



Pro Bono Practices and Opportunities in the Republic of Armenia¹

INTRODUCTION

Although, as a relatively young republic, the Republic of Armenia (“**Armenia**”) does not have a historic pro bono culture, the availability of pro bono legal services is now increasing and there is a growing tendency in the professional community to consider the provision of pro bono legal services as an integral part of a lawyer’s role. In contrast, the provision of state-funded free legal aid is well established and precisely regulated and systemized and has been expanded by the government in recent years. Significant work is still required to develop the legal infrastructure of Armenia.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The legal system of Armenia is considered part of the Romano-Germanic legal family, meaning that its core principles are codified into a referable system which serves as the primary source of law. A precise hierarchy of legal acts (laws, regulations, decisions, etc.) is established in which the Armenian Constitution (the “Constitution”) has supreme legal force. International treaties signed and ratified by the state prevail over other legal acts (including national legal acts) except for the Constitution. Accordingly, international treaties can only be signed and ratified by Armenia to the extent they do not conflict with the Constitution.

The Constitution was adopted by a nationwide referendum on July 5, 1995. On November 27, 2005, a nationwide constitutional referendum was held which resulted in the adoption of amendments to the Constitution.

The basis for the provision of legal aid and pro bono services is established in Article 40 of the Constitution, which provides that: “Each person has the right to obtain legal aid. In cases provided by law the legal aid is provided at a free basis”. The detailed legal framework within which legal aid is provided is then created and regulated by a variety of both national and international legal acts, including international treaties, national codes, particular laws, governmental decisions and rules of ethics. Of particular importance in this regard is the national law «On Advocacy» which establishes the concept of “free legal aid” and sets out and regulates the delivery of such free legal aid by Armenian Public Defenders (see below).

The Courts

Article 5 of the Constitution declares that the powers of the Armenian legislature, executive and judiciary shall be separated and balanced. The powers of the judiciary are set out in Chapter six of the Constitution and, in particular, Article 92 provides for the establishment and existence of a three-tier judicial system consisting of:

- “First Instance Courts of General Jurisdiction”, which consist of the Courts of Common Jurisdiction and the Administrative Court;
- “Courts of Appeal”, which consist of the Penal, Civil and Administrative Courts of Appeal; and
- the “Court of Cassation”, which acts as the Court of Supreme Judicial Instance, in which capacity it provides rulings as to the universal interpretation and application of Armenian law (except for issues related to constitutional law falling within the jurisdiction of the Constitutional Court).

¹ This chapter was drafted with the support of Dialog Law Firm.



The Administrative Court and the Administrative Court of Appeal are both specialized courts and, accordingly, will only hear litigation of certain types and under special jurisdiction.

The Constitutional Court is responsible for supervising the constitutionality of laws and other legislative instruments. It is the highest legal body for constitutional review in the country and is separate and independent not only from the legislature and the executive, but also from the judiciary and, as such, falls outside the three-tiered judicial system described above. The Constitutional Court delivers official interpretations of the provisions of the Constitution in the framework of the concrete cases.

The Constitution also contains a number of provisions safeguarding the independence of the judiciary including provisions guaranteeing the independence of the Armenian courts, provisions creating and guaranteeing the functioning of the Council of Justice and provisions confirming the process of judicial appointments (ensuring that it remains free from the risk of political influence). The Council of Justice is an independent body established under the Constitution consisting of nine elected judges and two legal scholars appointed by the President of Armenia. Its responsibilities include proposing lists of candidates for judicial appointments for Presidential approval and initiating disciplinary measures against judges.

A judge is a person who is appointed to hold the position of the president of the Court of Cassation, of the president of the Chambers or judges, as well as of the judge of the Court of first instance and of the Court of appeal or of the president of the court, according to conditions provided by Armenian law.

The Practice of Law

Education

The legal profession in Armenia is comprised of state-licensed attorneys (called “**advocates**”) and unlicensed lawyers (called “**jurists**” or “**lawyers**”). Only advocates are allowed to represent clients in courts (judicial representation) including defending them in criminal matters. Advocates also have certain special privileges and rights, especially in respect of confidential information and concerning civil, administrative and penal proceedings (as to which see further below). Jurists/lawyers provide a broad range of legal services to the public.

Note, there are no specific rules or requirements relating to the provision of pro bono services.

Licensure

Advocates are subject to stricter regulation than jurists/lawyers. In addition to the requirements for a jurist/lawyer set out below, they must successfully complete the Armenian School of Advocates (the “**School of Advocates**”) and obtain a practice license from the School of Advocates. To obtain such a license, the advocate must study at the School of Advocates and pass qualification exams organized by the qualification commission of the Armenian Chamber of Advocates (the “**Chamber**”).

Information in respect of all advocates must be recorded in the register of advocates maintained by the Chamber and advocates must pay membership fees to the Chamber.

The Role of Foreign Lawyers (as applicable)

Foreign advocates (lawyers) may act as advocates in Armenia in accordance with (i) the law “On Advocacy”, (ii) the Charter of the Chamber and (iii) the “Rules of conduct of advocates” promulgated by the Chamber, except for the cases provided by specific international agreements. A foreign advocate acts in Armenia on the basis of the license delivered by the appropriate advocacy body of the foreign country and on condition of receiving a certification of the Chamber according to the procedure provided by its Charter. The procedure of obtaining the certificate as well as the suspension of such certificate (particularly in case of violation of the provisions of the mentioned acts and rules) are established by the Board of the Chamber.

The Role of In-House Counsel

Advocates and lawyers may be employed as, and may provide legal assistance in their capacity as, in-house counsel in any Armenian company, bank or other legal entity and will continue to be subject to the requirements and oversight described in parts (a) and (b) above.



Demographics: Number of Lawyers per Capita; Number of Legal Aid Lawyers per Capita.

Armenia has a very centralized population and governing system. The large majority of both lawyers and advocates act in the capital, Yerevan. According to Chamber's data, there were 1,580 advocates in Armenia as of 20 July, 2015, of which 41.1% were female. As lawyers/jurists are not licenced or registered by anybody, there are no official statistics for lawyers/jurists in the country.

Legal Regulation of Lawyers

There are several legal acts concerning and regulating advocates and their activities, the most important of which are the laws "On Advocacy" and the appropriate decisions of the Board of Chairman of Courts and decisions of the Constitutional Court. A number of international laws are also applicable, including certain regulations and decisions of the European Court of Human Rights. Armenian judicial decisions and precedent also have an important impact on the legal profession and regulates a large variety of legal relationships. Finally, the Chamber, having the role of a regulatory body, has provided a number of relevant internal, local rules and regulations regulating advocates.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

The right to legal assistance is guaranteed under Article 20 of the Constitution as a basic right. Accordingly, all citizens have the right to legal assistance and, in certain cases provided by law, citizens may be eligible for state-financed legal assistance. Armenia is also party to the Council of Europe and party to the European Convention on Human Rights; therefore the guarantees of legal aid implied in Article 6 thereof (regarding the right to a fair trial) are also applicable.

Under Article 10 of the Armenian Code of Criminal Procedure all citizens have the right to receive legal aid in accordance with the procedures set forth therein. If requested by a suspect or defendant, or if required in the interests of justice and/or under Armenian law or applicable international agreements, the court hearing the relevant criminal case must ensure that such individual has due access to legal aid. Further, the relevant court/body can decide to provide free legal aid to a suspect or defendant based on their financial situation. Advocates and legal specialists may provide free legal aid on a voluntary basis. Such assistance is considered a charitable activity and is regulated by the law "On charity".

A party to civil proceedings has the right to engage any representative not prohibited by law and the court/body hearing the relevant civil case cannot forbid the participation of such representative.

State-Subsidized Legal Aid

Eligibility Criteria

An individual is entitled to the services of a legal-aid funded advocate (a Public Defender) (i) in criminal cases where the person does not have sufficient means to engage an advocate himself, and (ii) in civil matters if he falls within certain categories (see below). The Office of the Public Defender is founded to provide socially vulnerable citizens with free legal aid in cases provided for by law. A Public Defender is an advocate employed in the Office of the Public Defender employed by the Chairman of the Chamber upon submission by the Head of the Office of the Public Defender. Public Defenders are remunerated for their work from the State Budget as prescribed by law.

Subject to the satisfaction of the criteria set forth above, legal aid in criminal cases is provided by a Public Defender appointed by the Head of the Office of the Public Defender. Legal aid in civil, administrative and constitutional cases is provided on the basis of the applications of citizens and is available to the following:

- members of families of military servicemen who died defending the national borders;
- disabled people of 1st and 2nd category;
- indigent people with poverty graduation rank higher than 0;



- participants in the Great Patriotic war and the participants in military actions in defense of the national border;
- pensioners living alone;
- children left without parental care and similar persons;
- refugees; and
- people temporarily sheltered in Armenia.

State provided legal aid will cover the following activities and services:

- consultation, preparation of applications, lawsuits, appeals and other documents and provision of information;
- representation and defense in criminal, civil, administrative and constitutional cases; and
- representation in all stages of criminal procedure. State legal aid by a Public Defender is forbidden in matters related to business related cases (including corporate litigation) and cases exceeding AMD one million, except if the person receiving the legal aid is a defendant or third party appearing on the side of the defendant, as well as if there are reliable factual circumstances excluding the insolvency of the applicant.

Legal aid is not connected with citizenship, the merits of the case (though the client is normally consulted about the chances of its case) or legal issues (other than the exceptions referred to above). No companies (including NGOs) are eligible for legal aid.

In addition, the Office of the Public Defender organizes free legal aid days for all citizens every Thursday. The Chamber also organizes similar events on a regular basis.

Mandatory Assignments to Legal Aid Matters

Private attorneys are not required to accept matters assigned by the legal aid scheme. Private attorneys may voluntarily accept a legal aid assignment and, once accepted, they are obliged to act in good faith and in the best interest of the client and may not subsequently terminate their engagement if it would adversely affect the interests of the client. Attorneys employed (and paid) by the Office of the Public Defender are required to accept the matters assigned by the legal aid scheme. The Office of the Public Defender is publicly funded.

Unmet Needs and Access Analysis

Although the scope of legal activities covered by state-funded legal aid is relatively large, allowing for the appropriate defense and representation of a wide range of rights and interests, a large number of indigent persons do not satisfy the relevant eligibility criteria for state-funded legal aid (see Part B(1) above) and, thus, are currently excluded from making use of it. Consequently, there is significant scope for pro bono legal services to play an important role in supporting such persons who cannot afford to pay for legal assistance but who fail to satisfy the eligibility criteria for state-funded legal aid.

Alternative Dispute Resolution

Mediation, Arbitration, Etc.

The law "On Commercial Arbitration" was adopted in 2006 and the Arbitration Court was established in 2007. The stated purpose of the Arbitration Court is to facilitate the fair settlement of commercial disputes through the operation of an impartial arbitration tribunal in a timely and cost effective manner. In this manner, the Arbitration Court provides parties with a useful alternative to the courts.

Parties may agree to submit a commercial dispute to the Arbitration Court in a written application. Once jurisdiction in respect of an application is accepted by the Arbitration Court, the relevant commercial dispute will become subject to the examination and decision of the arbitration tribunal. The procedure for the operation of the Arbitration Court and the binding nature of decisions adopted thereby are set out in the law "On Commercial Arbitration". Arbitrators are selected on the basis of their experience and availability from a list of arbitrators approved from time to time by the Chamber of Commerce.



In accordance with the law “On Advocacy”, advocates appear on behalf of their clients in the Arbitration Courts. It is possible to obtain state-funded legal aid in respect of a dispute heard by the Arbitration Court.

Ombudsman

The Legal Ombudsman receives complaints, investigates them, reports them, or consults the applicants, however it does not mediate, and/or adjudicate matters.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Pro bono assistance in Armenia may be provided by:

- private attorneys/advocates;
- law firms;
- consulting firms (principally concerning financial law); and
- legal counsels.

Pro bono legal services are provided solely on a voluntary, ad hoc basis and are not regulated. Consequently, very little is known about the scope and extent of pro bono legal services provided. According to Chambers’ estimates, currently pro bono legal services in Armenia predominantly consist of legal consultations, with legal drafting, legal research and legal representation and advocacy in courts, arbitral tribunal and administrative bodies comprising the remainder of pro bono services provided.

There is no legal obligation on attorneys to undertake pro bono work or to report on pro bono work undertaken by them.

A very limited number of NGOs operate and/or finance independent pro bono legal clinics from time to time and may provide pro bono legal assistance on an ad hoc basis.

One of the Chamber’s objectives is to encourage and implement alternative systems of free legal aid delivery. The Chamber has contributed to the strengthening of a pro bono culture in Armenia primarily by:

- arranging weekly free legal consultations (including written consultations) provided by advocates and certain students at the School of Advocates; and
- granting certificates and acknowledgements to advocates that deliver free legal assistance.

Certain Higher Education Institutes run legal clinics staffed by law students, lecturers and/or professors which provide pro bono legal assistance upon request and in accordance with and subject to the internal regulations of the relevant institution(s). Such clinics are financed by the institutions themselves, universities and/or corporate grants and/or donations.

The Armenian Financial System Mediator (the “**Mediator**”) is a structure with an independent governing system, founded by the Central Bank of Armenia. The objective of the Mediator is to resolve the conflicts between natural person consumers and financial organizations concerning goods and stocks. The services provided by the Mediator are free, and the procedure of the examination of the appeal is simple, fast and transparent. The principles are stipulated in law “On the Financial System Mediator”, according to which its objective is to protect the rights and interests of consumers in the financial sphere as well as to assure the fast, effective and free examination of their appeals. The free services include all the phases of the procedure, that is, the proceedings of the reception and examination of the claim, and the phase of rendering a decision. The Mediator is funded by the Armenian state.

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

The development of pro bono in Armenia has been, and still is, hindered by the absence of a historic pro bono culture. However, the professional community, including the Chamber, is now more aware of the



advantages offered by encouraging and supporting pro bono as an integral part of a lawyer's role, and consequently, the availability of pro bono legal services is now increasing.

Current State of Pro Bono including Barriers and Other Considerations

Laws and Regulations Impacting Pro Bono

There is currently no specific law acknowledging or regulating the provision of pro bono legal services. Most notably there is no statutorily mandated minimum legal fee schedule in effect in Armenia. In contrast, the notion of (state funded) legal aid, as well as the terms and conditions of its provision, are clearly stipulated by laws, governing acts and internal regulations.

"Loser Pays" Statute

As a rule, this statute will apply, particularly in the framework of judicial cases. Generally, all of the reasonably incurred fees and expenses of the successful applicant/defendant will be covered by the other party to the dispute.

Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

The provision of legal aid is considered to be a commercial activity and only a limited number of lawyers and advocates are prepared to provide legal services without remuneration. The absence of a pro bono culture, where lawyers understand and acknowledge the importance and equity of the provision of free legal assistance, is an important socio-cultural barrier to the expansion of pro bono in Armenia.

Another barrier is public concern about the formal Armenian legal system, corruption, judicial efficiency, lack of public trust in the judiciary which leads to informal dispute resolution, efficacy of elected versus appointed judges, and the professionalism of judges. A wide variety of judicial and anti-corruption reform measures have been implemented recently (or are still in process) in an effort to enhance judicial efficiency and minimise corruption. It is hoped that such measures will improve public trust in the formal legal system and judiciary.

The Chamber is also actively seeking to promote and support the provision of pro bono legal services.

CONCLUSION

Key members of the legal profession and civil society in Armenia now understand the benefits of establishing a strong pro bono culture in order to complement the availability of state-funded legal aid. Although the scale of pro bono activities is increasing, there is significant space for development. This development would be assisted by the implementation of specific laws and regulations establishing a framework for pro bono and its provision (as in the same way as it exists for state funded free legal aid).

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