Continuing Legal Education

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Ambition and Reality

The book contains presentations and papers given by the various speakers during the conference organised by the Faculty of Law in February 2023.

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Preface

The education of lawyers does not end with obtaining a law degree, but all the contrary: Continuing legal education is of central importance for legal professionals and the whole of legal industry. Both the education sector and the legal sector are undergoing profound change due to new business models and information technology. Providers of continuing legal education and universities in particular are therefore confronted with various questions and challenges to adapt to constantly changing requirements.

The Faculty of Law of the University of Zurich as the leading provider for legal education in Switzerland, held therefore on February 15th and 16th, 2023 an international conference on that topic. The conference featured speakers from universities, law firms and associations as well as undertakings from Switzerland, Germany, the UK and the US. The individual presentations provided insight into the state of continuing legal education in the respective countries and addressed topics such as legal innovation, digitization, the role of law schools, and expectations from legal practice regarding continuing legal education.

The organizers of the conference would like to express their sincere gratitude to the speakers and authors of the various contributions in this publication; they enable us to continue the debate about the shape of continuous education in the field of law. The publication consists of manuscripts and transcripts of the speeches presented at the conference.

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I. International Best Practice

1. Continuing Legal Education in Switzerland – Situation today

Andreas Kellerhals

At the beginning of this two-day conference, we would like to show the existing possibilities in continuing legal education (CLE) in Switzerland and also focus on what we have been doing in Zurich so far. CLE was not traditionally a topic that universities have offered. Universities have primarily focused on primary education, referring to bachelor's programs, master's programs, and Ph.D. programs. A CLE program as such did not really exist here for a long time. It was not really seen as a university task. It was left to bar associations and other groups that were out there to train practitioners and not so much the academic world. In the old days, there was also this presumption that what you learned at law school would be enough to last a whole professional lifetime. This is something we cannot imagine any longer today.

The first law school in Switzerland was the University of Basel, founded in the 1460s, thus at a very early stage. But it was a small law school and the same was the case for other institutions that were started earlier. In Berne, there was a legal chair at an institute in the 1600s and then the real university was founded in 1834. Similar things happened in Zurich and Geneva. In Zurich, we had a first legal lecturer after the Reformation but the university as an institution was only founded in 1833. Similarly in Geneva, after the Calvin Reformation took place, law was introduced as a topic to be lectured and the university was subsequently founded in 1872.

If you wanted to pursue a sound legal education in the old days, this was note in Switzerland. In the German-speaking part of Switzerland, most would go to Germany. As mentioned, legal education in the old days was supposed to last the whole life. Of course, the development of law was much slower. It was very slow. And if you had studied those cases which had been decided by the courts, you were more or less fixed and in safe hands.

The idea that an initial legal education is sufficient only for a short period of time to cope with demands of modern professional life only developed later. In Zurich, for example, there is a university statute that is the basis for all of the university's activities. Only in 1998 a provision was added that further education was also something the university must offer. Before that, there was no

requirement. Since then, they must offer continuing education, including CLE. Education for graduates is therefore a more recent phenomenon in Switzerland. The University of St. Gallen is recognized the first university in Switzerland – in many ways also the leading institution – that recognized CLE at a very early stage.

Before 1983, there were no real activities here in Zurich, at least not to my knowledge. A first step was taken in 1983, when a foundation for CLE was established here in the Canton of Zurich. The courts, the faculty, and the law association came together and said: We must establish an institution that provides seminars, not courses, but seminars – daily seminars – on legal developments in order to help our members, the legal professionals, keep with developments important for their daily activities. This foundation is still around and produces four to six daily events throughout the year, more or less.

A next important step was the establishment of the Europa Institute at the University Zurich in 1992. This is a private association, but associated with the University, and of course associated with the law faculty. The Europa Institute is a very active driver in legal education. We do 40 to 60 seminars a year, daily seminars, but also CAS (certificate of advanced studies) education programs for the law faculty. Right now, we have CAS courses in the areas of Compliance Management, Inhouse Counsel, European Law, Legal English, Data Protection, Cybersecurity, and others comping up in the next months.

The Institute has also established an Open Access publishing house about three years ago, where we publish all the events that happen here. For example, this conference will be published in Open Access. The big advantage is that people from all around the world can read and access the publications. If we use a publishing house in Zurich, distribution is limited to the legal community of Zurich and the surrounding environment. Oddly, important publications in English are rarely read in such a context. The establishment of our publishing house is a significant event, though the financing of future events remains to be seen. The Institute active with China, the United States and Eastern Europe, which will not be covered at present. The establishment of the Europa Institute provided the faculty and the university a framework on which they could build their activities in CLE. In 1996, the faculty for the first time established a program that was an LL.M. program in International Business Law. Originally, this was only a part-time program lasting two years. This program still exists and has been expanded into a full-time LL.M. program that runs every other year and is designed for international lawyers – so people from all around the world – and is taught completely in English. Every year we attract between 20

and 30 students from abroad to attend the program. It is amazing when people in the Hindukush somehow find the University of Zurich homepage and our program. Of course, sometimes finances are an issue, but we have been very creative over the years to solve that problem. This has been around now for almost 30 years, and it is in a way a success story, I think we can say that. There has also led the establishment of our first an alumni organization. Zurich was very slow in doing so. Initially, they were unaware of all the former students at the university and had no access to them, and especially also no return. St. Gallen, on the other hand, created a wonderful infrastructure this is at least partially, financed by alumni, something we could only dream of in Zurich. But we are working on that and of course this would be wonderful to develop.

There are a few other developments at the University of Zurich which might be of interest: have the special attorney training in cooperation with the Swiss Bar Association and other universities. We have a Tax LL.M. We have created the foundation for a CAS course on medical law, this is an interdisciplinary education program. In 2020 we also started a cooperation with the "big neighbor next door", the ETH and we have a common program in International Governance and Law. This sums up our activities in Zurich so far.

What is the Zurich Law School doing so far in CLE? We have three LL.M. courses, and we have 13 CAS programs. We have one DAS course in cooperation with the ETH. There are three specialist attorney training courses, 40 to 50 one-day seminars in cooperation with the Europa Institute. We have additional education programs in China, the United States and in Eastern Europe. It is quite a big array of activities that we have created over the past few years.

Compared to other universities – and we will have a look at that in a minute – Zurich is in a quite good position. But of course, there is work to be done, and that is why we also have this conference here today.

We still have room to improve. The coordination could be better. Zurich University's appearance as a university and the provider of such services could be stronger. We could have better cooperation with partners in Switzerland but also abroad. I believe our strategy needs to be revised. And, as previously mentioned, infrastructure is insufficient. We need more of it but we

There is a need for us to rethink what we have been doing and what we should do in the future. In this respect, this conference is very promising to us because we will see your perspective on the developments, what needs you see

in the future and where you see things headed. This would be very helpful for us to look at, especially to answer the question: What should a university today offer in CLE?

We just had a look at Zurich. Let us have a brief look what other universities are doing, just to see what else is going on in Switzerland.

The first university is Switzerland's youngest, the University of Lucerne. It was only founded in the year 200, but they are quite actively engaged in the area of CLE. They organize conferences and seminars, though not as many as Zurich. Of what they offer, much is designed for Central Switzerland. They have an express continuing education program for lawyers. This includes short seminars and events that focus on developments in specific areas of law. The University of Lucerne also hosts the Lucerne Law and IT Summit. They offer a CAS is in agricultural law, which is very specialized, but certainly unique in Switzerland. They also offer a CAS is in arbitration. Additionally, they have the Swiss Judicial Academy. This is an education program for courts and judges in Switzerland. They also have something similar with the Academy of Public Prosecution. Finally, a cooperation program with legal professionals from Ticino. We had something similar here in Zurich though it proved to be quite difficult. It continues only on a very small scale.

The University of Basel is the oldest university in Switzerland. Their activities may be a little less extensive than what we do in Zurich. Of course, Zurich is the biggest law school in Switzerland and the biggest university in Switzerland. The University of Basel has done seminars and conferences since 2002. They offer CAS in cultural policy and cultural law, something we are not engaged in thus far. They also offer courses on nonprofit management and law, on foundation law and more. They have a special cooperation with the Basel Bar Association. This is an area where we could do more in Zurich. We do have a cooperation with the Bar, but the Zurich Bar Association is very big, and they do a lot of things independently, so they may not have an interest in cooperation as much as other bar associations do. Nevertheless, this is something we would be happy to explore further. Finally, they have the Europa Institute in Basel, which offers a postgraduate program in law, politics, and economics.

At the University of Bern, they have a special Continuing Education Office that manages continuing education for the entire university but also with regard to law. In the legal field they organize seminars. The Banking Law Conference they organize every year is well known. Then they have a legal magister MAS LL.M. This is an LL.M. program that consists mainly of lectures which are part of the master's program being taught already at the university Students pick

from available courses and once they attend enough lectures, they obtain an LL.M. This is a different approach from Zurich, with a separate program and separate teachers in the LL.M. programs. Then they have courses in Criminology and International Business Criminal Law, also something we do not focus on. They offer a CAS in Capital Market Law, and an Executive Master of Public Administration. This summarizes what University of Berne is doing in CLE.

The University of Fribourg is also quite active. They founded an Institute for International Business Law, and they also offer LL.M. in International Business Law, similar to what we do. They offer an LL.M. in Contracts and Arbitration, a CAS in International Contract and Arbitration, tan LL.M. in Compliance – not only at CAS – which is quite demanding. They offer an LL.M. in Commodity Trading Law, also a very specialized area. And something very interesting and innovative they have is an LL.M./MBA dual degree program. Students that attend that program obtain both an LL.M. and an MBA concurrently. This is amazing. It also appears very efficient cost wise. Current MBA programs cost from CHF 70'000 CHF 80'000 for a good program. An LL.M. program costs CHF 30'000 to CHF 40'000. Taken together, this means around CHF 120'000. If students can obtain both for CHF 90'000 you make a good deal. I'm uncertain as to the actual cost, but I this combined program is very innovative. I'm also unaware of its length. They also offer CAS in Asylum Procedure, Compliance, Criminal Procedure Law. The latter is also something we are not planning to offer. Fribourg is a quite active – if you want – competitor or partner of Zurich.

The University of St. Gallen (St. Gallen) has been a leader in innovation and a longtime frontrunner in Switzerland in CLE. Many developments that occurred in Switzerland had their origins in St. Gallen. Also, they founded their Executive School of Management, Technology and Law, which is headed by Bruno Mascello. It is very innovative and certainly something that is worth looking at as an example for others. They hold many conferences there, though nowadays they do fewer one day seminars. There is another institution that does that at St. Gallen, but they focus mostly on management and law programs, and in that field, they are very big and very successful. St. Gallen once offered an LL.M. in International Business Law, which stopped being offered a few years ago. Additionally, they organize conferences, seminars, and big CAS and DAS program in the area of compliance and others such as Law for Business, Law for Managers, which are also well known. Moreover, they offer courses in Data Protection, Criminal Procedure Liability and Insurance Law and Litigation, to name a few. St. Gallen's program is quite impressive and could serve as an example for other institutions.

The question of how CLE ought to be offered in Switzerland remains. For us, the role of the universities is in CLE is important.

As mentioned, originally CLE was left to the bar associations and other groups. Nowadays, universities must offer CLE by statute. We must remain be engaged and keep an eye on how others are having success. We must ask: How much do we want to invest in that? How much do we want to do it with partners out of practice? This is a question we have yet to answer. We will study and look at it in the near future.

What is the role, the combination, the cooperation with the bar association or inhouse groups? It is very important to define that. A frequent question is whether we should have a mandatory education program for practicing lawyers, like other groups – like doctors or also *Fachanwälte* that we have in Switzerland – they have to yearly attend 30 or 40 hours of education in order to retain their license. This question has not come up for attorneys in Switzerland. There are models abroad such as in the United Kingdom, where there is a requirement for lawyers to have an active role in continuing education. Perhaps this is something to consider for Switzerland. If this were implemented, it would be a major event for all those who provide services in that field. But the overall question should be: Is there a need and can we improve the quality of the legal practice in Switzerland? If we conclude that such a requirement would help, it should be seriously considered. Another consideration is a form of preparation school for the bar exam. There are mixed views on this. Some argue that there must be a difficult bar exam because there must be limits on who may practice law as an attorney. On the other side, the argument is that the Zurich bar exam is too difficult, causing an unacceptable rate of failure, and that therefore there ought to be way to let candidates prepare in a uniform way. We have been in talks with the Bar Association, the Zurich courts, and others. For now, there is not much movement to observe in this respect.

Another point to consider is whether there is an obligation or requirement that CLE programs are financially self-sufficient and funded. This is usually the case, but sometimes it is not. If it is not, financing options must be looked at if there is a belief that a program should be offered.

The Covid pandemic forced our programs online. We discovered the advantages and disadvantages of this new form. We will have to decide how much of our education program in the future should be accessible through the Internet. Do we still require people to be present or is it probably the new trend that people do not come or only come from time to time and otherwise they

sit at home or in the office and do the education part themselves? How much do we want to offer that? How much is this possible? This is not completely decided yet.

Also, how important are the certificates we are handing out? Is it important for the business practice to have a CAS certificate or is it rather important that they get the knowledge and the information, and they do not care about what we are handing out as a so-called academic record.

Another question that is always important – and I know that St. Gallen is very good at this – is: How important are non-legal skills for lawyers, especially knowledge about business, management, development? That you can only counsel your client well if you know his or her business. Therefore, there is certainly a need for lawyers to be better educated about other areas of non-legal skills in Switzerland. Other areas of law than business law because business law has been the center of the focus so far. Furthermore, specialization or translation is also a very general question. What I have not listed here, but is an overarching issue is artificial intelligence (AI). How is this going to change the legal practice and how is this going to change the education services we are offering? I have no clear answer to that, but I am looking forward that we can bring some more light onto this during the discussions in the conference we have here today and tomorrow.

Overall, CLE is an important task, and it is seen as an important task by universities in Switzerland and by the University of Zurich specifically. We naturally have room to improve, and we are constantly looking to improve our program. I believe we can learn from each other, that is obvious. There must be a clear strategy r. We hope to get some points for this out of this conference, in order to try to reach the general goal, to improve the quality of the legal profession in a constantly changing environment.