

Pro Bono Practices and Opportunities in Chile

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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The Chilean bar is recognized throughout Latin America as having a notable dedication to *pro bono* work. Chilean lawyers, in particular those in the capital, Santiago, have long had a culture of volunteering their time and skills to help society. Their commitment to providing *pro bono* legal services has increased in recent years, aided by organized efforts to grow *pro bono* practice throughout Latin America. This regional push has helped institutionalize practices formerly performed by Chilean attorneys on an individualized and ad hoc basis. These efforts will likely increase the availability and effectiveness of *pro bono* services provided to the Chilean populace. This section provides a brief overview of the Chilean legal system, reviews different avenues of free legal aid available to indigent persons and discusses various organizations currently providing *pro bono* legal services in Chile.

I. Legal Services and the Legal Profession in Chile

A. Overview of the Chilean Legal System

The Republic of Chile stretches over 6,400 kilometers along the western coast of South America. A democracy since 1990, the elected government is divided into executive, legislative and judicial branches. Chile's current Constitution has been in effect since 1980.¹ It guarantees rights comparable to those outlined in the Constitution of the United States and goes further, guaranteeing the right to equality under the law, right to privacy, right to education, right to a multiparty system, right to life, right to fair wages, right to collective bargaining and right to a clean environment, among others.² This litany of constitutional rights, and the multiple avenues available to enforce them, provide great opportunities for attorneys to engage in *pro bono* efforts resulting in significant societal impact.

Chilean judges have original jurisdiction in civil, commercial, mining, treasure, family, criminal and labor matters. The lower court system is divided into civil tribunals (*tribunales de letras*), criminal tribunals (*juzgados de juicio oral* and *juzgados de garantía*), the *judicatura de cobranza laboral* with jurisdiction over labor disputes and other, more specialized, bodies. The seventeen courts of appeals preside over appeals from judges and arbitrators, and have administrative supervision over judges sitting within their jurisdiction. The *Corte Suprema* is Chile's court of final appeal, adjudicating errors of law in the appellate courts, with administrative supervision over all judges in the country. The twenty-one members of the *Corte Suprema* are appointed by the President and approved by the Senate from lists of candidates provided by the *Corte Suprema*. Members of the *Corte Suprema* elect a president every three years.

Chile's *Tribunal Constitucional* is a specialized court focusing solely on constitutional matters. The *Tribunal Constitucional* determines whether general laws, *leyes orgánicas constitucionales*, decrees with the force of law or foreign treaties conflict with the Chilean Constitution.³ The *Tribunal Constitucional* also reviews the constitutionality of decisions of the *Corte Suprema*, courts of appeals and elections tribunal, and reviews proposed legislation for compliance with constitutional principles. The *Tribunal Constitucional* may, by majority vote, declare a law or act inapplicable to a specific case or may, by four-fifths vote, declare a law or act unconstitutional and of no general effect.⁴ The *Tribunal Constitucional* is made up of ten members: three appointed by the *Corte Suprema*, three appointed by the President, and the last

¹ Decreto 1150 de Oct. 21, 1980.

² *Constitución Política De La República De Chile*, Art. 19.

³ *Constitución Política De La República De Chile*, Art. 93.

⁴ *Id.*

four chosen by the Senate, two of whom are chosen from a proposal made by the Chamber of Deputies. The members of the *Tribunal Constitucional* elect a president every two years.

B. Criminal Proceedings and the Right to Legal Assistance

Chile inherited its former criminal law system from Spain during the country's initial colonization. It was an inquisitional system that concentrated investigation, prosecution and adjudication in the judiciary. This system relied largely on written evidence and permitted little or no contact between the parties or between the parties and the judge. However, the Chilean criminal system underwent a radical transformation beginning in 2000 and culminating in June 2005, pursuant to which it was transformed into an oral and adversarial system. Under this new system, trials are public, and court records, rulings and findings are generally accessible to the public. An accused party enjoys a presumption of innocence, has the right to appeal and to be released if guilt is not established within a short period of time.⁵ The reforms also grant new rights to victims, including the right to work with the prosecutor to seek an appropriate sentence for the accused, to take part in hearings and to enter into reparatory agreements.⁶ The reforms have been largely successful, with the citizenry generally reacting favorably to the system's increased speed and transparency. As a result, citizens are better informed about and have increased confidence in the legal system.

The radical transformation of the criminal system was marked by the introduction of several new features and legal institutions. The first was the reformation of the judiciary, dividing criminal courts into *juzgados de garantía* and *juzgados de juicio oral*. *Juzgados de garantía* handle the pre-trial phase through the pre-trial hearing and safeguard the rights of parties, especially of the accused.⁷ *Juzgados de juicio oral* handle the subsequent oral and adversarial proceedings, ruling on guilt and dictating sentences. Because the *juzgado de garantía* handles the pre-trial phase, each three-judge panel forming a *juzgado de juicio oral* first hears the evidence presented at trial. The second legal innovation was the creation of an independent prosecutor's office charged with representing the State in the investigation of crimes, formulation of charges and prosecution of cases. The third important innovation was the creation of the public defender's office. This office defends all those charged with a crime and lacking legal representation, whether in proceedings before a *juzgado de garantía* or *juzgado de juicio oral*. The adversarial nature of the new system is intended to guaranty impartiality and fairness for the defendant.

The Chilean Constitution guaranties all criminal defendants the right to an attorney.⁸ While the public defender's office is charged with representing all criminal defendants, whether indigent or not, it may require a non-indigent defendant to contribute a co-payment for services up to the entire cost of the representation, depending on such person's financial means. In practice, nearly ninety-seven percent of the public defenders' clients are indigent and therefore represented

⁵ Sergio Endress Gómez, Essential Issues of the Chilean Legal System.
<http://www.nyulawglobal.org/globalex/Chile1.htm>.

⁶ Rafael Blanco, Richard Hutt & Hugo Rojas, Reform to the Criminal Justice System in Chile: Evaluation and Challenges, 2 LOY. U. CHIC. INT'L L. REV., 253, 258, available at:
http://luc.edu/law/activities/publications/ilrdocs/vol2_no2/vol2_no2/blanco_hutt_rojas.pdf.

⁷ *Ley Orgánica Constitucional 7421, Título II*.

⁸ *Constitución Política De La República De Chile*, Art. 19(3).

free of charge.⁹ The public defender's office is generally viewed favorably, and seen as granting high-quality defense to indigent defendants. It is considered a marked improvement over the former system where recent law school graduates represented indigent defendants.

C. Requirements to Practice Law and Mandatory Professional Practice

The *Corte Suprema* grants licenses to practice law in Chile. Obtaining a license to practice requires that a candidate have graduated from a Chilean university with a law degree, be no less than twenty years of age, have no criminal record or pending criminal prosecutions, present evidence of good moral character, be of Chilean nationality or permanent residence and have successfully completed a period of post-graduate professional practice in a Legal Aid Corporation ("*Corporación de Asistencia Judicial*").¹⁰ Only Chile-qualified attorneys may represent clients in court. However, attorneys qualified in other jurisdictions can and do practice law in Chile, often focusing on transactional matters rather than litigation.

The mandatory six months of professional practice in a *Corporación de Asistencia Judicial*¹¹ mentioned above is geared towards providing services to low-income persons, and may include service with the public defenders' office or the prosecutors' office.¹² Recent graduates work in the areas of criminal, labor, family and civil law. A licensed and practicing attorney supervises these recent graduates at all times. This will often serve as a young attorney's second exposure to direct legal services, as many law schools incorporate clinical work as either a mandatory component of a law degree or a voluntary activity open to all students.

D. Advertisement of Pro Bono Legal Services

Chilean attorneys face no impediment to publishing or advertising accurate accounts of their *pro bono* activities, provided that such communications are factually accurate and protect client confidentiality in addition to complying with all other applicable ethical norms and regulations. Accordingly, a number of leading law firms advertise their *pro bono* activities on their firm website. We note that *El Colegio de Abogados de Chile*, the Chilean voluntary bar association, discourages the advertisement of all legal services, including *pro bono* legal services. *Fundación Pro Bono* (further discussed below) initially encountered a reluctance on the part of law firms to promote their *pro bono* activities, stemming from both a sense of modesty and a feeling that *pro bono* work was performed for the betterment of society rather than for its marketing potential.¹³ Currently, however, twenty-eight law firms are members of *Fundación Pro Bono*, and several mention their membership prominently on their websites.¹⁴

⁹ Sofia Libedinsky, "The Reform Of The Criminal Justice System In Chile: From An Inquisitorial To An Adversarial Oral System – The Public Defender Office Role And Goals," presented at the Second European Forum on Access to Justice on February 24-26, 2005.

¹⁰ Ley Orgánica Constitucional 7421, Arts. 523, 526.

¹¹ Ley N° 17.995 establishes the *Corporación de Asistencia Judicial de la Región Metropolitana de Santiago in Santiago*, the *Corporación de Asistencia Judicial de la Región de Valparaíso in Valparaíso*, and the *Corporación de Asistencia Judicial de la Región del Bío-Bío in Concepción*.

¹² Ley Orgánica Constitucional 7421, Art. 523, Ley N° 17.995.

¹³ Pilar Aspillaga and Pablo Guerrero, "*Chile: Fundación Pro Bono. Orígenes y Evolución de su Trabajo* (Parte II)," available at: http://vancenet.org/index.php?option=com_content&task=view&id=42.

¹⁴ Fundación Pro Bono, <http://www.probono.cl/miembros/>.

E. Pro Bono Declaration for the Americas

The *Pro Bono* Declaration for the Americas, which took effect on January 1, 2008, was drafted by a committee of leading practitioners from Latin America and the United States.¹⁵ The Declaration affirms that it is the duty of the legal profession to promote both a fair and equitable legal system and respect for human and constitutional rights. It calls for each entity that is a signatory to the Declaration to commit to perform an average of no less than twenty hours of *pro bono* work per practicing attorney per year. Sixteen private Chilean law firms signed the Declaration, as well as two corporate legal departments, two members of the judiciary, two government ministries, three law schools, two NGOs and *El Colegio de Abogados de Chile*.

The signing of the Declaration has invigorated *pro bono* work in Chile. It has served to spur the nation's leading law firms to institutionalize their *pro bono* practice and to develop formal structures and programs to perpetuate *pro bono* work. The Declaration has also helped define exactly what activities constitute *pro bono* legal services and distinguish them from other civic-minded activities that attorneys already perform, such as teaching university-level courses and serving on the boards of civic organizations. Larger law firms have generally leaned towards performing tax and transactional work for non-profit organizations, though they also provide a fair amount of legal services directly to indigent clients.

II. *Pro Bono Opportunities in Chile*

Fundación Pro Bono is Chile's leading clearinghouse for *pro bono* work. It is the only non-profit organization that focuses on finding and distributing *pro bono* opportunities to private attorneys.¹⁶ Founded in 2000, it was based on the United States' model and adapted to Chile's circumstances after extensive discussions with Chile's leading law firms. *Fundación Pro Bono* does not provide direct services but instead serves solely as a clearinghouse, referring matters to private firms and individual attorneys and developing new *pro bono* programs serving non-profit entities, NGOs and private citizens. As of early 2008, *Fundación Pro Bono* received around thirty requests for *pro bono* services per week, which it screens and refers to practitioners on a regular basis. Boasting a network of twenty-eight affiliated firms and over one thousand individual affiliated attorneys, *Fundación Pro Bono* aims to refer over 20,000 hours of *pro bono* services on an annual basis. In 2009, affiliate attorneys reported 9,967 hours of *pro bono* services. This organization has been held up as a model throughout the Latin American legal community and has been recognized for its efforts by the United Nations.

Fundación Pro Bono divides its efforts into a number of programs: family law, government transparency and access to information, arbitration, transactional and tax services to NGOs and microentrepreneurs, and legal assistance to victims of violent crimes. *Fundación Pro Bono* has entered into a collaboration agreement with the State pursuant to which private attorneys provide no-cost legal assistance to criminal victims. In 2009, for example, members took on 137 criminal cases.¹⁷ *Fundación Pro Bono*'s primary mission involves developing the *pro bono* practice and placing *pro bono* matters with private attorneys.

¹⁵ http://www.nycbar.org/VanceCenter/PBDA/PBDA_English.pdf

¹⁶ <http://www.probono.cl>

¹⁷ <http://www.probono.cl/documentos/memorias/Memoria2009.pdf>

Other NGOs in Chile provide direct legal services to victimized or indigent groups. Rather than referring cases to private attorneys, these NGOs bring cases on behalf of such pro bono clients.

Corporación de Promoción y Defensa de los Derechos del Pueblo (CODEPU) is an NGO focusing its efforts on the defense of human rights.¹⁸ CODEPU was founded in 1980, during Augusto Pinochet's military dictatorship. CODEPU offers social, legal and psychiatric assistance to individuals and groups that are victims of human rights violations, assisting in close to 1,000 cases a year. CODEPU also disseminates information relating to human rights and conducts trainings for social organizations and at schools.

Un Techo Para Chile is a youth-led non-profit organization begun in 1997.¹⁹ While its central focus is on building low-cost housing, it also provides legal and other advice aimed at developing the skills and qualifications of Chile's underprivileged population. The organization's objectives include imparting legal assistance and educating the people regarding their rights under the law. To this effect, its volunteers and affiliated organizations sponsor legal clinics to provide direct assistance with specific problems and also hold seminars to educate the people of Chile on their constitutional and legal rights and the various mechanisms available to enforce such rights. *Un Techo Para Chile*'s model has been very successful and has expanded to multiple other Latin American countries under the name *Un Techo Para Mi País*.²⁰

III. Conclusion

The Chilean bar is already a Latin American leader in providing *pro bono* legal services. In fact, many attorneys already perform more than the twenty hours per year *Pro Bono* Declaration for the Americas commitment.²¹ The practice of *pro bono* is likely to continue to increase and become further institutionalized in the coming years.

¹⁸ <http://www.codepu.cl>

¹⁹ <http://www.untechoparachile.cl>

²⁰ <http://www.untechoparamipais.org>

²¹ Pilar Aspillaga and Pablo Guerrero, "Chile: Fundación Pro Bono. Orígenes y Evolución de su Trabajo (Parte II)," available at: http://vancenet.org/index.php?option=com_content&task=view&id=42.