

Costa Rica sparks debate with compulsory bar exam

Friday, 27 March 2015 (1 month ago) by Lulu Rumsey

Costa Rica's Colegio de Abogados is making moves to introduce a compulsory bar exam for trainee lawyers aimed at raising the standard of lawyers in the country, but the decision has provoked debate in other jurisdictions and would make the country only the second in Latin America to make its lawyers pass a test before they can practise.

After sitting on the drawing board for more than a decade, the initiative will finally enter into force in May when Costa Rica will join Brazil as the only other Latin American country with a mandatory bar examination. But the decision has divided the region's lawyers between those who claim the exam will help raise the standard of the country's lawyers, and those that say it will prioritise certain areas of law over others and reduce choice for law students.

With the first exams set to take place in June, [BLP](#) partner and bar association president Eduardo Calderón welcomes the new system, saying it will help to up the standard of the legal profession in Costa Rica. "We have been suffering a little bit of a quality issue in legal representation," he admits. "The exam gives the bar the tools to professionally and objectively evaluate the quality and education of its lawyers. It is very important to fulfil your mission statement as a bar and we have to guarantee that Costa Rican lawyers have full knowledge about the different aspects of the law," he says. [Consortium Centro América Abogados - Costa Rica](#) partner Rolando Ladé Castro agrees: "By applying this test the bar can raise the professional quality of the lawyers of Costa Rica; I don't think there are any disadvantages."

Driving efforts to implement a new exam has been the rapid expansion over recent years in the number of Costa Rica's law schools, which currently numbers 28 separate institutions. With each following their own curricula, the wide variations in legal education meant there was a lack of consistency in the standard of lawyers from different law schools. "We have a lot of law schools, which is a phenomenon you see across the region, and it was becoming difficult to regulate the quality of lawyers coming out of those schools," admits Calderón, who was elected as president of the bar association in December.

To help raise standards, the new exam will test candidates on seven types of law designated as core areas by the Colegio de Abogados: commercial, civil, constitutional, criminal, labour, family and administrative. A six-member committee will be in charge of selecting specific topics and drafting the exam – Calderón is currently on the lookout for seasoned lawyers to fill the six spots, particularly retired judges and academics. "They have to be lawyers with an academic background and must be unrelated to staff positions at the universities because we want this to be objective," he says. "The idea is to make it very professional and independent." Practising lawyers will not have to take the exam, but can instead choose to take top-up courses set by the bar association. However, the exam will apply to foreign practitioners who want to practise in Costa Rica. Foreign lawyers can practise there as long as they are registered with the bar and have had their law qualifications checked by a Costa Rican university, although an exception applies to international arbitration lawyers.

Support for Costa Rica's exam was widespread amongst lawyers, with 95 per cent of Colegio de Abogados members approving the proposal at a meeting held in December. Introducing the exam required changing the by-laws of the bar association to give it the authority to set the exam, which involved getting approval from Costa Rica's Congress, and saw the International Bar Association (IBA) and the New York State Bar Association brought in to help the bar association draft its new by-laws. Previous attempts by the Colegio de Abogados to impose an exam were thwarted because the bar did not get congressional approval.

Costa Rica's decision to impose an exam sets the country apart from much of Latin America. Brazil is the only other country with a compulsory bar examination; set by the Ordem dos Advogados do Brasil, of which all local lawyers must be members. Foreign practitioners are banned from operating in the country unless through a foreign legal consultancy. For Horacio Bernardes Neto of [Motta, Fernandes Rocha - Advogados](#), introducing a bar exam in Brazil, which produces more lawyers than anywhere else in the world, was a no-brainer. "The

bigger a profession gets, then the more organised it has to be,” he says. “There are so many universities here and the quality of the legal education is very varied; two years ago only 8 per cent of candidates who took the exam actually passed; last year that rose to 19 per cent and that was considered huge.” Asking lawyers to take the exam also slots in with a wider exam culture in the country’s judiciary. “The whole legal profession is based on exams – for you to be a judge you pass an exam; if you want to be a public prosecutor, you have to pass an exam,” he adds.

Calderón hopes the exam might be copied by bar associations across Latin America that also count a high number of law schools. In Argentina, Venezuela and Peru, lawyers must be registered with a local bar association to practise and there is no exam; in Uruguay, Chile and Mexico, membership of a bar association is not compulsory. In Panama, law school graduates must have their degrees certified by the Supreme Court of Justice, but they do not have to join the country’s bar association.

Luis Carlos Rodrigo Prado, a partner at Peruvian firm Rodrigo, Elías & Medrano Abogados, supports the idea of an exam and agrees that introducing one would be a better way of making sure lawyers are capable of a minimum legal standard. Practitioners in Peru must sit an ethics exam set by one of the local bar associations, but not an aptitude test. Thanks to market forces, less capable lawyers are likely to have fewer clients, but that doesn’t stop them from giving the clients they do have bad advice, says Prado. Peru has dozens of law schools, but of that number no more than 15 produce top-level lawyers, he explains. “One unified bar exam would probably make the less serious universities less able to profit from students who just want a title, since if they would not be able to pass the unified bar exam, then they would not have any incentive to join these universities in the first place.”

But the decision has sparked debate in legal circles across Latin America. Claus Von Wobeser of Mexican firm Von Wobeser y Sierra SC points out that the exam prioritises the core practice areas over others and works against a more specialised career path many lawyers choose, focused exclusively on only one or areas of law. Von Wobeser also questions the legitimacy of enforcing mandatory top-up courses in a broad range of practices on seasoned practitioners and is against making already-qualified lawyers sit the same test as newcomers to the profession. “I would have an exam for newcomers, but there is a difficulty of imposing an exam on someone who has practiced law for decades,” he says. “I’m specialised in arbitration, so if I had to do an exam on labour and criminal law, I would probably fail. If a guy has been an immigration lawyer for 35 years he will probably fail a lot of subjects because he doesn’t practice them regularly.”

Hector Ferreira of Uruguayan firm Hughes & Hughes says the exam could lead students just to study for the exam, rather than encouraging them to deepen their legal knowledge more broadly, and force some to learn about areas of law they are not interested in, or suited for. Ferreira also argues that, as with all exams, the test might not be representative of the true extent of lawyers’ knowledge and would inevitably omit uncommon areas of law, like human rights. “I took the bar exam in the US and I think one disadvantage is that you are preparing for a very specific exam with certain rules and you do not have an exam that is complete in terms of law.” Uruguay is unlikely to follow Costa Rica’s example, since its bar association has little authority over the country’s lawyers, he adds. The country also doesn’t face the same challenges as others in the region, as it counts only five law schools. However, Ferreira concedes that an exam could be useful in other ways, because it would encourage mandatory continual education courses, which he says would become the norm if an exam was in place.

Other lawyers have mixed feelings about introducing a bar exam because of the challenges associated with its implementation. Although he supports the introduction of an exam, Prado thinks it is unlikely his country will follow suit. Instead, to improve quality he thinks Peru could go back to the system it followed until the mid-1990s, under which students have to produce a thesis and produce a mock defense based on two ongoing court cases. Nowadays students only need to produce a thesis. “Going back to [that the previous system] would at least make the students study more and it would be more likely that they will start practising law with a better preparation and more knowledge, but I would still prefer the unified bar exam system,” he says.

Finally, there is another, more emotive reason behind Latin America’s lack of institutionalised bar associations. Democracy in many states in the region is only decades old, and some lawyers fear that compulsory bar membership in a single organisation may be easier to co-opt, or subvert, by anti-democratic

governments in the future. “For a mandatory bar association to work it must be totally independent from the government,” says Von Wobeser, who was formerly chairman of the Mexican Bar Association, but adds that Latin America’s unprecedented period of political stability means there are signs lawyers are starting to put the past behind: “Historically, the Mexican Bar Association has felt that obligatory bar association membership was not good a good idea, as it could be a way for the government to control the profession. Now that we have more democracy Mexicans’ views are changing.”

Comments

There are currently no comments.
