

## IV. RECENZJE

**Julia Lefèvre, *Eine explorative Untersuchung der anwaltlichen Beratungshilfe: Das Berufsbild des Rechtsanwalts und seine Pflicht aus § 49a Abs. 1 BRAO als Instrument der Sicherung des gleichen Zugangs zum Recht in Recht und Praxis* [An Exploratory Study of Legal Advice: The Professional Profile of a Lawyer and His Duty Under Section 49A Paragraph 1 Brao as an Instrument for Ensuring Equal Access to the Law in Law and Practice], Duncker & Humblot, Berlin 2024, pp. 295, ISBN 978-3-428-19147-5**

This monograph was written as part of the author's dissertation.<sup>1</sup> Julia Lefèvre set herself the goal of determining the possible causes of the falling statistics regarding counseling assistance. To this end, she developed her own survey, which she sent to lawyers in Germany. The responses contributed to an evidence-based study into the reasons why counseling assistance may not be provided in accordance with legal requirements. This included a combination of dogmatic basic work and empirical investigation.

The judicial statistics in Germany do not offer regular help with providing answers to the questions regarding the mobilization of law. Above all, they show certain types of proceedings, the areas of law affected, and the plain number of lawsuits or lawsuits settled. There are relatively few statistical surveys available on access to justice.

The question posed in the dissertation is not just related to studies but ultimately concerns the implementation of a general guarantee of various human rights and constitutional systems. In international law, but also in European and national law, these guarantees are anchored in various international treaties and constitutional systems. The German Constitutional Court has extended the guarantee of access to justice to include the preliminary stages of a court-related referral. It first emphasized the requirement to "extensively equalize the situation of those with means and those without means when providing legal protection" for legal aid, and then extended this to the area of advisory assistance.

In Germany, research in this field slowed down after peaking in the 1970s. Lefèvre places her empirical study in the context of legal profession. In Germany, it is primarily lawyers who have to provide legal advice, although they do not have

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<sup>1</sup> The author of the review was the supervisor of the dissertation and as such the first to evaluate this work.

a monopoly in this area. If they do not fulfill the mandate given to them by law, there appears a risk of significantly limited access to justice for the poor. In view of the current upheaval in German society due to migration and the parallel changes in the legal services market, among other things, it seems appropriate to also examine this question empirically.

The dissertation is divided into 5 parts. Lefèvre begins with a relatively comprehensive introduction highlighting the problem dealt with by the present work. Part 2 is devoted to the profession of a lawyer and his role in ensuring equal access to law. The requirements for providing legal advice are presented, with the main focus placed on the reasons for rejection of this activity. Part 3 contains an overview-like presentation of advisory assistance, which, after a historical presentation of the development, explains individual requirements for this assistance. Part 4 presents the empirical investigation of the current situation. Lefèvre explains her research design and its methodological foundations. She addresses the design of her questionnaire and other content-related questions, and then moves on to data analysis and the evaluation methods used.

In Part 5, Lefèvre ultimately determines the gaps in application or different application practices between the written law and practice. In particular, the reasons for rejection are not applied in accordance with the legal requirements. Part 6 then provides recommendations and offers a forward-looking conclusion. The author formulates optimization approaches for legal advice. Among other things, she addresses a new version of reasons for rejection, improved accessibility of legal applicants but also questions of digitalization and involvement of young lawyers in legal advisory services.

In her introduction, the author presents the basics of advisory assistance, including the introduction of the Advisory Assistance Act 1980. In addition, statistics on advisory assistance are provided, which show the status up to 2021. According to the statistics, there was a significant decline in the number of cases where counseling assistance was provided, from just under 82,000 cases in 2011 to just under 32,000 cases in 2021. The coronavirus pandemic also appears to have had a significant impact on the statistics. The author cites differences of up to a 25% decline. Given the available statistical figures on the density of lawyers, Lefèvre determined an average number of legal advice services of 2.2 cases per lawyer for 2020. A year later, that number had dropped below 2 cases. However, these national average numbers vary greatly across federal states. The author has identified an average of 7.6 cases per lawyer in Saxony-Anhalt in 2020, but only one case in Bavaria. In addition, there appears to be a clear shift between individual lawyers and large law firms in cities that focus on commercial law. The latter seem to hardly play a role in providing legal advice.

In Part 2, the author turns to the profession of lawyer and its role in ensuring equal access to the law. To define the legal profession, the author primarily uses the professional regulations of the Federal Lawyers' Code. In addition, she also takes into account constitutional requirements, professional regulations for lawyers (BORA) and the Lawyers' Remuneration Act (RVG). The following is a presentation of the term 'access to law' both in national law and in international conventions, as well as in European law. This section continues with a presentation of

Article 49a BRAO. It is important that a lawyer may only reject a request for advice in individual cases and for important reasons. The details of the reasons for rejection in Article 16a Paragraph 3 BORA are presented. It should be emphasized that the failure to present a counseling assistance certificate by the district court is not a reason to reject counseling assistance. This seems to have become common practice for many lawyers because they expect considerable bureaucracy and time to be involved in the subsequent liquidation before the district court. The consequences of violations of Article 49a BRAO i. V. with § 16, § 16a BORA are primarily related to professional law but also civil law.

Part 3 presents the law of legal advice. After an instructive presentation of the historical development of advisory assistance, the author addresses individual legal questions such as jurisdiction, requirements for advisory assistance and need. It is important to emphasize that currently lawyers no longer have the privilege of providing advice. However, the dissertation focuses on advice from lawyers. It should also be emphasized that in individual cities (Berlin, Bremen and Hamburg), public legal advice is also provided, which displaces legal advice according to the Advice Aid Act. Advice is primarily provided by obtaining an advisory assistance certificate from the local court; in such a case, a judicial officer is functionally responsible. However, it is also possible to submit this application at a later time. It is then carried out by the lawyer who has previously provided legal advice. The lawyer is not obliged to participate in the application itself, but is only obliged to accept and cooperate with requests for advice. The following description of the need suggests that requests for advice are complex from a factual perspective alone. It is important to note that an examination of the prospects of success, which is central to granting legal aid, is not performed when it comes to advisory assistance. This issue is followed by a description of legal fees for advisory assistance. At present, it is unclear whether the current fees for advisory assistance are still appropriate. The author claims that the legislature should conduct its own investigation into such appropriateness. The following presentation serves to discuss possible barriers in obtaining access to legal advice. It becomes clear that in many cases the legal application points are apparently difficult to reach and, in some cases, too distant in larger states. The bureaucratization of the procedures also appears to pose a significant problem; the corresponding advisory assistance form contains an 8-page information sheet for a 4-page form. This is the precisely the case with other compulsory forms. Even for people with an academic background, some of these forms are difficult to understand. If you then imagine an asylum seeker in Germany, who may have a lower level of education, you might ask yourself if the legislator has taken such situations into consideration. It is also important to present cultural differences that stand in the way of those seeking advice. In some cultures, it is highly uncommon to disclose your financial circumstances and explicitly seek legal advice.

In Part 4, the current situation is empirically examined. The author then presents her research design and the research status, in addition to explaining her methodological approach. From a qualitative point of view, it has been found that the advisory mandates represent a significant expenditure of time and work for lawyers. They also involve considerable bureaucratic effort. The applicants are also

frequently perceived as unreliable, which, in conjunction with the 4-week deadline in Article 6 Paragraph 2 of the Counseling Assistance Act for the subsequent issuance of a counseling assistance certificate, appears difficult and is discussed by the author later on. The main problem seems to be the low fees on the part of the lawyers. When it comes to those seeking legal advice, there are cultural and linguistic hurdles as well as their behavioral patterns. On the part of the local court, the requirement to complete the forms and the proof of the requirements for legal advice constitute a clear barrier to access. Added to this is the accessibility of the legal application offices and long waiting times. The responsible legal officers appear to be inconsistent in handling such applications.

A survey on ideas for improving advisory assistance is presented in the next part. The lawyers primarily demand an increase in fees. In addition, they focus on simplifying and streamlining or reducing bureaucracy in the application process.

The final part of the dissertation contains recommendations and an outlook, in which the author emphasizes the need for further legal research. After this reference to further investigations, the author refers to her own optimization approaches for advisory assistance and initially wants to supplement the rejection catalog in § 16a BORA with a negative catalog. A separate standardization proposal is presented. She also advocates further training in professional law. The author wants to determine the question of accessibility of legal application points by actually examining accessibility. Supervisory measures are also suggested here. In order to better inform those seeking legal advice, the creation of a central website and an advisory assistance portal is proposed. The author also wishes to introduce improvements to the written application and would like to extend to two months the deadline for subsequent application for cases in which a lawyer provided advisory assistance before an advisory assistance certificate was issued. The fees should be increased appropriately; in the short term, the author advocates a dynamic fee adjustment. The author advocates involving young lawyers in providing advice. She also wants to set up a digital complaint management system at bar associations.

The value of this dissertation lies in the combination of a qualitative and quantitative study of the significance of the Legal Advice Assistance Act. In addition, this combination also includes the professional profile of the lawyer. The empirical study has deliberately not been designed to be representative and its results do not serve to provide a definitive, reliable assessment of the questions asked. However, they are at least suitable for indicating useful follow-up investigations. It is also worth mentioning that the author is not satisfied with abstract considerations but would rather supplement Section 16a BORA with a negative catalog, i.e. submits her own proposal. The need for further follow-up investigations is highlighted. Possible approaches to criticism, such as the fees being too low and the formalization of the application process, are mentioned but not decided in advance. Although it is obvious that the fees are far too low and that the processing, especially in the district courts, is overly formalistic, the author ultimately refrains from providing a definitive assessment, which is certainly not yet feasible with the data available.

Overall, the dissertation may also fit into a new approach that examines civil procedural issues more empirically. As shown in this work, the study commissioned by the Federal Ministry of Justice (BMJ) on the decline in the number of cases in

civil courts is now available ([https://www.bmj.de/SharedDocs/Downloads/DE/Fachinformation/Finalreport\\_Eingangszahlen\\_Zivilgerichte.html?nn=110490](https://www.bmj.de/SharedDocs/Downloads/DE/Fachinformation/Finalreport_Eingangszahlen_Zivilgerichte.html?nn=110490)). Other questions, such as the competition between civil courts and arbitration, were also examined empirically in the past. In this respect, the dissertation makes an important contribution to improving the area of German judicial statistics.

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