



Country Report of the German Bar Association (DAV)

49th European Presidents' Conference on 12 February 2021

After many years of lobbying, major legislative projects with regard to professional law and policy were significantly advanced or successfully concluded. These include the reform of the Federal Lawyers' Act (BRAO) initiated by the DAV and the increase in fees under the Lawyers' Remuneration Act (RVG). The Covid-19 pandemic and its impact on the German legal profession was one of the core issues within the DAV's activities. Related to this, but at the same time independent of it, is the DAV's strong commitment to the rule of law and human rights.

I. Covid-19 Pandemic

In the context of the Covid-19 pandemic, the DAV has acted as representative of the legal profession to ensure compliance with the principles of the rule of law, as well as the special needs and interests of colleagues, including the systemic relevance of the legal profession.

A central constitutional law issue for the DAV is the demand for **parliamentary control** of Corona measures, even in times of crisis. The DAV rejects a concentration of competences on the executive in these important and intervention-intensive areas. Even when quick action is required, parliament and the judiciary must exercise their rights of control. In addition, the DAV calls for the adaptation of procedural rules to the digital age, also to enable mobile working.

DAV position papers were drawn up, among other things, on the amendments to the Infection Protection Act in March and November 2020 and the DAV demanded in particular that regulations on infection protection must not restrict access to legal advice and representation. The DAV committees also provided their expertise in opinions on many other legal policy issues that urgently required legal regulation in the context of the pandemic (including insolvency law, tenancy law, labour law, etc.).

Also and especially in times of crisis, it is important to take into account the importance of the legal profession as an organ of the administration of justice and thus of the **access to justice** per se. Due to the federal structure of government in Germany - influence had to be exerted on the ordinance legislation at the federal



level and in the Laender. The access of the legal profession to its offices, as well as the access of clients to their lawyers, should be preserved regardless of curfews. The recognition of the legal profession as a **systemically relevant professional group** (as “essential workers”) in the judiciary was not only of symbolic importance; the need for emergency care for the children of lawyers was also of great practical importance.

It was also important to ensure the **economic support of the legal profession**. The DAV called for law firms to be able to receive subsidies such as the "emergency aid" established by the federal government. The DAV also successfully campaigned for lawyers, alongside tax advisors, auditors and certified public accountants, to be entitled to submit applications for corporate clients, for example in the case of interim aid.

In addition, the DAV always had the practical concerns of the legal profession in mind by advocating for an improvement in the **digital equipment of the courts**, especially with regard to the audiovisual documentation of the main hearing, which the DAV had been demanding for a long time. In the course of ongoing proceedings, compliance with **application deadlines** must also be ensured. This is why the DAV has lobbied federal politicians for a more flexible solution concerning the deadlines, as well as for supplementary regulations in the event of technical problems with the special lawyers' mailbox (beA).

The DAV has had numerous written correspondence and discussions with political representatives. A challenge – from a legal policy perspective – for the DAV committees was the increasingly **extremely short deadlines** for statements, especially in the face of the flood of legislative measures. The DAV has long been critical of this development, as it makes it even more difficult for lawyers to contribute their expertise to the legislative process.

Finally, the DAV made itself available at an early stage in the pandemic as a competent contact point for the numerous questions and concerns of the legal profession. We provided members with quick and uncomplicated information in the form of a constantly growing **FAQ list** via our information channels. In addition, an internet forum was created for colleagues to exchange information with each other.

The DAV's commitment was positively evaluated. Every three years, the DAV conducts a survey via a public opinion research institute. This showed at the end of 2020 that the DAV's Corona measures were very well known among both our members and non-members and were rated positively above average.



II. Virtual activities and events of the DAV

Due to the Corona crisis, the **German Lawyers' Convention 2020** (DAT) was held virtually for the first time and with great success: More than 2,500 participants took part - more than ever before. The programme was realised in the form of online seminars, live streams, video streams and audio podcasts. Virtual yoga classes, concerts, documentaries and feature films formed a varied social programme. For the first time, AdvoTec, the accompanying trade fair for the legal profession, was also digital. Impressions as well as a series of video streams were published on Youtube, among other places.

In addition to the DAT, the DAV also organised successful legal policy events last year. At the end of October, among other things, the virtual conference on "The Ultra Vires Control of the Federal Constitutional Court after PSPP" took place, organised by the DAV Legislative Committees for European Affairs and Constitutional Law. A high-profile panel shed light on the consequences of the Federal Constitutional Court's ruling de lege lata and de lege ferenda.

DAV President Edith Kindermann launched the new **DAV video format** "Auf ein Wort" in October. In future, she will address DAV members once a quarter via video. In five- to ten-minute contributions, she gives an overview of what the DAV is currently dealing with, which current developments are of interest to lawyers' practice and what is pending in legislation. The first two episodes focused in particular on the areas of the RVG amendment, BRAO reform, digitalisation, artificial intelligence and the upcoming 150th anniversary of the DAV.

To mark the **DAV's 150th anniversary**, which we will be celebrating at this year's Lawyers' Convention from 9 - 11 June 2021, the DAV 2021 is publishing the podcast "zuRechtgehört - vom Advocaten zur Anwältin". Every month until December, a new episode will look back to grasp the here and now: How do lawyers fight for justice, freedom and democracy and the interests of their clients? Why does the legal profession need a strong, free professional association? In the opening episode "The Long Road to the East", contemporary witnesses recall the rapprochement of the legal profession in East and West in 1989 and the re-founding and re-establishment of the lawyers' associations in 1990. The episodes can be accessed via the DAV homepage and all common podcast portals

III. RVG fee increase

After many years of intensive efforts by DAV and BRAK, the legislator has finally once **again adjusted the statutory lawyers' fees as of 1 January 2021** as contained in the RVG (Federal Lawyers' Remuneration Act). In addition, court fees



were also increased, which the legal profession had rejected. The last adjustment of the lawyers' fees was more than 7 years ago. DAV and BRAK had already presented a joint catalogue of demands in 2018. Not all demands were implemented, but some proposals were taken into account. The fees were increased linearly by 10 per cent, in social law by 20 per cent. In addition, there were some structural improvements, which should have a positive effect in particular in the area of legal aid remuneration. The adjustment is intended to bring the statutory lawyers' remuneration closer to the general development of income.

Adequate remuneration of lawyers, also on the basis of the RVG, is necessary to ensure access to justice for citizens, especially in the countryside. The statutory lawyers' remuneration enjoys a very high level of acceptance among those seeking justice and in the legal profession, also due to the principle of full reimbursement of costs. The legal profession advocates that in future the legislator should tackle an adjustment of the RVG once per legislative period (approx. every 4 years). In the case of a statutory fee schedule, the professionals bound by it must not be disconnected from the overall economic development.

IV. Major BRAO reform: New regulation of the law governing the legal profession and the professional law governing law firms

The recently **incomplete and fragmented professional law** of the legal profession in Germany, and in particular the **law governing law firms**, is now finally to be reformed by the legislature. Current draft legislation provides for a fundamental reform of the BRAO (Federal Lawyers' Act). According to the legislative proposal all permissible forms of company under German and European law are to be open to law firms. Lawyers' company law is to become neutral in terms of legal form. This will be made possible by a parallel reform of the law on partnerships. Furthermore, professional practice companies themselves are to become the addressees of lawyers' professional duties. Up to now, the rights and duties under the BRAO have been directed at individual lawyers and thus no longer corresponded to today's working and law firm reality. The possibility of inter-professional cooperation will also be reformed. Lawyers shall be permitted to cooperate with other liberal professions and to join together in a company, provided that such cooperation does not jeopardise their position as an organ of the administration of justice and their independence. Previously, this was only possible with European lawyers and authorised GATS lawyers, patent lawyers, tax advisors and auditors and following a judgment of the Federal Constitutional Court also with medical doctors and pharmacists. The DAV had demanded that the merger with compatible professions be made possible.



The DAV welcomes these reform plans, having already published **a comprehensive legislative proposal formulated as a legal text in March 2019** and submitted it to the Federal Ministry of Justice (BMJV). Edith Kindermann accompanied the discussion at numerous events, including the conference of the Cologne Institute for Professional Law in November 2020, which was supported by DAV-Anwaltsblatt.

Prior to this, the Federal Constitutional Court had already made it clear that there was a need for legislative action in this area with two decisions on the unconstitutionality of the majority requirement for a company and on the restriction of professions eligible to practise within a firm. The legislator has now complied with the judgments of the Federal Constitutional Court and published the draft bill on the BRAO reform on 3 November 2020, which has been commented on by the DAV in its position paper (No. [87/2020](#)). On 20 January 2021, the Federal Cabinet adopted the [government draft](#) of the BRAO reform, in which many points from the DAV's statement were implemented.

V. Minimally invasive professional law for Liquidators

So far, there are no separate professional law and no separate chamber for liquidators in Germany. Against the backdrop of the coalition agreement and the European harmonisation of insolvency law, the DAV published a joint letter with the BRAK on 25 June 2020 advocating the inclusion of **professional law for liquidators** in the BRAO. This minimally invasive solution would turn the bar associations into liquidators chambers – similar to the model for in-house lawyers. Liquidators could then be admitted upon application to the respective competent bar association without the need for an admission procedure.

VI. Legal Tech

The legal tech industry has grown; according to a list from November 2019 by [industry blogger Dominik Tobschall](#), more than 140 companies are already involved in it in the broadest sense, after initially only more than 30 companies in 2016. According to a broad understanding of the notion, legal tech covers both questions of digital law firm organisation, research and automation of routine tasks as well as the new and mass enforcement of claims by companies specialising in this field. A [survey](#) conducted at the end of 2019 among 300 lawyers showed that the legal profession predominantly perceives legal tech as an opportunity and does not fear it as a competitive offer, but sees the benefits in terms of increased efficiency and workload reduction. Nevertheless, other [surveys](#) also show that law firms still have a lot of catching up to do. However, the debate continues to focus on legal tech



offerings in the B2C area and the questions of demarcation from traditional legal advice.

In November 2019, the Federal Court of Justice (VIII ZR 285/18) had ruled in the case of **wenigermiete.de** that debt collection service providers provide "comprehensive and fully-fledged substantial legal advice" when collecting debts, which is covered by the concept of debt collection. As many legal-tech providers in the B2C sector operate on the basis of a debt collection licence, this ruling has further fuelled the debate on lawyers' reserved tasks.

The limits within which a debt collection service can now be provided have been completely unclear since the BGH ruling. Nevertheless, the debate has recently focussed mainly on establishing a level playing field for the legal profession and debt collection service providers. Amendments to the RDG (Federal Legal Services Act) to clarify what core business cannot be taken over by debt collection providers have not been discussed recently. **Legal tech is perceived by politicians primarily as a possibility to meet consumer rights on a large scale.**

In autumn 2020, in anticipation of the draft law, the board of the German Bar Association advocated for ensuring a level playing field in competition between the legal profession and legal tech providers (see Schweigerer, AnwBl 2020, 627).

In a closed meeting at the end of August/beginning of September 2020, the DAV Executive Board passed the following resolution on this matter:

1. as the Executive Board of the German Bar Association, we will continue to actively shape the change in our professional law.
2. we will therefore contribute our positions to current and forthcoming legislative procedures and, if necessary, to those to be initiated, in order to ensure comparable conditions ("level playing field") in competition - which currently do not exist - with providers of legal services that are based on so-called legal tech offerings.
3. to this end
 - moderate and sensible relaxation of the law governing the legal profession could be tackled, for example with regard to the prohibition of contingency fees, litigation financing, inter-professional cooperation and third-party financing;
 - legal clarification of the scope and limits of debt collection for such legal tech services could be made.

The Autumn Conference of German Justice Ministers (Jumiko) also noted in November 2020 that "several recent individual case decisions by courts (have)



created considerable legal uncertainty as to which business models are permissible and which are not." In their [decision](#), the ministers call for legal clarity and express the view that "the core business of legal services must be reserved for the legal profession."

At its autumn conference, Jumiko also passed a [resolution](#) asking the federal government to examine the possibilities of making legal tech applications mandatory for companies to process passenger claims in the event of delays in air and rail travel, as well as in the event of flight cancellations or cancellations.

A current draft from the Federal Ministry of Justice for an "[Act to promote consumer-friendly offers in the legal services market](#)" provides for extended possibilities to agree on a contingency fee and to take over the financing of legal proceedings, while at the same time extending the information obligations of debt collection providers.

In its [position paper](#), the DAV expressed concerns, among other things, as to whether the envisaged measures are suitable to achieve the legislative goal. In particular, there are considerable concerns because the law is not intended to provide any guidance as to when a debt collection service is permissible, although numerous legal consequences are linked to it.

The Federal Ministry of Justice has taken up the **DAV's criticism** of the draft bill at **key points in the government bill**. For example, the term "debt collection" within the meaning of the Legal Services Act (RDG) is redefined: Collection of the debt could only include the legal analysis that relates to this collection. Other legal services can only be permissible if they are ancillary to the main service within the meaning of Art. 5 RDG. The legislator retains the contingency fee, but by setting a limit of 2000 euros in relation to pecuniary claims (instead of the value in dispute before), it excludes, for example, child matters from the contingency fee.

VII. Artificial intelligence and digitalisation of the justice system

The EU Commission published a White Paper on Artificial Intelligence (AI) and a report on the impact of AI on liability issues in February 2020. In its detailed position paper No. [40/2020](#), the DAV advocated that the fundamental rights of citizens and the values of the legal profession be fully respected when dealing with AI. In addition, the DAV has continuously been available to decision-makers in the AI field as a valued dialogue partner. In discussions with representatives of the Commission (including Justice Commissioner Didier Reynders) and Members of the European Parliament, the DAV advocated for the following substantive positions:

1. judicial and similarly intrusive binding decisions by state actors must **never be**



fully automated, as the introduction of AI systems in the area of justice entails particularly high risks in terms of fundamental rights.

2. **Effective appeal and control mechanisms** must be created for the use of AI in the field of justice and public administration.

3. While lawyers can use AI resources profitably, there is also a risk in the **administration of justice that the further development of law and the access to the law** will be hindered by algorithms.

4. Comprehensive and meaningful **transparency obligations for AI** are needed. People concerned should also be informed in clear and understandable language whether the solutions offered by AI tools are binding or not, and whether they have alternative options. In addition, they should be **informed** if they have the **right to seek legal advice and the right to access a court of law**.

5. A precise definition of AI and the **adaptation of liability rules** with regard to the categorisation of AI and corresponding defects are necessary. The questions of appropriate liability addressees, the question of strict liability with associated insurance obligation, the distribution of the burden of proof in the AI chain and the differentiation between private and professional users must also be clarified precisely.

A legislative proposal from the Commission on the future regulation of AI is expected at the end of April 2021. Closely related to AI is the Communication on the digitisation of justice in the EU, which the Commission published in early December 2020. In talks with Justice Commissioner Reynders in October 2020, he had confirmed that he saw the digitisation of justice as part of AI, where the human-centred approach and the protection of fundamental rights are of great importance. That is why the DAV will continue to advocate that fundamental rights and the basic values of the legal profession - especially the protection of professional secrecy - are fully respected in the areas of AI and digitisation of justice.

VIII. Association Sanctions Act

Although the DAV and other associations had reacted with strong criticism to the BMJV's draft bill for a "Law to Strengthen Integrity in Business" published at the end of April 2020, the almost word-for-word identical government bill was already presented in mid-June 2020.

The draft represents a **paradigm shift in German criminal law**. On the one hand, this concerns the abandonment of the principle of guilt, in that criminal offences



committed by company employees are to be attributable to the company via an objectively determined organisational failure, without a deliberate or negligent omission of a supervisory measure by a management person being required.

On the other hand, the draft would entail a completely inappropriate **restriction of criminal procedural seizure prohibitions to the confidential relationship of the accused**: any records and correspondence with clients during internal investigations would be seizable unless they relate to the defence of the accused. The DAV objected to these and other points, such as the abandonment of the principle of opportunity and the drastic tightening of sanctioning instruments, as disproportionate and unacceptable in terms of the Rule of Law. The DAV welcomed the granting of procedural rights to companies.

IX. Mission Statement of the DAV

After a development process of almost two years, the DAV adopted its new mission statement in September 2020. With the help of the new mission statement, the DAV wants to ensure the attractiveness of the association. The mission statement focuses on the representation of the interests of the legal profession, the Rule of Law, democracy and human rights as well as the comprehensive support of all lawyers. The DAV is particularly concerned about diversity within the legal profession.

At the end of 2018, the DAV Executive Board had already laid the foundation for the development of the mission statement. The mission statement was deliberately discussed and drafted with the participation of the bar associations, but also of the sections and committees. This was the only way to ensure that the entire association rallied behind the mission statement. In 2019, numerous facilitated workshops then took place, surveys allowed the entire legal profession (including non-members) to participate. Moreover, internal as well as external stakeholders of the association were invited to participate as well.

The mission statement reads:

Mission statement of the German Bar Association and its member associations:

The German Bar Association gathers more than 60,000 lawyers and lawyers' notaries who are organised in 253 local bar associations in Germany and abroad. Lawyers are voluntarily involved in our 16 regional associations, 30 working groups and 40 legislative and specialised committees. The mission statement formulates the tasks, goals and perspectives of the German Bar Association and its member associations.



We fight for the interests of the legal profession

We are the free voice of the legal profession. We stand up for the interests of all lawyers. We accompany the chambers constructively, but also critically.

We stand for law, freedom and democracy

We fight for the rule of law, democracy and human rights in Europe. We defend the freedom and independence of the legal profession that we won in the 19th century. We fight for access to justice for all.

We are the largest network of lawyers

We offer lawyers platforms for networking, training and engagement. We bring together the legal profession in all its diversity.

We support lawyers

We have a solution for (almost) all entrepreneurial, organisational and personal questions of the legal profession.

We want to inspire everyone for the legal profession

We support the next generation. Practising law is not a question of gender, sexual identity, origin or disability. Where disadvantages exist, we want to eliminate them. That is what we are working for!

However, the DAV and its member associations do not want to be content with the adoption of the mission statement at the DAV General Assembly. The actual work lies

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

As an organ of the administration of justice, the legal profession has a special role and also an obligation to stand up for and fight for the upholding of the principles of the Rule of Law. The March of the European Robes, which DAV President Kindermann had called for during last year's Presidents' conference could unfortunately not take place due to the Covid-19 pandemic. In its place, the DAV has developed the podcast "[We need to talk about the Rule of Law](#)" together with the Verfassungsblog. Over 12 weeks 12 episodes addressed the topic in its multifaceted dimension. In each episode, three to four political and legal experts from Germany and abroad devoted themselves in English to a particular aspect of the topic and spoke, among other things, about constitutional courts, the elections of judges, disciplinary proceedings and, of course, the role of the legal profession in a State based on the Rule of Law. The podcast is available on all popular platforms ([Spotify](#), [Deezer](#)) as well as on the websites of the [DAV](#) and the [Verfassungsblog](#).



The EU Commission's activities in the area of the Rule of Law were at the very heart of the DAV's interest representation last year. Both in [writing](#) and in meetings with representatives of the EU Commission, the DAV provided information for the EU Commission's first **annual Rule of Law Report**, which was published in September 2020. Overall, the German country report provided a positive picture of the situation in Germany.

However, the DAV criticised the fact that the report did not fully mirror the role of the legal profession with regard to upholding the rule of law. The DAV reiterated this core demand to EU Commissioner Reynders in a personal meeting in October 2020. As a first step in this direction, the DAV, in cooperation with the CCBE, succeeded in anchoring a chapter on the independence of the legal profession as a new part of the questionnaire for the EU Commission's Justice Barometer 2021.

As far as our engagement in individual states is concerned, the DAV is working together with the Warsaw and Paris Bar Associations within the framework of the **Weimar triangle of the legal profession** with regard to the Rule of Law and the situation of the legal profession in Poland. A meeting of the three organisations in Warsaw in September 2020 led to the adoption of two resolutions on the situation of the legal profession in Poland, as well as on the situation of the legal profession in Belarus.

Again in 2020, one of the main focuses of the DAV's human rights work continued to be our support for colleagues in **Turkey**. In July 2020, despite massive protests from the legal profession, a controversial reform of the bar association came into force which is mainly to the detriment of the large, progressive chambers in Istanbul, Ankara and Izmir. DAV-President Kindermann is concerned that this will ultimately bring the legal profession in Turkey into line with the government. The DAV was also outraged by the wave of arrests of Turkish colleagues in Ankara in September and, together with other lawyers' organisations, supported the Turkish lawyers Ebru Timtik and Aytaç Ünsal who were on hunger strike. Ebru Timtik unfortunately died a short time later during the hunger strike. In November 2020, the DAV joined many other international organisations in calling for a fair and transparent trial to investigate the murder of human rights lawyer and president of the Diyarbakır Bar Association Tahir Elçi.

In addition, the DAV campaigned for other **persecuted colleagues**, including the Chinese human rights lawyer Chang Weiping and the Iranian human rights lawyer Nasrin Sotoudeh.

2020 was also a challenging year for the **European Lawyers in Lesvos (ELiL)** project initiated jointly by the DAV and the CCBE, in which the French CNB has also been involved since the beginning of 2020. The provision of legal advice was



extended to the Greek island of Samos in summer 2020. The largest refugee camp Moria on Lesbos was completely destroyed by fire in September. In addition, the Covid-19 pandemic was omnipresent in the refugee camps. Legal counselling can mostly only be offered outside the compound, another hurdle as leaving the camp was also strictly regulated on the basis of measures by the Greek government against the pandemic. The news that the project was awarded the Rule of Law Award 2020 by the Union Internationale des Avocats (UIA) in October for its impressive commitment under the most adverse conditions was all the more gratifying. In the weeks before, the collaboration between ELIL and six international law firms had already been honoured with the 2020 PILnet Pro Bono Publico Award, the Financial Times Innovative Lawyers Award and the Legal Week Legal Innovation Award. However, the important work this common project of the European legal profession continues to rely on donations <https://www.europeanlawyersinlesvos.eu/spenden>.