



Country Report of the German Bar Association (DAV)

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This report deals with the reform of the Federal Lawyers' Act (BRAO) in Germany, the demand for an increase of lawyers' fees, Legal Tech and the DAV's commitment as regards the rule of law and human rights.

I. DAV [discussion proposal](#) concerning the reform of the Federal Lawyers' Act in Germany

The regulation of lawyers and in particular the corporate law applying for lawyers in Germany are incomplete, fragmented and only partially reflect the possibilities of cooperation between lawyers. In 2016, two decisions by the Federal Constitutional Court (on the unconstitutionality of the majority ownership requirements in law firms and on the restriction of professional cooperation of lawyers with other professions) made clearly that there is a need for legislative reform in this area. The BRAO (Federal Lawyers' Act) is, according to its current status, oriented towards the individual lawyer as the subject of rights and duties. This no longer corresponds to the reality of the legal market. The organisation of a law firm and personal basic duties can often no longer be fulfilled and checked by the individual lawyer, especially not by employed lawyers. A fundamental reform is therefore needed. All legal forms established under German and European law should be open to law firms.

The possibilities for inter-professional cooperation should also be expanded. In addition to the professions already mentioned in § 59a BRAO, cooperation should be possible with compatible professions - i.e. those that cannot pose a threat to the core values of the legal profession. The obvious success of multidisciplinary partnerships of lawyers, tax consultants and auditors in recent years shows that the bundling of different disciplines is particularly attractive for clients and meets their consulting needs.

The DAV is therefore committed to a comprehensive reform of the law governing the legal profession. In March 2019, the DAV published a comprehensive legislative proposal and forwarded it to the German Federal Ministry of Justice and Consumer Protection (BMJV). On 27 August 2019, the BMJV published the key points of a possible reform, which largely align with the DAV proposal.



II. Demand for an appropriate increase of the regulated lawyer's fee

Since 2016, DAV and BRAK have been calling on the legislator for an appropriate increase of the regulated lawyer's fee. DAV and BRAK have submitted a common comprehensive list of demands. An appropriate remuneration of lawyers, based on the Lawyers' Remuneration Act (RVG), is necessary in order to safeguard access to justice. The increase is to be based on the general development of collectively agreed wages. For months, DAV and BRAK have been holding numerous discussions with representatives of the Federal Ministry of Justice and Consumer Protection, members of the German Bundestag and representatives of the federal states.

III. Legal Tech

Legal tech providers in Germany operate primarily on the basis of debt collection licenses. In November 2019, the German Federal Court of Justice (Case No. VIII ZR 285/18) decided in the case of the Legal Tech company wenigermiete.de that collection service providers provide "comprehensive and fully-fledged substantial legal advice" when collecting debts or claims. A similar issue was also raised in proceedings by the provider "myright", which offers to assert "Diesel gate" claims against the car manufacturer VW. Several expert opinions from renowned legal experts assume that myright's business model, which also operates as a collection service provider, violates the German Legal Services Act (RDG), and as a result thousands of claims may now be time-barred.

In April 2019, the liberal parliamentary group in the Bundestag (FDP) introduced a draft law on legal tech to create a new sectorial exception in the RDG for "automated legal services". According to the draft law, legal tech providers would be able to register and they would be required to fulfill information obligations towards their clients proving their special expertise and as well as the existence of a liability insurance. In return, the ban on contingency fees for lawyers would be relaxed in order to compensate them for their competitive disadvantage.

Whether an amendment to the RDG is at all necessary after the BGH ruling is controversial. In its resolution on legal tech, the Conference of Ministers of Justice of the Länder (the German federal states) took the view that legal services mainly provided by legal tech providers should also be reserved for the legal profession while liberalizing the prohibition on third-party participation in law firms and the restrictions on contingency fees.

The DAV opposes changes within the RDG for the following reasons: The BGH ruling wenigermiete.de shows that it is not necessary to enlarge the scope of the RDG.



Automated legal advice must also be regarded as a legal service with assistive tools - which means that legal services remain in principle a reserved activity of lawyers. The objective of the RDG is the effective protection of those seeking legal advice from erroneous legal advice - regardless of its automation. Legal Tech cannot solve the problems of the lack of access to independent legal advice, e.g. in rural areas. The provision of legal services by lawyers corresponds with their obligation of legal professional secrecy, the obligation to be bound solely to the interests of the client as well as the obligation to take over consulting assistance mandates. These obligations still do not apply to legal tech providers. A possible approach could be that law firms themselves offer (partially) automated legal services: Lawyers could cooperate with IT developers for the purpose of software development. The law firms could use the necessary software in return for license fees.

IV. DAV commitment to the rule of law and human rights

Current attacks by governments on open societies affect freedom and equality rights and freedom of speech and typically target journalists, the judiciary and the legal profession. The legal profession, as a strong voice for upholding the rule of law, therefore needs strong representation. The DAV insists that any discussion on future EU plans in the field of the rule of law and any possible assessment of shortcomings in the rule of law must include in particular an assessment of the independence of the legal profession. It is suggested that, even in mechanisms with rule-of-law conditionality, the situation of the legal profession should always also be an assessment criterion, including in the EU regulation proposed in May 2018 on the Union budget in the event of general shortcomings in the rule of law in the Member States. As suggested by the EU Parliament in the context of the proposal to link rule of law criteria and financial resources, the CCBE could be given a role as an external observer in such mechanisms.

At the last DAV Annual Conference - the largest further education event for lawyers in Germany - more than 1,750 participants discussed under the motto "Living the Rule of Law" the strengths of the rule of law, potential threats to it, which weaknesses exist and what role the rule of law plays in the daily work of the legal profession. Attention was also drawn to the situation of many colleagues abroad, some of whom work under difficult conditions - in Europe, most recently in Turkey and Poland.

On the occasion of the 70th anniversary of the German Basic Law the DAV announced a nationwide school competition on the topic in which more than 120 school groups took part. In our view, a solid basic knowledge of the German political system and of fundamental rights is the most effective way to counter political populism. Further projects with schools are being planned.

One focus of DAV's human rights work in recent years has been the situation of the rule of law and the legal profession in Turkey following the declaration of a state of emergency by the Turkish government in 2016. Furthermore, according to estimates



of the Turkish Bar Association (UTBA) – with which the DAV has concluded a friendship agreement – more than 350 lawyers are still in custody. Many reports by human rights associations stress the massive violations of the principles of a fair criminal trial by Turkish authorities. In order to support the Turkish legal profession, the DAV focuses on two central activities: training activities and networking opportunities for lawyers in Turkey as well as raising public awareness for trials against lawyers through trial observation. During a visit to Turkey in June 2019, DAV President Edith Kindermann and two human rights experts from Germany met with representatives of the UTBA in Ankara in order to discuss the conditions for a fair trial under the ECHR.

The DAV also observes the developments in Poland with great concern and is – particularly in the format of the Weimar Triangle of Lawyers – working together with the Warsaw Bar Association and the Barreau de Paris to ensure compliance with the principles of the rule of law by Polish authorities. Most recently, the DAV also participated in a hearing with international experts organized by the Polish Senate in Warsaw on 14 January 2020 on the so-called Judicial Disciplinary Act (“muzzle law”).

The large number of refugees continues to pose a challenge to the European society, governments and public administration. At the hotspots of Europe's external borders, the situation is worse than ever before. In June 2016, the DAV co-founded – together with the CCBE – the project European Lawyers in Lesvos (ELiL) which operates in the refugee camp Moria on the island Lesvos. ELiL enables lawyers from various European countries - all of them experts in migration law – to provide pro bono legal advice in the camp Moria. It is currently the only organization in Lesvos that offers individual legal advice in preparation for the crucial first hearing with regard to submitted asylum claims as well as with regard to potential family reunifications with relatives already living in other European countries. Thanks to generous donations from international lawyers' associations, law firms, NGOs and foundations, ELiL can continue this important work in 2020. Our aim is to ensure that ELiL can operate as long as required and, if necessary, to extend its activities to other focal points. The experience on Lesbos shows that independent and individual legal advice must be part of the standard measures of humanitarian aid.