to that point and the last twenty years have seen some praiseworthy initiatives on an unprecedented scale.

4.1. Legal Ethics

The *curricula* of the law departments include the teaching of professional ethics, which however, subject to several exceptions, is a fairly new course, usually offered as a specialist, optional subject, stretched over one term. Students are also allowed to choose when they want to take it. The courses are run by philosophy academics, normally employed at other faculties or by lawyers with a philosophy specialization. The teaching method concentrates on familiarizing the students with the theoretical background, concentrating on the principles and rules of ethics in general, followed by building of arguments in an ethical discourse. Less emphasis is put on practical problems and the analysis of professional rules of conduct with regard to particular legal professions.⁸¹ Legal ethics is also taught during the professional training conducted by the self-governments, this time as an obligatory course. There also exists a general portal of legal professions' ethics⁸² and each law profession has its own Code of Professional Conduct, binding both the legal interns and the professionals⁸³. Much in the field of the teaching and popularization of legal ethics is being done through specialist, guest lectures, conferences and seminars organized through the co-operation of law faculties, self-governments and coordinators of NGOs programs.⁸⁴

4.2. Public interest in practice: Legal Clinics and Street Law

The first legal clinic in Poland was set up in October 1997 at the Law Faculty of the Jagiellonian University. The initiative received support from the Ford Foundation and, subsequently, the U.S. Embassy and other donors. In 1998, clinical courses were introduced to the study program at the Warsaw University. In the same year, 1998, the European Law Students' Association (ELSA) organized a conference: *Legal education reform. Development of the legal clinics idea*, combined with the National Congress of the Polish Lawyers' Union⁸⁵

⁸¹ Edukacja Prawnicza, M. Jurzyk: *Czy potrzebna jest etyka prawnicza?*

http://www.edukacjaprawnicza.pl/index.php?mod=m_artykuly&cid=61&id=86, 06.08.2010.

⁸² Wortal etyki i zawodów prawniczych, <http://www.etykaprawnicza.pl/>, 06.08.2010

⁸³ Wortal etyki i zawodów prawniczych, Kodeksy etyczne,

http://www.etykaprawnicza.pl/index.php?option=com_content&task=view&id=9&Itemid=94, 06.08.2010.

⁸⁴ Wortal etyki i zawodów prawniczych, Wydarzenia,

http://www.etykaprawnicza.pl/index.php?option=com_content&task=category§ionid=1&id=18&Itemid=110, 06.08.2010.

⁸⁵ The Polish Lawyers' Union is a public interest organization and, having started in 1949, one of the oldest entities for lawyers in Poland. The Union groups advocates, notaries, prosecutors, legal counsels, judges, the representatives of the academia, as well as lawyers of other specialties. Currently, there are 18 local agencies with circa 800 members. The Union is the place, where the lawyers working in different fields of expertise meet,

and the National Congress of Law Faculty Deans, which proved to be a trigger for the rapid development of the program.

The main goal of the clinics is obtaining legal education and experience through providing assistance to the poor. The students undergo introductory training and are divided into different sections, overseen by at least one faculty teacher. Then, they are individually assigned to a case within which, subject to supervision, they provide written legal aid. Weekly seminars are held in order to carry out a thorough discussion of the issues at stake. They also include meetings with sociologists, psychologists, therapists and experts in the specific areas of the clinics' activity. The future clients undergo a procedure which is to ensure that they cannot afford regular legal advice.⁸⁶ Since 2002, the clinics are supported by the Legal Clinics Foundation, an entity which takes care of the clinics' finances but also sets forth the future goals, standardizes the activity, builds up co-operation between the clinics both in Poland and internationally, organizes conferences, seminars, presentations, publishing and, finally, gathers and processes the statistical data. The Foundation is supported by NGO'S CENTRUM SZPITALNA, Stefan Batory Foundation, Open Society Legal Institute (OSI Legal Institute), Polish-American Freedom Foundation and Public Interest Law Institute (PIL).⁸⁷

In accordance with the latest data⁸⁸, there are currently 25 clinics in 15 Polish cities, meaning, there is at least one clinic at each public higher education institution with a law department and at several private ones. Fifteen of them fulfill the prescribed standards. The clinics have been recognized by the higher education entities as a regular course of a specialist character, earning the students a respectively large amount of ECTS points. Within the time frame of October 2008 and June 2009, there were 1,661 students and 216 members of the teaching staff. Each of the latter supervised, on average, 8 students; each student conducted an average of 7 cases. In total, there were 11,075 cases admitted, mostly civil ones (25% - 2,769 cases). The other frequent areas of legal counsel rendered by the clinics were: criminal cases (2,190), family matters (1,434), work and unemployment (1,132), inheritance (1,010), landlord-tenant and other housing disputes (838). As far as the timeframe goes, 42% of the cases were dealt with in up to 2 weeks time (i.e. *circa* 2 visits), 40,4% lasted - up to 2 month

exchange views and broaden their knowledge; Zrzeszenie Prawników Polskich; O nas, <http://www.zgzpp.org.pl/>, 21.09.2010.

⁸⁶ Legal clinics in Poland, Legal Clinics Foundation, History and activity of the legal clinics in Poland http://www.fupp.org.pl/index_eng.php?id=history, 06.08.2010; Legal clinics in Poland, Legal Clinics Foundation Standards of the Polish legal clinics activity, http://www.fupp.org.pl/index_eng.php?id=standards, 06.08.2010.

⁸⁷ Legal clinics in Poland, Legal Clinics Foundation, Tasks of the Legal Clinics Foundation, http://www.fupp.org.pl/index_eng.php?id=foundation, 06.08.2010; Legal clinics in Poland, Legal Clinics Foundation, The Statute of the Legal Clinics Foundation, http://www.fupp.org.pl/index_eng.php?id=statute, 06.08.2010.

⁸⁸ Studenckie Poradnie Prawne: *Podsumowanie działalności za rok akademicki 2008/2009*; Uniwersyteckie Poradnie Prawne w Polsce, Raporty, <http://www.fupp.org.pl/index.php?id=raporty>, 20.09.2010. A thorough comparison of the four biggest clinics at their early stage of activity can be found in a study prepared for the Batory Foundation: *Uniwersyteckie Poradnie Prawne, Biura Porad Obywatelskich – Raport dla Fundacji im. Stefana Batorego*, Warsaw, 1999, http://www.fupp.org.pl/down/raport_batory-%20kliniki_bpo.pdf, 06.08.2010.

(several visits), 12,8% - up to one year and 4.8% took more than a year. What is more, the initiative is constantly growing. For comparison, in 2003/04 there were 6,569 cases handled by 913 students, supervised by 109 staff members.

Legal clinics in Poland proved to be a tremendous success for several reasons. As already mentioned, Polish higher education institutions, similarly to American ones, exercise much freedom and independence. Therefore the introduction of a new initiative was not that difficult from the formal viewpoint, especially once the institutions' authorities got convinced of the idea. In comparison to the classes provided at the law schools, the clinics have always been (and probably still are) the most effective way of gathering legal experience and learning law in practice. Consequently, they are also very popular with the students. Apart from that, the initiative is being vigorously supported by the Legal Clinics Foundation, which constitutes an efficient coordinating body. There also occurred a significant change in the attitude of the legal profession outside the academy environment-- the previously hostile relation full of mistrust as to the quality of the legal assistance provided by the clinics gave way to a peaceful co-existence with a promise of future co-operation. One of the program's most interesting goals for the future is influencing the academic education by sharing the abundant experience, introducing new ways of passing on knowledge and "training the trainers".

Poland has been the third country in the world (after the USA and the Republic of South Africa) to undertake the Street Law initiative. Its essence is that law students share legal knowledge through organizing classes in high schools and penitentiary facilities, using modern, interactive methods. The Polish version of the program started in 1995 in Warsaw and was supported by the previously created Polish Society for Legal Education⁸⁹. Subsequently, the initiative was implemented in Białystok, Szczecin, Poznań, Kraków, Kalisz, Siedlce and, recently, in Wrocław. Street Law receives backing also from the Stefan Batory Foundation, PHARE program and the Ford Foundation.⁹⁰ Like with the clinics, Street Law was designed to provide mutual benefits. The pupils and the prisoners acquire knowledge about the major law institutions which affect their lives on an everyday basis. The information which the students convey must be well organized, well thought-out, and delivered in a straightforward and easy to understand manner. This requires a profound knowledge of many aspects of law and some unquestionable social skills. Hence, the students prepare for possible university lectures they might conduct, meeting with clients and the court sessions.

⁸⁹ Polskie Stowarzyszenie Edukacji Prawnej PSEP, O nas,

<http://www.psep.pl/index.php?co=page&hopsa=pliki/strony/infopsep&mm=0>, 06.08.2010.

⁹⁰ Edukacja Prawnicza, Marcin Żukowski: *Street Law*,

http://www.edukacjaprawnicza.pl/index.php?mod=m_aktualnosci&cid=1&id=76, 06.08.2010. Polskie

Stowarzyszenie Edukacji Prawnej PSEP, O nas,

<http://www.psep.pl/index.php?co=page&hopsa=pliki/strony/infopsep&mm=0>, 06.08.2010. Uniwersyteckie

Poradnie prawne w Polsce, Fundacja Uniwersyteckich Poradni Prawnych, street Law,

<http://www.fupp.org.pl/index.php?id=streetlaw> , 06.08.2010.

Edukacja Prawnicza, Anna Drozd, Filip Kmiciewicz: *O „Street Law” i potrzebie nauczania prawa w szkołach średnich*, http://www.edukacjaprawnicza.pl/index.php?mod=m_artykuly&cid=139&id=1018, 06.08.2010.

CONCLUSIONS: IN NEED OF A PLAN

Several years running, the legal profession in Poland has gained a considerable amount of interest from high school graduates. Despite the market changes and the emerging of new types of occupations, lawyers are still perceived as esteemed, well off, well situated and *well educated*. The legal profession continues to be very much desired. This constitutes an unquestionable challenge for the respective education institutions: they are expected to process all those eager to follow a carrier in law and, simultaneously, provide high quality knowledge. The access to the European Union, the prospect of becoming a part of the Commonwealth's internal structures, the international exchange of students on an unprecedented scale and the flourishing of foreign law schools at law departments have all exposed Polish legal education to a scrutiny check. Its outcomes are not quite as satisfactory, as the Poles themselves tend to think.

The academic legal environment resists change, mostly because neither it nor the society sees a need for its implementation.⁹¹ The rusty organizational structure and the good old teaching methods, resembling those regarding the strictly humanistic subjects have, in many cases, been upheld without additional efforts. The law departments benefit from the past glory and the general popularity of the profession, detaching themselves from the actual outcomes of their teaching. Consequently, there is no real competition among them and, hence, no high pressure to elevate the standards. Some important requirements of young lawyers' employers and those of the students themselves are not met and certain skills are still missing from the *curricula*.

The picture is not totally pessimistic, though. The higher education institutions provide solid theoretical background upon which one can build up in a fairly easy and unrestricted manner during subsequent gathering of practical experience. The range of courses is abundant and varied, the lectures enable meeting with the greatest authorities in the field. Apart from the international exchange and foreign law schools, there are also the unquestionably successful clinical trials, moot court competitions, negotiation workshops, street law programs and, sometimes, truly engaging interactive lectures and classes. This is partially a result of the fact that in the 90s a new generation of teachers started their activity, many of whom had studied abroad and who were able to obtain different sources of funding for their ideas.⁹² The Polish Erasmus students are said to be one of the best and hard working in the program, the quality of lawyers and judges is improving. The private law schools are developing, with a promise of creating a true competitive market of legal services.

The professional education shared between the self-governments and the State is also far from excellent. The constant disputes as to its ultimate form cause an unhealthy situation when, even at the very moment of graduation, the students cannot be sure what to expect, as far as the type of the apprenticeship and the respective exams go. There is little or no dialogue

⁹¹In accordance with the CBOS survey of 2008, 67% of the respondents assess the higher education in Poland as good or rather good, 12% think it rather bad and only 1% is of the opinion that it is decidedly in a bad shape; Centrum Badania Opinii Społecznej CBOS: *Finansowanie nauki i szkolnictwa wyższego w Polsce, Komunikat z badań*, Warsaw, May 2008, http://www.cbos.pl/SPISKOM.POL/2008/K_071_08.PDF, 09.08.2010.

⁹²F. Zoll: *The Challenges of the Mass-University and the Civil Law Country Model of the Education – how far the Polish university may be open for the innovative way of teaching? Time of transition in clinical teaching.*

among the academics and the professional trainers and, therefore, no coherence between the content and method of teaching. Many apprenticeship classes duplicate university lectures in a condensed form and the internship in the bodies of the judiciary system is, at times, treated just as a formality. On the other hand, one cannot omit the visible efforts to make the legal professions more accessible and transparent. The “Judges School”, although not free from flaws, constitutes a decided step forward in the direction of a modern apprenticeship. The self-governments of counsels and advocates also notice the pressing need of change and come up with various plans of reform.

The last decade has also seen a significant growth with respect to the public interest initiatives in connection with the legal education. This proves extremely beneficial for all the interested parties, as law students and interns tend to comprise excellent material for the provision of social assistance. They possess the right type of knowledge and are not yet fully engaged in their professional activities. Properly supervised and organized, they are able to replace the State in several of its social duties. In exchange, they acquire a unique type of experience, wide range of practice and team work opportunities. They learn sensitivity and alertness with regard to the people and their problems and, thus, become more conscious citizens. The latter is particularly important, as Poland is still a country in transition, requiring much social awareness and activity.

The Polish legal education is currently undergoing some vital changes. Multiple, detached initiatives signal a shift in the proper direction and the system itself definitely harbors a potential for much more in-depth reform. However, as indicated at the beginning, the missing part seems to be a balanced reflection and a coherent idea, as to the training’s future. What the Polish legal education now desperately needs is a thorough and detailed plan for the next twenty years and a clear set of primary goals to be achieved in the long run.