SPECIAL FEATURES

The Practicing Lawyer in the Federal Republic of Germany*

A Summary of the Major Rules Governing the Profession of West German Lawyers and Their Effects Upon the Manner in Which Foreign Lawyers Can Collaborate with West German Colleagues

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I. Types of Lawyers

A. *"Rechtsanwalte" and "Notar"*

In the Federal Republic of Germany, there are two main types of practicing lawyers: (1) the *Rechtsanwält,* or independent consultant and agent in all legal matters,[1] and (2) the *Notar,* who occupies a public office which comprises, essentially, documentary authentification.[2]

B. *"Juristen"*

Even though the meaning of the word *Juristen* comprises all the lawyers who graduated from law school, it can also be interpreted to include lawyers who did not take the so-called *Zweites Staatsexamen* (Second State Examina-

*List of Abbreviations: Anw.Bl. *(Das Anwaltsblatt);* ArbGG *(Arbeitsgerichtgesetz);* BGH *(Bundesgerichtshof);* BGBl *(Bundesgesetzblatt);* BVerfGE *(Bundesverfassungsgerichtsentscheidung);* Der St.Ber. *(Der Steuerberater);* EGH *(Ehrengerichtshof);* NJW *(Neue-juristische Wochenschrift);*

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[1]The *Rechtsanwalt* is defined and regulated by the Bundesrechtsanwaltsordnung of 1959, [1959] Bundesgesetzblatt [BGBl] I S 565 (W. Ger.), *as amended by* [1978] BGBl I 1645 [hereinafter cited as Anwaltsordnung]. The Bundesrechtsanwaltsordnung is the federal act on *Rechtsanwälte.*

[2]The Notare is defined and regulated by the Bundesnotarordnung of 1961, [1961] BGBl I S 98, *as amended by* [1975] BGBl I 2258 [hereinafter cited as Notarordnung]. The Bundesnotarordnung is the federal act on *Notare.*

tion)[3] and who are working as legal advisers, for instance, as house consultants in multinational enterprises *(Syndikus)* or banking institutions, without admission to practice before the courts.

C. *"Rechtsbeistände" and "Prozessagenten"*

In addition, there is a smaller group of lawyers and legal advisers, called *Rechtsbeistände* and *Prozessagenten,* who are not admitted as *Rechtsanwalte* but who may also give legal advice professionally. The Federal Act to Prevent Unauthorized Legal Consultation[4] imposes limitations on individuals acting as legal consultants or advisers. Such consultants or advisers have to be specially admitted by the presiding judge of the regional court of first instance *(Landgericht)* in the area in which they want to practice.

The admission, however, will only be granted if the *Rechtsbeistände* proves reliability and some legal qualification, and if a need for their service is established.[5] *Rechtsbeistände* may also be granted the right of representation in local courts of first instance *(Amtsgericht).* In that case, they are referred to as *Prozessagenten.*[6]

D. *"Patentanwälte"*

These lawyers are exclusively involved in patent litigations and they must not only establish their knowledge of the law but they must have a degree in the technical sciences as well.[7]

II. Access to the Legal Profession

A. *Legal Training and State Examinations*

Lawyers in Germany (including higher public servants, public prosecutors, judges, *Anwalte* and *Notare*) have to go through the same two-phase legal training. They study law at the university level first—around five years on the average—and thereafter complete two years of professional training. At the end of each phase they are required to take a state examination, arranged by the Ministry of Justice of their respective states.

Law students who pass the examination after the first stage are called *Referendar.* Their professional training has to be served in several stages, each of varying length, with a judge at an *Amtsgericht* or *Landgericht,* a

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[3]*See* Part II *infra.*

[4]Rechtsberatungsgesetz of 1935, [1935] BGBl I S 1478, *as amended by* [1975] BGBl I 1509 [hereinafter cited as Beratungsgesetz].

[5]*Id.* § 1. However, the rule that the *Rechtsbeistand* may only be admitted if, in addition to the locally admitted *Rechtsanwalte,* a need for their service is established, was held unconstitutional. Judgement of May 5, 1955, [1955] Bundesverwaltungsgericht [BVerwGE] 2 S 85. The Bundesverwaltungsgericht is the highest federal administrative court in West Germany.

[6]There are about 3500 *Rechtsbeistande,* 450 of whom are admitted as *Prozessagenten.*

[7]The *Patentanwalt* is defined and regulated in the Patentsanwaltsordnung of 1966, [1966] BGBl I S 557.The Patentsanwaltsordnung is the federal act on governing *Patentanwälte.*

public prosecutor, a local government authority, and a Rechtsanwalt. Part of their professional training may also be spent clerking in the office of a foreign lawyer. The *Referendar* has the status of public servant and receives a subsidy. Following the second state examination, the lawyer is entitled to use the title of *Assessor,* and he now can choose his profession.

B. *Admission as Rechtsanwalt*

If the *Assessor* wants to become a *Rechtsanwalt,* he will have to file an application for admission to a court of appeal *(Oberlandesgericht)* acting for the Ministry of Justice of the state in which he plans to reside. He will have to request admission to a court of first instance.[8] Although legal education is subject to state legislation,[9] and therefore differs from state to state, every *Assessor* has a free choice of where he plans to reside.

C. *The Lawyer in the Judiciary and in the Public Administration*

If the *Assessor* meets certain state requirements (a certain grade-point average, to name one), varying every year according to the demand and the number of graduates, he can apply to a state ministry or to a particular court to enter either the Judiciary as a public prosecutor (in order to perhaps become a judge later on) or to enter a particular section of state government to become a state-employed lawyer in public administration. The Judiciary, public prosecutors, and the majority of lawyers in government are *Beamte,*[10] members of the civil service with life tenure.

D. *Admission as Notare*

The admission to *Notare* is strictly limited. Only the number of lawyers considered necessary for the public is admitted in that capacity.[11] In some of the states, lawyers can combine the function of *Anwalt* and *Notar* (this is the principle of *Anwaltsnotariat*); in others, the two professions are separate entities (this is the principle of *Nurnotariat*). In either form, those practicing hold the same qualifications.

In the court districts with *Anwaltsnotariat,* the *Rechtsanwälte* have to wait until they are granted their additional admission to *Notar* (up to fifteen or more years). Additionally, in the states with *Nurnotariat,* the so-called *Notariatsassessor* has to wait in general between six to ten years in order to become fully qualified as *Notar.*

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[8]Anwaltsordnung, *supra* note 1, §§ 6 ff. In Germany (including West Berlin) there are presently more than 35,000 *Rechtsanwalte.*

[9]GRUNDGESETZ arts. 72, 75 (W. Ger.)

[10]*See* REUSCHEMEYER, LAWYERS AND THEIR SOCIETY, A COMPARATIVE STUDY OF THE LEGAL PROFESSION IN GERMANY AND IN THE UNITED STATES 93 (1973).

[11]Notarordnung, *supra* note 2, § 4.

III. Rules Governing the Profession of the "Rechtsanwalt" and the Professional Organizations

A. *The Rules*

The rules governing the profession and practice of the *Rechtsanwälte* are partly statutory, including (1) The Federal Act on Rechtsanwälte (*Bundesrechtsanwaltsordnung*);[12] (2) The Federal Act on Fees (*Bundesrechtsanwaltsgebuhrenordnung*);[13] (3) The Civil Procedure Act (*Zivil prozessordnung*)[14] and (4) The Criminal Procedure Act (*Strafprozessordnung*);[15] and partly a set of autonomous professional rules consisting of (1) the Principles of Professional Conduct and Etiquette (*Grundsätze des anwaltschaftlichen Standesrechts*).[16] These principles are set up by the Federal Council of Rechtsanwälte (*Bundesrechtsanwaltskammer*) according to an enabling rule in the Anwaltsordnung[17] and are revised from time to time to take into account changes of opinion as to the customs prevailing in the profession. Additionally, there is the International Code of Ethics, adopted by the House of Deputies of the International Bar Association at Oslo on July 25, 1956.

B. *The Professional Organizations*

1. The "Anwaltskammern"

The *Anwälte* in the area of each court of appeals (*Oberlandesgericht*) form a professional association, namely, the Council of Anwälte to which membership is obligatory.[18] The *Anwaltskammern* join in the Federal Council of *Anwälte* (*Bundesrechtsanwaltskammer*) in Bonn.[19]

2. The "Anwaltsvereine"

Aside from the *Anwaltskammern,* there exist a large number of local associations of *Anwalte* (*Anwaltsvereine*). These are governed by the *Deutscher Anwaltsvereine* (DAV). The purposes of the *Anwaltsvereine* and the *DAV* include acting as guardians of professional interests, giving practical assistance to their members, and organizing courses in further training.[20]

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[12] *See* note 1 *supra.*

[13] Bundesgebührenordnung für Rechtsanwälte of 1957 [1957] BGBl I S 907, *as amended by* [1977] BGBl I 1586 [hereinafter cited as Gebührenordnung].

[14] Zivil prozessordnung [ZPO] of 1950 (W. Ger.), [1950] BGBl S 533.

[15] Strafprozessordnung [StPO] of 1975 (W. Ger.), [1975] BGBl I S 129, ber. S 650.

[16] Grundsätze des anwaltschaftlichen Standesrechts of 1973, *as amended by* Bundesrechtsanwaltskammer (Aug. 1977) [hereinafter cited as Grundsätze]. *See* Part III(B)(1) *infra.*

[17] Anwaltsordnung, *supra* note 1, § 177 II.

[18] *Id.* § 60 ff. There are 23 *Anwaltskammern* in Germany, including West Berlin; each *Anwaltskammer* has between 20 (BGH) and more than 4000 (Munich) members.

[19] *Id.* § 175 ff.

[20] For a foreign lawyer, the chamber of commerce of some major German cities might also be of interest, for example, the German-American Chamber of Commerce.

IV. Scope of Activities

A. *Monopoly of Pleading and Representation*

Anwälte hold the monopoly of pleading and legal representation in regional courts of first instance (*Landgericht*) (not in the local courts of first instance—the *Amtsgericht*), courts of appeal, the Supreme Federal Court (*Bundesgerichtshof*) (civil and criminal division in every case), the State Labor Tribunals (with exceptions), the Federal Labor Court, and the Federal Administrative Court.[21] This monopoly is completed by an obligation for the parties not to appear unrepresented—or unassisted in criminal proceedings—in these courts.[22] Self-representation or self-defense is excluded.[23]

B. *No Monopoly of Consultation*

Anwälte do not hold the monopoly of consultation. On the other hand, under the regulations of the above-mentioned *Rechtsberatungsgesetz,* the greatest part of it is reserved for them, a privilege their professional organizations guard jealously against infringements. According to the *Rechtsberatungsgesetz,* legal advice may be given by several groups, aside from the *Rechtsanwälte,* including the *Rechtsbeistände,* other liberal professionals in areas of their competence, cooperative societies for their members, and governmental authorities within their range of competence.[24]

C. *Limitations*

German *Rechtsänwalte* are under strict territorial limitations. This does not extend to consultation; *Anwälte* may give legal advice in any town, but not on a permanent basis. However, there are territorial limitations on legal representation in civil matters and there are jurisdictional limitations as well.[25]

1. Territorial Limitation

The *Anwalt* may represent a party in civil matters only in the court to which he is admitted.[26] This is an important limitation, as civil matters make up the greatest part of work in general practice. The territorial limitation does not extend to local courts of first instance (*Amtsgericht*) or tribunals, nor does it extend to criminal matters.

In civil matters, a *Rechtsanwalt* may, however, appear and be heard in courts other than the one to which he is admitted, if the party is represented by an *Anwalt* admitted locally.[27] This rule also applies in the rare instance of a foreign lawyer making an appearance.

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[21]ZPO § 78, ArbGG § 10.
[22]STPO § 140 ff.
[23]STPO § 138(a).
[24]Beratungsgesetz, *supra* note 4, §§ 3-7.
[25]Anwaltsordnung, *supra* note 1, § 27 ff.
[26]*Id.* § 27.
[27]ZPO §§ 373 ff, 414.

2. JURISDICTIONAL LIMITATION

As a rule, *Anwälte* cannot simultaneously be admitted to a court of first instance (*Landgericht*) and a court of appeals (Oberlandesgericht). With some exceptions, admission to an appeals court[28] is exclusive. There is a special class of elected *Anwälte*[29] at the *Bundesgerichtshof* (Supreme Federal Court). They have the sole right of representation in civil matters in that court. On the other hand, they are only allowed to appear in the *Bundesgerichtshof,* the other federal courts, and in international courts.[30]

3. LIMITATION OF REPRESENTATION IN LABOR TRIBUNALS

There is a limitation of representation for proceedings in labor tribunals of first instance. To cut down the cost of legal proceedings—and the financial risk involved for the losing party—*Anwälte* may appear only if the court finds their cooperation necessary in cases in which the sum in dispute is less than 300 DM.[31]

V. Establishment

A. *Number of Offices Permitted at Home*

The *Anwalt* is entitled to only one office and is not allowed to hold regular consultation hours outside his office. An exception can be made in the rare case where it appears necessary to improve local legal services.[32]

B. *Requirements as to Residence and Place of Office*

The *Anwalt* must have his office at the place of the court to which he is admitted and must take his residence in the district of the regional court of appeals (*Oberlandesgericht*).[33] An exemption from the office and residence requirements may be granted the *Anwalt.* However, this is only done if particular urgent circumstances demand it.[34] These obligations still are interpreted restrictively and the judicial authorities are keen about upholding them.

C. *Offices Abroad*

According to the number-of-offices rules presently in effect, an *Anwalt* is not entitled to open his own branch office abroad.

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[28]Anwaltsordnung, *supra* note 1, § 25.
[29]*Id.* § 164 ff.
[30]*Id.* § 171.
[31]ArbGG § 11. *See also* Bundesrerfassungsgericht [BVerfGE] 31/297.
[32]Anwaltsordnung, *supra* note 1, § 28.
[33]*Id.* § 27.
[34]*Id.* § 29.

D. *Special Regulations for German Emigrants*

The German *Anwälte* who found it necessary to leave Germany for racial, political or religious reasons during the time between January 30, 1933 and May 8, 1945, are not affected by the residence regulation.[35] They may be admitted to any court of their choice, without living in Germany, and may open a practice there.

VI. Disciplinary Rules

The rules of conduct and etiquette are contained in the *Anwaltsordnung,* the *Gebührenordnung* and the *Grundsätze.*[36] Some rules which are of interest to foreign lawyers are contained in these sources.[37]

A. *Fees*

The *Anwälte* charge their fees according to a scale, as specified in the *Gebührenordnung.* The basis of the calculation is the sum in dispute.[38]

In civil proceedings, the precise amount of chargeable fees has to be derived from the scale. In other matters, especially in criminal defense cases, a framework of fees is prescribed. In the case of consultation, the *Anwalt* may either charge a fixed part of the fee for the sum in dispute (that is, twenty percent, thirty percent, and so on) or a discretionary proportion of the fee (for example, fifty percent or seventy-five percent are frequently used figures) depending on the kind of work the consultation requires.[39]

In cases where there is a great deal of money at stake, as is often the case in international litigation, this practice of computing fees can lead to figures that are unjustifiably high in the eyes of most foreign lawyers. Yet it must be taken into account that, in instances where low or medium sums in dispute are involved, the *Anwalt* does not receive sufficient monetary compensation for the amount of work and time involved, and thus has to make up that loss by his more lucrative larger cases.

Undercutting is forbidden.[40] Only in special cases may the *Anwalt* reduce his fee. For example, if a client turns out to be insolvent, fee reduction is proper, but only so long as this does not constitute unfair competition. The *Anwalt* may, however, charge a higher fee than that set out in the scale if a special fee agreement is signed by the client.[41] The *Anwalt* may accept lump

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[35] *Id.* § 213.

[36] *See* note 16 and accompanying text *supra.*

[37] More specific information can be obtained by referring to MEISNER & HEINRICH, ANWALTSBREVIER, (1971) (J. Schweizer Verlag, Berlin).

[38] Anwaltsordnung, *supra* note 1, § 8.

[39] Grundsätze, *supra* note 16, § 53.

[40] *Id.* § 51 I.

[41] Gebührenordnung, *supra* note 13, § 3.

sum fees[42] for consultation services on a permanent basis. Contingent fees as well as fee-sharing arrangements are forbidden.[43]

B. *Publicity*

1. Advertising[44]

The *Anwalt* may only advertise in legal journals and local newspapers in the following instances: (1) opening, removal, or change of office; (2) admission to another court; (3) appointment as notary, certified public accountant (*Wirtschaftsprüfer*), tax adviser (*Steuerberater*); (4) the addition of a new law partner or termination of a partnership. These changes may also be announced by the *Anwalt* through means of a formal printed notice forwarded to the respective clients, to the colleagues at the *Anwalt's* court of admission, and to other colleagues with whom he may be in professional contact.

2. Title[45]

The *Anwalt* may use his professional title when appearing in public as a journalist, speaker, or the like.

Anwälte who are proven experts in a particular field of law may be granted the right to use a title which corresponds to that specialization. Titles in use which are recognized by the *Bundesrechtsanwaltskammer* are as follows: *Fachanwalt für Steuerrecht* (expert in the law of taxation), and *Fachanwalt für Verwaltungsrecht* (expert in administrative law). Also, *Anwälte* who have qualified as certified public accountants or as tax advisers may also use these titles.

3. Legal Directories[46]

The *Anwalt* (or lawyer), may not let his name appear in directories which are not open to the whole profession. He may, however, allow his name to appear in legal international directories which contain only a small number of German lawyers, as long as this does not imply an unfair attraction of business.

C. *Compatibilities and Incompatibilities*[47]

Acting as a liquidation administrator or company director is considered to be compatible with the professional independence of the lawyer. He may be in salaried employment as long as his professional independence is not in-

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[42]Grundsätze, *supra* note 16, § 53.
[43]*Id.* §§ 52, 55.
[44]*Id.* §§ 2, 69ff.
[45]*Id.* § 78. *See also* Schardey, Anw.Bl. 41 (1978), who pleads for a broader range of titles which indicate their respective specialization.
[46]Grundsätze, *supra* note 16, § 73.
[47]Anwaltsordnung, *supra* note 1, §§ 7 No. 8, 15 No. 2. *See also* BVergGE 40/296 (313).

fringed upon. He cannot, however, represent his employer in court. He may undertake honorary administrative and governmental functions (or political functions) as long as there is no conflict of interest between his public functions and his independent position as a lawyer.

D. *Professional Liability*

There is a contractual relationship between the *Anwalt* and the client. Since a situation may arise where the lawyer is liable for breach of contract, the lawyer must be insured for damages caused to his clients.[48] This insurance should amount to at least 100,000 DM. And as a rule, a lawyer cannot totally exclude his liability in advance by contract. This is permitted only in exceptional cases, such as giving advice on foreign or international law.[49] An *Anwalt* may, however, limit his liability to 50,000 DM[50] in exceptional cases.

E. *Holding of Client's Monies*

Firms generally do not keep their own accounts, as distinct from those kept for their clients. Monies which a client is awarded and which have been deposited into the lawyer's current account must be immediately transferred to the client. Not doing so is in violation of the *Grundsätze*.[51]

F. *Out-of-Court Hearing of Witnesses*

The *Anwalt* may hear witnesses out of court if this becomes necessary.[52] He must, however, handle that situation with candor, as the client might be influenced adversely.

G. *Legal Aid*[53]

The Federal Civil Procedure Act contains legal aid regulations pertaining to the defense and representation of poor parties in court proceedings. Thus, the court may order the lawyer to represent a party in need of legal aid who cannot afford his own defense. The lawyer has to treat this type of client with the same care and thoroughness as he treats a party whom he has voluntarily chosen. If he wins the case, the opposing party pays his fees. If he loses, the state pays the fees of the poor party's attorney.[54]

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[48]Grundsätze, *supra* note 16, § 48.

[49]*Id.* § 49.

[50]*But see* Geigel, *Begrenzung der vertraglichen Haftung des Rechtsanwalts,* ANW.BL. 29 ff 1971.

[51]Grundsätze, *supra* note 16, § 47. Carelessness with client's money is already in violation of the Gas; *See* Ehrengerichtsentscheidung V 68, 206, 211, 219, 267.

[52]Grundsätze, *supra* note 16, § 6.

[53]ZPO § 114 ff; Grundsätze, *supra* note 16, § 57 ff.

[54]ZPO § 123; Gebuhrenordnung, *supra* note 13, § 121 ff.

H. *Disciplinary Control*

Disciplinary jurisdiction does not lie exclusively in the hands of the professional organizations. Disciplinary control is exercised by each Council of *Anwälte* over its members. An *Anwalt* in breach of his professional duties may be reprimanded by the executive committee (*Vorstand*) of his Council if the breach in question is relatively minor. However, judicial proceedings are required in all other instances. Disciplinary jurisdiction is exercised by the following steps:

1. The honor court (*Ehrengericht*),[55] set up at the location of the Council, sitting with *Anwälte* only;
2. the *Ehrengerichtshof,* hearing appeals from cases of the honor court, sitting with three lawyers and two presiding judges;[56]
3. a special section of the Supreme Federal Court pertaining to *Anwalt* matters, sitting with four judges and three *Anwälte.*[57]

In the severest case of disciplinary measure, the lawyer may be denied the right of representation or may be stricken from the roster.[58]

VII. Forms of Collaboration

A. *Forms of Partnership*

Lawyers may form a partnership (*Sozietät*). Other forms of partnership, such as office and expense-sharing arrangements (*Bürogemeinschaft*) are also permitted.[59]

B. *Collaboration with Other Professionals*

Lawyers may not form a partnership or share offices with *Notare* who themselves are not admitted as *Anwälte* (*Nurnotare*). On the whole, legal advisers not admitted as *Anwälte* are not permitted to form associations.[60] Lawyers are not even allowed to employ their services.[61] Thus, *Anwälte* are not in a position, to join in partnerships or share offices with *Rechtsbeistände* and *Prozessagenten.*[62] They may, however, collaborate in any form with patent lawyers, certified public accountants, or tax advisers.[63] In those cases,

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[55]Anwaltsordnung, *supra* note 1, § 92.
[56]*Id.* §§ 100, 142 ff.
[57]*Id.* § 106.
[58]*Id.* § 114.
[59]Grundsätze, *supra* note 16, §§ 28, 29.
[60]*Id.* §§ 30, 31.
[61]*Id.* § 84.
[62]*But see* the development in the case of a casual collaboration: Rittner, *Teamarbeit bei freien Berufen,* Der StBer. 1967, 2 ff; Vollmer, *Die Partnerschaft als Gesellschaftsform für die Teamarbeit im freien Beruf,* Der StBer. 1967, 25 ff.
[63]Grundsätze, *supra* note 16, § 30. But partnership is not permitted between an *Anwaltsnotar* and a certified public accountant, BGH, NJW 1975, 1414 (1415).

lawyers may only handle litigation for which they are professionally qualified. They are then bound by the rules of conduct and etiquette of their profession as well as by those of their partners.[64]

Partnerships or association with foreign lawyers are not allowed. To this day, the German *Anwalt* may only collaborate with any other law firm—within Germany or in a foreign country—on a correspondent and agent basis.

VIII. Practice Abroad

There are not specific rules governing the practice of law abroad. If permitted by the law of the host country, the lawyer may give legal advice and plead in foreign courts. Because of the professional requirements set out above, the *Anwalt* may not establish an office in a foreign country, even though this might be acceptable and lawful in that country.[65] There is the exception, however, that the lawyer may be exempted from the requirement of having a home-country office and residence.[66] So far, however, the only exceptions made have been in the case of *special personal* circumstances, and not generally for lawyers willing to engage in international legal exchanges. Due to the one-office ruling, no German *Anwalt* can have a branch office in another country.

IX. Foreign Lawyers Practicing in the Federal Republic of Germany

A. *Legal Rulings*

There are no special written legal rules regulating the practice of foreign lawyers in the Federal Republic of Germany. Yet, there exist unwritten principles of an "International Lawyers Law," and these are adhered to. For example, foreign lawyers wanting to give their legal opinion in German litigation may do so. As a rule, they are granted the right to appear and be heard in court, with the stipulation that they are assisted by a *Rechtsanwalt* who is admitted to that court and who represents the party, and then only if they have a sufficient command of the German language. They may appear in other proceedings if the presiding judge so rules.

There have not been many problems of foreign lawyers wanting to practice in Germany which have arisen or which have had to be decided. It is still undecided whether a foreign lawyer may be permitted to obtain a German post-office box address in his professional capacity. As a rule, however, the foreign lawyer may assume that any form of *nonpermanent* practice is acceptable and legally possible, as long as it is in accordance with the requirements of the host country (West Germany) and his own rules of conduct and ethics.

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[64]Grundsätze, *supra* note 16, § 31.

[65]Under English law, for example, it would be lawful for an *Anwalt* to open an office in England.

[66]Anwaltsordnung, *supra* note 1, § 29.

B. *Foreign Lawyers as "Rechtsbeistände"*

A foreign lawyer wanting to practice law on a permanent basis in the Federal Republic of Germany will have to apply for a permit to function as *Rechtsbeistand* and perhaps as *Prozessagent* as well.[67] More particularly, in order to be admitted as a *Rechtsbeistand,* the foreign lawyer must apply for admission to the presiding judge of the regional or local court—if there is a presiding judge—in the district in which he wants to practice law. Personal reliability and aptitude, including a sufficient command of the German language and sufficient legal qualification, will have to be established. Unless the applicant has a good general knowledge of German law, he will only be permitted to practice in the field of his expertise in which he is well qualified. For foreign lawyers this will be the law of their home countries and perhaps European Communities law or, more specifically, some field of international law.

If a *Rechtsbeistand* is only granted partial permission to practice law, he will have to take a professional title which makes reference to his field of specialization. He may be called Avocat Francais, Solicitor, American Attorney, and the like, perhaps in combination with a *Rechtsbeistand* title referring to admission to practice in another field of law (for example *Rechtsbeistand für Europarecht* (a consultant in European law), or a *Rechtsbeistand für Recht der Europaischen Gemeinschaften* (a consultant in the law of the European communities). Except for those from European Economic Community (EEC) countries, foreign lawyers are admitted only as *Rechtsbeistände* if indeed a need for their consultative services is recognized.[68]

The *Rechtsbeistand* has to practice at the place for which the permission has been granted. He may, however, also apply for permission to open a branch office or hold regular consultation hours at an additional place. No residency requirements are expressly stated. The *Rechtsbeistand* must nevertheless make use of his permission when it has been granted. If he has not practiced within a year, that permission will be withdrawn. This means that a foreign lawyer can apply for permission to practice law and open a (branch) office in West Germany only if he spends a certain amount of his time there.

According to the *Rechtsberatungsgesetz,* the permission to give legal advice may also be granted to foreign corporations, associations, and other legal entities for either one or more of their partners, associates, or other official if they have the required qualifications. Therefore, it should be quite possible for a foreign corporation to make application for admission for just one partner or one employed lawyer and to open a branch office in West Germany in the firm's name. No precedent has been established so far in this matter, although in one known instance, the opening of an office by an individual under the firm's name has been denied.

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[67] *See* Part I(C) *supra.*

[68] *But see* note 4, *supra.*

C. *The Foreign Lawyer as "Prozessagent" (Trial Agent)*

A foreign lawyer may also apply for a license as a *Prozessagent* (trial agent) at a local court of first instance. This requires adequate qualification in German civil law, and is granted only if a need for a *Prozessagent* can be established.[69]

D. *Fees of the "Rechtsbeistand" and/or "Prozessagent"*

These fees are, in general, not governed by statutory provisions. But they are considered appropriate if amounting to less than those of a *Rechtsanwalt* in comparable situations.[70]

E. *Conclusion*

As foreign lawyers are not allowed to open a branch office in Germany as *Rechtsanwälte,* no partnership or any other form of permanent association between German lawyers (*Rechtsanwälte*) and foreign lawyers is possible. These German and foreign lawyers may not even join in partnerships when the foreign lawyer is admitted as a *Rechtsbeistand,* since *Rechtsbeistände* are considered to be inferior to *Rechtsanwälte* and are therefore not allowed to share offices with them.[71] Foreign lawyers may, however, be employed by a German *Rechtsanwalt* or a partnership of *Rechtsanwälte* (and there are quite a few examples of it), but of course they cannot officially obtain the status of a partner. They cannot even be employed if they are admitted as *Rechtsbeistände,* since *Rechtsanwälte* are not allowed to employ *Rechtsbeistände.*

Up to the present, it has been impossible for foreign lawyers and *Rechtsanwälte* to arrange some kind of collaboration reflected on the firm's letterhead or the name-plate on the office door. German and foreign lawyers may work together only as correspondents or on an agency basis. In the future, the increasing need for international legal exchanges might lead to a change of this increasingly unsatisfactory situation.

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[69] *Id.*

[70] *But see* Law of July 26, 1957, [1957] BGBl I S 861.

[71] *See* Part VII(B) *supra.*