

# ***Pro Bono Practices and Opportunities in Spain***

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

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In Spain, legal aid to indigent clients is a long-standing tradition. Traditionally, the system presumed that those less fortunate had a right to bring a claim in front of the court, and it was therefore the lawyer's right and duty to represent them without a fee. The Spanish Constitution of 1978, following this tradition, introduced a system to grant legal aid to indigent clients.

The American terminology of *pro bono* does not exist in the Spanish jurisprudential lexicon as currently defined by the Spanish Constitution of 1978. Instead, following the tradition of other European jurisdictions, the Spanish legal system refers to *asistencia jurídica gratuita* (free legal assistance). This legal term is not exactly equivalent to the American *pro bono* although it fulfills a similar social function. Whereas *pro bono* in the American sense implies free services provided by lawyers, the *asistencia jurídica gratuita* in Spain is a citizen's right set out in the Spanish Constitution and an obligation of the State. It is conceived as a public service and the State pays the legal fees, although these fees are significantly lower than typical legal fees.

Further, the Spanish system of *asistencia jurídica gratuita* is determined by law and organized and managed by the General Council of Spanish Advocacy ("*Consejo General de la Abogacía Española*," hereinafter, the "CGAE") and the Spanish Bar. In particular, the CGAE organizes legal aid through its general rules and regulations pertaining to the practice of law, while *pro bono* practice in the United States generally consists of partnerships among legal referral services, various bar associations, and law firms, which bring together indigent clients and lawyers seeking to fulfill their professional ethical aspirations.

## **I. *Legal Services and the Legal Profession in Spain***

The Spanish system of *asistencia jurídica gratuita* consists of a right to free legal assistance established by law and financed by the State, characterized as a public service. In addition, the CGAE and the bar of each territory have gradually developed additional services that are financed by the bars themselves, in conjunction with specific aid from regional or local administrations. These additional services are known as "*servicios especiales*" (special services).

### **A. Right to Asistencia Jurídical Gratuita**

The right to *asistencia jurídica gratuita* is set out in Article 119 of the Spanish Constitution and is developed by Law 1/1996, of 10 January, of *asistencia jurídica gratuita*.<sup>1</sup> The right to *asistencia jurídica gratuita* consists of:

- Legal assessment in advance of proceedings with the aim of avoiding legal proceedings or assessing the viability of the claim;
- Assistance to the detained person or prisoner;
- Free legal assistance to plaintiffs and defendants by lawyers during proceedings (the so-called *turno de oficio*);
- Other free services such as access to public registries and documents.<sup>2</sup>

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<sup>1</sup> Law 1/1996 of 10 January, of free legal assistance, implements Article 119 of the Spanish Constitution and develops further the system as initially set out in Articles 20(2) and 440(2) Law 6/1985. Law 1/1996 is developed by Royal Decree 2103/1996, of 20 September, as modified by Royal Decree 1455/2005, of 2 December.



*Asistencia jurídica gratuita* is generally available to several groups: Spanish or European Union citizens, and foreign citizens residing in Spain.<sup>3</sup> The aid can be afforded to the plaintiff or the defendant in a proceeding in any of the four jurisdictions in Spain: civil, criminal, administrative or labor.

The essential criterion for receiving *asistencia jurídica gratuita* is financial need.<sup>4</sup> Any individual has the right to *asistencia jurídica gratuita* when he or she meets the threshold set out by law. *Asistencia jurídica gratuita* will be granted when the individual can show that the income of the family unit does not exceed double the statutory minimum wage annually established by the State. In 2010, the threshold was set at €633 per month. Exceptionally, the law also allows for *asistencia jurídica gratuita* to be granted to individuals who may not meet the financial threshold, but still may qualify given their low income and economic circumstances.

The system of *asistencia jurídica gratuita* is organized and monitored by the Bar of each province. Each Bar has a Committee specifically created following Law 1/1996 to be in charge of managing the system of *asistencia jurídica gratuita* within its territory (*Comisiones de Asistencia Jurídica Gratuita*). In order to receive the aid, each petitioner must complete a request for free legal assistance before the Bar of the province of their residence or where the legal proceedings are due to take place, along with proof of income. The *Comisiones de Asistencia Jurídica Gratuita* will assess whether the criteria are met and will assign a lawyer. Applicants for *asistencia jurídica gratuita* may waive their right to a lawyer during the proceedings and appoint a lawyer of their choice without losing the other benefits of *asistencia jurídica gratuita*. However, this will only be permitted if the lawyer chosen by the applicant does not request payment for legal services offered.<sup>5</sup>

Under the system of *asistencia jurídica gratuita*, lawyers who donate their time receive payment from the State according to a fee structure set by the State. This payment, however, is lower than those typically received by Spanish lawyers, in particular the fees of large firms.

In 2008, there were 1,400,000 cases of free legal assistance in Spain. Approximately 35,000 lawyers provided free legal assistance. The costs of the services in 2008 totalled €219.7 million, an 11.2% increase from 2007.

On average, the annual fees paid to the lawyers under the *turno de oficio* in 2008, were €4,260. 60% of the cases under the *turno de oficio* concerned criminal proceedings, 25% were civil proceedings, 9% were administrative proceedings, and 3% were labor proceedings.<sup>6</sup>

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<sup>2</sup> See Article 6 of Law 1/1996.

<sup>3</sup> In criminal and administrative proceedings, foreign citizens not residing in Spain will also have the right to free legal assistance if they fulfill the applicable financial criteria.

<sup>4</sup> See Article 3 of Law 1/1996.

<sup>5</sup> See Articles 27 and 28 of Law 1/1996. However, the recently created *Observatorio de la Justicia Gratuita*, a monitoring center of free legal assistance, proposed in June 2007 to allow free legal assistance by the lawyer of the applicant's choice. This proposal has not yet implemented; however, in 2008 a pilot project was conducted in order to test the proposal.

<sup>6</sup> III Informe del Observatorio de la Justicia Gratuita, p 22.



## B. Servicios Especiales

In addition to the right to *asistencia jurídica gratuita* developed by Law 1/1996, the CGAE, the different Bars, as well as regional and local administrations have created several services that complement *asistencia jurídica gratuita*. These services benefit from mixed financing from the Bars and regional and local administrations.

Services that have been created include the *Servicio de Asistencia a las Víctimas del Delito* (assistance to the victims of crime); *Servicio de Asistencia a las Mujeres Maltratadas* (assistance to victims of gender-based violence); *Servicio de Extranjería* (assistance to immigration), *Servicios de Asistencia Jurídica a los mayores* (assistance to the elderly); and *Servicio de Orientación y Asistencia Jurídica Penitenciaria* (assistance in prison).<sup>7</sup>

The creation of these services and their gradual evolution and implementation has led several courts to consider them covered by the *turno de oficio* (free legal assistance to plaintiffs and defendants by lawyers during proceedings), which is part of the *asistencia jurídica gratuita*.

In addition, some of these services have been developed by law in the recent years. In this regard, the new Regulation on Alien Persons of 2004<sup>8</sup> has developed the services for assistance to immigration; and the Law for the Protection of Gender-Based Violence of 2004 has developed services for the assistance to victims of gender-based violence.<sup>9</sup>

## II. *Pro Bono Opportunities in Spain*

There are some opportunities for new forms of *pro bono* work in the Spanish environment otherwise run by centralized institutions. First, a firm could establish strong relationships with and provide representation to public interest organizations. Large law firms in Madrid and Barcelona may also consider working on projects with international human rights groups to expand their *pro bono* projects in Spain. Firms may also get more involved in *pro bono* projects in their local communities.

In fact, many law firms, including the largest Spanish law firms as well as international law firms with a presence in Spain, have ongoing *pro bono* projects. Some large law firms have created community service committees to offer legal know-how and resources to the community, as well as being actively involved in *pro bono* projects. Through these committees, law firms promote the development of humanitarian projects and participate in charitable and cultural activities.

Also, many opportunities exist in initiatives led and monitored by institutions such as the CGAE and the regional bars. In this respect, the CGAE recently created the *Observatorio de la Justicia Gratuita*, a monitoring center for free legal assistance. Other initiatives in this field include the creation of an internet portal managed by the CGAE to facilitate access to *asistencia jurídica gratuita*: [www.justiciagratis.es](http://www.justiciagratis.es). This portal allows requests for *asistencia jurídica gratuita* online, and contains information on the applicable law in each Autonomous Region in Spain, a service for legal guidance and other legal information.

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<sup>7</sup> *Observatorio de la Justicia Gratuita, Informe: Antecedentes y Estado de la Cuestión*, p. 13.

<sup>8</sup> *Reglamento de Extranjería*, RD 2393/2004, of 30 December.

<sup>9</sup> *Ley Orgánica 1/2004, of 28 December, de Medidas de Protección Integral contra la Violencia de Género*.



In addition, many of the regional Bars have created working groups in support of human rights, as well as a working group for social action and cooperation.

### **III. Conclusion**

The Spanish legal aid system attempts to create an exhaustive system run by the CGAE and the regional Bars to assist the indigent community. The *asistencia jurídica gratuita* system gives all clients in need an attorney paid for by the State to represent their interests in a courtroom, as well as other complementary services, such as legal advice prior to any legal proceedings and free or reduced fee access to public registries and documents. The system seeks to ensure that the indigent community is sufficiently well-informed to make proper legal decisions and receives free legal assistance to represent their interests in a courtroom. In addition, the CGAE and the regional Bars, in conjunction with regional and local administrations, have developed additional services which benefit from mixed financing from the Bars and regional and local administrations.

Currently, lawyers who wish to represent indigent clients must offer their services as part of the social legal aid system in order to do meaningful *pro bono* work, but numerous opportunities for expanding the scope of the *pro bono* practice in Spain do exist and some law firms already have *pro bono* practices that go beyond the institutionalized system of *asistencia jurídica gratuita*.