

Pro Bono Practices and Opportunities in Germany

I. Introduction

Generally, public opinion in Germany considers the provision of pro bono legal services as a positive recent development. However, legal and cultural obstacles to pro bono work still exist. Although pro bono work in Germany may not have such a long-standing tradition as in most Anglo-American countries – 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 – pro bono activity has been on the rise in recent years. Through establishing associations such as the Probono e.V., founding multiple university law clinics, and the influence of Anglo-American law firms, pro bono work in the German legal sector has gained much more attention and support.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	<p>1. Describe the laws/rules that regulate the provision of legal services?</p>	<p>The practice of law is regulated by various, especially federal laws. The most important among them are:</p> <ul style="list-style-type: none"> • The Federal Lawyer’s Act (<i>Bundesrechtsanwaltsordnung</i>, “BRAO”), which regulates the provision of legal services by lawyers,¹ and the • The Federal Attorneys Services Act (<i>Rechtsdienstleistungsgesetz</i>, “RDG”), which stipulates who may render which types of out-of-court services.² <p>The acts listed above are complemented by two more laws:</p> <ul style="list-style-type: none"> • The Ordinance for the Legal Profession (<i>Berufsordnung für Rechtsanwälte</i>, “BORA”), which sets out the rules on professional conduct for lawyers and is adopted by an assembly of elected representatives of the local bar associations.³ • The Federal Attorneys Compensation Act (<i>Rechtsanwaltsvergütungsgesetz</i>, “RVG”), which provides statutory fees for attorneys. However, in most cases attorneys are free to negotiate a fee arrangement (e.g. hourly rates) with their clients.⁴

¹ See <https://www.gesetze-im-internet.de/brao/> (last visited on October 2, 2019).

² See <https://www.gesetze-im-internet.de/rdg/> (last visited on October 2, 2019).

³ See https://www.brak.de/w/files/02_fuer_anwaelte/berufsrecht/025-bora-stand-01.11.18.pdf (last visited on October 2, 2019).

⁴ See <https://www.gesetze-im-internet.de/rvg/> (last visited on October 2, 2019).

	<p>2. Describe any licensure requirements governing the provision of legal services.</p>	<p>The only licensure requirement to practice as an attorney in Germany is the admission to the local bar association (<i>Rechtsanwaltskammer</i>). To be admitted to the bar, each German legal practitioner has to pass two State Examinations (<i>Staatsexamina</i>) and cannot have a criminal record. The First State Examination marks the end of university education. The Second State Examination concludes a mandatory two-year legal clerkship (<i>Referendariat</i>) 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.</p> <p>Besides the non-existence of a criminal record, there are almost no further pre-conditions for admission to bar (cf. Sections 6 and 7 BRAO).</p> <p>There are specific regulations and certain exemptions for foreign-qualified lawyers. Foreign-qualified lawyers from the EEA and Switzerland can obtain a license as a “European Lawyer” in Germany under the Act on the Activities of European Attorneys (<i>Gesetz über die Tätigkeit europäischer Rechtsanwälte, “EuRAG”</i>).⁵ To obtain the license, the attorney needs to prove, inter alia, the membership to the lawyers’ profession and the establishment in Germany.</p>
<p>(b) Pro Bono Practice and Culture</p>		
	<p>1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.</p>	<p>There are no explicit rules governing the provision of pro bono legal services in Germany.</p> <p>While there is a law containing a minimum fee requirement (Section 49b para. 1 BRAO), there are certain exceptions to it. Pursuant to Section 49b para. 1 BRAO, lawyers must generally not agree on lower fees than the ones set out in the Federal Attorneys Compensation Act (RVG). However, exceptions are allowed, for example, in cases where the client is indigent or where there is a family connection between the lawyer and the client.</p> <p>Even if none of the exceptions to Section 49b BRAO apply, it is the prevailing opinion among German scholars that Section 49b BRAO is not applicable in pro bono cases, because offering free</p>

⁵ See <https://www.gesetze-im-internet.de/eurag/> (last visited on October 2, 2019).

		<p>legal services does not fall within the purpose of that law.</p> <p>Concerning the questions whether a free initial consultation is permissible, the German Federal Court of Justice (<i>Bundesgerichtshof</i>, “BGH”) decided recently, in 2017, that it is permissible for a lawyer to advertise for free initial consultation after having been involved in a car accident (BGH, decision of July 3, 2017 – AnwZ (Brfg) 42/16).</p> <p>Another rule which indirectly regulates pro bono legal services is a restriction for foreign-qualified attorneys willing to provide pro bono legal services as they might not be able to render legal services as attorneys at all. This restriction applies to attorneys from outside the EEA and Switzerland, who cannot obtain a practice license and thus can only work in Germany in a supporting role to German attorneys. In contrast, attorneys from EU member states, Switzerland and other EEA member states can obtain a permission as a “European Lawyer” in Germany and are then also allowed to engage in pro bono activities.⁶</p>
	<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>Lawyers in Germany are not required to work a minimum number of pro bono hours.</p>
	<p>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</p>	<p>Aspiring lawyers in Germany are not required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers.</p>
	<p>4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?</p>	<p>There is need for pro bono work in Germany despite the existing legal aid system, and attorneys, as well as law clinics, are presented with many opportunities for providing pro bono legal services.</p> <p>The main area of law, which requires the provision of pro bono legal services, is civil law (covered, e.g., by university law clinics). In addition, there has been a recent rise in need for pro bono legal services in the area of refugee and asylum law.</p> <p>Furthermore, social organizations often require the provision of pro bono legal services in labor law, data protection law, trademark law, labeling rules,</p>

⁶ See <https://www.anerkennung-in-deutschland.de/html/de/rechtsanwalt.php> (last visited on October 2, 2019).

		<p>social franchising, web presence, tax law and copyright law.</p> <p>Major unmet legal needs are revealed, for example, when looking at low income individuals, like single parents, who cannot afford legal costs insurance but are not “sufficiently poor” to qualify for assistance under the Legal Aid Scheme and thus run the risk of being deprived of their rights.</p> <p>Furthermore, NGOs and charitable organizations often struggle to fulfill the requirements of the Legal Aid Scheme or are not even entitled to legal aid at all as they are not residents in Germany, the EU or EFTA.</p> <p>Finally, very complex cases may be unsatisfactorily dealt with under the legal aid system, because lawyers working for reduced legal aid fees are likely to allocate less time and efforts to these cases. 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.</p>
	<p>5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?</p>	<p>There are several providers of pro bono legal services in Germany. Due to the fact that the provision of pro bono legal services faced some legal uncertainties in the past, the development of pro bono is of a more recent nature than for example in the US. Thus statistics are scarcely available and a “main” provider of pro bono legal services cannot be identified.</p> <p>Pro bono legal services in Germany are provided by private attorneys, NGOs (often limited to a specific legal area in line with their business activities, e.g. Caritas Deutschland,⁷ Deutsches Rotes Kreuz,⁸ Arbeiterwohlfahrt),⁹ university law clinics¹⁰ and law firms, most of the latter are of Anglo-American origin and often focus on advising NGOs.</p>
<p>(c) Obstacles to Provision of Pro Bono Legal Services</p>		

⁷ See <https://www.caritas.de/hilfeundberatung/onlineberatung/rechtliche-betreuung/rechtliche-betreuung> (last visited on October 2, 2019).

⁸ See <https://www.drk-berlin.net/angebote/beratung/rechtsberatung.html> (last visited on October 2, 2019).

⁹ See <https://www.awo-frankfurt.com/dienste-angebote/beratung-hilfen/schuldner-und-rechtsberatung.html> (last visited on October 2, 2019).

¹⁰ See <http://b-s-r-b.de/studentische-rechtsberatung/studentische-rechtsberatungsstellen-in-deutschland/> (last visited on October 2, 2019).

<p>1. Do lawyers require a license to provide pro bono legal services?</p>	<p>There is no special license for pro bono legal services in Germany. Lawyers just need to be admitted to the local bar association.</p> <p>Legal services provided by non-lawyers in the context of pro bono must be rendered under the supervision of a qualified lawyer (see Section 6 RDG). Pro bono legal services by non-lawyers are in general provided by university law clinics. 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.</p>
<p>2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?</p>	<p>Foreign lawyers do not require any additional licenses to provide pro bono legal services in Germany. However, they need to meet the specific requirements to practice law in Germany in general.</p> <p>Foreign-qualified lawyers from the EEA and Switzerland can obtain a license as a “European Lawyer” in Germany under the Act on the Activities of European Attorneys (EuRAG).¹¹ To obtain the license, the attorney needs to prove, inter alia, the membership to the lawyers’ profession and the establishment in Germany.</p> <p>Lawyers who cannot obtain a practice license and thus only work in Germany in a supporting role to German attorneys, cannot provide pro bono legal services as lawyers.</p>
<p>3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?</p>	<p>There is no requirement for special insurance for pro bono legal services.</p> <p>However, lawyers are required to have a professional indemnity legal insurance in general (Section 51 BRAO). The professional indemnity insurance covers all liabilities originating from an attorney’s professional activities and, consequently, includes 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</p>

¹¹ See <https://www.gesetze-im-internet.de/eurag/> (last visited on October 2, 2019).

		activities are covered by professional indemnity insurance to the same extent as his regular fee-based activities. On another note, an attorney and his pro bono client may agree to limit, but not completely exclude, the attorneys liability in accordance with general rules of German statutory law (Section 52 BRAO).
	4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?	<p>Yes, Section 43b BRAO states that advertisement is only allowed if it solely contains factual information about the professional activity and is not directed to the assignment of an individual case. This law is generally interpreted in a narrow way and in the light of the purpose of the law, which is to protect a prospective client of the situation of being taken by surprise and not being able to decide freely.</p> <p>Simply providing the information that pro bono legal services are offered is allowed under Section 43b BRAO, as this constitutes factual information. Also soliciting a specific client and informing him about one’s own pro bono experience does not generally constitute unlawful behavior. The threshold of Section 43b BRAO might be exceeded if the lawyer offers specific legal advice to a potential client who is seeking advice for a specific case.</p> <p>Advertising pro bono successes and naming the pro bono client is only allowed if the client gives prior consent (Section 6 para. 2 sentence 2 BORA).</p> <p>The question, whether the standards of Section 43b BRAO are met, must be answered separately for each specific case.¹²</p>
	5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?	Lawyers in Germany do not receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked.
(d)	Sources of Pro Bono Opportunities and Key Contacts	
	1. Describe any governmental sources of pro bono and/or other legal services in Germany.	There are no governmental sources of pro bono legal services in Germany, but there are sources of other free or low-cost governmental legal services. These services include legal aid in civil proceedings, legal assistance in criminal proceedings and legal advice.

¹² See https://www.gesetze-im-internet.de/brao/_43b.html (last visited on October 2, 2019).

		<p>Legal Aid in civil proceedings encompasses the entitlement of an indigent litigant in civil proceedings before the ordinary courts as well as in proceedings before the administrative law, labor law and social courts to receive, under certain conditions, legal assistance under the Legal Aid Scheme (<i>Prozesskostenhilfe</i>). 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 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. The eligibility criteria for legal assistance under the Legal Aid Scheme differ between individuals and legal entities.</p> <p>Legal Assistance in criminal proceedings means that a defendant in criminal proceedings is, in certain cases, entitled to a public defender (<i>Pflichtverteidiger</i>), who is appointed to the defendant by court. 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. The competent state agencies will cover the public defender's fees, unless the defendant is found guilty of the crime.</p> <p>Legal advice and out-of-court representation can be sought by eligible indigent persons and legal entities in all areas of law at no or very low cost. The modalities of the provision of legal advice to indigent persons differ between states.</p>
	<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Germany.</p>	<p>Pro bono Deutschland e.V. has been founded by 32 national and international law firms in order to advocate engagement in the area of pro bono legal advice. The association itself does not render any legal services and does not coordinate the pro bono activities or solicit pro bono cases. 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.¹³</p> <p>Startsocial e.V. is a non-profit-organization, which is sponsored and supported by German corporations. It helps selected small and medium-sized social project by matching them with advisory</p>

¹³ See <https://www.pro-bono-deutschland.org/> (last visited on October 2, 2019).

		<p>teams consisting of professionals, including law firms.¹⁴</p> <p>Auridis gGmbH is a non-profit-organization funded by retail giant Aldi Süd seeking to support young families and children. Auridis provides social projects in the area of family support and early education with funds, networking opportunities and free counseling, also, with the help of external pro bono lawyers, regarding legal issues.¹⁵</p> <p>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. Many university law clinics look for qualified attorneys willing to supervise law students and to work pro bono in this way.¹⁶</p>
	<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>Attorneys, who search for pro bono opportunities focusing on legally advising <u>non-profit-organizations</u> can, for example, register with the UPJ (a registered association). UPJ is a network, founded in 1996, which works with Probono Deutschland e.V. and several law firms in order to connect law firms and individual lawyers with non-profit-organizations in need for pro bono legal services. UPJ functions as a “Clearinghouse“ and checks the organizations asking for pro bono help. It also provides a Newsletter-Service for interested attorneys and law firms, so that they can apply for pro-bono-mandates and establishes the contact between the law firms and potential pro bono clients.¹⁷</p> <p>In contrast, we are not aware of any organization with which attorneys can register in order to be made aware of pro bono opportunities focusing on legally advising <u>individuals</u>. However, pro bono opportunities focusing on legally advising individuals can for example be found on university law clinics’ websites or on the websites of Public Legal Advice and Settlement Offices. In addition, pro bono work is often provided on a local level, e.g. by legal advice offices (e.g., the Public Legal Advice and Settlement Offices in Hamburg (<i>Öffentliche Rechtsauskunft- und Vergleichsstelle</i></p>

¹⁴ See <https://startsocial.de/ueber-uns> (last visited on October 2, 2019).

¹⁵ See <https://www.auridis.de/startseite> (last visited on October 2, 2019).

¹⁶ See <https://rlc-deutschland.de/> and <http://b-s-r-b.de/> (last visited on October 2, 2019).

¹⁷ See <https://probono-rechtsberatung.de/kanzleien/> (last visited on October 2, 2019).

		<i>Hamburg</i> ¹⁸ or local lawyers associations (e.g., the Lawyers Association of Frankfurt (<i>Frankfurter Anwaltsverein</i>)). ¹⁹
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¹⁸ See <https://www.hamburg.de/oera/> (last visited on October 2, 2019).

¹⁹ See <https://www.frankfurter-anwaltsverein.de/buergerservice/rechtsberatung/> (last visited on October 2, 2019).