

## Outline

### **I. The current legal position**

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##### a) The basic texts

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§ 5 para. 1 clause 1 RDG

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#### 2. The grounds advanced in favour of the bar monopoly of legal services

##### a) The grounds in general

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#### 3. The grounds advanced against the bar monopoly of legal services

##### a) The grounds in general

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### **III. Summary**

## **I. The current legal position**

### **1. The bar monopoly of legal services**

#### **a) The basic texts**

##### **§ 3 RDG**

##### **Authorisation to provide out of court legal services**

The independent provision of out of court legal services is admissible only to the extent that it is permitted by this law or by or on the basis of other laws

##### **§ 3 para. 1 BRAO**

The lawyer is the appointed independent adviser and representative in all legal matters.

##### **§ 78 ZPO (German Code of Civil Procedure)**

The appointment of a lawyer is before the civil courts is mandatory in the majority of cases.

### **1. The bar monopoly of legal services**

#### **b) Restrictions on the bar monopoly of legal services**

##### **§ 5 para. 1 RDG**

##### **Legal services in connection with another activity**

Legal services in connection with another activity are permitted if they are a service ancillary to the profession or activity. Whether such an ancillary service exists must be assessed in accordance with its content, scope and material connection with the main activity, taking into consideration the legal knowledge required for the main activity.

## **1. The bar monopoly of legal services**

### **c) The position of the legal protection insurers**

#### **§ 4 RDG**

##### **Incompatibility with another duty to perform**

Legal services which have a direct effect on the fulfilment of another duty to perform must not be provided if the due provision of the legal service would thereby be jeopardised

## **2. The grounds advanced in favour of the bar monopoly of legal services**

### **a) General grounds**

#### **§ 1 RDG**

This law regulates the authorisation to provide out of court services. It serves to protect persons seeking legal assistance, legal relations and the legal order from unqualified legal services.

- protection of persons seeking legal assistance (consumer protection)
- protection of legal relations (due processing of disputes, avoidance of additional cost)
- protection of the legal order (contribution to legal development)

## **2. The grounds advanced in favour of the bar monopoly of legal services**

### **b) The grounds affecting the legal protection insurers**

#### **§ 4 RDG**

#### **Incompatibility with another duty to perform**

Legal services which have a direct effect on the fulfilment of another duty to perform must not be provided if the due provision of the legal service would thereby be jeopardised.

- Protection against conflicts of interest

## **3. The grounds advanced against the bar monopoly of legal services**

### **a) General grounds**

- limits the range of services offered
- prevents applicants from deciding for themselves
- restricts competition
- no certainty as to the special quality of the lawyer's advice
- costs of implementing the prohibition

## **3. The grounds advanced against the bar monopoly of legal services**

### **b) The grounds affecting the legal protection insurers**

- competition between the insurers supports the quality of the service
- the insurers' know-how
- the insurers' assumption of liability for risks

- the "legal protection product" is convincing only if cases can be conducted and won

#### **4. Bypass strategies**

- employment of personnel from outside the bar in law firms
- special bypass strategies of the legal protection insurers
  - Telephone hotlines
  - "rationalisation agreements"

## **II. Alternatives to the bar monopoly of legal services**

1. Relaxation of the bar monopoly of legal services, admission of further participants into the market (Solution 1)
2. Abolition of the bar monopoly of legal services (Solution 2)

→ These solutions result in the disadvantages of the bar monopoly of legal services being reduced (slide 8), respectively avoided (Solution 2).

→ The disadvantages with regard to demand for legal advice can be overcome by corresponding duties to provide information when the contract is concluded (sanctioned by a right of cancellation).

→ The disadvantages with regard to legal relations can be avoided, respectively restricted, by reserving court appearances to members of the bar.

### **III. Summary**

1. The grounds advanced in favour of a bar monopoly of legal services (protection of persons seeking legal assistance, legal relations, the legal order) are not convincing for advice given out of court.
2. An abolition of the bar monopoly of legal services in the out of court domain would enable those seeking legal assistance to choose for themselves the type of legal advice they want. The resulting competition between advisers would reduce the cost of legal advice. To protect those seeking advice, every service-provider should be required to disclose his qualifications (however slight they may be) upon the conclusion of the contract.
3. The retention of the bar monopoly for representation in court is supported by the fact that it ensures the efficiency of the proceedings. The admission of insufficiently qualified representatives would hinder the progress of the proceedings. As the Federal Republic of Germany already has sufficient numbers of lawyers, the admission of further qualified persons for court representation purposes is unnecessary.

## **Core arguments**

1. In the first part of my submissions, I will present the current legal position with regard to the bar monopoly of legal services in the Federal Republic of Germany. It will be shown that this monopoly is very extensive. At the same time, liberalising tendencies are apparent. However, the legal protection insurers are excluded from these liberalising tendencies.
2. The grounds advanced for such a monopoly – protection of persons seeking legal assistance and the legal order (ensuring orderly progress of proceedings, avoidance of additional costs, contribution to legal development) – are unconvincing. On the contrary, it is the disadvantages that stand out (restriction of the product range, restriction of the consumer's right to decide for himself, restriction of competition). It seems to me that a restriction of representation to members of the bar is called for only in the area of representation in court, where it serves to expedite the proceedings. As the Federal Republic of Germany already has sufficient numbers of lawyers, the admission of further qualified persons is unnecessary.
3. The second part of my submissions discusses the question of alternatives to this monopoly. One possibility is the complete abolition of the bar monopoly in out-of-court matters or an extension of the range of service-providers. It is my view that a complete abolition of the bar monopoly is the preferred choice. This would enable people looking for legal assistance to decide for themselves the kind of advice they want. In addition, the resulting competition between advisers would serve to bring down the costs. Furthermore,

this would avoid tricky problems of differentiating between those who can advise and those who are prohibited from doing so. To protect consumers from the dangers of unqualified legal advisers, every service-provider should be required to disclose his qualifications upon signature of contract. If he fails to do so, the consumer should have a right to cancel. In addition, the considerable liability risk serves to protect consumers against the danger of unqualified legal advisers.