



Pro Bono Practices and Opportunities in Romania¹

INTRODUCTION

Historically, few lawyers in Romania engaged in pro bono work.² Partially due to the country's communist/ socialist past, a culture of civic disengagement persists, with many Romanians still harbouring feelings of distrust towards unpaid community work.³ However, following Romania's accession to the European Union in 2007, increased competition in the legal profession, the proliferation of law firms and the arrival of several international law firms, Romania's legal community is increasingly recognizing the value of pro bono services. As such, the infrastructure supporting pro bono opportunities and lawyers who perform this work has continued to improve. This chapter describes the current framework governing the provision of legal services, reviews the legal aid system, and discusses pro bono opportunities in Romania.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

Romania's justice system is a civil law system. The basic law of Romania is the Constitution, adopted in November 1991 and further amended in October 2003⁴, and establishes the structure of the government of Romania, the rights and obligations of the country's citizens and its mode of passing laws. Other sources of law in Romania are the laws adopted by the Parliament, presidential decrees, normative acts of the Government, normative acts issued by the central and local public administrative authorities, European Union law (directives, regulations) and international treaties to which Romania is a signatory. The treaties establishing the European Union prevail over contrary provisions of national laws.⁵

The Courts

Levels, relevant types and locations

The principles, structure and organization of the Romanian judicial system are established by the Constitution and Law no. 304/2004.⁶ Justice is accomplished through (a) the High Court of Cassation and Justice; (b) courts of appeal; (c) tribunals and specialized tribunals; (d) first instance courts; and (e) military courts.⁷

¹ This chapter was drafted with the support of Andrea Toma and Cristina Togan at Leroy și Asociații SCA

² Kandis Scott, *Decollectivization and Democracy: Current Law Practice in Romania*, 36 *GEO. WASH. INT'L L. REV.* 817, 817 (2004).

³ *Id.*

⁴ The initial form of the Constitution was amended by Law no. 429/2003 for the revision of Romania's Constitution.

⁵ Article 5 of the Romanian Civil Code. See also Art. 148 § 2 of the Romanian Constitution, available at <http://legeaz.net/constitutia-romaniei/articolul-148-constitutie> (last visited on September 4, 2015).

⁶ ROMANIAN SUPERIOR COUNCIL OF MAGISTRACY, *Presentation of the Romanian judicial system*, available at <http://www.csm1909.ro/csm/index.php?cmd=9401&lb=en> (last visited on September 4, 2015).

⁷ ROMANIAN SUPERIOR COUNCIL OF MAGISTRACY, *Presentation of the Romanian judicial system*, available at <http://www.csm1909.ro/csm/index.php?cmd=9401&lb=en> (last visited on September 4, 2015).



The High Court of Cassation and Justice is Romania's highest court. It is located in the capital Bucharest, has four sections (Section I- Civil; Section II-Civil; Section III-Criminal; Section IV-Fiscal and administrative), as well as joint sections and five judge panels.⁸

The courts of appeal are at the next level. There are currently 15 courts of appeal. Within the courts of appeal there are sections or specialized panels for, among other things, civil, criminal, commercial, family, fiscal, administrative, labor, social insurances, maritime and fluvial cases.⁹

Tribunals are the next level of courts and are organized at the county level and in Bucharest. There are currently 42 tribunals established by law. Within tribunals, there are sections, or panels for civil, criminal, commercial, minors and family cases, fiscal and administrative claims, labor conflicts and social insurances, as well as maritime or fluvial cases and other matters. In certain areas, sections or specialized tribunals can be established at the county level or in Bucharest, depending on the nature and number of cases.¹⁰

First instance courts are the lowest ranking courts and are organized at the level of the most important cities in Romania and in the districts of Bucharest. There are approximately 188 first instance courts with general jurisdiction (*rationae materiae*). A decision rendered by courts of first instance may be challenged in appeal at the next court level.¹¹

Appointed vs. Elected Judges

Judges in Romania are appointed by the Superior Council of Magistracy (the "SCM") following a two year course at the National Magistrates Institute (*Institutul National de Magistratura*). The SCM is the institution responsible for guaranteeing the independence of the judiciary system and for disciplining judges and prosecutors.¹² The SCM is made up of 19 members: nine judges and five prosecutors, elected by the general assemblies of judges and prosecutors, two representatives of the civil society (law specialists nominated by the Senate) and three members *de jure* – the President of the High Court of Cassation and Justice, the Minister of Justice and the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.¹³

The Practice of Law

Education and Licensure

In order to practice law in Romania, one must complete a Romanian law degree and then pass a bar exam in order to apply for admission to one of the 41 regional bar associations in Romania as a trainee lawyer.¹⁴ A trainee lawyer needs to complete a two-year professional training period under the supervision of a permanent lawyer who has been practicing for at least six years.¹⁵ Following completion of the training period, a trainee lawyer can acquire the status of a permanent lawyer by either passing the bar exam for permanent lawyers or the graduation exam of the National Institute for the Training and

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ ROMANIAN SUPERIOR COUNCIL OF MAGISTRACY, Presentation of the Romanian judicial system, <http://www.csm1909.ro/csm/index.php?cmd=9401&lb=en> (last visited on September 4, 2015). For example, the law provides for the organization of sections and specialized panels for minors and family cases.

¹² Id.

¹³ Id. See also The Regulation of organization and functioning of the Superior Council of Magistracy, 2005.

¹⁴ The Statute on the lawyers' profession and the Law 51/1995 on the organization and exercise of the lawyers' profession, available at <http://www.avocatura.com/11493-legea-51-din-1995-privind-organizarea-si-exercitarea-profesiei-de-avocat.html> (last visited on September 4, 2015).

¹⁵ Id.



Improvement of Lawyers (*Institutul National pentru Pregatirea si Perfectionarea Avocatilor*).¹⁶ The trainee lawyer is allowed to argue cases only in front of first-instance courts. Only after the trainee lawyer becomes a fully-qualified lawyer, is he or she allowed to argue cases in front of most Romanian courts (subject to certain exceptions), and to work on his or her own.¹⁷

There are new rules on continuing professional training of lawyers, which require a Romanian lawyer to participate in at least three seminars, conferences or debates, organized at the regional bar association every two years.¹⁸ Romanian legislation contains no specific rules mandating pro bono work for Romanian lawyers – applicable provisions only set forth the right to benefit from legal aid and how legal aid is financed and organised.

Demographics

Among a population of approximately 19.5 million, there were 23,244 practicing lawyers (*avocati cu drept de exercitare a profesiei*) in Romania, as of March 1, 2015.¹⁹ Of these practicing lawyers, 5,012 were registered as legal aid lawyers with the Legal Aid Registries maintained by the local bars.²⁰

Legal Regulation of Lawyers

The regulation of the legal profession in Romania is decentralized.²¹ A practicing lawyer needs to be a member of one of the 41 regional bar associations in Romania.²² The regional bar associations hold most of the regulatory power.²³ There is a National Association of Romanian Bars (*Uniunea Nationala A Barourilor Din Romania* or *UNBR*), which consists of representatives from each regional bar association and has advisory jurisdiction over issues related to the regulation and discipline of Romanian lawyers.²⁴

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

Though many Romanians are poor, few are destitute. Most are able to afford the relatively low fees for legal representation and/or legal advice.²⁵ Additionally, due to the surge in the number of lawyers, many attorneys are willing to negotiate their fee in order to secure more business. Nonetheless, Romania also maintains a legal aid system.

¹⁶ UNIUNEA NATIONALA A BAROURILOR DIN ROMANIA, Decision No. 04/2011 of the National Association of the Romanian Bars, available at http://www.unbr.ro/fisiere/file/consilii_si_cp/CONS-CP-07-09-IUL-2011/HOTARAREA_04-2011_2011_CONSILIUL_UNBR_APROBARE_REGULAMENT_EXAMENE_150711RevDOClean-OK-WEBSITE.pdf (last visited on September 4, 2015).

¹⁷ DREPT ONLINE, Legal Profession Career, available at http://www.dreptonline.ro/cariere/cariera_avocat.php (last visited on September 4, 2015).

¹⁸ The Decision no.12/2011 of The Lawyers' Congress on the continuous professional training of lawyers.

¹⁹ UNIUNEA NATIONALA A BAROURILOR DIN ROMANIA, 2014, Activity Report of the National Association of the Romanian Bars, page 58, available at http://unbr.ro/ro/wp-content/uploads/2015/05/0000-MATERIALE_CONGRES_2015-UNBR+CAA_V1.0_260515-OPTIM.pdf (last visited on September 4, 2015).

²⁰ Id.

²¹ THE LAW SOCIETY OF ENGLAND AND WALES, How to practice in Romania (Sep. 2014), available at <http://communities.lawsociety.org.uk/international/regions/europe-and-cis/romania/how-to-practise-in-romania/5043182.article> (last visited on September 4, 2015).

²² Id.

²³ Id.

²⁴ Id.

²⁵ See Scott, *supra* n.1, at 831-32.



The Right to Legal Assistance

The Constitution provides for the right to representation by a lawyer (selected by the person or appointed by the state) during any judicial proceeding.²⁶ As discussed in more detail below, legal representation is mandatory in certain cases and in such cases a lawyer will be appointed by the state if an individual has not hired counsel.²⁷ In other cases, indigent persons may request and be granted state-sponsored legal aid (either in the form of legal representation or legal advice).²⁸ Lawyers interested in providing legal aid must make a request to be included in the Legal Aid Registry (*Registrul de Asistentă Judiciară*) maintained by each local bar.²⁹ If the number of attorneys listed in the Legal Aid Registry is insufficient, the local bar may designate other lawyers to provide legal aid.³⁰ Each local bar also has a Legal Aid Bureau (*Serviciu de Asistentă Judiciară*, or “**SAJ**”) responsible for, among other things, designating the lawyers who provide legal aid.³¹

State-Sponsored Legal Aid in Civil Proceedings

Before 2008, state-sponsored legal assistance in civil proceedings was only available to a limited category of persons, specifically, victims of domestic violence, children, refugees and asylum seekers, persons petitioning to obtain or re-obtain Romanian citizenship, owners of property expropriated during the 1945-1989 period, heroes of the 1989 Romanian revolution, or citizens of a foreign state (together, “**special legal aid matters**”).³² Special legal aid matters are still applicable today, but a 2008 Emergency Ordinance (the “**Ordinance**”) has added a general mechanism for providing indigent persons with state-sponsored legal aid for all civil matters, thus expanding the eligibility criteria.³³

According to the Ordinance, legal aid is provided upon request by an applicant for any civil, commercial, administrative, labor or social security matter or proceeding, as well as certain other matters and proceedings, upon request, if the applicant: (a) is a natural person; (b) resides in Romania or in a member state of the European Union; (c) has had a net monthly income per household member below a certain threshold during the two months preceding the request (subject to certain exceptions); and (d) the costs related to legal proceedings or to obtaining legal advice in order to defend a legitimate right are sufficiently high to jeopardize the applicant’s financial ability to provide for his or her family.³⁴ As an

²⁶ ROMANIA CONST. art. 24.

²⁷ See Obancia, *infra* n.39.

²⁸ *Id.*

²⁹ Framework Regulations regarding the organization of the Legal Aid Bureaus (*Servicii de Asistentă Judiciară*) of the Romanian Bars, adopted by Decision No. 419 of Sep. 27, 2008 of the UNBR Council, as further amended (hereafter, “Legal Aid Framework Regulations”), art. 1.

³⁰ *Id.*

³¹ *Id.* at art. 1.

³² See, for example, Law No. 217/2003 on the Prevention of and Fight Against Domestic Violence, published in MONITORUL OFICIAL no. 367/29.05.2003, as further amended, arts. 6 and 27 (4); Law No. 272/2004 on the Protection and Promotion of Children’s Rights, published in MONITORUL OFICIAL No. 557/23.06.2004, as further amended, arts. 42 (2) and 61; the Romanian Code of Civil Procedure, art. 1084 (2); Ordinance, arts. 41-49; Law No. 122/2006 on Asylum, published in MONITORUL OFICIAL no. 428/18.05.2006, as further amended, art. 17; Law No. 42/1990 on the Honoring of and the Granting of Certain Rights to the Heroes of the Romanian Revolution of December 1989 and Their Families, republished in MONITORUL OFICIAL no. 198/23.08.1996, as further amended, art. 10 (now repealed).

³³ Emergency Ordinance No. 51/2008 on Judicial Public Help with Respect to Civil Matters, published in MONITORUL OFICIAL no. 327/25.04.2008, as subsequently amended.

³⁴ *Id.*



exception, if an applicant proves lack of financial means and that his or her rights would be prejudiced by delay, then that applicant's legal aid request may also be approved by the dean of the local bar.³⁵

From a procedural perspective, the Ordinance provides that the legal aid request must include in an annex evidence of the applicant's income and financial obligations towards his or her family³⁶ and should be filed with the SAJ of the local bar in order to be approved by the dean of the respective local bar. If the request is granted, the bar then designates a lawyer to provide the requested legal services and such designation is mandatory for the lawyer in question. If the applicant requests the appointment of a certain lawyer by indicating in the petition the lawyer's name, such designation is subject to the respective lawyer's consent.³⁷

State-Sponsored Legal Aid in Criminal Proceedings

The Romanian state must ensure that a criminal defendant is represented by a lawyer (either of his or her choice, or appointed by the state through the SAJ infrastructure described above) throughout all stages of the criminal proceedings, in the following circumstances: (a) the defendant is a minor; (b) the defendant is detained in a rehabilitation center or in an educational medical institution; (c) the defendant is detained or arrested (even in connection with another case); (d) the defendant, as a preventive measure, is detained in a medical institution or is mandated to receive medical treatment (even in connection with another case); (e) the prosecutor or the court determines the defendant is not capable of defending himself or herself; or (f) the defendant is facing a charge for which the sentence is imprisonment for five years or more (this latter instance is limited to trial proceedings only, and does not apply to all stages of criminal proceedings).³⁸ The provision mandating that the court or the prosecutor appoint a lawyer if the defendant is not capable of defending himself or herself is rarely applied in practice, except in cases where defendants are mentally disabled, sick or handicapped. It is still debated whether this provision also covers indigent defendants.³⁹ Moreover, defendants accused of a crime for which the maximum sentence is less than five years of imprisonment are not automatically entitled to free legal representation.⁴⁰

The Romanian state must also ensure representation by a lawyer for criminal trial parties other than the defendant, such as: the victim, the civil party or the civilly responsible defendant in the following circumstances: (a) the victim, the civil party or the civilly responsible defendant lacks the capacity to exercise his or her rights, or has a restricted capacity (*capacitate de exercitiu restransa*); (b) the prosecutor or the court determines that the victim, the civil party or the civilly responsible defendant in a criminal case is not capable of defending himself or herself⁴¹ (for example, when that person is a minor or has been declared mentally incompetent by court order).

Romanian legislation also sets forth special cases in which legal representation is required, although the above mentioned conditions are not met, as follows: in case the object of the trial is represented by

³⁵ Law No. 51/1995, art. 71-75; Legal Aid Framework Regulations at arts. 156, 157 and 161.

³⁶ Emergency Ordinance No. 51/2008 on Judicial Public Help with Respect to Civil Matters, published in MONITORUL OFICIAL no. 327/25.04.2008, as subsequently amended, Article 14.

³⁷ See Obancia, *infra* n.39; Law No. 51/1995, art 72 (2).

³⁸ Article 90 of the Romanian Criminal Procedure Code.

³⁹ Cozmin Obancia, Marinela Cioroaba and Andrei Savescu, Access to Justice in Central and Eastern Europe Country Reports: Romania 423 (2003), available at http://pilnet.org/component/docman/doc_download/48-access-to-justice-in-central-and-eastern-europe-country.html (last visited on September 4, 2015).

⁴⁰ Jill Parker, Comment: West Meets East: A Discussion of European Union Enlargement and Human Rights, 11 TULSA J. COMP. & INT'L L. 603, 625 (2004).

⁴¹ Article 93 (4), (5) of the Romanian Criminal Procedure Code.



crimes such as: human trafficking⁴²; serious crimes such as murder, attempted murder, physical bodily harm, rape or sexual perversion⁴³; during extradition proceedings, international transfer proceedings, and execution of European arrest warrants.⁴⁴

Mandatory assignments to Legal Aid Matters

Any attorney registered with the SAJ infrastructure is subject to mandatory assignment to legal aid matters. The condition for assignment is to be registered in the Legal Aid Registry for attorneys. Registration represents an attorney's consent to provide legal aid services. Failure to provide legal aid is subject to disciplinary sanctions.⁴⁵

Although a legal aid assignment by the SAJ is mandatory, and thus not subject to the designated attorney's consent, when a request for legal aid is granted, the applicant may express a preference to be represented by a specific lawyer. Only in this scenario does the lawyer designated at the applicant's request have an option to consent to the assignment. If the legal aid beneficiary does not express a preference for a specific lawyer, SAJ will assign one of the registered lawyers and that appointed attorney has no option to consent (representation in this case is considered a legal duty).

In all cases of state-sponsored legal aid, the lawyer's fees are paid by the state from the budget of the Ministry of Justice.⁴⁶ The compensation is set forth in a protocol between the Ministry of Justice and the UNBR (the "Protocol"),⁴⁷ as a flat fee for each type of legal aid service.⁴⁸ The flat fee is not adjusted to take into account the time spent on the case or the outcome of the case, which does little to motivate committed representation. Moreover, the fees are relatively small, therefore discouraging many experienced lawyers from pursuing these opportunities. As a result, and because legal aid assignments provide an opportunity to gain experience, young lawyers typically volunteer to take them on.⁴⁹ In fact, the relevant regulations state that legal aid in civil matters will be primarily assigned to young lawyers.⁵⁰

Unmet Needs and Access Analysis

Although Romanian state-sponsored legal aid continues to address an increasing number of legal aid requests⁵¹, access to legal aid remains limited. For actual applicants, access is mostly hindered by the

⁴² Law No. 678/2001 on the Prevention of and Fight Against Trafficking In Persons, published in MONITORUL OFICIAL no. 783/11.12.2000, as further amended, arts. 43 and 44.

⁴³ Law No. 211/2004 on Certain Measures for The Protection of Crime Victims, published in MONITORUL OFICIAL no. 505/04.06.2004, as further amended, articles 14, 15, 16.

⁴⁴ Law No. 302/2004 on International Judicial Cooperation Regarding Criminal Proceedings, published in MONITORUL OFICIAL no. 594/01.07.2004, as further amended.

⁴⁵ Legal Aid Framework Regulations, arts. 1, 11, 70 and 71.

⁴⁶ Protocol between the Romanian Ministry of Justice and the National Association of the Romanian Bars No. 48025/2015, available at http://unbr.ro/ro/wp-content/uploads/2015/06/Protocol_Oficii_MJ_IUNIE_2015_060615_WEBSITE.pdf (last visited on September 4, 2015).

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ See Obancia, supra n. 39.

⁵⁰ See Legal Aid Framework Regulations, supra n.29 at art. 27; supra n.19.

⁵¹ As confirmed verbally with a representative of the Bucharest Legal Aid Office on September 1, 2015, the service is currently addressing 800 pending legal aid requests, which have been approved and fall within the existing budget.



evidentiary criteria they have to meet in order to qualify for legal aid, as well as by the limited staff and financial resources available to process applications. In addition, given the absence of state-sponsored initiatives to promote access to free legal assistance, it is likely that a significant number of potential applicants are simply unaware of the existence of a legal aid system, and thus never apply.

Alternative Dispute Resolution

Mediation and Arbitration

One alternative optional dispute resolution procedure recognized in Romania is mediation.

Another recognized alternative dispute resolution procedure in Romania is arbitration, which is regulated by the Romanian Civil Procedure Code.⁵² Parties may choose arbitration as an alternative to settle any type of dispute, except for disputes concerning marital status, inheritance, family relations and rights of which the parties may not dispose.

Ombudsman

Romanian citizens also have the option to submit petitions to the People's Advocate (Avocatul Poporului), the Romanian equivalent of the European Ombudsman institution. The purpose of the People's Advocate is to investigate complaints about maladministration within Romanian institutions. The petition must be submitted in writing and is free of stamp tax. After reviewing the petition and if the petition is upheld, the People's Advocate issues a recommendation to the relevant public institution. Based on such recommendations, the respective institution may take measures to mitigate any damage to the affected citizen.⁵³

PRO BONO ASSISTANCE

Pro Bono Opportunities

A growing number of international and local firms and NGOs in Romania are interested in giving back to their communities and are seeking to foster pro bono work. There is also an increasing interest in pro bono from nonprofit and student organizations. However, the lack of an appropriate legal framework supporting or encouraging pro bono work continues to act as a barrier to the increase in such activities.

Mandatory Pro Bono for Private Attorneys

Neither the law for the organization and practice of the legal profession⁵⁴, nor the law regarding scholars and students' internships⁵⁵ requires practicing lawyers, or law students to do pro bono work. However, European practice generally (following the more established US model) is evolving rapidly. An increasing trend in recent years has seen multinational companies imposing social responsibility policies on outside counsel. Furthermore, according to the stated values of the Council of Bars and Law Societies of Europe (CCBE), pro bono should be one of the key social responsibility aspects of the legal profession.⁵⁶ These external factors are bound to contribute to a more favorable perception of pro bono work and should help to incentivize the Romanian legal profession to become more involved.⁵⁷

⁵² Article 541 et seqq. of the Romanian Civil Procedure Code.

⁵³ Law 35/1997 on organizing and exercise of the Avocatul Poporului institution.

⁵⁴ Law no. 51/1995 for the organization and practice of the lawyer's profession.

⁵⁵ Law no. 258/2007 regarding scholars and students' internship.

⁵⁶ <http://www.ccbe.eu/index.php?id=32&L=0> (last visited on September 4, 2015).

⁵⁷ The initiative is announced within the UNBR Activity Report 2014, p. 79 available at: <http://www.juridice.ro/377902/raportul-de-activitate-al-unbr-in-perioada-2014-2015-si-materialele-supuse-dezbaterii-la-congresul-avocailor-2015.html> (last visited on September 4, 2015).



In the absence of pro bono legislation, Romania currently lacks the legal framework to require mandatory pro bono reporting. Although such a requirement could lead to an increase in reported legal service hours (as it seems to be the case in jurisdictions that have already implemented this measure),⁵⁸ there are no apparent plans to introduce such legislation in the near future. There are no specific voluntary reporting options for private attorneys outside law firms.

Law Firm Pro Bono Programs

In recent years, pro bono programs in Romania have intensified as a result of the commitment of corporate law firms in Bucharest, as well as in Romania's major cities to align the practice of local firms with the pro bono culture of their international partners. Indeed, it has become customary for large Romanian law firms to dedicate part of their resources to pro bono activities.⁵⁹

An area where pro bono service seems to abound is the NGO sector. For example, in 2012 the Foundation for the Development of Civil Society launched a project called "Pro Bono legal services for NGOs" which allowed lawyers to commit available time and resources to provide legal services to different NGOs.⁶⁰ This initiative has generated legal support for a variety of NGOs, including organizations dedicated to combating the sexual exploitation of children, improving the lives of the disabled, rehabilitating Romanian rainforests, promoting inclusive education for children with disabilities, and developing sustainable social enterprises in emerging market economies.⁶¹

In addition to pro bono work for NGOs, Romanian firms are also taking on pro bono representation of individuals and classes of plaintiffs in class action lawsuits.⁶²

Non-Governmental Organizations (NGOs)

There are several international and local issue based NGOs that provide Romanians with free legal assistance. These NGOs tackle a wide variety of issues that Romanians are facing, specifically the rights of the Roma minority, discrimination based on sexual orientation and HIV positive status, prison conditions, mental health treatment, government corruption and microfinance.

For example: (i) the Roma Center for Social Intervention and Studies (Romani CRISS) advocates Roma rights by providing legal assistance in cases of abuse⁶³; (ii) the NGO "Accept" created the Anti-Discrimination Coalition which aims to improve access to justice and efficiency of remedies available to persons exposed to discrimination;⁶⁴ (iii) the Romanian Association Against AIDS (ARAS) is leading an awareness-raising and prevention campaign and is also providing advocacy help for AIDS-affected

⁵⁸ Pro bono reporting has been required in Florida for more than two decades and the reported result has been a steady increase in service hours reported and dollars contributed to legal aid groups, as tracked by the Florida bar available at <http://www.theindianalawyer.com/state-bar-approves-pro-bono-reporting-requirement/PARAMS/article/32634> (last visited on September 4, 2015).

⁵⁹ See <http://www.avocatura.com/stire/8563/se-implica-marile-case-de-avocatura-in-programe-de-responsabilitate-sociala-nu-p.html> (last visited on September 4, 2015).

⁶⁰ See <http://www.fdsc.ro/servicii-juridice-pro-bono-pentru-onguri> (last visited on September 4, 2015).

⁶¹ See http://www.legal500.com/assets/images/stories/firmdevs/nest12237/nndkp_press_release_30-03-2009.pdf (last visited on September 4, 2015); http://www.legal500.com/firms/12818-tuca-zbarcea-asociatii/press_releases/26360 (last visited on September 4, 2015); <http://www.dlapiperprobono.com/what-we-do/signature/index.html?query=romania&search=search> (last visited on September 4, 2015); <http://www.legal500.com/firms/17003-leroy-si-asociatii/offices/11951-bucharest/tab/diversity> (last visited on September 4, 2015).

⁶² See <http://www.bancherul.ro/avocatul-gheorghe-piperea-anunta-initierea-unei-actiuni-in-justitie-tip-class-action-pentru-eliminarea-clauzelor-abuzive-din-toate-contractele-unei-banci.-pentru-ca-oamenii-sa-nu-mai-cheltuie-bani-cu-avocatii--13445> (last visited on September 4, 2015).

⁶³ See <http://www.romanicriss.org/en/> (last visited on September 4, 2015).

⁶⁴ See <http://www.antidiscriminare.ro/first-english-page> (last visited on September 4, 2015).



vulnerable groups⁶⁵; (iv) the Association for the Defense of Human Rights in Romania-Helsinki Committee (APADOR CH) is involved in public efforts to improve prison conditions⁶⁶; (v) the ESTUAR Foundation aims to provide basic protection for adults with mental health problems⁶⁷; and (vi) the Advocacy and Legal Assistance Centre (an institutional project of the Transparency International network in South-Eastern Europe set up in Romania in 2003) is dedicated to the assistance and guidance of victims and witnesses of abuse or corruption in the public system.⁶⁸

Bar Association Pro Bono Programs

In its 2014 activity report, the UNBR emphasized the creation of new programs aimed at increasing awareness about, and involvement in, pro bono activities.⁶⁹ In particular, the report identifies the need to diversify the types of events and actions organized by the UNBR, in order to enhance the interaction between the legal profession and non-judicial areas (such as the NGO sphere). The UNBR also aims to initiate pro bono and social responsibility campaigns, similar to other bars in Europe. These projects are designed to alleviate certain derogatory perceptions with respect to the legal profession, in order to increase public confidence.

The first project announced by the UNBR is the connection of the Romanian application *Info-avocat* to the CCBE program “Find-a-Lawyer”⁷⁰, which aims to allow instant access to information about lawyers registered on the connected platform to anyone seeking legal assistance. The UNBR report also contemplates the creation of an annual award for the legal profession, including as an evaluation criterion the pro bono activities undertaken by prospective award recipients.

University Legal Clinics and Law Students

The concept of a university legal clinic is fairly new in the Romanian legal market. Recently, the idea received some publicity as some universities attempted to implement clinic-style programs.⁷¹ However, because these programs were only internally funded through universities, they lacked basic resources and failed to flourish.

Another likely contributing factor discouraging the establishment of legal clinics is the focus of the Romanian educational system on a theoretical approach. Until recently there used to be no infrastructure or grading system for any practical activity that law students engaged in outside the classroom. Although this has changed in recent years (now one condition to successfully completing each year of law school is conducting at least two weeks of practical activity), universities still do not encourage students to focus on pro bono specifically. Another challenge in setting up such programs is finding mentor lawyers willing to run the legal education clinics on a pro bono basis.⁷²

⁶⁵ See <http://www.aidsactioneurope.org/members/aras-romanian-association-against-aids> (last visited on September 4, 2015).

⁶⁶ See <http://www.apador.org/en/studiu-fti-privind-arestul-preventiv-si-alternativele-sale/> (last visited on September 4, 2015).

⁶⁷ See <http://www.estuar.org/> (last visited on September 4, 2015).

⁶⁸ See http://www.transparency.org.ro/centru/index_en.html (last visited on September 4, 2015).

⁶⁹ UNBR Activity Report 2014, available at <http://www.juridice.ro/377902/raportul-de-activitate-al-unbr-in-perioada-2014-2015-si-materialele-supuse-dezbaterii-la-congresul-avocailor-2015.html> (last visited on September 4, 2015).

⁷⁰ See https://e-justice.europa.eu/content_find_a_lawyer-334-en.do (last visited on September 4, 2015).

⁷¹ “George Bacovia” University in Bacau fostered such a Pro bono Clinical program throughout the academic year 2012/2013. Source available at <http://www.desteptarea.ro/avocati-si-studentii-universitatii-george-bacovia-vor-lucra-pro-bono/> (last visited on September 4, 2015).

⁷² See <http://www.uaic.ro/studenti/asociatii-si-ligi-studentesti/asociatia-studentilor-la-drept-asd/> (last visited on September 4, 2015).



It is worth mentioning however that, while few university legal clinics seem to be established currently⁷³, UNBR representatives have stated their willingness to support pro bono work by creating pro bono community initiatives, including a new legal clinic within the Bucharest University Faculty of Law.⁷⁴

Historic Development and Current State of Pro Bono

Historic Development and the Current State of Pro Bono

Historically, Romania, like most Eastern European countries, did not have a culture of pro bono legal assistance (though under the former communist regime, state-sponsored legal aid was mostly free for individuals). However, following the example of western and even neighboring countries, Romania has undergone an ideological shift in recent years, whereby more and more law firms have started to participate in pro bono programs. Furthermore, an increasing number of events advocating pro bono have been organized in Romania recently. During one such event, UNBR representatives stated their position and willingness to get more involved in supporting pro bono work and even in creating certain pro bono partnerships (for example, with NGOs or the Embassy of the United States in Bucharest).⁷⁵

While the culture is changing, Romania still lacks a professional environment that fully supports pro bono work, and there continues to exist an overriding hesitation on the part of Romanian lawyers to voluntarily engage in such activities.

One potential barrier to engaging in pro bono work in Romania is the rules and regulations governing the lawyers' profession. Beyond state-sponsored legal aid, there are no sanctioned referral programs or ethics codes to encourage pro bono work by Romanian bar members. Moreover, UNBR's past portrayal of pro bono work as veiled advertising and unfair competition also works against pro bono efforts.

Laws and Regulations Impacting Pro Bono

Rules Directly Governing Pro Bono Practice

There are no rules or regulations directly governing pro bono practice in Romania. However, the prohibition of advertising for the purpose of attracting clients and the limitations applicable to professional publicity would presumably apply also to pro bono successes. Such practices are still regarded as contrary to the restrictive advertising rules applicable to lawyers and to the fair competition between lawyers.

Concerns about Pro Bono Eroding Public Legal Aid Funding

There is little concern about pro bono eroding state-sponsored legal aid in Romania, as there is no direct connection between the sources of funding for these two types of legal services. Pro bono in Romania is an entirely private initiative, funded by private law firms offering pro bono services, whereas state-sponsored legal aid is directly funded by the Ministry of Justice.

Moreover, the financial extent of assistance provided by pro bono and state-sponsored legal aid is different. Legal aid has a monetary threshold imposed by law for each person eligible to receive state assistance.⁷⁶ The cost of litigation and the benefits of legal aid also vary depending on the base income of the relevant person benefiting from state assistance. By contrast, pro bono services grant legal assistance throughout the entire litigation process free of charge, usually with no financial cap imposed by the relevant law firm.

However, as of today, pro bono services in Romania remain only a trend, and may be seen as supplementing rather than eroding state-sponsored legal aid. Therefore, until more comprehensive

⁷³ Id.

⁷⁴ See <http://www.infolegal.ro/pledoarie-pentru-pro-bono-includerea-romaniei-in-reteaua-globala/2012/06/08/> (last visited on September 4, 2015).

⁷⁵ See <http://www.infolegal.ro/pledoarie-pentru-pro-bono-includerea-romaniei-in-reteaua-globala/2012/06/08/> (last visited on September 4, 2015).

⁷⁶ Chapter II of the Emergency Government Ordinance no. 51/2008 on Public Legal Aid.



regulations on pro bono work are adopted in Romania, it is unlikely that any pro bono work would influence legislative decisions with respect to legal aid funding.

Regulations Imposing Practice Limitations on In-House Counsel

Pro bono services in Romania are not limited to practicing lawyers. In-house counsels can effectively assist and represent persons that are unable to afford trial expenses. However they may be subject to certain limitations.

First, a company's organization may contain exclusivity agreements that prohibit in-house counsel from representing persons outside the company or its group. This obstacle can be easily remedied by a waiver. However, there is no record of any significant pro bono services offered by in-house counsel in Romanian companies, primarily because these companies concentrate their efforts on social responsibility and corporate citizenship, offering free services or organizing workshops directly linked to their sphere of activity.⁷⁷

Secondly, in most cases, only lawyers (members of bar associations) may present arguments and procedural exceptions in court but not "jurists" (i.e. law school graduates who are not admitted to a bar association).⁷⁸ Given that a preponderance of in-house counsel are "jurists" but not lawyers, in-house pro bono activities tend to be significantly reduced.

Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys

Romanian lawyers that undertake pro bono activities are required to conclude a legal assistance and representation contract with the beneficiary of the service. Provided that the contract is fully signed, the attorney is insured against any alleged professional misconduct towards the pro bono client, with the exception of willful misconduct or gross negligence in handling the respective case. Standard professional insurance covers any and all legal representation granted by the insurance beneficiary, formalized through a legal assistance and representation contract (even with null consideration).⁷⁹

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

Public concerns about the formal legal system

The most recent 2015 Eurobarometer⁸⁰, measuring public trust in the formal legal system⁸¹ provides somewhat ambivalent conclusions. On the one hand, 91% of respondents consider corruption as a constant and current problem in Romanian society, and 90% of respondents consider that improvements must be made with respect to the current legal system. On the other hand, 22% of respondents believe that legal institutions are making progress in the fight against corruption, as compared to only 13% in the 2012 survey. Moreover, 34% of respondents believe that shortcomings in the judicial system have improved (a 14% increase compared to 2012), and 43% of respondents believe that it will continue to improve.⁸²

⁷⁷ Article 3(1) letter c) of EGO no.80/2013.

⁷⁸ Articles 83 and 84 of the Romanian Civil Procedural Code.

⁷⁹ For a general description of the standard professional insurance, see for instance : <http://www.euroins.ro/asiurarea-pentru-avocati,244.html> (last visited on September 4, 2015).

⁸⁰ Eurobarometer is an initiative designed to monitor public opinion within in the European Union (EU) via surveys conducted on behalf of the European Commission on a wide variety of topical issues across EU Member States.

⁸¹ Flash Eurobarometer 406 of January 2015: "The Cooperation and Verification Mechanism for Bulgaria and Romania - second wave", available at http://ec.europa.eu/public_opinion/flash/fl_406_en.pdf (last visited on September 4, 2015). Flash Eurobarometers are ad hoc thematic telephone interviews conducted at the request of a service of the European Commission; these surveys enable the Commission to obtain results relatively quickly and to focus on specific target groups, as and when required.

⁸² Id.



Corruption is considered the blight of public institutions in Romania, decreasing confidence in vital institutions. However, the increasing number of corruption charges against senior politicians has increased public trust and a belief in the independence of the legal system. According to a recent public opinion survey⁸³ measuring public trust in the institutions of the legal system in Romania, 41% of respondents expressed their trust in the legal system. Based on this survey, the most trusted institution of the Romanian legal system is the National Anticorruption Direction (*Directia Nationala Anticoruptie* or DNA), a prosecutor's office specializing in combating high and medium level corruption.⁸⁴

Opposition from the Bar

The UNBR and the local bar associations are not opposed to pro bono activities carried out by lawyers in Romania. However, the president of the UNBR expressed some reservations regarding the repeated use of pro bono activity as being contrary to the restrictive advertising rules applicable to lawyers and to fair competition between lawyers.⁸⁵

Pro Bono Resources

Entities Engaged in Pro Bono

Romanian civil society has some strong promoters of pro bono activities, including the Konrad Adenauer Stiftung Foundation, the Pro-Democracy Association, the Horia Russu Foundation, APADOR-CH and the Foundation for the Development of the Civil Society. These NGOs focus on programs aimed at facilitating the connection between individuals or entities in need of legal assistance and lawyers.⁸⁶

As NGOs have dominantly concentrated their efforts on the promotion and protection of human rights in Romania, pro bono projects are usually focused on mitigating human rights violations. In addition, an increasing number of Romanian and international law firms have decided in recent years to engage in pro bono activities, mainly by supporting NGOs which promote social development. For example, Leroy si Asociatii, one of the country's leading law firms⁸⁷, supports several non-profit organizations and foundations by providing pro bono legal services, such as NESsT Romania, a non-profit organization which develops sustainable social enterprises aimed to address critical social problems in emerging market economies, and Lycée Français Anna de Noailles (the French School of Bucharest), a foundation supported by Leroy on an ongoing basis with pro bono legal advice on various matters, including financing, real estate and employment matters.⁸⁸

CONCLUSION

The legislative framework governing the legal profession in Romania does not regulate pro bono services. As such, there are no actual barriers preventing Romanian lawyers from engaging in pro bono activities. However, the absence of a clear legal framework has led to reluctance on the part of Romanian lawyers to voluntarily engage in pro bono activities.

⁸³ Barometer of trust in institutions, Part I: Justice, representing telephone interviews conducted by Romanian Institute for Evaluation and Strategy (IRE'S) during March 9-10, 2015, available at http://www.ires.com.ro/uploads/articole/ires_barometrul-increderii-in-institutii_justitia_studiu.pdf (last visited on September 4, 2015).

⁸⁴ Id.

⁸⁵ See <http://www.curieruljudiciar.ro/2014/04/25/av-ghe-florea-presedintele-unbr-problemele-actuale-ale-aplicarii-legislatiei-privind-profesia-de-avocat-i/> (last visited on September 4, 2015).

⁸⁶ See <http://www.fdsc.ro/servicii-juridice-pro-bono-pentru-onguri> (last visited on September 4, 2015).

⁸⁷ See <http://www.legal500.com/c/romania/corporate-and-manda/corporate-and-manda> (last visited on September 4, 2015).

⁸⁸ See <http://www.legal500.com/firms/17003-leroy-si-asociatii/offices/11951-bucharest/tab/diversity> (last visited on September 4, 2015).



Despite this environment, in the past few years an increasing number of the country's leading law firms have allocated time to supporting NGOs or initiatives in need of free legal assistance. In addition, the creation of the first Romanian pro bono legal services clearinghouse in March 2012 by the Foundation for the Development of the Civil Society has paved the way for other clearinghouses or similar initiatives which aim to connect those in need of free legal counseling with Romanian lawyers ready to provide such services.⁸⁹

Although the pro bono culture in Romania is in an incipient stage, these developments show encouraging signs of an incremental shift in the legal profession's perception of voluntary work.

September 2015

Pro Bono Practices and Opportunities in Romania

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⁸⁹ For example, the Pro Bono Network for Human Rights (created in 2014 by the Equality and Human Rights Action Centre) is a clearinghouse which aims to provide legal assistance to vulnerable groups. Furthermore, in 2014, the Association "Salvati Bucurestiul" ("Save Bucharest") established a call center providing free legal counseling on planning, construction, heritage protection and environmental protection.