

# ***Pro Bono Practices and Opportunities in the Russian Federation***

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

September 2010

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This chapter discusses the law and regulations governing the provision of free legal services and the specific *pro bono* opportunities available to international law firms in the Russian Federation.<sup>1</sup>

Historically, there has been no culture of *pro bono* legal assistance in the Russian Federation. Under the communist regime that prevailed for so many years in the USSR, legal aid, like most other services, was exclusively the province of the state. Perhaps as a vestige of the former communist era, Russia still lacks a professional environment that fully supports *pro bono* work. However, with Russia's transition to a democratic government and capitalist economy, there has been an ideological shift from the expectation that legal aid be exclusively state-sponsored to an anticipation that private sector attorneys also play a role in the provision of free legal services. A growing number of international firms and non-governmental organizations are appearing in Russia, many of which seek to foster *pro bono* and give back to the community. There have also been some positive steps taken at the federal level which aim to expand regulation of the free legal aid system in the Russian Federation. As a result, *pro bono* culture in Russia is slowly developing.

## **I. *Legal Services and the Legal Profession in the Russian Federation***

### **A. The Russian Judicial System**

The Russian federal judicial system is a tri-partite system consisting of the constitutional, *arbitrazh* and general court systems. The constitutional court decides questions of constitutional law, statutory interpretation and allocation of powers; the *arbitrazh* court handles commercial matters; and the general court hears civil cases with the participation of individuals, criminal cases and disputes between individuals and State authorities.<sup>2</sup> The general court system's lowest level court (the regional court) hears more than 90% of all civil and criminal cases.<sup>3</sup> The greatest need for *pro bono* assistance is at the regional court level. Unlike courts in the United States and Europe, which frequently encourage *pro bono* representation of *amicus curiae* at the appellate level, few such opportunities exist in the Russian Federation.

### **B. Regulation of the Legal Profession and Legal Services**

The legal profession in Russia is comprised of state-licensed attorneys (called "advocates") and unlicensed lawyers (called "jurists"). Jurists do not need to meet the same educational or licensure requirements as advocates but may still provide a broad range of legal services to the public, with the exception of undertaking certain criminal matters.<sup>4</sup> Advocates, on the other hand, must successfully complete an examination and application process administered by regional bar chambers and are thereafter subject to regulation by the Russian Bar. Given the ability to practice law without obtaining advocate status, many attorneys, particularly those practicing in commercial areas, do not ultimately become licensed.

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<sup>1</sup> For a discussion of opportunities available in public international law more generally, *see, e.g.*, Richard J. Ferris, Jr., et. al., *Directory of Pro-Bono Opportunities in International Law* (2004), <http://www.law.georgetown.edu/graduate/documents/InternationalDCProBono.pdf>.

<sup>2</sup> *See Sbornie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 1997, No. 1, item 1 ("On Judicial System in the Russian Federation").

<sup>3</sup> *See id.* (Comments to art. 21). Local justices of the peace also have jurisdiction to hear limited types of cases.

<sup>4</sup> *See Sbornie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 2002, No. 23, item 2102 ("On Attorney's Activity and the Bar in the Russian Federation").

The lack of advocates in Russia is significant because only advocates have an obligation under Federal law to provide free legal aid.<sup>5</sup> The mandatory legal aid provided by advocates is free to clients; however, the advocate is paid a minimal fee by the federal government (and in some cases regional governments) in accordance with federal law and local ordinances.<sup>6</sup> Legal aid is administrated chiefly by the judiciary and the investigators' office through an assigned-counsel system in which courts or investigators appoint counsel for criminal suspects and defendants from a regional registry of licensed advocates.<sup>7</sup> While there are few formal exceptions to such service when called upon by the government, in practice many advocates find ways to avoid providing the required legal aid service.

### C. The Right to Counsel in the Russian Federation

The Constitution of the Russian Federation guarantees to Russian citizens the right to qualified legal counsel and, in cases set forth by law, the right to free legal aid.<sup>8</sup> The current law requires that a government-appointed attorney be provided free of charge to defendants in certain criminal proceedings;<sup>9</sup> to men who serve in the military on questions related to their military service obligations;<sup>10</sup> and to minors residing in state institutions with respect to child neglect and juvenile offenses. There is also a right, in certain civil cases,<sup>11</sup> to free legal assistance if the individual meets specified financial eligibility criteria.<sup>12</sup>

In practice, however, access to free legal aid in Russia is quite limited. The combination of financial eligibility criteria and the restriction on the type of civil cases in which indigent

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<sup>5</sup> See *id.*

<sup>6</sup> See *id.* Under the Criminal Procedure Code and the Federal Law "On Attorney's Activity and the Bar in the Russian Federation," advocates' fees for the provision of legal aid are paid from the federal budget, save for the provision of legal aid in remote and sparsely populated areas. In these areas, advocates' fees are financed from regional budgets.

<sup>7</sup> See *Ugolovno Protsessual'nyi Kodeks [UPK]* [Criminal Procedure Code], Art 5. The investigators' office is part of the executive branch but separate from the prosecutors' office. Investigators are officers authorized to conduct pre-trial investigations in criminal proceedings.

<sup>8</sup> *Konstitutsiia Rossiiskoi Federatsii* [Konst. RF] [Constitution] Art. 48.1.

<sup>9</sup> This includes, inter alia, cases where the defendant: (1) is a minor; (2) has physical or psychological disabilities that prevent him from defending himself; (3) is not fluent in Russian; (4) is charged with crime punishable by more than 15 years of imprisonment; (5) is to stand trial in front of a jury; or (6) has admitted the charges and motioned for summary proceedings. See *Ugolovno Protsessual'nyi Kodeks [UPK]* [Criminal Procedure Code], Art 51.

<sup>10</sup> See *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 1998, No. 22, item 2331 ("On the Status of Military Men").

<sup>11</sup> The indigent also have access to counsel in the following civil and criminal matters: (1) to plaintiffs: in cases concerning alimony, damages relating to a breadwinner's death and serious job-related injuries; (2) to veterans of the Great Patriotic War: on any issue not relating to entrepreneurial activity; (3) to citizens of the Russian Federation: where applications for pensions and benefits are drawn up; and (4) to the citizens of the Russian Federation who suffered from political repression: on issues relating to their rehabilitation. See *supra* note 412.

<sup>12</sup> In order to qualify for legal aid, applicants must have an average per capita household income that is under the standard of living minimum, established by the Federal government and currently set at 5,518 Russian Rubles per month. See *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 26 July 2010, No. 30, item 4102 ("On Establishment of Size of Living Minimum in the Russian Federation for First Quarter of 2010"). The standard of living minimum, however, may be raised (but not lowered) by regional governments. In Moscow, for example, this amount is currently set at 8,424 Russian Rubles per month. See *Gazeta Tverskaya* 13 [Tverskaya Newspaper 13], Aug. 08, 2010, No. 101 ("On Establishment of Size of Living Minimum in Moscow for Second Quarter of 2010").

citizens may assert the right to receive free legal assistance ultimately deprives individuals of access to justice in a number of important spheres, including housing law, family law, labor law, actions against officials, and numerous others. In addition, the right to receive free legal assistance is guaranteed exclusively to citizens of the Russian Federation – to the exclusion of a significant and growing number of foreign citizens, including refugees. Practically speaking, the quality and availability of legal aid varies dramatically across the country, making it substantially more difficult to secure free legal assistance in small metropolitan and rural areas. The problem is compounded by the fact that many citizens are almost entirely uninformed about their right to receive free legal assistance, as evidenced by how rarely legal aid is requested.<sup>13</sup>

#### D. Legal Aid Legislation

While the Constitution of the Russian Federation guarantees qualified legal representation for its citizens in certain criminal and civil cases, this guarantee has not been accompanied by any meaningful implementing legislation. Absent a developed set of laws that specify, for example, how such legal aid is to be administered and funded, the promise of legal representation will likely continue to go unfulfilled for many Russian citizens.<sup>14</sup>

The regulation of legal aid and the provision of free legal services in the Russian Federation is based predominantly on the Code of Criminal Procedure and the Federal Law “On Attorney’s Activity and the Bar in the Russian Federation.” The current regulatory regime, however, is limited both in terms of the categories of people that may avail themselves of free legal aid and the scope of services available to them.<sup>15</sup> Funding from the federal budget is limited and the fees authorized for advocates who provide legal aid are minimal, making it difficult to attract lawyers and provide high quality legal aid. In addition, a significant portion of the population is often denied access to legal aid by virtue of their residence in remote and sparsely-populated areas with an inadequate number of legal offices and lawyers.<sup>16</sup>

In 2005, in an attempt to address some of these problems, the federal government expanded legal aid regulation by implementing a Government Decree “On Rendering Free Legal Aid to the Indigent” dated 22 August 2005 (“Decree No. 534”), which established experimental legal consultation offices, or “legal aid bureaus,” in ten regions of the Russian Federation.<sup>17</sup> These legal aid bureaus are authorized to provide a variety of services to the indigent, including general advice on legal issues, drafting of complaints, applications, notifications and other court documents, and representation in various civil and administrative proceedings, before local authorities, public associations and other organizations.<sup>18</sup>

The legal aid regime under Decree No. 534, however, remains markedly deficient in a number of areas. Most notably, legal aid bureaus remain thinly funded and few in number. In

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<sup>13</sup> See O. Yu. Krivososova, D.V. Kulagin & D.V. Shabelnikov, *Provision of Legal Aid in the Russian Federation: Legislation and Practice* (2004), <http://www.pili.org>.

<sup>14</sup> See *id.*

<sup>15</sup> See *Ugolovno Protsessual’nyi Kodeks [UPK]* [Criminal Procedure Code], Art 5; *Sobranie Zakonodatel’sstva Rossiiskoi Federatsii [SZ RF]* [Russian Federal Collection of Legislation] 2002, No. 23, item 2102 (“On Attorney’s Activity and the Bar in the Russian Federation”).

<sup>16</sup> See O. Yu. Krivososova, *et al.*, *supra* note 421.

<sup>17</sup> See *Sobranie Zakonodatel’sstva Rossiiskoi Federatsii [SZ RF]* [Russian Federal Collection of Legislation] 2005, No. 35, item 3615 (“On Rendering Free Legal Aid to the Indigent”).

<sup>18</sup> See *id.*

addition, to be effective, these bureaus must overcome numerous practical and legislative hurdles. Under Decree No. 534, legal aid offices are not permitted to exceed 15 employees.<sup>19</sup> At the same time, it is extremely difficult for legal aid offices, which have few resources with which to compensate their staff, to recruit and retain properly qualified attorneys.<sup>20</sup> In addition, state legal bureaus are plagued by bureaucracy which often results in applications for legal aid being rejected on formal grounds, such as the failure to meet burdensome documentation requirements.<sup>21</sup>

In April 2010, the Ministry of Justice of the Russian Federation introduced a new bill on “the system of free legal aid in the Russian Federation” aimed at expanding the framework of legal aid regulation in Russia.<sup>22</sup> This bill, if passed, would be the first and only federal law dedicated specifically to regulating free legal aid across Russia. This is significant because the Russian constitution provides that free legal aid shall be regulated by federal law, not subordinate regulation, and marks recognition by the Russian legislature of the need for federal government support and intervention in this area.

The bill provides, among other things, for more detailed regulation of the activities undertaken by, and funding of, state legal aid bureaus, as well as expanded access to legal aid in various civil as well as criminal matters.<sup>23</sup> In addition, the bill proposes to eliminate the statutory income threshold for free legal services for a number of important groups such as veterans and the physically and mentally disabled.<sup>24</sup> While the bill places primary funding obligations for legal aid on regional governments, it contemplates federal subsidies in circumstances where regional governments are otherwise unable to meet those funding obligations.<sup>25</sup>

## II. *Pro Bono Opportunities in the Russian Federation*

*Pro bono* opportunities for international law firms located in the Russian Federation center largely around the representation of public non-governmental organizations (“NGOs”). While there is also a need for legal aid at the individual level, there are numerous barriers to taking on the representation of individuals in Russian courts – among them, admission to practice law in Russia and a high degree of fluency in the Russian language.

International NGOs are still relatively new to the Russian Federation. These NGOs provide a variety of humanitarian services ranging from the provision of legal assistance to

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<sup>19</sup> See *id.*

<sup>20</sup> See *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 14 December 2009, No. 50, item 6099 (“On State Legal Aid Bureaus”). The salary for all lawyers in Russian legal aid bureaus is fixed at 9,000 Russian Rubles per month by regulation (in comparison, the standard of living minimum in Moscow is currently set at 8,424 Russian Rubles per month). See *supra* note 420.

<sup>21</sup> See O. Kuznetsov, *State Legal Aid Offices: The Gloss and Poverty of the Experiment*, <http://www.bestlawyers.ru/php/news/newsnew.phtml?id=370&idnew=24570&start=0>. For example, during the first six months following implementation of the legal aid bureau pilot program, 1002 of 1292 applicants in the Sverdlov region alone were rejected on the grounds that the applicants were unable to supply the required documentation to prove their indigence.

<sup>22</sup> See Ministry of Justice of the Russian Federation homepage, <http://www.minjust.ru>.

<sup>23</sup> See *Id.* The bill contemplates that local bar associations would be responsible for providing a list of advocates who would participate in the free legal aid program. These advocates would render free legal services on a contract basis and each year submit free legal aid reports to the relevant State authorities.

<sup>24</sup> See *Id.* See also Alexander Lebedev, *Lawyers for the Indigent*, <http://www.epam.ru/index.php?id=23&id2=1474&l=rus>.

<sup>25</sup> See *supra* note 430.

meeting the basic day-to-day needs of Russia's indigent population. The function of NGOs in Russia, however, is not nearly as robust as it is in the United States or in other developed European countries. This is due, in part, to the fact that the Russian federal government has not taken a proactive interest in and has done little to stimulate or encourage the growth of NGOs.<sup>26</sup> Moreover, Russian NGO legislation is complicated and is often applied by the government unevenly, making it difficult for NGOs to navigate the legal landscape.<sup>27</sup> As a result, most of these organizations look to foreign and private sources, such as the New Eurasia Foundation,<sup>28</sup> for financial and other support. While such organizations are growing in Russia, their resources nevertheless remain limited.

Accordingly, NGOs in Russia have a substantial need for *pro bono* assistance. In recent times, international law firms located principally in Moscow and Saint Petersburg have provided legal aid to NGOs and other public or charitable institutions on a variety of different matters. Among the dozens of organizations that have requested and received *pro bono* assistance in recent times are the Hermitage Museum,<sup>29</sup> the AIDS Foundation East-West,<sup>30</sup> Doctors Without Borders,<sup>31</sup> the Danish Refugee Council,<sup>32</sup> Integra,<sup>33</sup> the Humanitarian Programs Support

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<sup>26</sup> See, e.g., Jeffrey Thomas, *U.S. Says Russian NGO Law Does Not Meet Human Rights Commitments*, [http://florence.usconsulate.gov/viewer/article.asp?article=/File2006\\_01/alia/a6012711.htm](http://florence.usconsulate.gov/viewer/article.asp?article=/File2006_01/alia/a6012711.htm) (criticizing Russian NGO legislation which gives the executive wide latitude to determine the fate of NGOs); see also L.U. Grudtsina, *History of Russian Bar*, *The Advocate* (2006).

<sup>27</sup> See Alison Kamhi, *The Russian NGO Law: Potential Conflicts with International, National, and Foreign Legislation*, 9 *Int'l J. of Not-for-Profit Law* 1, 34 (Dec. 2006); see also *Moscow Branch of the Salvation Army v. Russia*, No. 72881/01, *Eur. Ct. H.R.* (2006), <http://www.echr.coe.int/echr>.

<sup>28</sup> The New Eurasia Foundation is a nongovernmental, noncommercial organization working to improve the lives of Russian citizens by consolidating the efforts and resources of the public, private, and nongovernmental sectors and implementing social and economic development programs at the regional and local levels. See generally, New Eurasia Foundation homepage, <http://www.neweurasia.ru>.

<sup>29</sup> See Baker & McKenzie, *Pro Bono and Community Service: The Rewards of Giving* (2007), [http://www.bakerinfo.com/NR/rdonlyres/BC9D3EF2-9CA4-44B2-B108-5309A2F683E5/0/probono\\_brochure07.pdf](http://www.bakerinfo.com/NR/rdonlyres/BC9D3EF2-9CA4-44B2-B108-5309A2F683E5/0/probono_brochure07.pdf).

<sup>30</sup> AIDS Foundation East-West ("AFEW") is an international, humanitarian, public health, non-governmental organization whose mission is to contribute to the reduction of the impact of HIV/AIDS in the Newly Independent States (NIS) of the former Soviet Union. See generally, AIDS Foundation East-West Homepage, <http://www.afew.org>.

<sup>31</sup> See *Medecins Sans Frontieres* homepage, <http://www.doctorswithoutborders.org>.

<sup>32</sup> See Chadbourne & Parke LLP, *Pro-Bono Year in Review 2005*, <http://www.chadbourne.com/files/upload/Pro%20Bono%20Year%20in%20Review%202005.pdf>

<sup>33</sup> Integra is non-profit partnership whose mission is to alleviate poverty, reduce unemployment and help transform communities by supporting the development of small businesses. See generally, Integra homepage, <http://www.integrarussia.ru>.

Charitable Foundation,<sup>34</sup> the International Center for Not-for-Profit Law<sup>35</sup> and United Way Moscow.<sup>36</sup>

In December 2007, the Public Interest Law Institute (“PILI”) launched a *pro bono* clearinghouse in Moscow.<sup>37</sup> The clearinghouse attempts to bridge the gap between NGOs, which know the legal needs of the community but lack the ability to provide legal representation, and law firms, which possess the legal resources but lack a direct connection to local NGOs and individuals in need. PILI identifies and screens potential *pro bono* clients and circulates a bi-monthly newsletter to participating firms that provides a description of clients in need of legal aid and a summary of the respective legal issues with which they need assistance.<sup>38</sup> The clearinghouse also provides Russian NGOs with training and know-how on a variety of issues related to the daily operation of non-profit organizations.<sup>39</sup> A firm having expertise or an interest in a particular area can notify PILI’s Moscow office and PILI will then put the firm into direct contact with the relevant client. PILI also holds quarterly meetings with participating law firms and NGOs in Moscow to discuss the clearing house and various topical themes and issues in the sphere of Russian *pro bono* services. PILI is currently exploring ways to replicate its Moscow-based clearinghouse in other Russian regions. Dmitry Shabelnikov is the country director for Russia at PILI.

In addition to work for locally established NGOs, there are also opportunities for Russia-based lawyers to take on broader *pro bono* work in the European community. For example, PILI operates a global clearinghouse out of their headquarters in Budapest, Hungary. The international clearinghouse is open to firms from all countries and generates work relating to Europe, predominately representing *amicus curiae* in European courts. Additionally, through organizations such as the European Human Rights Advocacy Center (“EHRAC”), there are litigation opportunities to work on cases that have been appealed to the European Court of Human Rights.<sup>40</sup>

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<sup>34</sup> Humanitarian Programs Support Charitable Foundation (“HPSCF”) is a non-profit organization aimed at implementing programs that contribute to the improved quality of life of children with disabilities and their families. *See generally*, HPSCF homepage, <http://www.fpgp.ru>.

<sup>35</sup> The International Center for Not-For-Profit Law (ICNL) is an international not-for-profit organization that seeks to promote an enabling legal environment for civil society, freedom of association, and public participation around the world. *See generally*, ICNL homepage, <http://www.icnl.org>.

<sup>36</sup> United Way Moscow is a community based non-profit organization dedicated to improving the lives of people in Moscow and fostering the concepts of modern philanthropic giving in Russia generally. *See* United Way Moscow homepage, <http://www.unitedway.ru>.

<sup>37</sup> *See generally*, Public Interest Law Institute homepage, <http://www.pili.org>. The clearinghouse was opened with the assistance of the American Bar Association Rule of Law Initiative and several private law firms. Since 2007, PILI’s Russian clearinghouse has grown from partnering with four international law firms to more than 20 local and international firms and 2 corporations, and has taken on over 85 matters for more than 40 NGOs.

<sup>38</sup> *See* Alexander Lapidus, *PILI’s Russian Clearinghouse Making Great Strides*, [http://pili.org/index.php?option=com\\_content&view=article&id=899&Itemid=95](http://pili.org/index.php?option=com_content&view=article&id=899&Itemid=95). PILI connects with civil society networks, working through umbrella organizations such as the International Center for Not-for-Profit Law, Charities Aid Foundation, Lawyers for Civil Society, United Way Russia and UNHCR.

<sup>39</sup> *See* United States Agency for Internal Development, *Alliances in action: Pro bono clearinghouse in Moscow*, [http://www.usaid.gov/our\\_work/global\\_partnerships/gda/resources/Pro\\_Bono\\_Clearinghouse.pdf](http://www.usaid.gov/our_work/global_partnerships/gda/resources/Pro_Bono_Clearinghouse.pdf).

<sup>40</sup> *See generally*, EHRAC homepage, <http://www.londonmet.ac.uk/ehrac>. Established in January 2003, EHRAC (based at London Metropolitan University) works in Russia in partnership with the Memorial Human Rights

Finally, the American Bar Association, through its Rule of Law Initiative program, has made significant inroads in advancing *pro bono* and developing legal infrastructure in Russia.<sup>41</sup> Among other things, the ABA facilitates a series of public events aimed at publicizing and fostering a commitment to *pro bono* service within the Russian legal community. The ABA seeks to engage lawyers, judges and academics to publish works on *pro bono* as well as to attend, speak or otherwise participate at ABA conferences in Russia.

### III. Conclusion

While Russia does not have a legacy of *pro bono* culture, a professional environment that accepts *pro bono* as part of a lawyer's role in the community is slowly developing. The government is also taking new steps to expand its role in the provision of free legal aid, evidenced by the April 2010 draft law on legal aid. There is still much work to be accomplished in terms of developing the legal infrastructure in Russia and transforming how the local legal community thinks about *pro bono*. Nonetheless, there are a growing number of *pro bono* opportunities, both for litigators and transactional attorneys, available in Russia. Thanks to PILI, the Moscow-based *pro bono* clearinghouse now provides a steady stream of *pro bono* work for both Russian and foreign qualified lawyers to draw upon. While it is a first step in many respects, creating such opportunities is a critical component in developing a robust professional culture that embraces *pro bono* service.

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Center through a dedicated project office in Moscow. EHRAC's primary objective is to assist individuals, lawyers and NGOs within the Russian Federation in taking cases to the European Court of Human Rights.

<sup>41</sup> Significant projects have included: assisting in the reintroduction of jury trials in Russia; assisting in drafting a new criminal procedure code based on select adversarial principles; founding clinical legal education programs throughout Russia and publishing Russia's first clinical legal education textbooks; providing training to social advocates to assist victims of domestic violence; and assisting in adoption of judicial and legal profession codes of ethics. Telephone interview with Anton Alferov, Deputy Country Director, ABA/ROLI in the Russian Federation (Feb. 6, 2008); *see also* American Bar Association homepage, <http://www.abanet.org>.