

Consultancy Terms and Conditions

Refugee Law Clinic – As of July 2020

of the Studentische Rechtsberatung der Universität Passau, e.V., Innstraße 39, 94032 Passau, Germany
(in the following: „Studentische Rechtsberatung“)

Preamble

The Studentische Rechtsberatung is a registered association based in Passau (Rg-Nr. VR 200578). On the legal basis of Sec. 6(2) of the German Act on Out-of-Court Legal Services it

- * Offers **consultations free of charge** amongst others in the field of asylum and migration law;
- * Enables students of the University of Passau to acquire legal knowledge in the field of asylum and migration law, applying it practically and extending their expertise in consultation;
- * And thus, also supports the education and **social commitment of the University of Passau** at the Faculty of Law.

In the light of that, the following Terms and Conditions apply additionally to any Consultancy Contract agreed by the parties:

§ 1 Object of the Contract

- (1) The person seeking advice mandates the Studentische Rechtsberatung in the sense of Sec. 662 of the German Civil Code to advise them and to assist in the clarification and **legal assessment of concerns in the area of asylum and migration law** as well as related areas of law (the „Consultation“). The person seeking advice may grant authority to the Studentische Rechtsberatung. The aim is to present courses of action and their respective consequences to the person seeking advice
- (2) During counselling, students of the University of Passau ("Student Counsellors") act on behalf of the Studentische Rechtsberatung. The Person seeking advice expressly permits transferring the performance of the counselling obligation to Student Counsellors.
- (3) In individual cases, the Studentische Rechtsberatung is entitled to mandate interpreters to communicate during the Consultation.
- (4) The Studentische Rechtsberatung **only provides out-of-court advice**; in court proceedings Student Counsellors may advise only when drafting pleadings or applications or they may support in preparing for court hearings.
- (5) The Studentische Rechtsberatung only provides advice in cases that are not urgent or existentially threatening. No counselling involving criminal, civil or tax law issues or disputes against the University of Passau, university examination results, state examinations or BAföG decisions shall take place.
- (6) **Only at the moment of acceptance by the Chairman** of the Board of the Studentische Rechtsberatung – or, in the event of his prevention, by his deputy – **and from there on a Consultancy Contract enters into force**. The establishment of contact and prior discussions do not constitute a contractual relationship.

§ 2 Standards of the Consultation

- (1) The person seeking advice is aware of and it is expressly pointed to them that the Student Counsellors are working as laypersons in law without having completed a (law) degree. The Student Counsellors are not admitted as attorneys. The Consultation cannot reach the level of legal advice provided by a lawyer and does not replace the advice of a lawyer.
- (2) Special regulations for lawyers do not apply (e.g. no right to refuse testimony, no protection against seizure of information, no professional liability insurance, obligation to report particularly serious offences).

- (3) The Student Counsellor shall provide advice under the supervision of a person who is entitled to provide legal services against payment or is qualified to hold judicial office (the "Supervisor") (Sec. 6(2) of the German Act on Out-of-Court Legal Services).
- (4) **No ad-hoc advice shall be given.**

§ 3 Free of charge for Consulting; Reimbursement of Expenses

- (1) **The Consultation is free of charge.**
- (2) However, the Studentische Rechtsberatung may request that the person seeking legal advice reimburses actual expenses incurred to the Studentische Rechtsberatung, such as travel, copy or postage costs.

§ 4 Extinction and Termination

- (1) A Consultancy Contract is extinguished when the service obligations are fulfilled by the Student Counsellors according to § 1.
- (2) A Consultancy Contract can be terminated by notice of termination or withdrawal by both parties at any time. However, the Studentische Rechtsberatung may only terminate untimely if there is a compelling reason. A compelling reason is particularly given if the Studentische Rechtsberatung is not able to provide the Consultation, because
 - a) it does not find a Supervisor for the matter in question;
 - b) the subject matter exceeds the abilities of the Student Counsellors;
 - c) the person seeking advice deliberately and seriously behaves unlawful; or
 - d) the person seeking advice does not comply with their obligation to cooperate (§ 5) even after a deadline has been set.

§ 5 Obligation of the Person Seeking Advice to Cooperate

The person seeking advice shall provide the Studentische Rechtsberatung and the Student Counsellor with all the information and documents which are necessary for the Consultation.

§ 6 Liability

- (1) The Studentische Rechtsberatung is only liable to the person seeking advice **for intent and gross negligence and shall provide advice with due care of a legal layperson.**
- (2) This limitation of liability shall not apply to damages resulting from injury to life, body or health, or violations of data protection regulations.
- (3) The limitation of liability shall also not apply in the event of breach of substantial contractual obligations. Substantial contractual obligations are such,
 - a) which the Studentische Rechtsberatung must fulfil in order to properly perform the contract;
 - b) in whose fulfilment the person seeking legal advice trusts and may trust; and
 - c) whose culpable non-performance jeopardises the attainment of the purpose of the contract.

If the Studentische Rechtsberatung violates a substantial contractual obligation, it is only liable for the damage, which was foreseeable at the time the Consultancy Contract was concluded and which typically occurs.

- (4) The person seeking advice refrains from making direct claims against Student Counsellors and Supervisors judicially. This shall not apply in the case of intent and gross negligence; paragraphs 2 and 3 shall apply accordingly.

§ 7 Limitation Period

All claims of the person seeking advice from or in connection with a Consultancy Contract shall become statute-barred in 18 months after the date upon which the person seeking advice obtains knowledge, but no later than five years after they arise. This shall not apply in the case of intent and gross negligence; § 6 paragraphs 2 and 3 shall apply accordingly.

§ 8 Confidentiality

- (1) The Studentische Rechtsberatung **commits itself to confidentiality** about all information and documents of the person seeking advice, which it obtains as part of the counselling ("Counselling Information"). The duty of confidentiality continues to exist after the termination of a Consultancy Contract.
- (2) The Studentische Rechtsberatung may, however, pass on the Counselling Information to Student Counsellors. The Studentische Rechtsberatung and the Student Counsellors may pass on the Counselling Information to other Student Counsellors and to the interpreters mandated by the Studentische Rechtsberatung. The Studentische Rechtsberatung and the Student Counsellors can also pass on the Counselling Information to the Supervisors, but only in an anonymised or - in individual cases - pseudonymised versions and only to the extent necessary for supervision. This does not apply if in individual cases the person seeking advice has agreed otherwise.
- (3) The Studentische Rechtsberatung strives to ensure that also Student Counsellors, Supervisors, and interpreters mandated by the Studentische Rechtsberatung keep Counselling Information confidential.
- (4) In particular, the Studentische Rechtsberatung undertakes to treat all personal data received in connection with the Consultation confidential, and to comply with the statutory data protection regulations and its Privacy Notice.

§ 9 Safekeeping of the Documents of the Person Seeking Advice

- (1) The Studentische Rechtsberatung takes over the **digital safekeeping of the Counselling Information**. Sec. 688 et seq. of the German Civil Code shall apply to this safekeeping unless the following provides otherwise and without prejudice to the provisions of statutory data protection regulations. The safekeeping is free of charge. Deviating from Sec. 690 of the German Civil Code, § 6 of this Consultancy Terms and Conditions shall apply.
- (2) **After the legal limitation has occurred, the Studentische Rechtsberatung is entitled to destroy the Counselling Information.** Secs. 695 to 697 of the German Civil Code and § 4 of this Consultancy Terms and Conditions shall not apply to the safekeeping relationship. This shall not prejudice the right to extraordinary termination for a compelling reason.

§ 10 Final Provisions: Severability Clause, Choice of Law and Choice of Court

- (1) Agreements deviating from the Consultancy Contract are also effective if they are made orally. For proof- and for documentation purposes, both parties shall work towards a textual recording of such deviating agreements.
- (2) In case individual provisions of this Consultancy Terms and Conditions are or become void or ineffective, or when this Consultancy Terms and Conditions contain a gap, the remaining provisions of this Consultancy Terms and Conditions remain valid. The Parties agree to maintain the validity of the remaining provisions of this Consultancy Terms and Conditions in any case and exclude Sec. 139 of the German Civil Code as a whole and any reversal of the burden of proof therein.
- (3) The substantive law of the Federal Republic of Germany shall apply to this Consultancy Terms and Conditions and to any Consultancy Contract based on them.
- (4) The courts of Passau shall have jurisdiction,
 - a) if the person seeking advice does not have general jurisdiction in Germany;
 - b) for legal actions against the person seeking advice if they relocate their place of residence or habitual place of abode abroad after a Consultancy Contract came into force or if the place of residence or habitual place of abode is not known at the time proceedings are brought in the courts.
- (5) This **English version is a non-legally binding translation** of the Consultancy Terms and Conditions. In case of different possible interpretations of the Consultancy Terms and Conditions only the German version is decisive.