



Pro Bono Practices and Opportunities in Poland¹

INTRODUCTION

The pro bono culture in Poland emerged in the early twentieth century and developed throughout World War II. However, due to the political climate, access to pro bono services became limited after the war. It wasn't until 1989, when, as a result of the involvement of non-governmental organizations (“NGOs”), multinational and domestic law firms as well as professional legal associations and successful governmental initiatives, an active pro bono culture re-emerged and now continues to grow. As a member of the European Union (“EU”), Poland also became bound by EU's legal requirements and extensive jurisprudence on the right of access to justice.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

Poland is a republic with a democratic form of government. The legislative power is vested in the Parliament, which consists of the lower house (*Sejm*) and the upper house (*Senat*). The executive power is vested in the President (*Prezydent Rzeczypospolitej Polskiej*) and the Council of Ministers (*Rada Ministrów*). The judicial power is vested in the courts and tribunals.² The sources of law are the Constitution, statutes (*ustawa*), ratified international agreements and regulations (*rozporządzenie*), with the Constitution considered the supreme law. The Constitution, enacted in 1997, contains provisions governing the Polish legal system, institutional organization, the judicial system and local authorities.³ It also covers political freedoms and rights. Another source of legal rights and obligations stems from EU regulations.

The Courts

Levels, Relevant Types, and Locations

The judiciary system is composed of courts (Supreme Court, common, administrative and military courts) and tribunals (Constitutional and State). The Supreme Court (*Sąd Najwyższy*) is the highest court. It exercises judicial supervision over the decisions of all other courts, ensuring consistency in the interpretation of laws and judicial practice. The system of common courts includes the appellate (*sądy apelacyjne*), provincial (*sądy okręgowe*) and district courts (*sądy rejonowe*). These courts decide, among other things, cases concerning criminal, civil, family and juvenile law, commercial law, labor and social security laws. The system of administrative courts includes the High Administrative Court (*Naczelny Sąd Administracyjny*) and regional administrative courts (*wojewódzkie sądy administracyjne*).⁴

The Constitutional Tribunal (*Trybunał Konstytucyjny*) is a separate body from the court system and was established to decide the conformity of issued laws with the Constitution, disputes concerning competence between the organs of central administration, the conformity of the political parties' tasks

¹ This chapter was drafted with the support of Centrum Pro Bono

² European Justice Portal, Law, Poland , at: https://e-justice.europa.eu/content_member_state_law-6-pl-en.do?member=1 (last visited on September 4, 2015).

³ European Justice Portal, Law, Poland , at: https://e-justice.europa.eu/content_member_state_law-6-pl-en.do?member=1 (last visited on September 4, 2015) and The Polish Legal System, at: http://eur-lex.europa.eu/n-lex/info/info_pl/index_en.htm (last visited on September 4, 2015).

⁴ European Justice Portal, Judicial systems in Member States, Poland, at https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-pl-en.do?member=1 (last visited on September 4, 2015).



with the Constitution and to hear constitutional complaints filed by citizens.⁵ The Tribunal of State (*Trybunał Stanu*) adjudicates cases in which high ranking government officials are charged with violations of the Constitution or other legislative Acts.⁶

Appointed vs. Elected Judges

Professional judges and lay judges preside over the Polish legal system. Professional judges (*sędziowie zawodowi*) are appointed by the President based on a motion made by the National Judiciary Council (*Krajowa Rada Sądownictwa*). The powers of the National Judiciary Council guarantee judicial independence in Poland. The independence of judges is further guaranteed by their judicial immunity and their disciplinary subordination to their professional organizations, which include the appellate courts and the Supreme Court.

Lay judges (*lawnicy*) in provincial and district courts are chosen by the councils of municipalities within the jurisdiction of these courts. They sit alongside professional judges to ensure citizen participation in the judicial system, but they receive no formal legal training. Lay judges are also independent in exercising their powers. Provincial court lay judges are designated by the presidents of the relevant appellate courts to consider employment and social security law cases in such courts. In general, lay judges may neither preside over a trial or session, nor perform the functions of a professional judge outside of trial.⁷

The Practice of Law

Education

After completing a five-year law program, a university graduate becomes a jurist (*prawnik*). In order to be admitted to practice, a three-year bar apprenticeship (*aplikacja*) is required followed by the bar exam. The apprenticeship for advocates and legal advisers consists of theoretical and practical courses, with greater focus on the latter.⁸ The National School of Judiciary and Public Prosecution (*Krajowa Szkoła Sądownictwa i Prokuratury*) is responsible for the initial and continuing education of judges and prosecutors. On-site training for judges lasts five years, followed by a clerkship. On-site training for prosecutors lasts three years.⁹ Pro bono service is not a requirement of the legal education system.

Licensure

Licensed legal professions include: judges (*sędzia*), prosecutors (*prokurator*), advocates (*adwokat*), legal advisers (*radca prawny*), notaries (*notariusz*) and judicial officers (*komornik*). The legal professionals licensed to provide legal advice consist of advocates (*adwokat*), who provide a range of legal services, and legal advisers (*radca prawny*), who practice predominantly in the business and administrative sectors.¹⁰ Prior to July 1, 2015, legal advisers were restricted from providing representation for criminal offenses beyond misdemeanors.

⁵ Piotr Rakowski and Robert Rybicki, An Overview of Polish Law, available at <http://www.nyulawglobal.org/globalex/Poland1.htm> (last visited on September 4, 2015).

⁶ European Justice Portal, Judicial systems in Member States, Poland, at: https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-pl-en.do?member=1 (last visited on September 4, 2015).

⁷ European Justice Portal, Legal professions, Poland, at: https://e-justice.europa.eu/content_legal_professions-29-pl-en.do?member=1 (last visited on September 4, 2015).

⁸ Lawyers training systems in the EU (Poland) at <https://e-justice.europa.eu/> (last visited on September 4, 2015).

⁹ National School of Judiciary and Public Prosecution, at <https://www.kssip.gov.pl/angielski> (last visited on September 4, 2015).

¹⁰ European Justice Portal, Legal professions, Poland, at: https://e-justice.europa.eu/content_legal_professions-29-pl-en.do?member=1 (last visited on September 4, 2015) and Naczelna Rada Adwokacka, at: <http://www.nra.pl/> (last visited on September 4, 2015) and Krajowa Izba Radców Prawnych, at: <http://kirp.pl/> (last visited on September 4, 2015).



Demographics

As of January 1, 2015 there were 36,582 advocates and legal advisers in Poland.¹¹ According to the Council of Bars and Law Societies of Europe, the number of lawyers per capita increased significantly over the past ten years, from one lawyer for every 1,253 people in 2005 to one lawyer for every 716 people in 2015.¹² Due to a decentralized legal aid system, there is no data available on the number of legal aid lawyers per capita. However, the Open Society Justice Initiative, in a 2015 report, published the amounts spent on legal aid in 2013, reporting approximately €23 million spent, roughly €0.59 per capita or 0.01% of GDP.¹³

Legal Regulation of Lawyers

The May 26, 1982 Law on Attorneys (*Prawo o Adwokaturze*) regulates the organization and responsibilities of advocates while the July 6, 1982 Law on Legal Advisers (*Ustawa o Radcach Prawnych*) regulates the organization and responsibilities of legal advisers.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

There is no unified system of legal aid in Poland and no specific legal aid legislation to address its provision in a systemic and organized manner. The Polish government has expressed its commitment to significant legal aid reform, including the development of a model whereby the government could fund local municipal authorities in order to provide and manage legal aid.¹⁴

In Civil Proceedings

Neither the Constitution nor the Code of Civil Procedure provides for mandatory representation or legal aid in civil cases. However, a party who has been exempted from court fees on his own motion, or granted a statutory exemption in whole or in part or a party not exempt from court fees, may apply for the appointment of an *ex officio* attorney.¹⁵

In Criminal Proceedings

A defendant in a criminal proceeding has a constitutional right to defense in all stages of the proceeding; the defendant may hire counsel of his choice or have one appointed *ex officio*, according to principles specified by law.¹⁶ These principles are echoed by the Code of Criminal Procedure, which provides that every accused person has the right to a fair hearing, including the right to counsel of his choice.¹⁷

¹¹ CCBE Lawyers' Statistics 2015, available at: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2015_Table_of_Lawyer1_1433140834.pdf (last visited on September 4, 2015).

¹² Number of lawyers on the rise, Polskie Radio, available at: <http://www.thenews.pl/1/9/Artykul/209592,Number-of-lawyers-on-the-rise> (last visited on September 4, 2015).

¹³ Legal Aid in: Poland, available at: <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

¹⁴ Legal Aid in: Poland, available at: <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

¹⁵ Article 117, Section 1 of the Code of Civil Procedure of the Republic of Poland.

¹⁶ Article 42, Point 2, of the Constitution of the Republic of Poland.

¹⁷ Article 6 and Article 83 of the Code of Criminal Procedure of the Republic of Poland.



State-Subsidized Legal Aid

Eligibility Criteria

An applicant for exemption from court costs and/or appointment of *ex officio* attorney is obliged to submit detailed information, supported by evidence, regarding his or her familial situation, property, and income, and, as in the case of criminal legal aid, must demonstrate that he is unable to pay attorney's fees without impeding his ability to support himself and his family.¹⁸ The court determines whether the presence of counsel or a legal adviser is necessary in such a case.¹⁹ Discretionary exemptions are granted based on the legal and factual complexity of the case, as assessed by the court, and on the vulnerability of the applicant. Once the court determines eligibility, the local Council of the Bar (*Rada Adwokacka*) or Council of Legal Advisers (*Rada Radcow Prawnych*) appoints an *ex officio* attorney.

The eligibility criteria for legal aid in criminal cases include substantive and financial standards. Substantively, the presence of counsel is mandatory in the following instances: (1) juvenile cases; (2) cases where a defendant is deaf, blind, or mute; (3) cases involving reasonable doubt as to whether defendant's ability to recognize the gravity of the act or defendant's ability to control his or her conduct was absent or substantially limited at the time of the crime; (4) cases involving reasonable doubt as to whether defendant's mental health allows him or her to participate in the proceedings or conduct the defense in an independent and reasonable way; (5) when the court determines the necessity for counsel in light of the circumstances and (6) cases where the defendant has been accused of a serious crime.²⁰ If the defendant does not hire his own counsel, the court will appoint one for the defendant.²¹ In addition, the court appoints an *ex officio* attorney at the request of the defendant who does not have his own counsel.²²

Financially, a criminal defendant is obliged to demonstrate that he or she is unable to pay attorney's fees without impeding his ability to support himself or his family.²³ If approved, the costs of the *ex officio* counsel are covered by the Treasury. However, the court may reverse its decision to appoint counsel if circumstances permitting such appointment are found to be false.²⁴

The financial eligibility criteria have been criticized for lacking clarity and being potentially arbitrary and difficult to enforce. This is especially concerning since it is within the court's prerogative to refuse legal aid without clearly stating the grounds for its decision and making appellate review difficult.²⁵

Mandatory Assignments to Legal Aid Matters

All practicing attorneys are required to take on *ex officio* criminal cases, which are assigned by the court from an alphabetical list. Such attorneys are compensated by the State.²⁶ There is no separate or

¹⁸ Article 117 of the Code of Civil Procedure of the Republic of Poland.

¹⁹ Article 117, Section 4, of the Code of Civil Procedure of the Republic of Poland.

²⁰ Article 79, Sections 1 and 2, and Article 80 of the Code of Criminal Procedure of the Republic of Poland.

²¹ Article 81 of the Code of Criminal Procedure of the Republic of Poland.

²² Article 80a of the Code of Criminal Procedure of the Republic of Poland.

²³ Article 78, Section 1, of the Code of Criminal Procedure of the Republic of Poland.

²⁴ Article 78, Section 2, of the Code of Criminal Procedure of the Republic of Poland.

²⁵ "There are no clear guidelines for defendants about what evidence to provide to the judge to demonstrate that they cannot afford a lawyer. There is no explicit duty on judges to provide detailed reasons for their decision." Legal Aid in: Poland, available at <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

²⁶ L. Bojarski, "The Role of the Nongovernmental Sector in Pursuing Reform of the Legal Aid System: The Case of Poland." This report accompanies "Making Legal Aid a Reality; A Resource Book for Policy Makers and Civil



specialized group of lawyers acting in legal aid cases. The judge appoints a lawyer from a list provided by the local bar associations, irrespective of their field of expertise or availability, meaning that lawyers who have little or no experience in criminal law can be appointed to complex criminal trials.²⁷ Legal aid fees are relatively low, with no differentiation in payments according to the time spent on a case or its complexity.

Although the codes of professional responsibility of the respective bar associations require equal treatment of all clients, regardless of whether the legal assistance is provided at no cost, there are no standards of professional conduct for legal aid cases. There is also no effective mechanism for quality control or assurance. All responsibility for disciplinary proceedings lies within professional bodies that are widely criticized for not fulfilling this task properly.²⁸

Unmet Needs and Access Analysis

In cases where the state is not able to provide assistance to indigent people due to organizational limitations, NGOs provide support, albeit limited. One such example is the “Strategic Litigation Program” (*Program Spraw Precedensowych*) of the Helsinki Foundation for Human Rights (the “HFHR”), which aims to join or initiate strategically important judicial and administrative proceedings of individuals involving human rights violations. Through its participation in these proceedings, the HFHR aims to achieve breakthrough judgments, and changing practice or legislation in respect of specific legal issues which raise serious concerns with regard to human rights protection.²⁹ Additionally, the legal aid team of the Federation for Women and Family Planning (*Federacja na rzecz Kobiet i Planowania Rodziny*) provides free legal advice by phone and an online forum. For many women, this is the only chance to obtain legal advice anonymously and free of charge.³⁰

Alternative Dispute Resolution

Mediation, Arbitration, Etc.

Under Polish law, mediation can be applied in civil law, commercial law, employment law, family law, minors’ matters, criminal law and judicial-administrative matters. In recent years, the Ministry of Justice has been focusing on the development and popularization of mediation and other forms of alternative dispute resolution, or ADR, and increasing the effectiveness of the justice system and its accessibility to citizens. There are also a large number of NGOs and companies that play an important role in promoting mediation and determining its internal standards. In addition, professional bodies (e.g. Bar Associations) promote mediation through institutionalized activities, including the Mediation Center by Council of the Bar (*Centrum Mediacyjne przy Naczelnej Radzie Adwokackiej*) and Commercial Law Mediation Center by Council of Legal Advisers (*Centrum Mediacji Gospodarczej przy Krajowej Izbie Radców Prawnych*).^{31 32} In criminal matters and cases involving minors, the legal fees are covered by Treasury resources. In other

Society” (2009), by Public Interest Law Institute available at <http://www.pilnet.org/public-interest-law-resources/19-making-legal-aid-a-reality-a-resource-book-for-policy.html> (last visited on September 4, 2015).

²⁷ Legal Aid in: Poland, available at <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

²⁸ Legal Aid in: Poland, available at <https://www.opensocietyfoundations.org/fact-sheets/legal-aid-poland> (last visited on September 4, 2015).

²⁹ Program Spraw Precedensowych, at <http://www.hfhrpol.waw.pl/precedens/> (last visited on September 4, 2015).

³⁰ Federacja na rzecz Kobiet i Planowania Rodziny, at <http://www.federa.org.pl/kampanie-i-projekty-porozumienia/zespol-pomocy-prawnej> (last visited on September 4, 2015).

³¹ Centrum Mediacyjne przy Naczelnej Radzie Adwokackiej, at <http://centrummediacji.nra.pl/> (last visited on September 4, 2015).

³² Centrum Mediacji Gospodarczej przy Krajowej Radzie Radców Prawnych, at <http://www.cmg.kirp.pl/> (last visited on September 4, 2015).



types of cases, the cost of legal fees is subject to agreement between the mediator and the parties. The mediator may agree to conduct the mediation on a pro bono basis.³³

Ombudsman

The Polish Ombudsman (or Human Rights Defender) is the constitutional authority for legal control and protection of constitutional freedoms and rights.³⁴ In his activities, the Ombudsman is integral and independent from other state authorities, safeguarding human and civic freedoms and rights specified in the Constitution and other legal acts. The Ombudsman examines whether there has been any violation of civil right and liberties resulting from an act or omission of the governmental authority, organizations or institutions. After determining such violation, the Ombudsman requests the competent authority whose actions led to the infringement, or to a superior authority to ensure redress for the infringement, and monitors implementation of the recommended actions. The Ombudsman may also request the Constitutional Tribunal to determine the conformity of laws concerning civil right and liberties with the Constitution. Motions directed to the Ombudsman are free of charge.³⁵

PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Attorneys

While all practicing attorneys are required to take on *ex officio* criminal cases, there is no legal requirement in Poland to provide pro bono services. Professional ethical rules of the bar associations do not require a minimum of pro bono hours. Private attorneys may take a case or participate in pro bono activities voluntarily through their respective bar association as described below under “Bar Association Pro Bono Programs”.

Law Firm Pro Bono Programs

Private law firms have been instrumental players in the creation of a pro bono culture in Poland. Initially, foreign law firms with offices in Poland provided the majority of pro bono services, bringing the practice to Poland mainly from the United States and Western Europe. More importantly, however, a culture of pro bono has started to emerge in Polish domestic law firms. The Pro bono Center (Centrum Pro Bono) publishes an annual report that highlights the activities of all private law firms in Poland that collaborate with the Pro bono Center in the pro bono sector. According to the most recent report, in 2013, law firms collaborating with the Pro bono Center provided legal advice in a wide range of cases, including matters involving non-profit organizations, people with disabilities, environmental protection, and animal rights. Lawyers were also advising on intellectual property law, privacy law, labor law, tax law, business law, internet law and public procurement.³⁶

Non-Governmental Organizations (NGOs)

Pro bono Center

³³ European Justice Portal, Mediation in Member States, Poland, at: https://e-justice.europa.eu/content_mediation_in_member_states-64-pl-en.do?member=1 (last visited on September 4, 2015) and <http://ms.gov.pl/pl/dzialalnosc/mediacja/> (last visited on September 4, 2015).

³⁴ Human Rights Defender, at: <http://www.brpo.gov.pl/en/content/about-human-rights-defender> (last visited on September 4, 2015) and Act of July 15, 1987 on the Human Rights Defender at <http://www.brpo.gov.pl/en/content/act-human-rights-defender> (last visited on September 4, 2015).

³⁵ How does the Human Rights Defender and his Office work? at <https://www.rpo.gov.pl/en/content/what-we-do> (last visited on September 4, 2015).

³⁶ 2013 Report available at <http://www.centrumprobono.pl/wp-content/uploads/2014/02/RAPORT-CPB-2013.pdf> (last visited on September 4, 2015).



The Pro bono Center serves as a clearinghouse for pro bono activities.³⁷ It is part of the Legal Clinics Foundation (described below). Its main goal is to create an institutional framework for the further development of pro bono legal assistance in Poland. The Pro bono Center has set up and coordinates a cooperative network between law firms and NGOs. Most aspects of pro bono work distribution between NGOs and private law firms are now handled by the Pro bono Center. The law firms participating in the program are assigned specific cases depending on the difficulty and area of expertise involved. There are currently 55 law firms collaborating with the Pro bono Center. Additionally, the Pro bono Center offers a series of legal educational programs for NGOs and others engaged in social work. All such educational programs are run by lawyers and experts associated with the Pro bono Center.

Helsinki Foundation for Human Rights

The HFHR,³⁸ based in Warsaw, is a foundation devoted to research and education in the field of human rights in Poland and abroad (primarily in the Russian Federation, Ukraine, Belarus, the Caucasus and Central Asia). As part of its wide array of initiatives, the HFHR runs several programs aimed at providing cost-free legal advice. Since 1992, through its Legal Assistance for Foreigners and Refugees Program (which includes a Migration and Refugee Law Clinic), the HFHR has assisted non-nationals and refugees in obtaining free legal assistance in Poland. Under the auspices of this program, the HFHR litigates cases on behalf of non-nationals, and also monitors the legality of the actions of the Polish government with respect to non-nationals. Lawyers are on call to interview and give advice to non-nationals and refugees. Lawyers also represent non-nationals and refugees at administrative proceedings, prepare opinions on legal act drafts, and educate the public about laws concerning non-nationals through leaflets, lectures, and seminars. The HFHR has also founded several legal programs related to litigation, legal intervention, ownership rights and wrongful convictions.³⁹

Bar Association Pro Bono Programs

The National Council of the Bar and the National Council of Legal Advisers coordinate annual countrywide events for people who cannot afford to pay for legal services to receive free legal advice. The National Council of the Bar has hosted a “Day of Free Legal Advice” every year since 2006.⁴⁰ This initiative has become very popular and so far, thousands of people have received free legal assistance in various areas of law, including inheritance law, rights to alimonies, distribution of marital property, labor law, insurance law, real estate and traffic accidents. The 2015 edition took place on April 18, 2015 in 190 locations across the country. Over 600 attorneys provided legal advice to several thousand people.⁴¹

The “Blue Umbrella” is another free legal advice program and week-long event organized by the National Council of Legal Advisers. First held in 2009, “Blue Umbrella” is now a bi-annual event. Free legal advice is provided in certain areas, with a primary theme for each event. In 2014, participating lawyers advised over 8,500 people.⁴² Most clients have sought assistance in matters related to inheritance, alimonies, and distribution of marital assets in cases of divorce. Persons also often inquire about issues related to labor law, insurance law, as well as real estate and traffic accidents.

³⁷ Centrum Pro bono, available at <http://www.centrumprobono.pl/> (last visited on September 4, 2015).

³⁸ Helsinki Foundation for Human Rights, at <http://www.hfhr.pl/en/fundacja/> (last visited on September 4, 2015).

³⁹ Helsinki Foundation for Human Rights, Legal Programs, at: <http://www.hfhr.pl/en/programy/programy-prawne/> (last visited on September 4, 2015).

⁴⁰ IX Dzień Bezpłatnych Porad Prawnych już 18 kwietnia, at: <http://www.adwokatura.pl/z-zycia-nra/dzien-bezpłatnych-porad-prawnych-18-kwietnia/> (last visited on September 4, 2015).

⁴¹ Kolejny sukces akcji Dnia Bezpłatnych Porad Adwokackich, at <http://www.adwokatura.pl/z-zycia-nra/pro-bono/> (last visited on September 4, 2015).

⁴² Krajowa Izba Radców Prawnych, Pro bono, Niebieski Parasol, at: <http://kirp.pl/pro-bono/niebieski-parasol/> (last visited on September 4, 2015).



In addition, the National Notary Council organizes an annual “open door” event offering free advice in cases involving various aspects of real estate or estate law.⁴³

University Legal Clinics and Law Students

The Legal Clinics Foundation, in its goal to establish clinics at law faculties nationwide, aims to “provide legal aid to poor members of the community” and seeks to “enlighten students on the public service aspect of the legal profession.”⁴⁴ While the Legal Clinics Foundation itself does not provide legal assistance, it has set up a network of legal clinics and promoted pro bono work throughout Poland. The first legal clinic was established in 1997 and was modeled on the legal clinics in the United States. Today, there are 26 legal clinics in 16 cities. The Legal Clinics Foundation’s programs and initiatives are especially promising because they aim to incorporate pro bono ethics into legal education. During the academic year of 2013/2014 the legal clinics provided legal advice in 11,181 cases.⁴⁵ While providing those in need with legal aid, the clinics provide the law students with educational and practical skills, preparing them to serve the public.

The Legal Clinics Foundation involves lawyers in its pro bono activities as well. In 2004, the Legal Clinics Foundation launched the “Pro bono Lawyer” competition, which has now become an annual event. The qualifications for the competition include “provision of free of charge and voluntary legal services” to charity organizations or the community, participation in programs and initiatives aiming at the development of a system of free legal advice, and achievement of goals in the area of public interest law.⁴⁶

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

In the early twentieth century, members of the Polish Bar began to provide free legal advice in criminal cases and to political prisoners. During World War II, they mostly represented detainees. After the war, during the Communist era, free legal aid was provided by official organizations by members of the Polish Bar as well as by underground organizations, mostly to political prisoners or persons oppressed by state institutions.⁴⁷ During this period the growth of pro bono culture was hindered by the political climate. However, in the 1990s, this attitude started to change as a result of a general ideological shift from state-sponsored legal aid (as it was under Communism) to the provision of free legal assistance by civil society and private citizens.

In the past 20 years, many new pro bono programs have developed and the pro bono activities initiated earlier in the decade have expanded and diversified. NGOs have been instrumental in establishing a long-term pro bono presence in Poland. In 2007, the Legal Clinics Foundation, along with the HFHR, PILnet and the Ashoka Foundation organized a roundtable pro bono conference at the Polish Constitutional Tribunal in Warsaw, Poland. The conference contributed yet another important step to the establishment of pro bono culture in Poland. It was attended by many prominent members of the Polish legal community including judges, members of the Polish Bar Association and the National Association of

⁴³ Dzień Otwarty Notariatu, at <http://www.porozmawiajznotariuszem.pl/> (last visited on September 4, 2015).

⁴⁴ Legal Clinics Foundation, Legal Clinics Foundation available at <http://www.fupp.org.pl/en/foundation/history-mission> (last visited on September 4, 2015).

⁴⁵ Legal Clinics, 2013/2014 report, available at: <http://www.fupp.org.pl/kliniki-prawa/publikacje/raporty> (last visited on September 4, 2015).

⁴⁶ Lawyer Pro bono, Legal Clinics Foundation, available at <http://www.fupp.org.pl/en/lawyer-pro-bono/lawyer-pro-bono-contest-s> (last visited on September 4, 2015).

⁴⁷ Marta Janina Skrodzka (red.) „System poradnictwa prawnego i obywatelskiego w Polsce; Wdrażanie rozwiązań modelowych” (2014), available at <http://www.edukacjaprawnicza.pl/aktualnosci/a/pokaz/c/aktualnosc/art/system-poradnictwa-prawnego-i-obywatelskiego-w-polsce-wdrazanie-rozwiazan-modelowych.html> (last visited on September 4, 2015).



Legal Advisers, as well as representatives from many law firms. The highlight of the roundtable was the signing of the Pro bono Publico Declaration, a public affirmation of the commitment to the provision of legal services to those in need. In addition, a new pro bono program was introduced in Poland, the Pro bono Center.⁴⁸

At the European level, Poland has also shown greater involvement. In 2009, Poland participated in the European Pro bono Forum hosted by the Public Interest Law Institute (“PILnet”). The forum, which focused on the global economic crisis and its effect on legal aid, encouraged greater commitment to pro bono service by providing advice, as well as setting up a network forum for law firms and private practitioners. At the 2011 European Pro bono Forum, the HFHR was one of the recipients of the PILnet European Pro bono Awards for its exceptional work in the public interest.⁴⁹ In 2012, Filip Czernicki, one of the founders of the Pro bono Center and president of the Legal Clinics Foundation since 2002 (both described above), received the PILnet’s European Award for extraordinary contribution to the development of pro bono culture.⁵⁰ In 2013 the Seventh European Pro bono Forum was hosted in Warsaw.

Current State of Pro bono including Barriers and Other Considerations

Laws and Regulations Impacting Pro Bono

Although pro bono opportunities have increased in recent years, barriers still remain. Many NGOs and advocates have lobbied for reform of the legal profession to improve accessibility and transparency, and increase legal aid activity. Recent legislation and proposals attempt to respond to these criticisms. In June 2013, a law was passed to facilitate broader access to the legal profession, thereby increasing the number of practicing attorneys available to provide greater access to legal aid.⁵¹ Recently, on June 25, 2015, the lower house of the Polish Parliament approved a draft bill on free legal aid, free legal information and legal education for citizens (*Projekt ustawy o nieodpłatnej pomocy prawnej, nieodpłatnej informacji prawnej oraz edukacji prawnej społeczeństwa*). Pursuant to the draft, from January 1, 2016, more than 1,500 offices will be established throughout the country where legal professionals will provide legal assistance to people on welfare, youth under 26 years of age, seniors over 65 years of age, large families, veterans and victims of natural disasters. It is anticipated that 22 million citizens will be covered by this legal assistance system.⁵²

Although the current draft bill emphasized that high costs are the largest barrier to legal aid access, the draft lacks clear provisions eliminating value added tax (VAT) on free legal services.⁵³ Both the National Council of the Bar and the National Council of Legal Advisers expressed major concerns regarding the unfavorable interpretation of regulations on VAT that lawyers must pay for enumerated forms of legal assistance, including pro bono aid. According to the Pro bono Center, a tax on free legal aid is now one of the most serious barriers to pro bono activity. Both the National Council of the Bar and the National Council of Legal Advisers agree. In response, the Pro bono Center began an initiative to abolish the tax

⁴⁸ The Polish Legal Clinics Foundation is going to establish Pro bono Center, Legal Clinic Foundation, available at <http://www.fupp.org.pl/en/foundation/statute/37-angielski/news-en/178-the-polish-legal-clinics-foundation-is-going-to-establish-pro-bono-center> (last visited on September 4, 2015).

⁴⁹ Winners Announced for PILnet’s 2011 European Pro bono Awards, November 21, 2011, available at <http://pilnet.org/events/133-winners-announced-for-pilnets-2011-european-pro-bono-awards.html> (last visited on September 4, 2015).

⁵⁰ “PILnet Announces 2012 European Pro bono Awards”, at: <http://www.pilnet.org/events/171-pilnet-announces-2012-european-pro-bono-awards-.html> (last visited on September 4, 2015).

⁵¹ See “Ustawa o zmianie ustaw regulujących wykonywanie niektórych zawodów” (“Bill amending laws regulating certain professions”), June 13, 2013, see at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130000829> (last visited on September 4, 2015).

⁵² See <http://ms.gov.pl/pl/dzialalnosc/darmowa-pomoc-prawna/> (last visited on September 4, 2015).

⁵³ See <http://ms.gov.pl/pl/informacje/news.6633.projekt-ustawy-o-nieodplatnej-pomocy-prawnej-i.html> (last visited on September 4, 2015).



and enlisted tax experts of the 18 largest Polish law firms who have created an informal group now dedicated to the development of specific legal solutions in this area.⁵⁴

Other broad systemic changes have been promoted in recent years. An initiative to develop a model system encompassing both free legal advice and civic counseling was coordinated by the Department of Public Benefit of the Ministry of Labor and Social Policy from December 2011 to July 2014.⁵⁵ The project was co-financed by the European Union under the European Social Fund. The Ministry worked on the project in partnership with NGOs which are directly engaged in providing free legal advice and civic counseling or support to such activities. The project focused on extensive research examining current relations between providers of free advice and counseling and those receiving such services as well as the role of the justice system in this area. NGOs and public institutions participating in the project as well as experts in the field gathered in February 2015 at a convention to discuss the status and outcome of the four-year plan and to agree on the policies affecting legal and civic counseling in Poland.⁵⁶

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

Polish society appears to trust the formal legal system, and people tend to choose the judicial system over alternative methods of dispute resolution. The legal community also helps boost confidence in the formal legal system. In recent years, all Polish Bar Associations actively promoted various pro bono programs, each attracting thousands of people seeking free legal advice. Although actual pro bono activities remain insignificant relative to the resources available in Poland, especially to Polish law firms, in recent years there has been a noticeable increase in interest in pro bono practice, according to the Pro bono Center. Information regarding pro bono services is more commonly included on websites of corporate law firms, as the annual rankings of law firms include a category distinguishing law firms for their outstanding pro bono activity. Up until recently, only a few law firms actively promoted pro bono services. Currently, many firms have dedicated pro bono programs and policies providing for significant legal assistance.⁵⁷

Pro bono Resources

- Centrum Pro bono
 Address: ul. Szpitalna 5 lok. 5, Warszawa
 00-031 Poland
 Phone: +48 572 440 150
 E-mail: biuro@centrumprobono.pl
 Website: <http://www.centrumprobono.pl/> (last visited on September 4, 2015)
- Ministry of Justice – Free Legal Services (*Darmowa Pomoc Prawna*) provides information about the new Pro bono system to be available from January 1, 2016 (subject to completion of the legislative process): <http://www.ms.gov.pl/pl/dzialalnosc/darmowa-pomoc-prawna/> (last visited on September 4, 2015)

⁵⁴ Centrum Pro bono, at <http://www.centrumprobono.pl/o-programie/> (last visited on September 4, 2015).

⁵⁵ Department of Public Benefit of the Ministry of Labor and Social Policy, at: <http://pozytek.gov.pl/Main,Page,532.html> (last visited on September 4, 2015).

⁵⁶ Kongres Poradnictwa Prawnego i Obywatelskiego at <http://www.inpris.pl/kongres/> (last visited on September 4, 2015) and Marta Janina Skrodzka (red.) „System poradnictwa prawnego i obywatelskiego w Polsce; Wdrażanie rozwiązań modelowych” (2014), available at <http://www.edukacjaprawnicza.pl/aktualnosci/a/pokaz/c/aktualnosc/art/system-poradnictwa-prawnego-i-obywatelskiego-w-polsce-wdrazanie-rozwiazan-modelowych.html> (last visited on September 4, 2015).

⁵⁷ Centrum Pro bono, at <http://www.centrumprobono.pl/o-programie/idea-pracy-prawnikow-pro-bono/> (last visited on September 4, 2015).



CONCLUSION

The pro bono presence and culture continues to gain strength in Polish society. Pro bono initiatives are numerous and welcomed by the public. The related ongoing efforts by the government will benefit not only the pro bono culture but the overall legal system in Poland.

September 2015

Pro Bono Practices and Opportunities in Poland

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.