

ACCESS

TO JUSTICE

FOR ALL



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At the beginning of September, the Tagesanzeiger's Focus Legal Guide 2020 (Fokus Rechtsguide 2020 of the Tagesanzeiger) published an article entitled "Access to justice for all!". Editor Lars Gabriel Meier had a conversation with the head of the Rechtsatelier, Jean-Luc Delli, about how to improve access to legal information, legal services and legal solutions.¹ The full conversation can be found here.

Mr. Delli, why are there so many uncertainties in everyday legal life?

People seeking justice have a need to obtain a practical solution to a problem or an individual situation. Legal service providers are required to develop their solutions in such a way that they comply with both the legal system and the interests of those seeking justice. Whether a solution is negotiated out of court or comes about in court, also differs in terms of costs, time and uncertainty about the outcome. The chances of success cannot be planned or predicted. Those seeking justice are left with the risk that they will remain frustrated despite the effort expended. Accompanying those seeking justice in their decision-making process, analyzing where they stand (situation and legal analysis), understanding what the client's interests are and what fields of action and solution options are open are all part of professional legal services.

cable to the person seeking legal assistance. Legal service providers can focus on the customer need and themselves be just as easily accessible and offer legal information and legal services affordably on the market.

"The customer is the focus."

When is an individual consultation at a fixed price no longer sufficient to meet the client's needs?

During a one-on-one consultation, legal seekers learn about their injustice (legal information) and what legal solutions are possible. If legal seekers can implement the fields of action and solution options themselves, the individual consultation offers affordable guidance on how to proceed in order to achieve one's goals. In simple situations, this may already meet the client's needs. Those seeking legal advice know how to proceed. Individual counseling is no longer sufficient, however, if legal seekers want further legal services or a person who advises, accompanies or represents them in the matter.



Professional legal service providers understand how to explain legal analysis and legal solution to legal seekers in such a way that clients can understand the situation and decide how to proceed.

"Professional legal service providers recognize what clients are looking for and weigh the client experience equally with the legal information and related advice provided. This is how value-added solutions are created."

Nowadays, it is possible to receive individual counseling anonymously on the Internet, by telephone, or in the form of a personal meeting at a moderate fixed price. What are the advantages of telephone and personal individual counseling?

In the course of a telephone or personal one-on-one consultation, people seeking legal advice obtain the legal information they need to decide how to obtain justice themselves or with the help of a third party. Knowing the law or one's own law meets a customer need and has a corresponding market value. Standardized legal information is nowadays easily "accessible" on the Internet, but it is not directly appli-

Can legal information also be obtained in simple language if required?

Legal information, whether oral or written, must be comprehensible to the person seeking justice. This applies to a court decision as well as to a contract or legal advice.

"Professional legal service providers understand how to describe and explain legal analysis and legal resolution to legal seekers in a way that they understand the situation and how to proceed."

They assist clients in deciding which solution with which resources is appropriate in the current situation. This requires that the advisor has a good grasp of the injustice and the problem of the person seeking legal assistance and matches the advice with the needs of the person seeking legal assistance. In contrast, professional legal service providers know how to make legal information and legal services accessible to clients in simple language.

What about access to law if you do not understand our national languages?

Law in this country is not very accessible in foreign languages, and without a command of the national languages, people seeking justice are usually denied access to the law. Foreign-language law-seekers will therefore often fail because they cannot find legal information themselves.

How does a layperson recognize professional legal advice?

Professional legal advice focuses on the client. The client decides for himself what he will receive: be it only legal information (i.e. a legal analysis, situation assessment and recommendations for action) or other legal services such as legal advice, legal coaching and legal representation. In terms of the form of cooperation, the Swiss legal market has potential. We no longer consider traditional legal representation to the exclusion of clients or even their “paternalism” to be in keeping with the times.

“Professional legal service providers vary their role and adapt the form of collaboration to the client relationship.”

Thus, instead of dominantly acting as legal representatives, where the client is excluded, legal service providers can alternatively support their clients from the background in an advisory capacity. In Switzerland, little attention is paid to legal coaching, in which legal service providers assist their clients on an equal footing, enabling them to have their say and help shape negotiations in or out of court, which in certain cases can be very effective, as the clients help shape the process and become part of the solution.

“Because customers should be able to decide whether they want to resolve a dispute in court or through other means, and what resources will be used to do so.”

Does legal advice always have to be expensive? How can legal advice be offered “affordably”?

Only with full cost transparency do clients also have the necessary cost control. While in a court case the dispute is temporarily settled, in a negotiation

or mediation the parties meet on the solution level. In this way, problems can be solved outside of court in a sustainable and practical manner, which is often profitable, creates potential and saves resources in no small measure. A professional legal service will therefore promote dialogue and explore all possible out-of-court solutions before embarking on a potentially conflictual, long and expensive legal process.

Explain your understanding of “access to law”.

In the legal market, “access to law” is often defined as “access to lawyers”. Internet platforms and providers advertise that they can find a suitable lawyer for those seeking legal advice. Yet “access to law” still has immense potential in Switzerland. As with other services, it should become a matter of course that everyone in this country can obtain legal services at an affordable price and tailored to the customer’s needs. Far too often, people live with injustice because they do not know the law, do not recognize the added value of legal services or cannot find access to satisfactory legal solutions.

Is it even possible to get justice without money and influence?

Access to justice is not always guaranteed in this country. Although Switzerland is considered a constitutional state, it too often fails to provide a way to enforce the law. Thus, people live within justice because they do not know their rights (lack of access to legal information) or cannot reach a legal solution and because they are denied access to legal services (lack of access to legal services and legal information). The high cost of legal services is just as much a problem as the cost of legal proceedings. The Swiss middle class in particular often cannot afford these costs, but they also do not qualify for free litigation. Legislators are challenged to make law and legal solutions more accessible and affordable.

“Legal service providers can also do their part by putting the client first and offering affordable solutions.”



Jean-Luc Delli is the founder and director of the “Rechtsatelier”. He advises solution-seeking entrepreneurs and private persons in difficult decisions and different life situations in accordance with the law and with an entrepreneurial spirit and guides them (“coaching”) and creates with them valuable solutions (legal advice, legal representation, legal negotiation).

WE DEMAND BETTER ACCESS TO JUSTICE FOR ALL

PEOPLE SEEKING JUSTICE SHOULD BE ABLE TO REALIZE THEIR RIGHTS INDEPENDENTLY. WE ARE COMMITTED TO ENSURING THAT EVERYONE CAN EASILY ACCESS THEIR RIGHTS AND DEFEND THEMSELVES AGAINST RECOGNIZED INJUSTICE.

1. ALTERNATIVE DISPUTE RESOLUTION

Out-of-court solutions have the potential to address conflicts and disputes in a holistic manner and to remedy existing injustice in a sustainable way. We therefore call for out-of-court negotiations or mediation to take place free of charge before any proceedings before the authorities or courts and to

be accompanied by trained specialists. If the legal system promotes and recognizes out-of-court solutions, this will relieve the burden on the courts and lead to more valuable solutions than arbitration or litigation can achieve.

2. ACCESS TO JUSTICE

Disproportionately high court and legal fees lead to individuals and companies with low to medium income and assets, who do not qualify for legal aid, accepting a certain injustice and shying away from taking legal action. This can be avoided if the state waives advance payments of costs in cases of recognized injustice, reduces or assumes procedural

costs and party compensation, and takes personal and financial circumstances into account in order to help the right to be enforced. In addition, the affected person should be able to choose freely between legal representation and legal coaching, in that he or she is also compensated for the legal coaching if the case is won.

3. ACCESS TO LAW

We advocate a uniform practice throughout Switzerland, so that affected persons can be advised and accompanied by legal counsel vis-à-vis the police, authorities and courts, insofar as this is permitted by law, without having to be represented by a lawyer. Legal counsel is particularly important in criminal proceedings, when defendants often appear before the police in the preliminary proceedings without legal representation.

With legal counsel, a person affected receives an accompanying person or a legal coach. This person has an advisory, accompanying and support-

ing function and helps the person concerned to be better informed and educated about the law and the proceedings. However, unlike a lawyer, he does not act as a legal representative. In addition, a legal coach can also be a moral support for an affected person. With legal assistance and legal coaching, affected persons can thus better prepare for proceedings, appear independently before the police, authorities and courts, and defend or explain themselves if necessary. This leads to a more balanced and equitable application of the law and creates better access to justice for all.