

Pro Bono Practices and Opportunities in Germany

INTRODUCTION

Generally, public opinion in the Federal Republic of Germany (“**Germany**”) considers pro bono practice as a positive recent development. However, legal and cultural obstacles to pro bono work still exist. This may partly be due to the different definitions of “pro bono” that are used by attorneys on the one hand and the government on the other. Attorneys engaged in pro bono activities regard the concept of pro bono as gratuitous legal counselling for a good and mostly charitable cause.¹ The government seems to expand its definition of pro bono to the provision of legal services free of charge regardless of the underlying motives.²

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The German Constitution³ stipulates democracy, social solidarity, republicanism, the rule of law and federalism as constitutional principles of Germany.⁴ As a consequence of these constitutional principles, particularly the rule of law, the Constitution guarantees a comprehensive right to justice, especially the right to a fair trial and the right to effective judicial protection.⁵

Among the set of laws governing the German justice system are the procedural codes, particularly the Code of Criminal Procedure (*Strafprozessordnung* (“**StPO**”)) and the Code of Civil Procedure (*Zivilprozessordnung* (“**ZPO**”)). The procedural codes also contain provisions on legal aid for indigent persons.

The Courts

The observance of the rule of law is ensured effectively and efficiently by the German court system which is divided into five well-functioning specialty branches: ordinary courts (criminal and civil disputes), administrative law courts, tax law courts, labor law courts and social law courts. Each branch is organized hierarchically. For example, the branch of ordinary courts consists of local courts (*Amtsgerichte*), regional courts (*Landgerichte*), higher regional courts (*Oberlandesgerichte*) and the Federal Court of Justice (*Bundesgerichtshof*) as the court of supreme instance.⁶ The lower courts of each branch are organized regionally in each Federal State (Bundesland), meaning that distances between citizens and competent courts are relatively short.

In addition to the specialty branches, there are constitutional courts, i.e. the Federal Constitutional Court (*Bundesverfassungsgericht*) and each State’s Constitutional Court (*Landesverfassungsgerichte*), that have jurisdiction over decisions regarding alleged violations of constitutional law only.⁷

¹ See <http://www.pro-bono-deutschland.org/en/pro-bono-legal-advice/> (last visited on September 4, 2015)

² Explanatory Memorandum to the Act amending the legal aid and legal advice aid regulations (Entwurf eines Gesetzes zur Änderung des Prozesskostenhilfe- und Beratungshilferechts), BT-Drucks. 17/11472, p. 49.

³ Grundgesetz der Bundesrepublik Deutschland (“**GG**”).

⁴ GG Article 20.

⁵ GG Article 19 (4).

⁶ Courts Constitution Act (Gerichtsverfassungsgesetz („**GVG**”)) § 12.

⁷ Cf. regarding the Federal Constitutional Court the Federal Constitutional Court Act (Bundesverfassungsgerichtsgesetz (“**BVerfGG**”)).



In the lower instances of the specialty branches, the court divisions consist of professional and of lay judges. However, professional judges oversee the proceedings and the oral hearing and usually determine the verdict. In the higher instances, the court divisions consist of professional judges only. All judges are appointed by the Federal States and the Federal Republic, as the case may be, rather than being directly elected by the people.

The Practice of Law

Each German legal practitioner has to pass two State Examinations (*Staatsexamina*). The First State Examination marks the end of university education. The Second State Examination concludes a mandatory two-year legal clerkship (*Referendariat*) consisting of several internships in courts, public authorities, law firms etc. The legal clerkship and both State Examinations are organized by the respective state, acting through the regional or higher regional courts.

German legal education, i.e. legal university education as well as the legal clerkship, does not require law students or law clerks to participate in pro bono activities. However, in recent times, German law students have had more and more opportunities to engage in pro bono activities, especially in university legal clinics (see below IV.a.vi.). Dependent on the respective university's curriculum, the participation in university legal clinics may be rewarded with credit points that count towards the law students' academic degrees. However, it is ultimately left to the law students to decide whether they will volunteer in university legal clinics or other pro bono institutions.

The admission to practice as an attorney (*Rechtsanwalt*) in each state is awarded by the local bar association (*Rechtsanwaltskammer*). Aside from the completion of both State Examinations and the non-existence of a criminal record, there are almost no further pre-conditions for admission to the bar.⁸ There are specific regulations and certain exemptions for qualified lawyers from European Union ("EU") and EFTA⁹ member states wishing to practice in Germany.¹⁰ The completion of pro bono activities is not required to obtain or to retain licensure as an attorney.

Currently, 163,000 licensed lawyers practice in Germany¹¹, amounting to a median number of attorneys per capita of roughly one to 490.

According to a recent survey, two thirds of German lawyers provide pro bono legal services and an active pro bono lawyer handles on average nine matters per year without charge. According to the results of the survey, pro bono in Germany is particularly common in small local law firms as well as in big international law firms. Although the survey was conducted among a large number of lawyers, the validity of its results may be questionable as the survey did not apply a consistent definition of pro bono.

Legal Regulation of Lawyers

The practice of law is regulated by various, especially federal, laws. The most important among them is the Federal Attorneys Services Act (*Rechtsanwaltsdienstleistungsgesetz* ("**RDG**")), stipulating who may render which types of out-of-court legal services, and the Federal Attorneys Code (*Bundesrechtsanwaltsordnung* ("**BRAO**")) providing rules of professional conduct and responsibility. The BRAO is complemented by the Ordinance for the Legal Profession (*Berufsordnung für Rechtsanwälte* ("**BORA**")), adopted by an assembly of elected representatives of the local bar associations. Those local bar associations are also the regulators for the attorneys with respect to matters of professional ethics.

The Federal Attorneys Compensation Act regulating the compensation of lawyers (*Rechtsanwaltsvergütungsgesetz* ("**RVG**")) provides statutory fees for attorneys. Although, in most cases

⁸ BRAO §§ 6 et seq.

⁹ European Free Trade Association.

¹⁰ Act on the Activities of European Attorneys in Germany (Gesetz über die Tätigkeit europäischer Rechtsanwälte ("**EuRAG**")).

¹¹ See http://www.brak.de/w/files/04_fuer_journalisten/statistiken/2015/06_anl.1_grafik_entwgesamtzugelrae-bis2015-.pdf (last visited on September 4, 2015).



attorneys are free to negotiate a fee arrangement (e.g., hourly rates) with their clients, practically, the fee structure stipulated by the RVG is the standard fee most lawyers, particularly sole practitioners and small law firms, charge.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

The German state, i.e. the Federal Republic and the Federal States taken together, provides a comprehensive system of legal assistance to indigent persons. Such legal assistance is provided through either public or semi-public institutions funded by the state or through independent attorneys compensated by the state to advise and represent the indigent clients.

Legal Advice

Indigent persons and legal entities are eligible for general legal advice and out-of-court representation in all areas of law at no or very low cost.¹² Similar conditions as regards eligibility for legal aid in civil proceedings (see below III.a.ii., III.b.) apply.¹³ The modalities of the provision of legal advice to indigent persons differ between states. Whilst the City of Hamburg and the City of Bremen provide advice through Public Legal Advice and Settlement Offices (*Öffentliche Rechtsauskunft- und Vergleichsstellen*), the other states issue vouchers that the indigent person may use with the attorney of their choice.

Legal Aid in Civil Proceedings

An indigent litigant in civil proceedings before the ordinary courts as well as in proceedings before the administrative law, labor law and social law courts is, under certain conditions (see below III.b.), entitled to receive legal assistance under the Legal Aid Scheme (*Prozesskostenhilfe*).

If eligible for legal assistance under the Legal Aid Scheme, the indigent litigant may freely choose his or her attorney. The competent state agencies waive the court fees and cover the fees of the indigent litigant's attorney. However, if the indigent litigant loses the case, he or she must still bear the costs for the opponent's attorney. Consequently, a certain financial risk remains for the indigent litigant.

Legal Assistance in Criminal Proceedings

A defendant in criminal proceedings is, in certain cases, entitled to a public defender (*Pflichtverteidiger*). This includes in particular cases where the defendant is charged with a felony and where the defendant is held in remand detention or provisional placement.¹⁴ The public defender is appointed by the court. If the defendant requests a certain defender, this defender has to be appointed unless there is an important reason for not doing so. Otherwise, the court chooses the public defender.

The competent state agencies will cover the public defender's fees, in the first instance, regardless of the financial situation of the defendant. However, if the defendant is found guilty of the crime he or she was accused of, the defendant will ultimately have to bear his or her defender's costs.

¹² For instance, at the Public Legal Advice and Settlement Offices (*Öffentliche Rechtsauskunft- und Vergleichsstellen*) in Hamburg, the fee for legal advice in one matter amounts to 10 € or to 3 € for persons with a very low income, cf. available at <http://www.hamburg.de/rechtsberatung/> (last visited on September 4, 2015).

¹³ Act on Legal Advice Aid (*Beratungshilfegesetz* („BerHG“) §§ 1 et seq.

¹⁴ Cf. for the full list of cases, StPO §§ 140 et. seq.



State-Subsidized Legal Aid: Main Eligibility Criteria

Both individuals and legal entities (including NGOs) are generally eligible for legal assistance under the Legal Aid Scheme. However, different eligibility criteria apply.¹⁵

Eligibility Criteria for Individuals

German citizens and foreign citizens, regardless of their nationality or immigration status, are generally eligible for legal assistance under the Legal Aid Scheme.¹⁶

The financial assessment criteria are basically in line with those for receiving social security benefits. In essence, the applicant must have no or only very limited financial means. Consequently, only a minority of individuals may benefit from the Legal Aid Scheme. Considering that in 2013 only 377,000 people were eligible for social security benefits, which amounts to 0.4% of the population in Germany, only a small percentage of people actually meet the strict criteria and may be eligible for Legal Aid. The applicant for legal aid must disclose income and assets to demonstrate indigence.

In order to qualify for legal aid, the action that the applicant intends to bring or the defense against an action that has been brought against the applicant (i) must have sufficient prospects of success and (ii) must not appear frivolous.¹⁷ The “sufficient prospects of success”-test requires a judge to determine the claim’s merits. It is not required that the claim / defense has a strong chance of success but it is sufficient that it has a reasonable basis. In practice, only “hopeless” claims / defenses are denied legal aid.

The second requirement provides that the applicant will not receive legal aid in cases where he or she can achieve his objective in a more straightforward and cost-efficient manner, e.g. through summary proceedings for a payment order (*Mahnverfahren*).¹⁸

Finally, if litigation is to take place before a local court, where representation by an attorney is not mandatory, legal assistance will only be granted if the judge deems it necessary (e.g., due to the complexity of the matter) or if the opponent is already represented by an attorney.¹⁹

Legal Entities

Legal entities, like NGOs and charitable organizations are only entitled to legal aid if they are based in Germany or in another EU or EFTA member state. The applying entity must be unable to fund the proceedings. Furthermore, the applying entity’s inability to fund the proceedings and the resulting failure to commence or defend against an action, as the case may be, must contradict public interest. This is the case if substantial parts of the population or the economy as a whole would otherwise be affected negatively.²⁰ Finally, as with legal aid for individuals, the action or defense, as the case may be, must have sufficient prospects of success and must not appear frivolous.

Mandatory assignments to Legal Aid Matters

In Germany, attorneys largely benefit from freedom of profession (*Berufsfreiheit*). Thus, mandatory assignments are confined to mandatory appointments as a public defender in criminal proceedings. Attorneys may not refuse such appointments unless he or she has a sound reason (e.g., a conflict of interest in the person of the accused). In practice, however, there is usually a sufficient number of lawyers actively seeking court appointments and, consequently, involuntary appointments remain the exception. If

¹⁵ ZPO §§ 114 et. seq.

¹⁶ Kießling, in: Saenger, ZPO § 114 margin no. 9.

¹⁷ ZPO § 114.

¹⁸ ZPO §§ 688 et. seq.

¹⁹ ZPO § 121.

²⁰ ZPO § 116.



an attorney is mandatorily appointed as a public defender, his scheduled statutory fees are lower than the statutory fees of the defender of a self-paying (non-indigent) client, but are fully covered by the competent state agencies.

Unmet Needs and Access Analysis

There is a need for pro bono work in Germany despite the existing legal aid system. Low income individuals, like single parents, who cannot afford legal costs insurance (*Rechtsschutzversicherung*) but are not “sufficiently poor” to qualify for assistance under the Legal Aid Scheme always run the risk of being deprived of their rights.

Furthermore, NGOs and charitable organizations often struggle to fulfill the requirements of the Legal Aid Scheme. International NGOs and charitable organizations are often not entitled to legal aid at all as they are not resident in Germany, the EU or EFTA. Others usually struggle to prove that failure to commence or defend against an action, as the case may be, contradicts public interest, i.e. negatively affects substantial parts of the population or the economy as a whole. This often forces charitable organizations to choose between abandoning professional legal services completely or diverting funds from charitable purposes to cover legal expenses.

Finally, very complex cases may be unsatisfactorily dealt with under the legal aid system. Lawyers working for the reduced legal aid fees are likely to allocate less time and efforts to these cases, ultimately resulting in unjust results. Furthermore, some potential pro bono cases cannot be handled on a legal aid basis because special expertise or manpower is required, for example, cases with cross-border implications.

In line with this reasoning, the Federal Constitutional Court, already in December 2006, recognized that the legal aid system in Germany may not be sufficient to provide legal services in all cases in which such services would be necessary.²¹

Alternative Dispute Resolution

Mediation and Arbitration

In Germany, mediation is still not a common means for dispute resolution. The same applies to arbitration by private courts / judges. There are certain public, semi-public or private institutions offering mediation and arbitration services. A good example are the Public Legal Advice and Settlement Offices (*Öffentliche Rechtsauskunft- und Vergleichsstellen*) in Hamburg.²² These offices offer mediation and conflict resolution services in all areas of private law. Disputes in the areas of family law, legacy law or employment law are especially common. The mediation and conflict resolution services include legal advice, but no legal representation in court or out of court. The services are not reserved to indigent persons or residents of Hamburg. The Public Legal Advice and Settlement Offices charge fees that are based on the value in dispute, but are generally moderate. In addition, fees are reduced or even waived for indigent parties.²³

Another example, based on private initiative and privately financed, are mediation or arbitration committees of tenants’ organizations such as the German Tenants’ Protection Association (*Mieterschutzbund*).²⁴ The German Tenants’ Protection Association’s local branches provide alternative dispute resolution possibilities for tenants, neighbors and landlords. The decisions of the committee are

²¹ See Judgment of the Federal Constitutional Court, file no. 1 BvR 2576/04, Dec. 12, 200- juris, mn. 100 et. seq.

²² See <http://www.hamburg.de/oera/> (last visited on September 4, 2015).

²³ For example, the Public Legal Advice and Settlement Office Hamburg charges a fee of 25 € when the value in dispute amounts to 200 €, cf. available at <http://www.hamburg.de/streitschlichtung/> (last visited on September 4, 2015).

²⁴ See <http://www.berliner-mieterverein.de/recht/infoblaetter/fl138.htm> (last visited on September 4, 2015).



binding provided that both parties have agreed either beforehand or afterwards. For members of the German Tenants' Protection Association, arbitration services are covered by their annual membership fee;²⁵ other parties are charged quite moderate fees.

Ombudsmen

Ombudsmen have become more common in Germany recently and allows for cost-efficient alternative dispute resolution in various fields of law. Ombudsmen receive and handle complaints and, in some cases, organize mediation and arbitration proceedings.

A notable example is the ombudsmen in public child and youth services which have been established in some states.²⁶ These ombudsmen give advice to children and adolescents with respect to entitlement to child and youth benefits or welfare services free of charge.

Another example for private dispute resolution is the German Conciliation Body for Public Transport (the "GCBPT").²⁷ The GCBPT offers arbitration services aiming to settle disputes between consumers and transport providers regarding travel by train, bus, airplane or ship. The GCBPT may hear the case if the respective transport company has joined the GCBPT and a prior complaint by the consumer has been unsuccessful. Airlines are required by law to join the GCBPT or to establish their own conciliation board.²⁸ So far, all major airlines have joined the GCBPT. The arbitration proceedings are free of charge for the consumer.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Attorneys

Private attorneys are not legally required to handle pro bono cases. However, it is quite common that private attorneys partially or completely waive the fees for indigent or other clients. Private attorneys also have a range of opportunities to engage in pro bono activities such as participation in the services of the Public Legal Advice and Settlement Offices (see III.a.i. above) or participation in the legal services of non-profit organizations such as the Tenants' Protection Association (see III.e. above).

Law Firm Pro Bono Programs

32 law firms have founded the Pro bono Deutschland e.V.,²⁹ a registered association to promote pro bono work in Germany. These law firms, which are mostly of Anglo-American origin, each have a pro bono program. Their main focus is on advising national and international NGOs, because individuals, being the other category of potential pro bono clients, are more likely to have access to state legal aid.

Legal Department Pro Bono Programs

In Germany, corporate legal departments' rarely have pro bono programs. Corporations themselves cannot be retained to provide pro bono legal advice. This means that advising counsels in legal departments are personally liable for professional malpractice, and typically do not carry professional

²⁵ The annual membership fee amounts to 75 €.

²⁶ See the webpage of the Ombudsman of North Rhine-Westphalia, available at <http://ombudschaft-nrw.de/> (last visited on September 4, 2015).

²⁷ See <https://soep-online.de/> (last visited on September 4, 2015).

²⁸ Air Traffic Act (Luftverkehrsgesetz („LuftVG“)) § 57.

²⁹ See <http://www.pro-bono-deutschland.org/de/> (last visited on September 4, 2015).

liability insurance to cover this. However, some corporate legal departments cooperate with law firms in pro bono cases or advise charity projects run or funded by the respective corporation.³⁰

Non-Governmental Organizations (NGOs)

Several NGOs offer very basic and initial legal advice in the context of their primary activities. For example, organizations working with victims of domestic violence may provide them with some initial information on their rights against the offender under the Protection Against Violence Act (*Gewaltschutzgesetz*) or provide legal counseling regarding social welfare benefits and services. Other NGOs such as churches or charitable societies cooperate with law firms or university law clinics and refer clients when they are confronted with a legal issue or a client seeking legal advice. In this respect, a number of NGOs serve as clearing houses. Some NGOs, especially church organizations and church communities, have founded law clinics in cooperation with attorneys willing to work pro bono. In such law clinics, the attorneys provide initial legal advice and, as appropriate, refer the client to another attorney who will apply for legal aid on behalf of the client and pursue the case.

Bar Association Pro Bono Programs

Pro bono programs by local bar associations or the Federal Bar Association (*Bundesrechtsanwaltskammer*) do not exist. However, certain representatives of local bar associations encourage their members to offer pro bono advice and support university law clinics.

University Law Clinics and Law Students

The number of university law clinics run by law students has risen significantly over the past few years. There are now approximately 70 university legal clinics in Germany providing legal advice to individuals. This has been facilitated by a reform of the RDG which now allows laymen to provide free legal advice under the supervision of a qualified attorney.³¹ Consequently, law students in university law clinics offer advice under the supervision of, often, specialized attorneys. When a case requires the legal representation of the client in court, often the supervising attorney applies for legal aid on behalf of the client and represents him officially, while the university legal clinic and its law students serve as the “back office” undertaking legal research and drafting documents. Often, university legal clinics cooperate with NGOs. For example, the Bucerius Law Clinic in Hamburg³² cooperates with the social services organization of the German Protestant Church (*Diakonie*) and the Law Clinic of the University of Göttingen³³ cooperates with the local food bank. Most university legal clinics specialize in one field such as social security law or refugee law in order to ensure high quality advice.

Others

Several non-profit foundations and trusts, e.g. the *Harold H. und Ingeborg L. Hartog-Stiftung*, support pro bono work and university law clinics financially.

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

It seems likely that individual attorneys in Germany have always provided their services and advice in certain cases “for the common good” i.e. *pro bono publico*, in one way or another. However, only with the emergence of regional and international law firms in the 1990s were institutional pro bono programs established and brought to the public’s attention.

³⁰ Juve Rechtsmarkt, ed. 12/2012, pp 53 et seq.

³¹ RDG § 6.

³² See <http://www.law-school.de/deutsch/lehre-forschung/law-clinic/> (last visited on September 4, 2015).

³³ See <http://www.uni-goettingen.de/de/studentische-rechtsberatung/514334.html> (last visited on September 4, 2015).

One of the main obstacles to such pro bono programs was the unfounded concern that these might constitute a breach of the minimum legal fee requirement (*Verstoß gegen Gebührenunterschreitungsverbot*) or, in other words, be misused as a means of conducting unfair competition. This and other prejudices and obstacles were overcome by the German pro bono community establishing and following high ethical standards in their pro bono programs. In particular Pro bono Deutschland e.V. promotes such high ethical standards in pro bono matters by living up to its definition of pro bono which reads as follows:

“Pro bono legal advice is gratuitous legal counselling for a good cause and consists of the counselling and representation of non-profit organizations, non-governmental organizations, trust funds and needy individuals who pursue legitimate causes yet do not benefit from the statutory legal aid system, as well as engagement to promote and spread the rule of law and human rights. The aim of pro bono legal counselling is to make the professional expertise and resources of a law firm available for a good cause, in most cases a charitable cause, and to therewith develop civic engagement as a part of the professional activities. Pro bono legal advice is committed to meeting the same professional quality standards as fee-based legal services. In principle, pro bono legal services are also only rendered in those cases for which no or a very limited “market” exists. Parties requesting such advisory services are mostly not in a position to bear the costs of legal counselling due to their economic situation or by-laws, or are unwilling to do so on grounds of a preferential use of their funds for their own charitable purposes.”³⁴

Current State of Pro Bono including Barriers and Other Considerations

Laws and Regulations Impacting Pro Bono

Laws and regulations, especially with respect to the minimum legal fee requirement, still exist today. However, the pro bono community in Germany and the majority of scholars agree that the minimum legal fee requirement is not applicable to pro bono work. Pro bono work is therefore permissible.³⁵

There are a number of other rules and regulations impacting specific forms and aspects of pro bono legal services:

- Practice restrictions on Foreign-Qualified Attorneys: Foreign-qualified attorneys may be prevented from providing pro bono legal services in Germany, because they may not be allowed to render legal services at all. This restriction applies to attorneys from outside the EU and Switzerland who cannot obtain a practice license and can thus only work in Germany in a supporting role to German attorneys. In contrast, attorneys from other EU member states and Switzerland can obtain permission as a “European Lawyer” in Germany³⁶ and are then also allowed to engage in pro bono activities.
- Availability of Professional Indemnity Legal Insurance Covering Pro Bono activities by Attorneys: Professional indemnity insurance covers all liabilities originating from an attorney’s professional activities³⁷ and, consequently, include liabilities from the provision of pro bono legal services. The attorney-client relationship in a pro bono case resembles the attorney-client relationship in a fee-based mandate, because the client’s dependency on the attorney’s superior knowledge remains the same. Accordingly, the attorney’s responsibilities and the resulting liability risks stay the same. As such, an attorney’s pro bono activities are covered by professional indemnity insurance to the same extent as his regular fee-based activities.³⁸ On another note, an attorney and his pro

³⁴ See <http://www.pro-bono-deutschland.org/en/pro-bono-legal-advice/> (last visited on September 4, 2015).

³⁵ There is no apparent case law or administrative order to that end, and a few scholars suggest otherwise. However, given the apparent need for pro bono legal advice and the fact that there is no risk of unfair competition, we think that our opinion would be upheld if ever tested in court.

³⁶ See <http://www.anerkennung-in-deutschland.de/html/de/rechtsanwalt.php> (last visited on September 4, 2015).

³⁷ BRAO § 3.

³⁸ Baelz/Moelle/Zeidler, *Neue Juristische Wochenschrift* 2008, p. 3383 et seq., especially p. 3387, Legal advice pro bono publico in Germany – a review (Rechtsberatung pro bono publico in Deutschland – eine

bono client may agree to limit, but not completely exclude, the attorney's liability in accordance with general rules of German statutory law.³⁹

- Availability of Legal Insurance for Clients: Legal expense insurance policies (*Rechtsschutzversicherungen*) are widespread in Germany and cover a great variety of areas of legal disputes. The insurance services cover the court fees, statutory legal fees, expert reports and the legal fees of the other party, if the policy holder has to bear them. Most policies contain deductibles which are far below the actual fees in a legal dispute. Sometimes, the sum covered is limited; however, the usual policy is sufficient to cover the costs of the initial legal dispute and any first instance appeal.

Socio-Cultural Barriers to Pro Bono

Although a majority of German attorneys frequently works pro bono, this does not always happen within institutionalized pro bono programs. In this regard, the pro bono culture in Germany is significantly less well-developed in comparison to many other, especially Anglo-American, countries. One reason may be that the Legal Aid Scheme provides a fairly comprehensive mechanism to assure access to justice for the poor, so that some legal professionals and members of the public do not consider institutionalized pro bono programs necessary. There have also been concerns that the pro bono work of large law firm creates competition with a segment of the German bar, since work under the Legal Aid Scheme provides a meaningful source of income to some attorneys.

However, the main development regarding pro bono has been a shift in the legal culture. There has been widespread press coverage and discussion of pro bono work,⁴⁰ and the word itself has already become established as part of the German attorney vocabulary. The profession has changed profoundly in recent years due to the globalization of finance and commerce, the arrival of international, and in particular American and British law firms and a prolonged wave of consolidations among German law firms. Pro bono work has become more common in Germany, especially by international law firms.

German attorneys therefore increasingly recognize the need (see section III.d above) for pro bono legal services in addition to the traditional financial contributions to charitable and civic organizations. In this context, a so-called "round table" has been established in which German lawyers discuss the potential to establish and extend pro bono work in Germany. Local bar associations have responded favorably to this development and is supported by the Federal Constitutional Court which considers that the German system of legal aid does not cover every situation in which free legal assistance would be desirable.⁴¹ The Federal Government has also expressed commitment to extend the possibilities for attorneys to render pro bono legal services.⁴²

Pro Bono Resources

This section lists some potential points of contacts for attorneys willing to provide pro bono services. In particular, this sections takes account of the emergence of German clearing houses such as startsocial e.V. and Proboneo gGmbH (see below), which is a relatively new but promising development:

Bestandsaufnahme); Dux, *Anwaltsblatt* 2/2011, p. 90 et seq., especially p. 96, Attorneys' pro bono activities in Germany (*Anwaltliche pro bono-Tätigkeit in Deutschland*).

³⁹ BRAO § 51a.

⁴⁰ See, e.g., Westenberger, *BRAMagazin*, 6/2009, Pro bono – Do good and talk about it (Pro bono – Tue Gutes und rede darüber); Budras, *Frankfurter Allgemeine Zeitung*, October 6th, 2007, Advocates in favor of good cause (Advokaten für die gute Sache); Amann, *Financial Times Deutschland*, March 31, 2006; In favor of good cause and for a positive image (Für die gute Sache und das gute Image); Baelz/Moelle/Zeidler, *Neue Juristische Wochenschrift* 2008, p. 3383 et seq., Legal advice pro bono publico in Germany – a review (*Rechtsberatung pro bono publico in Deutschland – eine Bestandsaufnahme*).

⁴¹ Judgment of the Federal Constitutional Court, file no. 1 BvR 2576/04, Dec. 12, 200- juris, mn. 100 et. seq.

⁴² Explanatory Memorandum to the Act amending the legal aid and legal advice aid regulations (Entwurf eines Gesetzes zur Änderung des Prozesskostenhilfe- und Beratungshilferechts), BT-Drs. 17/11472, p. 49.

- **Pro bono Deutschland e.V.**⁴³ has been founded by several national and international law firms, including Latham & Watkins LLP, and aims to advocate engagement in the area of pro bono legal advice. Pro bono Deutschland works to achieve greater recognition and more widespread implementation of the concept of pro bono legal advice among lawyers in private practice in Germany. The association itself does not render any legal services and does not coordinate the pro bono activities or solicit pro bono cases for its members. However, Pro bono Deutschland is a useful resource for information on pro bono legal services in Germany and provides the opportunity to share experiences of pro bono work and to advocate the cause of pro bono legal advice in Germany.
- **startsocial e.V.**⁴⁴ is a non-profit-organization under the patronage of German chancellor Angela Merkel and sponsored and supported by major German corporations. In essence, startsocial helps selected small and medium-sized social projects to improve their project structure and management and, ultimately, to pursue their cause effectively. To this end, startsocial matches social projects with an advisory teams consisting of professionals from the private, non-profit or public sector who pass on their experience, establish valuable contacts etc. In this context, startsocial also provides clearing between social projects and law firms willing to provide pro bono legal advice.
- **Proboneo gGmbH**⁴⁵ is an initiative by the BMW foundation Herbert Quandt which aims to bring together social organizations on the one hand and managers and professionals on the other hand to provide social organizations with professional services pro bono. Among others, Proboneo brokers pro bono legal services and is becoming increasingly successful and well-known in this field.
- **Auridis gGmbH**⁴⁶ is a non-profit-organization funded by retail giant Aldi Süd seeking to support young families and young children. Auridis provides social projects in the area of family support and early education with funds, networking opportunities and free counselling, also, in cooperation with external pro bono lawyers, regarding legal issues.
- There are several network organizations of German university law clinics that provide information on their work and an **overview of existing legal clinics** in Germany on their websites.⁴⁷ Many university law clinics look for qualified attorneys willing to supervise law students and to work pro bono in this way.

CONCLUSION

Germany has come a long way from individual attorneys providing their services and advice in certain cases on a pro bono basis to law firms providing pro bono legal advice within well-established institutional pro bono programs. In particular, by establishing high ethical standards for pro bono work, Pro bono Deutschland e.V. helped to overcome the unfounded concern that pro bono programs might constitute a means of unfair competition.

September 2015

Pro Bono Practices and Opportunities in Germany

⁴³ See <http://www.pro-bono-deutschland.org/de/> (last visited on September 4, 2015).

⁴⁴ See <https://www.startsocial.de/> (last visited on September 4, 2015).

⁴⁵ See <https://www.proboneo.de/> (last visited on September 4, 2015).

⁴⁶ See <https://unternehmen.aldi-sued.de/de/verantwortung/gesellschaft/auridis/> (last visited on September 4, 2015).

⁴⁷ Umbrella association of German universities' law students' associations (Bundesfachschaft Jura): see <http://bundesfachschaft.de/der-verband/die-ausschusse/koordination-und-besondere-aufgaben/legal-clinics/> (last visited on September 4, 2015); Association of student legal advisors (Bundesverband studentischer Rechtsberater): see <http://b-s-r-b.de/> (last visited on September 4, 2015); Refugee Law Clinic Network: see <http://rlc-network.org/> (last visited on September 4, 2015).



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