

Pro Bono Practices and Opportunities in Poland

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

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After Poland's accession to the European Union ("EU") in 2004, the EU's legal requirements and extensive jurisprudence on the right of access to justice became binding on Poland. Conceptions of legal aid, the state's role in providing it, and the possible provision of legal aid through *pro bono* services undertaken by the private sector are influenced, on the one hand, by the waning legacy of the Communist era and, on the other hand, by integration into the EU. Although traditionally no *pro bono* culture *per se* existed in Poland, currently, as a result of involvement of non-governmental organizations ("NGOs") and multinational and domestic law firms, an active *pro bono* culture is emerging.

I. Legal Services and the Legal Profession in Poland¹

The Polish legal profession consists of attorneys, called "advocates," who can provide a range of legal services, and "legal advisors," who service predominantly the business and administrative sectors, and cannot undertake work in criminal or family matters. Legal aid follows the *ex officio* assigned-counsel system, in which the courts appoint counsel for indigent defendants and attorneys' fees are paid by the State. Both advocates and legal advisors provide legal aid through this system. However, access to legal aid is limited, and consequently, difficult to obtain in Poland, partly because there is a shortage of practicing lawyers.

No single law governing legal aid exists. Relevant provisions are scattered throughout various statutory codes. The following is an overview of the central criminal and civil legal aid provisions.

A. Legal Aid in Criminal Cases

A defendant in a criminal proceeding has a constitutional right to defense in all stages of the proceeding; the defendant may hire counsel of his choice or have one appointed *ex officio*, according to principles specified by law.² These principles are echoed by the Code of Criminal Procedure of the Republic of Poland, which provides that every accused person has the right to a fair hearing, including the right to counsel of his choice.³ There are also several statutes providing for the right to representation in non-criminal cases, which are discussed further below.⁴

The eligibility criteria for legal aid in criminal cases include substantive and financial standards. Substantively, the presence of counsel is mandatory in the following instances: (1) cases wherein a defendant is a juvenile; (2) cases wherein defendant is deaf, blind, or mute; (3) cases involving reasonable doubt as to the defendant's sanity; (4) cases where the defendant has been accused of a high crime or has been deprived of liberty; and (5) when the court

¹ L. Bojarski, *Access to Justice Country Report: Poland* (2003), Public Interest Law Initiative/Columbia University Kht., available at: http://www.pili.org/dmdocuments/CR_Poland.pdf. This report accompanies the Access to Justice in Central and Eastern Europe: A Source Book (2003) publication prepared by the Public Interest Law Initiative, Columbia University Budapest Law Center in collaboration with Interights in London, the Bulgarian Helsinki Committee in Sofia, the Polish Helsinki Foundation for Human Rights in Warsaw, and the Open Society Justice Initiative, as part of the Project Promoting Access to Justice in Central and Eastern Europe, available at: http://www.pili.org/index.php?option=com_content&view=article&id=51:country-reports&catid=29:books&Itemid=53. Unless otherwise noted, the information contained in this section is derived from this report.

² Article 42, Point 2, of the Constitution of the Republic of Poland.

³ Article 6 and Article 83 of the Code of Criminal Procedure of the Republic of Poland.

⁴ Article 117 of the Code of Civil Procedure of the Republic of Poland.

determines the necessity for such in light of the circumstances.⁵ If the defendant does not hire his own counsel, the court will appoint one for the defendant.⁶ A defendant may demand that counsel be appointed for him if he suffers financial hardship. The applicant is obligated to demonstrate that he or she is unable to pay attorney's fees without impeding his ability to support himself or his family.⁷ If approved, the costs of the *ex officio* counsel are covered by the Treasury. However, the court may reverse its decision to appoint counsel if circumstances permitting for such appointment are found false.⁸ Because it is within the prerogative of the court to refuse legal aid without clearly stating the grounds for its decision, and because of the lack of recourse to appellate review, these financial criteria have been criticized for being potentially arbitrary and difficult to enforce.

B. Legal Aid in Civil Cases

Neither the Constitution of the Republic of Poland nor the Code of Civil Procedure of the Republic of Poland provide for mandatory representation or legal aid in civil cases. However, a party who has been exempted from court costs on his own motion, or granted a statutory exemption in whole or in part, may apply for the appointment of an *ex officio* attorney.⁹ The court determines whether the presence of counsel or legal advisor is necessary in such case.¹⁰ Discretionary exemptions are granted based on the legal and factual complexity of the case, as assessed by the court, and on the helplessness of the applicant.

Exemption from attorney's fees can be granted at any stage of the proceedings. It can also, however, be withdrawn when circumstances permitting such appointment are found false or have changed, and the applicant may be required to pay attorney's fees when an award has been granted to him.¹¹ An applicant for exemption from court costs is obligated to submit detailed information, supported by evidence, regarding his or her familial situation, property, and income, and, as in the case of criminal legal aid, must demonstrate that he is unable to pay attorney's fees without impeding his ability to support himself and his family.¹² As a result of severe under-budgeting of the judicial system, it is estimated that legal aid is granted in only about 0.18% of non-criminal cases. After granting an application, the court issues an order of appointment of an *ex officio* advocate or legal advisor sent by the court to the relevant Regional Council of the Bar or Regional Council of Legal Advisers, to carry out the order.

One flaw of the civil legal aid system is that it is easier for court-appointed lawyers to collect their fees after losing a case, because the money comes directly from the Treasury. Meanwhile, in the event of winning a case, fees have to be collected from the losing party. This system creates an economic disincentive from winning cases, a central systematic flaw. In addition, no mechanisms exist to determine the quality of the legal representation in *ex officio*

⁵ Article 79, Sections 1 and 2, and Article 80 of the Code of Criminal Procedure of the Republic of Poland.

⁶ Article 81 of the Code of Criminal Procedure of the Republic of Poland.

⁷ Article 78, Section 1, of the Code of Criminal Procedure of the Republic of Poland.

⁸ Article 78, Section 2, of the Code of Criminal Procedure of the Republic of Poland.

⁹ Article 117 of the Code of Civil Procedure of the Republic of Poland.

¹⁰ Article 117, Section 4, of the Code of Civil Procedure of the Republic of Poland.

¹¹ Article 120 of the Code of Civil Procedure of the Republic of Poland.

¹² Article 117, Section 6, of the Code of Civil Procedure of the Republic of Poland.

cases or to monitor the actions of the lawyers. Monitoring by professional bodies via disciplinary procedures has been widely criticized as not fulfilling its function.

Furthermore, legal aid is provided only in court proceedings. No statutes provide for legal aid during administrative proceedings or in the prior stage of granting legal advice only.¹³

C. Legal Aid Legislation

The rapid economic growth Poland has sustained in the past two decades has left a large portion of the population behind, creating a situation in which most citizens are unable to afford the costs associated with legal proceedings. Included in the list of reform priorities identified by the Polish government is a “better functioning of judiciary.”¹⁴ However, the Polish government lacks the resources often required to provide the necessary legal aid.¹⁵

There have been, however, promising developments pertaining to legal services for the indigent. On February 1, 2005, the EU Council Directive establishing minimum common rules relating to legal aid in cross-border disputes came into force, and was later adopted by Poland.¹⁶

Poland’s Parliament has explored ways to broaden access to the legal profession and increase the number of practicing attorneys in order to provide greater access to legal aid by making the entry procedure more objective, transparent and organized, and by allowing more input from the Ministry of Justice. Many NGOs and advocates have lobbied for reform of legal corporations, and continue to do so in order to make the legal profession more accessible and transparent, which could lead to an increase in legal aid activity. Members of the Bar Association especially consider it necessary to provide better and wider access to legal aid for all citizens.¹⁷

II. *Pro Bono Opportunities in Poland*

Traditionally, there has been no culture of providing *pro bono* legal services in Poland. No-fee services were for many years largely frowned upon and commonly associated with working on behalf of the government, a pursuit which carries the stigma of the earlier Communist era. As a result, young attorneys were not encouraged to take on *pro bono* cases, and there was no sense of commitment to the cause within the profession. However, with the arrival of the new century, some positive changes to “[t]his aversion to *pro bono* services”¹⁸ began to emerge. These changes were mainly brought about by a general ideological shift from the expectation that legal aid would be exclusively state-sponsored as it was under Communism, to anticipation that

¹³ Report on Legal Situation of Asylum Seekers in Austria and Poland, *available at*: <http://www.fluequal.at/picture/upload/AP1b%20legal%20report%20final.pdf>.

¹⁴ *Poland Country Brief 2010*, World Bank Online Publication, *available at*: <http://www.worldbank.org.pl/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/POLANDEXTN/0,,menuPK:304804~pagePK:141132~piPK:141107~theSitePK:304795,00.html>.

¹⁵ See e.g., V. Terzieva, *Access to Justice in Central and Eastern Europe: Comparative Report*, (2003), Public Interest Law Initiative, *available at*: http://www.pili.org/dmdocuments/CR_ComparativeReport.pdf.

¹⁶ *EU Council Directive 2005/19/EC*, Official Journal of the European Union, *available at*: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_058/l_05820050304en00190027.pdf.

¹⁷ K. Zaczekiewicz-Zaborska, *Palestra ma wreszcie poparcie Ministra*, *available at*: http://prawo.gazetaprawna.pl/artykuly/3596,palestra_ma_wreszcie_poparcie_ministra.html.

¹⁸ Interview with Barbara Micgiel, Assistant Legal Librarian, Latham & Watkins, New York (Aug. 6, 2004).

other sectors, such as civil society and private actors, will become greater participants in the provision of legal services.

Each year during the past few years, Poland has experienced the development of many new *pro bono* programs, and those *pro bono* activities initiated earlier in the decade have shown a healthy pattern of expansion and diversification. The pioneers of *pro bono* activities in Poland were NGOs, and they have been instrumental in establishing a long-term *pro bono* presence in Poland.

In November of 2009, Poland participated in the European Pro Bono Forum hosted by the Public Interest Law Institute. The forum, which focused on the global economic crisis and its effect on legal aid, encouraged greater commitment to *pro bono* service by providing advice, as well as setting up a network forum for law firms and private practitioners. Adam Bodnar, Board Member of the Polish Helsinki Foundation for Human Rights (“HFHR”), was one of its distinguished speakers.¹⁹

A. Helsinki Foundation for Human Rights

HFHR, based in Warsaw, is a foundation devoted to research and education in the field of human rights. As part of its wide array of initiatives, HFHR runs several programs aimed at providing cost-free legal advice. Since 1992, through its Legal Assistance for Foreigners and Refugees Program (which includes a Migration and Refugee Law Clinic), HFHR has assisted non-nationals and refugees in obtaining free legal aid in Poland.²⁰ Under the auspices of this program, HFHR litigates cases on behalf of non-nationals, and also monitors the legality of the actions of the Polish government with respect to the non-nationals. Lawyers are on call to interview and give advice to non-nationals and refugees. Lawyers also represent non-nationals and refugees at administrative proceedings, prepare opinions on legal act drafts, and educate the public about laws concerning non-nationals through leaflets, lectures, and seminars.

HFHR also founded the Public Interest Law Action Program, which is largely run by students. The main aim of this program is to ameliorate the standards of compliance with human rights laws through direct observation of trials, participation in trials as a social organization with the right to speak on important points concerning human rights laws, or provision of expertise on human rights laws. Law students, under the supervision of qualified lawyers, play the main role by attending court and administrative proceedings, assisting with drafting complaints, supporting clients, addressing authorities on the issues of law and participating in other related activities.²¹

Another HFHR law student clinic, the Law Clinic “Innocence” Program, deals with representation in criminal cases. Law students analyze cases, including whether or not there was a violation of a right to a fair trial. They investigate the facts, observe court proceedings and draft reports.²²

¹⁹ 2009 European Pro Bono Forum, *available at*: <http://arcs.ceu.hu/event/601/2009-european-pro-bono-forum>.

²⁰ *Cost-free Legal Advice for Foreigners and Refugees*, Helsinki Foundation for Human Rights, *available at*: <http://www.hfhrpol.waw.pl/program-10-en.html>.

²¹ *Public Interest Law Actions*, Helsinki Foundation for Human Rights, *available at*: <http://www.hfhrpol.waw.pl/Nprogram-2-en.html>.

²² *The “Innocence” Clinic*, Helsinki Foundation for Human Rights, *available at*: <http://www.hfhrpol.waw.pl/Nprogram-16-en.html>.

In addition, HFHR's Strategic Litigation Program was designed to allow HFHR to commence or join strategically important judicial or administrative proceedings. By its participation in those proceedings, HFHR aims to achieve groundbreaking judicial decisions, changing the existing law or legal practice in the field of human rights laws.²³

B. Legal Clinics Foundation

The Legal Clinics Foundation (the "Foundation"), in its goal to establish clinics at law faculties nationwide, aims to "provide legal aid to poor members of the community" and seeks to "enlighten students on the public service aspect on the legal profession."²⁴ While the Foundation itself does not provide legal assistance, it has set up a network of legal clinics and promoted *pro bono* work throughout Poland. Today, nine law faculties across Poland offer law clinics for law students.²⁵ The Foundation's programs and initiatives are especially promising because they aim at incorporating *pro bono* ethics into legal education. While providing those in need with legal aid, the clinics provide the law students with educational and practical skills, as well as with an essential element of their future careers – serving the public. On October 19-21, 2007, the Foundation organized the VIII Annual Colloquium on Clinical Legal Education in Poland.²⁶ At the Colloquium, future steps in the development of clinical legal education were discussed. The meeting also included workshops on mediation, moot court competitiveness, as well as NGO and small business clinics.

The Foundation also involves lawyers in its *pro bono* activities. In 2004 the Foundation launched the "Pro Bono Lawyer" competition, which has now become an annual event. The qualifications for the competition include "provision of free of charge and voluntary legal services" to charity organizations or the community, participation in programs and initiatives aiming at the development of a system of free legal advice, and achievement of goals in the area of public interest law.²⁷

In 2007, the Foundation, along with HFHR, the Public Interest Law Institute and Ashoka Foundation organized a roundtable *pro bono* conference at the Polish Constitutional Tribunal in Warsaw, Poland.²⁸ The conference contributed yet another important step to the establishment of *pro bono* culture in Poland. It was attended by many prominent members of the Polish legal community including judges, members of the Polish Bar Association and the National Association of Legal Advisors, as well as representatives from many law firms. The highlight of the roundtable was the signing of the *Pro Bono Publico* Declaration, a public affirmation of the

²³ *Strategic Litigation Program*, Helsinki Foundation for Human Rights, available at: <http://www.hfhrpol.waw.pl/precedens>.

²⁴ *Legal Clinics Foundation*, Legal Clinics Foundation available at: http://fupp.org.pl/index_eng.php.

²⁵ *Polish Legal Clinics*, Legal Clinics Foundation available at: http://fupp.org.pl/index_eng.php?id=clinics.

²⁶ *VIII Annual Colloquium on Clinical Education in Poland*, Legal Clinics Foundation, available at: http://www.fupp.org.pl/index_eng.php?id=8okspp_eng.

²⁷ *Lawyer Pro Bono*, Legal Clinics Foundation, available at: http://fupp.org.pl/index_eng.php?id=probono2004eng.

²⁸ *Global Pro Bono: Polish Lawyers Sign Pro Bono Declaration in Poland*, Pro Bono Wire, available at: <http://www.probonoinst.org/wire/09207-8.pdf>.

commitment to the provision of legal services to those in need. In addition, a new *pro bono* program was introduced in Poland, the Pro Bono Center.²⁹

C. Pro Bono Center

The Pro Bono Center (the “Center”) serves as a clearinghouse for legal *pro bono* activities.³⁰ Its main goal is to create an institutional framework for the further development of *pro bono* legal assistance in Poland. The Center has set up and coordinates a cooperative network between law firms and NGOs. Most aspects of *pro bono* work distribution between NGOs and private law firms are now handled by the Center. The law firms participating in the program are assigned specific cases depending on the difficulty and area of expertise involved. The Center also issues an annual report, in which it discusses the *pro bono* activities of the participating law firms. Additionally, the Center offers a series of legal educational programs for NGOs and others engaged in social work. All such educational programs are run by lawyers and experts associated with the Center.

D. Private Law Firms

Besides NGOs, other instrumental players in the creation of a *pro bono* culture in Poland have been private law firms. Initially, foreign law firms with offices in Poland provided the majority of *pro bono* services, bringing the practice to Poland mainly from the United States and Western Europe. For example, the Warsaw office of Weil, Gotshal & Manges provides extensive *pro bono* services to its community; in fact, in 2007, the firm was named a finalist for the Pro Bono Award.³¹ An associate of another U.S.-based law firm, Hogan & Hartson (with a local office in Warsaw), founded The Talizman Foundation (*Fundacja Talizman*) which collects goods and funds from donors to assist orphanages, homes for the elderly, and homes for the mentally and physically disabled in rural Poland.³²

More importantly, however, a culture of *pro bono* has started to emerge in Polish domestic law firms. One of the largest law firms, Wierzbowski Eversheds, has taken on multiple *pro bono* projects, including providing training and explaining legislation for “The Friends of Integration Association,” an NGO that helps handicapped people participate in social life.³³ Another Polish law firm, Domański Zakrzewski Palinka, supports the development of legal education and other legal initiatives in the country by sponsoring the European Law Students Association.³⁴ The firm of Soltysinski Kawecki & Szlezak also undertakes numerous *pro bono* activities. For example, the attorneys from this firm advised on the creation and implementation of the Mass Privatization Program and also represented the Polish government on a *pro bono* basis in a criminal case involving alleged illegal arms dealing.³⁵

²⁹ The Polish Legal Clinics Foundation is going to establish Pro Bono Center, Legal Clinic Foundation, available at: http://www.fupp.org.pl/index_eng.php?id=news_eng2005.

³⁰ Centrum Pro Bono, available at: <http://www.centrumprobono.pl>.

³¹ Weil, Gotshal & Manges Website, available at: <http://www.weil.com/warsaw>.

³² 2004 Annual Report: Community Services Department, Hogan & Hartson, available at: <http://www.hhlaw.com/probono/annualreport>.

³³ Wierzbowski Eversheds website, <http://www.eversheds.pl>.

³⁴ Domański Zakrzewski Palinka website, <http://en.dzp.pl/index.php>.

³⁵ Soltysinski Kawecki & Szlezak website, http://www.skslegal.pl/pro_bono.php.

The increasing role of domestic law firms in promulgation of *pro bono* culture in Poland is also evidenced by the fact that all three law firms that were distinguished in the annual ranking of law firms prepared by Gazeta Prawna (a Polish national newspaper) were domestic firms.³⁶ These were Kosztys, GESSEL, and Budzowska Fiatowski & Partners.

III. Conclusion

Although *pro bono* culture in Poland is certainly not as established and sophisticated as that existing in many countries of Western Europe or in the United States, the many examples of *pro bono* activities recently springing up in Poland provide strong support for the conclusion that there is a rising interest in developing proper *pro bono* culture in the country. As discussed in the preceding section, the past couple years especially have witnessed a sort of awakening in the Polish *pro bono* culture.

Having said that, one should not forget that there is still more that could, and should be done with respect to developing *pro bono* activities in Poland. The situation of many NGO, working for the public good is quite difficult, as they lack resources to develop their *pro bono* efforts. Many private law firms have those resources, and the next step in increasing *pro bono* awareness in Poland is to link the NGOs with the law firms.

³⁶ Gazeta Prawna, 2009 *Ranking of Law Firms*, available at: http://prawo.gazetaprawna.pl/artykuly/378365,vi_ranking_kancelarii_prawnych_dziennika_gazety_prawnej.html, 3.