



## Pro Bono Practices and Opportunities in Azerbaijan<sup>1</sup>

### INTRODUCTION

Despite the fact that the Republic of Azerbaijan has no cultural heritage of legal aid and pro bono services, a professional environment that provides legal assistance on a voluntary basis as part of the role of the lawyer is gradually developing. We note that there is still a lack of both legal aid and pro bono services in Azerbaijan. Moreover, not all individuals in Azerbaijan can afford to hire a lawyer and pay for his or her legal services, so the Government of Azerbaijan is taking active steps to expand its role in providing legal aid, while some individual lawyers are also trying to be engaged in pro bono services for the same reasons.

In addition, the Academy of Justice of Azerbaijan, the Bar Association of Azerbaijan (the “**Bar**”), the Confederation of Lawyers of Azerbaijan and a number of law firms, including the Baku Law Centre together with foreign partners have commented on a draft law on legal aid which is currently being considered in Azerbaijan.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Constitution of the Republic of Azerbaijan (the “**Consitution**”) is the basic law of the Republic of Azerbaijan adopted on November 12, 1995. It has supreme legal force and direct legal effect on the whole territory of Azerbaijan. According to the Constitution, a person has the right to receive qualified legal advice. In cases stipulated by law, legal assistance is provided by way of legal aid funded by the government.

##### The Courts

Currently, Azerbaijan has a three-tier court system - the court of first instance, the court of appeal and the supreme court of cassation courts. The courts of first instance are district (city) courts, military, local administrative and economic courts and courts of serious crimes.

Under the new judicial system there are six regional Courts of Appeal in Azerbaijan. The Courts of Appeal consist of four chambers: (1) civil, (2) criminal, (3) military and (4) administrative and economic.

As part of the court system, the Supreme Court is a court of cassation instance. The Supreme Court consists of four judicial chambers: (1) civil, (2) criminal, (3) military and (4) administrative and economic.

The Constitutional Court of Azerbaijan is the supreme body of constitutional justice on matters attributed to its jurisdiction by the Constitution to ensure the supremacy of the Constitution and the protection of an individual’s fundamental rights and freedoms. It is an independent body and not dependent upon any legislative, executive or other judicial bodies.

The highest demand for free legal aid and pro bono services are seen in the courts of first instance.

Judges in Azerbaijan are elected. To become a judge, a nominee should pass an election procedure which is based on successful completion of written and oral exams. The judges’ election process is conducted by the Committee for the Selection of Judges. A new judge will typically be appointed to the courts of first instance. A new judge may be appointed to courts of higher instance by the Milli Majlis of Azerbaijan and by the President of Azerbaijan.

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## The Practice of Law

### Education.

Law students receive basic legal education after four years of study at the law faculty of a university. There are only three universities in Azerbaijan that have a law faculty and which teach future lawyers. Only the law faculty of the Baku State University operates legal clinics providing free legal assistance. A graduate of this university is permitted to provide free legal aid and pro bono services to low-income segments of the population: pensioners, the disabled, refugees and displaced persons and students.

Due to the fact that the system of pro bono in Azerbaijan today is not as extensively developed as in other countries, there are no specific rules or requirements for the provision of pro bono services as part of a lawyer's continuing professional development. Pro bono services are performed by lawyers on a voluntary basis and are not mandatory. Accordingly, there is no CLE credit for pro bono, however members of the Bar are required to improve their qualifications and undergo applicable training and educational programs, such as the training program for members of the Bar on "Advocacy skills".

### Licensure

Azerbaijani legislation does not require a license to practice law. If however, legal aid, pro bono or paid legal services relate to the representation of a client in criminal proceedings or in the court of cassation instance (the Supreme Court of Azerbaijan) (in "advocacy"), then a lawyer must pass an exam to become a member of the Bar.

### Demographics

Azerbaijan has a population of approximately 9,573,938 individuals. The specific number of lawyers is unknown. There are only 25 operating legal advice centers in 64 districts of the country, which means that there are approximately nine lawyers for every 100,000 individuals.

### Legal Regulation of Lawyers.

Lawyers that have been appointed by the state to provide state-funded legal aid have an obligation to provide legal advice (without charge to the client) in accordance with the Law "On Lawyers and Advocacy". The lawyers who provide legal aid under this law are appointed by the appropriate governmental authorities. Other than the above law, there is no specific regulation on providing legal services without charge (including pro bono services) in Azerbaijan.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Constitution guarantees citizens the right to receive assistance from qualified legal counsel and, in cases set forth by law, the right to receive legal aid.

#### In Civil Proceedings

A party to a lawsuit in civil proceedings is required to be represented by a lawyer in accordance with Article 67 of the Civil Procedure Code. Persons who are unable, due to their financial position, to hire a lawyer at their own expense, are entitled to legal assistance free of charge or at the expense of the state budget of Azerbaijan. These funds are paid in the amount established by the applicable legislation and they may be withheld from the person against whom a judgment is made.

#### In Criminal Proceedings

In accordance with Article 121 of the Criminal Procedure Code of Azerbaijan, the state body conducting the criminal proceedings is obliged to ensure that a suspect or accused may exercise their rights. Accordingly, if such person does not have adequate means to pay counsel's fees, legal aid will be provided to such person by the state.



## State-Subsidized Legal Aid

### Eligibility Criteria

A person will be eligible to receive legal aid from the state, if the person is a low-income citizen. The applicant's immigration status (i.e. whether they are a citizen, permanent resident, refugee or internally displaced person) and whether the person is a pensioner or disabled will also be taken into consideration in assessing whether legal aid will be provided.

### Mandatory assignments to Legal Aid Matters

Lawyers and members of the Bar who are on the list drawn up by the Presidium of the Bar must provide state-funded legal aid. A lawyer who has been appointed to represent a client by the state cannot refuse to perform such representation. The lawyers' fees for legal aid work are paid by the state and the amount is determined by the relevant executive body of the state.

### Unmet Needs and Access Analysis

Low-income citizens are required to provide a number of documents to the state to confirm their low-income status. Without this confirmation, the state will not provide free legal aid to that person. We understand there are a number of low-income citizens who are unable to provide the relevant documentation and who are therefore not able to access state-funded legal aid. Those citizens nonetheless require legal assistance and pro bono services should help such low-income citizens to receive good quality free legal advice.

### Alternative Dispute Resolution

#### Mediation, Arbitration, Etc.

Alternative dispute resolution in Azerbaijan is only provided by the International Commercial Arbitration Court. In April 2008, the Arbitration and Mediation Center of Azerbaijan was set up. This center consists of three main institutions: the International Commercial Arbitration Court; Arbitration Court; Baku Mediation Center. One of the activities of the Office of the Azerbaijan Arbitration and Mediation Center is a collaboration with government agencies and non-governmental organizations to improve the legislation and joint efforts for the development and promotion of alternative dispute resolution.

#### Ombudsman

The Commissioner for Human Rights investigates complaints from citizens of Azerbaijan, foreigners and other persons and legal entities with respect to the violation of human rights.

Legal aid is not available for mediation/arbitration or ombudsman actions.

## PRO BONO ASSISTANCE

### Pro bono Opportunities

#### Private Attorneys

Private lawyers in Azerbaijan are not obliged to provide, or report on, pro bono services. As of today, no pro bono programs have been set up by Azerbaijani law firms or corporate legal departments.

#### Non-Governmental Organizations (NGOs)

Multiple NGOs operate in Azerbaijan. Some of them focus on human rights' protection and legal services connected therewith. The role of such NGOs is to make proposals to improve the legal framework in Azerbaijan. They do not, however, render qualified legal assistance or pro bono services to the population of Azerbaijan. Examples of such NGOs include the Eurasian Lawyers Association; the Azerbaijan Lawyers Confederation; the Azerbaijani Center for Human Rights; and the Committee for Democracy and Human Rights.



## Bar Association Pro Bono Programs

As mentioned above, members of the Bar are required to participate in specific programs relating to advocacy and client representation in court. These programs may also prove useful for the purposes of pro bono related services rendered by the members of the Bar on a voluntary basis.

## University Legal Clinics and Law Students

Graduates of the faculty of law of the Baku State University may provide, among others, pro bono services to low-income segments of the population: pensioners, the disabled, refugees and displaced persons, students.

## Historic Development and Current State of Pro Bono

### Historic Development of Pro bono

Historically, there has been no culture of pro bono legal assistance in Azerbaijan. Azerbaijan was a part of the USSR for a long time, which has affected the development of pro bono culture. For example, legal aid in the USSR (as most other social services) was exclusively within the remit of the state and most of the cases, such as they were, were free of charge for individuals.

### Current State of Pro bono including Barriers and Other Considerations

Azerbaijan still lacks a professional environment that fully supports pro bono work. Nevertheless, state owned institutes (e.g., the Institute under the Academy of Justice), private companies (including international and local law firms) and non-governmental organizations seek to provide qualified pro bono services and the extent of such services is growing consistently. In addition, a draft law is being discussed in the legal community of Azerbaijan, which should improve the quality of state-funded legal aid as well as making the process of rendering state-funded legal aid more straightforward and reducing the period of time taken by the state to pay lawyers fees. The streamlining of state-funded legal aid will also potentially impact pro bono related services.

### Laws and Regulations Impacting Pro Bono

In accordance with the requirements of Law “On Lawyers and Advocacy”, the provision of legal services by foreign-qualified lawyers in Azerbaijan is limited exclusively to advice and opinions on the application of the laws of the state in which such lawyers are qualified to practice, or rules relating to international law. Foreign-qualified lawyers are allowed to participate in civil cases, criminal cases, administrative and economic disputes and administrative violations where permitted by an international treaty ratified in the Azerbaijan Republic.

There is no professional indemnity legal insurance relevant to the provision of pro bono services. However, Azerbaijan law requires that each lawyer creates a safety bank account and credit two percent of their monthly income into such account. The funds from such account are used to satisfy the claims of clients relating to damages suffered by such client due to the actions or inactions by the lawyer in connection with the legal services rendered by such lawyer.

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

The legal services' environment is underdeveloped in Azerbaijan. Hence, the pro bono services' culture is yet developing and not very popular. Nevertheless, pro bono legal services may be used by low-income citizens who cannot afford to pay for a lawyer. Moreover, some citizens of Azerbaijan may not really trust the providers of pro bono services and may question the quality of pro bono services just because such services are free of charge. Another barrier to the provision of pro bono services is the remoteness of many towns from the capital of Azerbaijan making quality control difficult (without setting up regional or local pro bono centers).



## Pro Bono Resources

In Azerbaijan, one of the key pro bono resources are the NGOs. Registration of NGOs is performed by the Ministry of Justice. Another pro bono resource is the law faculty of the Baku State University. In addition, some private lawyers are also engaged in rendering pro bono services, but this is yet to be widespread in Azerbaijan.

## CONCLUSION

As a matter of practice, pro bono services are not extensively available and there are only a few practicing lawyers who are engaged in pro bono services in Azerbaijan. Nevertheless, the demand for pro bono services is significant due to there still being a great number of citizens and NGOs that are financially unable to access legal aid (as noted above) and that therefore need pro bono advice from lawyers and members of the Bar.

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