



Pro Bono Practices and Opportunities in Belarus¹

INTRODUCTION

Article 62 of the Constitution (the “**Consitution**”) of the Republic of Belarus (“**Belarus**”)states that everyone shall have the right to legal assistance. However, in practice, legal aid is available only in a limited number of situations and its regulation under Belarussian legislation is fragmented. Accordingly, the need for pro bono services to fill the gap is significant. A pro bono culture is only recently emerging in Belarus in response to that need.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

The Constitution was adopted in 1994 and has supreme legal force. Other national and regional laws may not contravene the provisions of the Constitution. Universally-recognized principles of international law and international treaties and agreements of Belarus are also recognized as sources of law in Belarus.² Court decisions are not officially recognized as sources of law; however, decisions of the Constitutional Court of Belarus and decisions of the Plenum of the Supreme Court of Belarus (the “**Supreme Court**”) on the application of legislation have binding legal force.

The Courts

In accordance with Article 5 of the Code of the Republic of Belarus “On Judicial System and Status of Judges” dated June 29, 2006 No. 139-3 (as amended), the state court system consists of (a) the Constitutional Court (which conducts reviews of the conformity of legal acts with the provisions of the Constitution) and (b) the courts of general jurisdiction (which resolve civil, criminal and administrative disputes).

The courts of general jurisdiction are headed by the Supreme Court which acts as the highest supervisory body to the lower courts of general jurisdiction and also resolves significant cases as a court of first instance. Lower courts of general jurisdiction include regional courts, regional economic courts³ and district courts. All judges in the state courts of Belarus are appointed either by the President of Belarus or the Council of the Republic (Parliament).

There is also a system of non-state arbitration courts regulated by the Law “On Arbitration Courts” dated July 18, 2011 No. 301-3. Arbitration courts hear only commercial disputes.

The Practice of Law

The legal profession in Belarus is represented by: (a) advocates (can be only individuals), (b) commercial attorneys (can be commercial organizations or individual entrepreneurs) and (c) in-house lawyers.⁴

The practice of law by advocates and commercial attorneys is subject to licensing requirements in accordance with the Edict of the President of the Republic of Belarus “On Licensing of Certain Activities”

¹ This chapter was drafted with the support of Sbh partners.

² Available at official web-site of Belarussian legal information:
<http://www.pravo.by/main.aspx?guid=12581&p0=02.04> (last visited on September 4, 2015).

³ Minsk city court and Minsk city economic court have the status of regional courts.

⁴ Under Belarussian law, notaries and real estate agents also form part of the legal profession, but are not considered for the purposes of this summary.



dated September 1, 2010 No. 450. Licensing is conducted by the Ministry of Justice of Belarus. However, unlike advocates, commercial attorneys cannot represent their clients in the state courts of Belarus.

The licensing requirements for commercial attorneys are as follows:

- for commercial law firms – all employees (except for technical and support staff) must have a legal education and at least two of them must have lawyers' certificates⁵ issued by the Ministry of Justice;
- for individuals – lawyer's certificate issued by the Ministry of Justice.

The Licensing requirements for advocates are as follows:

- Belarussian citizenship;
- legal education;
- internship at an advocate office or sole-practicing advocate (at least six months for individuals that have three or more years' professional experience, and at least one year for individuals with less than three years' professional experience); and
- the passing of a qualification exam set by the qualification commission of the Ministry of Justice.

Licenses to practice law in Belarus are issued only to Belarussian legal entities or citizens. Therefore, foreign lawyers and foreign law firms are prohibited from the practice of law as advocates or as commercial lawyers. According to information provided by the Ministry of Justice as of June 2015, there were 170 commercial law firms and 579 individuals licensed as commercial attorneys⁶ and 1,888 individuals licensed as advocates in Belarus.⁷

LEGAL RESOURCES FOR INDIGENT PERSONS

Legal aid is provided (a) at the expense of regional bar associations or (b) at the expense of national or regional budgets in situations set out in Article 28 of the "Law on Advocate Services" (*mandatory legal aid*).

Legal aid is provided in the following cases at the expense of the applicable regional bar association:

- for plaintiffs that have labor or alimony claims in district (city) courts or regional courts;
- oral advice for veterans of the Great Patriotic War (Second World War) – in connection with non-business related matters by way of oral advice;
- for citizens of Belarus – in connection with the preparation of pension and allowance applications;
- oral advice for for certain disabled persons that does not require review of documents; and
- for minors or their parents (guardians) – in connection with the protection of the minor's interests;

Legal aid in these matters is provided by advocate offices or individually practicing advocates who are admitted to practice by the applicable regional bar association. The regional bar associations determine the procedure for providing legal aid and they distribute the expenses for conducting the same to the applicable advocate or advocate office.

Legal aid is provided to the victims of human trafficking or terrorism (in connection with their social rehabilitation) from the national budget. Reimbursement of advocates' fees for the provision of such legal aid is made in accordance with the Resolution of the Council of Ministers of the Republic of Belarus "On Procedure of Reimbursement of Advocates' Fees for Provision of Legal Aid to Victims of Human-trafficking and Terrorism" dated February 6, 2012 No. 122, namely:

⁵ Lawyers' certificates are issued by the Ministry of Justice to individuals who have at least three years of professional experience.

⁶ Legal services, available at http://www.minjust.by/ru/site_menu/license/legal_services (last visited on September 4, 2015).

⁷ Advocate service, available at http://www.minjust.by/ru/site_menu/license/lawyer_work (last visited on September 4, 2015).



- 70 per cent. of the first category tariff rate for one working day in the Supreme Court and in regional courts; and
- 50 per cent. of the first category tariff rate for one working day in the district (city) courts, where such work can include participation in preliminary investigation, giving of oral advice and explanations, drafting of statements, complaints and other legal documents.

Legal aid is provided to criminal suspects or defendants from the applicable regional budget by advocates appointed at the request of the court. Reimbursement of advocates' fees for the provision of such legal aid is determined by the Resolution of the Ministry of Justice and the Ministry of Finance of the Republic of Belarus "On Instruction of Reimbursement of Advocates' Fees from Regional Budgets" dated August 30, 2007 No. 57/129 in the following way:

- 70 per cent. of the first category tariff rate for one working day at the appointment in the Supreme Court or regional courts;
- 50 per cent. of the first category tariff rate for one working day at the appointment of district (city) courts; and
- 50 per cent. of one working day salary in connection with conducting of inquiry procedures, preliminary investigation and trial.

Importantly, advocates' fees for the provision of legal aid to criminal suspects and defendants that are reimbursed from regional budgets must be reimbursed by such individuals in the event they are found guilty by the court.

All three forms of mandatory legal aid referred to above will be provided only to individuals of certain social groups. Accordingly, mandatory legal aid is not available to the wider public. According to the last statistics available at the website of the Republican Bar Association, in 2013 advocates provided legal aid to 85,900 individuals which is equal to 26% of total legal assistance (privately paid and legal aided) provided by advocates.⁸ This statistic does not distinguish between legal aid provided at the expense of bar associations and legal aid provided at the expense of national or regional budgets.

Each regional bar association can also determine other categories of individuals to whom its members can provide legal aid services at the expense of such bar association in addition to those categories of individuals who are entitled to receive legal aid services at the expense of regional bar associations in accordance with para. 1 of Art. 28 of the Law on Advocate Service. Regional bar associations usually arrange free legal consultations on Belarussian Advocates Day (June 26) and Lawyer's Day (December 5).

PRO BONO ASSISTANCE

Pro bono culture in Belarus, as in other CIS countries, has started to emerge only in recent years after the dissolution of the USSR. As such, it is still in its early stages and is not widely known to the public as a separate source of legal assistance. There are separate legal acts covering certain aspects of pro bono assistance, but there is no comprehensive regulation on this.

In accordance with the Resolution of the Ministry of Justice of Belarus "On Some Issues of Legal Education of the Population" dated November 19, 2010 No. 98 (the "**Act on Legal Education**") advocates, commercial attorneys, court officials, notaries, real estate agents in-house lawyers, NGOs and university law clinics can provide oral legal advice in certain areas.

Pro bono legal aid may also be provided under the Edict of the President of Belarus "On Provision of Gratuitous (Sponsor) Aid" dated July 1, 2005 No. 300 (the "**Edict on Gratuitous Aid**") for the purposes indicated therein (including the development of art, sport or social protection of citizens). In accordance with the Edict on Gratuitous Aid, persons providing sponsor aid (including in the form of free services) shall enter into an agreement in respect thereof with recipients of such sponsor aid where the parties

⁸ Information was announced at the Board of Republican Bar Association on February 28, 2014, previously available at <http://www.rka.by/news/itogi-raboty-belorusskoy-advokatury-podvedeny> (last visited on September 4, 2015).



shall agree on the aim, amount and procedure for providing sponsor aid. A template sponsor aid agreement has been developed by the Government of Belarus. Recipients of sponsor aid must also provide reports to sponsors on the utilization of such sponsor aid.

Pro Bono Opportunities

Law Firm Pro Bono Programs

Law firms in Belarus that operate as commercial attorneys do not typically establish special pro bono programs. Pro bono work is conducted by them on a case-by-case basis. The development of a pro bono culture among law firms is hindered, in part, by the absence of western law firms in the Belarussian legal market that could promote pro bono values amongst the local legal society. Accordingly, there is no pro bono culture in Belarus and pro bono work is not considered to be notable or prestigious.

Non-Governmental Organizations

NGOs can generally provide limited pro bono assistance in the form of oral legal advice under the Act on Legal Education. There are also special types of NGOs that can provide free legal aid on specific matters (such as trade unions and consumer-protection associations). In particular, consumer protections associations in accordance with the Law “On Protection of Consumers’ Rights” dated January 9, 2002 No. 90-3 are entitled to:

- provide free legal consultations to consumers on the protection of their rights;
- submit claims on behalf of consumers to manufacturers or, as the case may be, sellers, suppliers or their representatives; and
- submit claims on behalf of consumers to courts and also represent consumers’ interests in courts.

University Legal Clinics and Law Students

In accordance with the Act on Legal Education, legal clinics established by universities can carry out free oral legal consultations to vulnerable social groups such as indigent citizens, the disabled, veterans of the Great Patriotic War (Second World War), orphans, single mothers, etc. These consultations are provided by students under the supervision of their professors. Legal clinics have been established at the Belarussian State University, Grodno State University, Vitebsk State University, Gomel State University and Brest State University.

Pro Bono Resources

The New Eurasia Establishment (the “**NEE**”) has implemented a legal clinic support program that promotes a network of university-based legal clinics providing free legal services to vulnerable social groups. Through this project, the NEE aims to enhance the professional capacity of legal clinic tutors and clinicians and strengthens the educational role of legal clinics to produce qualified lawyers. The project facilitates networking between legal clinics and promotes their advocacy role in the provision of free services for vulnerable people. A list of legal clinics participating in the NEE’s network and links to their web-sites are available at the NEE’s web-site⁹. The program is supported by the Eurasia Foundation with funding from the U.S. Agency for International Development (USAID).

Legal aid in the sphere of consumer rights protection is conducted by consumer protection associations. The full list of consumer protection associations can be found on the website of the Ministry of Trade of Belarus¹⁰. The largest association is the republican public association “Belarusian society of the protection of consumers”¹¹.

⁹ See <http://www.eurasia.by/partners.php> (last visited on September 4, 2015).

¹⁰ See http://www.mintorg.gov.by/index.php?option=com_content&task=view&id=509 (last visited on September 4, 2015).

¹¹ See <http://www.potrebitel.by/> (last visited on September 4, 2015).



CONCLUSION

Pro bono culture in Belarus is just emerging. Currently, only advocates and law firms are in a position to provide full scale pro bono services. However, none of the major law firms currently have an established pro bono program. Other potential providers of pro bono services are limited at law to oral legal consultations. At the same time, barriers to the development of pro bono in Belarus are predominantly of a social nature – Belarus does not have a tradition of pro bono and Belarussian society remains unfamiliar with such type of legal assistance.

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