

General principles of German lawyers' fees

In Germany, a lawyer's remuneration is calculated on the basis of either the respective law (since 01.07.2004 the *Rechtsanwaltsvergütungsgesetz*, RVG, law on the remuneration of lawyers) or on the basis of negotiated fees. Negotiated fees are always a possibility which can be chosen instead of calculation on the basis of the statutory fees. However, when choosing this option, the rules provided in § 49 BRAO (*Bundesrechtsanwaltsordnung*, Federal Lawyers' Act) and in § 4 RVG have to be taken into consideration. According to these provisions, the formal provisions of § 4 RVG have to be taken into account when a higher fee than the one prescribed by statute is charged. Also, the negotiated fee for a lawyer's activity must not be lower than the statutory rate. Negotiated fees which exceed the statutory level are always possible.

The *Rechtsanwaltsvergütungsgesetz* consists of the text of the law as such, which contains the general provisions regarding fees, plus an annex in the form of a list of the individual acts performed by the lawyer and the respective applicable rate (*Vergütungsverzeichnis*, VV).

The *Rechtsanwaltsvergütungsgesetz* provides for several types of fees. They are either fixed fees or fees within a fixed range. Fees within a fixed range either depend on the value in dispute and are then called *Satzrahmengebühren*, or a minimum and a maximum amount is prescribed and they are then called *Betragsrahmengebühren*. The level of the fee that is dependent on the value in dispute is given in the fee scale in the annex to § 13 RVG (cf. attached fee scale). The appropriate fee in each individual case within this prescribed fee range has to be determined by the lawyer at his own discretion in an equitable manner, taking into account all the circumstances linked with a case, in particular the scope and difficulty of the legal work, the importance of the matter and the income and financial situation of the client (§ 14 (1) RVG). In addition, a lawyer's increased risk of liability may be taken into consideration.

Extrajudicial work

For extrajudicial advice, fees are calculated on the basis of number 2100 VV RVG. As of 1.7.2004, fees for extrajudicial advice are completely liberalised. Since then, a provision applies, according to which the lawyer shall seek to obtain a fee agreement. In the absence of such an agreement, fees will be calculated on the basis of civil law, i.e. in accordance with § 612 BGB (Civil Code). If the client is a consumer and there is no fee agreement, the

lawyer's fee for extrajudicial advice and legal expertise must not exceed 250 Euro. The fee for the provision of initial legal advice to a consumer must be no higher than 190 Euro.

Extrajudicial representation is regulated in number 2400 et seq. VV RVG. The fee range for a general fee (*Geschäftsgebühr*) is 0.5 to 2.5 (cf. attached fee scale). There are no other provisions regarding any other fees anymore. Important information is given in the note regarding number 2400 VV RVG. It provides that a lawyer can charge a fee that is higher than 1.3 only if his legal work was extensive or difficult. There are similar threshold values applicable to the general fees in other legal areas.

According to number 1000 et seq. VV RVG, the fee for an extrajudicial settlement is 1.5. Settlement is achieved when a contract is signed with the assistance of a lawyer, which ends the dispute or the uncertainty of the parties regarding a legal relationship.

Representation in court

There are two types of lawyer's fees for judicial work and according to number 1300 et seq. VV RVG: the fee for proceedings (*Verfahrensgebühr*) and the fee for court hearings/meetings with the lawyer of the opposing party (*Terminsgebühr*). Part 3 of the RVG contains the individual provisions for the different kinds of procedure. The general fee in court proceedings is 1.3, the *Terminsgebühr* is 1.2, i.e. a total of 2.5. If the parties reach a settlement after proceedings have been initiated, the settlement fee is 1.0.

Criminal matters

Criminal matters are dealt with in Part 4 of the RVG annex. There is always a basic fee for the first familiarisation with the matter, plus a procedural fee and possibly a *Terminsgebühr* in the preliminary investigation and during court proceedings. Furthermore, remuneration for a chosen defence lawyer is different from remuneration for an appointed counsel. The fee for an appointed counsel corresponds to 80% of the average fee (*Mittelgebühr*) of a chosen counsel.

Administrative fines

Administrative fines are the subject of a set of rules set out in Part 5 of the RVG annex. They have been formulated along the lines of the rules applying to criminal matters. Thus, there is

a basic fee, a fee for the lawyer's work regarding the administrative proceedings, the fee for the defence in court and other additional fees for individual activities.

Expenses

The rules regarding a lawyer's expenses are set out in Part 7 of the RVG annex. Here, too, agreements are always possible instead of or in addition to the statutory provisions. They are advisable where e.g. extensive material has to be photocopied or the lawyer has to travel on behalf of his client.

The new law on lawyers' fees is on the whole very flexible due to its broad fee ranges. Since the individual activities performed by the lawyer are considered either explicitly in a provision or taken into account by applying a broader fee range, it also does more justice to the lawyer's performance. Fixed fees are only provided for where they are necessary for reasons relating to the reimbursement of costs or because of separate provisions regarding legal aid or court-appointed defence.