**Mandate of the Special Rapporteur on the Independence of Judges and Lawyers
Questionnaire on the Role, Composition and Functions of Bar Associations**

1. Please provide information on the way the legal profession is organised and regulated in your country. What are the legal bases for its establishment (e.g. constitutional provisions; ordinary law or other)? Please also indicate the main legal provisions protecting the right of lawyers to freely join or create a local, national or international association, and mention the existing associations.

In Germany, the legal profession is regulated by the Federal Lawyers’ Act (BRAO), a federal law enacted by the German legislator, which provides a framework for the profession’s self-regulation. Pursuant to these provisions, self-regulation is organised according to the constitutional principle of separation of powers: with independent legislative (Lawyers’ Parliament), executive (regional Bars and The German Federal Bar) and judicial bodies (disciplinary courts).

Legislature – the legislation

The legal bases for the regulation of the legal profession, as it is laid down in the BRAO, was established by the German legislator who has the exclusive competence to modify these provisions. On the basis of a decision by the Federal Constitutional Court in 1987, the German legislator gave the profession the power to decide upon, and issue, professional practice regulations within its competences laid down in the BRAO (§§ 59b, 191a BRAO). On that basis, the Lawyers’ Parliament (*Satzungsversammlung*) was established as an independent decision-making body which, as far as the organisation is concerned, is attached to The German Federal Bar (*Bundesrechtsanwaltskammer*, hereinafter referred to as BRAK). The members of the Lawyers’ Parliament are elected directly by the lawyers (*Rechtsanwälte*) from among its profession and they work in an honorary capacity. In the framework of the competences conferred by the German legislator, the Lawyers’ Parliament decides on amendments and additions to the Rules of Professional Practice (*Berufsordnung für Rechtsanwälte* - BORA) and the Rules pertaining to bar approved specialized lawyers (*Fachanwälte*) (*Fachanwaltsordnung* - FAO). The Lawyers’ Parliament also makes proposals to the Ministry of Justice for amendments of the BRAO.

Executive – the administration

In the framework of self-regulation, the executive is formed by the regional Bars (*Rechtsanwaltkammer*) which are regulatory bodies supervised by the Ministry of Justice of the particular state (Land) to which they belong. The supervision is limited to ensure that the law and the by-laws are observed (“*Rechtsaufsicht*”), in particular that the duties assigned to the regional Bars are performed (§ 62 para. 2 BRAO). Pursuant to § 60 BRAO, for each Higher Regional Court district (Oberlandesgericht) a regional Bar shall be established. Additionally, all lawyers practicing at the Federal Supreme Court (*Bundesgerichtshof*) constitute a separate regional Bar (§ 174 BRAO). The core of the regional Bars’ work consists of providing advice and assisting members as well as exercising disciplinary control (§ 73 BRAO).

The BRAK is the umbrella organisation of the 27 regional Bars and the Bar at the Federal Supreme Court. Since every lawyer is required to be a member of a regional Bar, the BRAK represents the professional and political interests of all 164,500 German lawyers at national, European and international level.

Pursuant to § 177 BRAO, the BRAK has in particular the following duties:

1. to ascertain the opinions of the regional Bars and to discover the opinion of the majority through joint discussions, in as far as matters exist which concern all regional Bars;

2. to set out guidelines for the welfare institutions of the regional Bars (§ 89 para. 2 no. 3 BRAO);

3. to put forward the opinion of the BRAK to the courts and the authorities which have jurisdiction in all matters which concern all regional Bars;

4. to represent all regional Bars vis-à-vis the authorities and organisations;

5. to submit opinions which have been requested by an authority, by a federal government entity which participates in passing legislation or by a federal court;

6. to further the continuing professional development of German *Rechtsanwälte*;

7. to support the electronic communication of German *Rechtsanwälte* with the courts, authorities and other third parties.

These tasks are fulfilled independently and with direct responsibility borne by the BRAK. The latter is supervised by the state (*Rechtsaufsicht* - cf. question 3) and acts on the basis of statutory powers and state authorisation.

Judiciary – the jurisdiction

The judiciary of the self-regulated legal profession is exercised by special courts which are not part of the general jurisdiction: the lawyers’ disciplinary tribunals (*Anwaltsgerichte*), the higher disciplinary courts (*Anwaltsgerichtshöfe*) and the lawyers’ court of appeal in disciplinary matters (*Anwaltssenat*) at the Federal High Court of Justice. The legal profession’s disciplinary jurisdiction is competent for sanctioning violations of legal and professional duties and for examining decisions rendered by the Council to reprimand a lawyer. Additionally, the higher disciplinary courts can review administrative decisions rendered by the Bar, such as, for example, the repeal of a lawyer’s admission to practise.

Concerning the second question:

Every lawyer can, in the limits of the Federal Constitution, freely join or create a local, national or international association, if he/she does not violate any professional duties, in particular §§ 43 and 43a BRAO:

*BRAO § 43 General professional duties*

*A Rechtsanwalt must practise his/her profession conscientiously. A Rechtsanwalt must show that he/she is worthy of the respect and the trust that his/her status as Rechtsanwalt demands, both when practising and when not practising his/her profession.*

*BRAO § 43a The basic duties of a Rechtsanwalt*

*(1) A Rechtsanwalt may not enter into any ties that pose a threat to his/her professional*

*independence.*

*[…]*

1. Does a professional association of lawyers play a role in the regulation of the profession? If so, please provide information on:
2. the exact denomination of the body;

As mentioned above (cf. question 1), the legal basis for the regulation of the legal profession, as it is laid down in the BRAO, was established by the German legislator. The Lawyers’ Parliament has established, in the framework of its competences conferred to it by the legislator, the Rules of Professional Practice and the Rules pertaining to Bar-approved specialized lawyers. The BRAK is the umbrella organisation of the regional Bars which are the self-regulatory bodies of the legal profession in Germany.

1. the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other);

The legal basis for the self-regulated bodies of the legal profession is laid down in the BRAO which is a federal law enacted by the German legislator.

1. whether the association has been established as an ‘independent’ and self-governing association;

The BRAK, the regional Bars as well as the Lawyers’ Parliament are independent bodies who are part of the self-regulation of the legal profession.

1. the composition and appointment process of the executive body of the association.

The executive body of the regional Bars is the Council (*Vorstand*), which consists of lawyers working on an honorary basis. The Council is elected for four years by all lawyers who belong to the respective Bar. The Council elects a Presidency from among their numbers. The Presidency consists of the President, the Vice President, the Secretary and the Treasurer.

The two main organs of the BRAK are the Presidency and the General Assembly. The Presidency consists of the President, four Vice Presidents and a Treasurer. It is elected for four years by the Presidents of the 28 regional Bars from among their number. The General Assembly, where each regional Bar is represented by its President, is convened on a regular basis by the President of the BRAK in order to make decisions in the framework of their competences.

1. Please provide information on the relationship between the association of lawyers and the Executive, Legislative and Judiciary powers. In particular, please provide information on the role of the Ministry of Justice and/or the judiciary in relation to the establishment and functioning of this association.

The BRAK is state-regulated and supervised by the Federal Ministry of Justice. Such supervision is limited to ensure that the law and the by-laws are observed (“*Rechtsaufsicht*”) and in particular that the duties assigned to the BRAK are performed (§ 176 para. 2 BRAO). The Federal Ministry of Justice may overrule the by-laws passed by the Statutory Assembly. As Germany is a federal state, the Land administration of justice is responsible for the supervision and the regulation of the respective regional Bar at regional level.

As mentioned above, the disciplinary courts are part of a special jurisdiction hearing lawyers’ cases (disciplinary matters as well as questions of admission). The panels of the courts consist of either practising lawyers (Lawyers’ Disciplinary Court) or practising lawyers as well as professional judges (Higher Lawyers’ Court and Senate for matters concerning the Legal Profession at the Federal Supreme Court). Only at the Senate for matters concerning the Legal Profession at the Federal Supreme Court the majority of the judges are professional judges.

Disciplinary proceedings are initiated on the initiative of the Public Prosecutor or a regional Bar, either when they obtained knowledge of a breach of the professional rules by themselves or following complaints made by clients, by opposing parties or a by another regional Bar, or on the initiative of the Public Prosecutor. Disciplinary matters are in general dealt with in the first instance by the regional Bars or the Public Prosecutor’s Office. However, all decisions relating to the conduct or discipline of lawyers may be referred to the special disciplinary courts either by the regional Bar or the Public Prosecutor.

1. Please provide information on the role that professional associations of lawyers play with regard to:
2. the admission process to the legal profession and the licensing of lawyers;

The individual regional Bars are responsible for the admission of their members.

1. the conduct of disciplinary proceedings against lawyers;

As mentioned above, the regional Bars are responsible for the professional supervision of their members, i.e. the Bars ensure that the lawyers observe their professional obligations. The Bars have the power to enforce certain sanctions if a lawyer violates these rules (also cf. answer to question 3).

1. the provision of legal aid;

In Germany, the state is responsible for the legal aid system. Neither the regional Bars nor the BRAK play a role with regard to the provision of legal aid.

1. the protection of individual lawyers from any form of intimidation, hindrance, harassment or improper interference in the exercise of their functions;

The role and work of the regional Bars as well as the BRAK include the protection of the individual lawyer from intimidation, hindrance, harassment or improper interference in the exercise of their professional functions.

1. the development and implementation of legislation concerning the free exercise of the legal profession and the administration of justice.

The BRAK as well as the regional Bars represent the interests of the German lawyers. As part of their duties, they submit opinions which have been requested by an authority, by a federal government entity which participates in passing legislation or by a federal court.

1. Is membership in the professional association of lawyers mandatory to practice law in your country? In case membership is a prerequisite to practice law, please provide detailed information on the measures the State has taken to ensure access to justice in cases where there is a shortage of lawyers in the whole country or part of its territory.

In Germany, every lawyer has to be registered with one of the regional Bars to be able to give legal advice. Over the last decades, the number of admissions constantly increased. There are 164,500 lawyers for 82 Million citizens. There is currently no need for measures preventing a shortage of lawyers in the whole country. Furthermore, every lawyer can represent his clients before any German court - with the exception of the Civil Section of the Supreme Court. Thus, access to justice, in particular the access to a lawyer, is guaranteed to every citizen.