



Pro Bono Practices and Opportunities in Serbia¹

INTRODUCTION

The Republic of Serbia (“**Serbia**”) is a nascent independent nation, surviving the violent splintering of Yugoslavia in the early 1990s and cutting ties with Montenegro to become an independent republic in June 2006.² As such, the fledgling parliamentary republic is still working to strike the ideal, functional balance – including with respect to the judiciary system, which has been fluid since its inception. With the legal system in flux, combined with the problems inherited from the previous regime and the complications inherent to a young country, pro bono legal assistance in the traditional sense has been sparse at best. Yet, spearheaded by NGOs, two of the most publicized groups needing service (refugees and victims of human trafficking) are actually receiving aid. Also, legislation for a comprehensive system of Free Legal Aid has been drafted, though has yet to be adopted and financed by the legislature. Furthermore, international law firms have been providing pro bono assistance, with a select number of local Serbian firms and individuals following suit.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

For the proper context of the legal landscape in Serbia, a brief summary of the last two decades of turmoil and the current political climate is beneficial. The system of public administration in Serbia was significantly eroded in the 1990s, the decade President Slobodan Milosevic was in power. Following the surrender of Milosevic in 2000 and the subsequent assassination of Prime Minister Djindjić in 2003, Serbia continued to experience many changes in its political system. A new Constitution was adopted in 2006³ to replace the Constitution of 1990, and shortly thereafter, the Republic of Montenegro declared independence from Serbia. Additionally, in 2008, Kosovo declared its independence from Serbia, a declaration which Serbia initially rejected.

Today, Serbia’s keen focus on accession to the European Union (the “**EU**”) is the primary driving force behind economic, social and political reforms. In December 2009, Serbia formally applied for membership in the EU and received EU candidate status in October 2011. As Serbia shifted from a post-conflict environment to one increasingly focused upon EU integration, it became obvious that Serbia would need to build an efficient, transparent, and accountable public administration capable of governing in an impartial manner and delivering benefits to its citizens.

The Courts

Much like the rest of the country, the judiciary system in Serbia is ever-changing, propelled by the National Judicial Reform Strategy (enacted by the National Assembly in July 2013), which proposed a framework of judicial reform to arc from 2013-2018.⁴ These changes have included the reinstatement of

¹ This chapter was drafted with the support of the Kinstellar law firm, particularly Srdjan Vlatkovic and Branislav Maric, managing partner of Kinstellar’s Belgrade office, and the support of the Janković Popović Mitić law firm, particularly Stefan Dobrić.

² See generally, CENTRAL INTELLIGENCE AGENCY (“**CIA**”), The World Factbook: Serbia (2012), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ri.html> (last visited on September 4, 2015).

³ SERBIA CONST. (New Serbian Constitution of 2006), available at <http://www.wipo.int/wipolex/en/details.jsp?id=7378> (last visited on September 4, 2015).

⁴ REPUBLIC OF SERBIA MINISTRY OF JUSTICE, Action Plan for the Implementation of the National Judicial Reform Strategy for the Period 2013-2018, accessible at <http://www.mpravde.gov.rs/en/vest/2906/action-plan-for-the->



several fired judges and prosecutors, new courts with jurisdiction in all case matters, a new system of appraisals for judges and prosecutors, and reforms to the nomination process of new judges.⁵ Yet, significant problems continue to plague Serbia's court system, including chronic backlog, poor case management and lapses in due process and the right to a fair trial, judicial accountability, and the legitimacy and enforcement of court decisions.⁶

There are multiple layers of Serbia's current court system, arranged in 2008.⁷ There are the Basic, High and Appellate Courts (in Belgrade, Novi Sad, Nis, and Kragujevac) for general jurisdiction, as well as specialized courts, such as Commercial Courts, Misdemeanour Courts, a High Misdemeanour Court and an Administrative Court (both of which have branches in Belgrade, Novi Sad and Nis). A Supreme Court of Cassation oversees all of those courts. A Constitutional Court lies separate from the rest of the legal system.⁸

The courts are staffed by approximately 3,000 elected judges with 2787 in office,⁹ who, under the Constitution, "shall be independent and accountable only to the Constitution and the law," and cannot hold a political office, be a member of a political party, or even engage in any other form of compensated employment, including paid legal services.¹⁰ But the reforms calling for "re-election and re-appointment" of the judiciary, designed in part to make the court system more efficient, cast doubt on the independence of the judiciary.¹¹ Many members of the judiciary are opposed to the current reforms based upon separation of powers grounds.¹²

[implementation-of-the-national-judicial-reform-strategy-for-the-period-2013-2018-.php](#) (last visited on September 4, 2015).

⁵ See European Commission, Serbia Progress Report, ENLARGEMENT PACKAGE 2014: STRATEGY AND PROGRESS REPORTS, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf (last visited on September 4, 2015).

⁶ See European Commission for Democracy Through Law, Opinion on the Constitution of Serbia, at ¶ 106 NO. 405/2006, CDL-AD(2007)004, 70TH Session, Venice Commission, Strasbourg (March 19, 2007).

⁷ See Organization for Security and Co-operation in Europe ("OSCE"), Judicial Institutions in Serbia: September 2011 Update, accessible at <http://www.osce.org/serbia/82759?download=true> (last visited on September 4, 2015).

⁸ Id.

⁹ Correspondence from Stefan Dobrić of Janković Popović Mitić (July 17, 2015).

¹⁰ The European Commission for the Efficiency of Justice, *supra* note 9, at Table 7.1 ;European Commission for Democracy Through Law, Opinion on the Draft Laws on Judges and on the Organisation of Courts of the Republic of Serbia, no. 464/2007, CDL-AD (2008) 007, 74th Session, Venice Commission, Strasbourg (March 19, 2008).

¹¹ Id.

¹² United Nations Development Programme ("UNDP"), Serbia: Terminal Outcome Evaluation of the UNDP Serbia Country Programme Document (CPD) (2005-2009), p. 34, Final Report (February 1, 2010); Gordana Andric, Jury Out on Serbia's Botched 'Reform' of Judges, BALKAN TRANSITIONAL JUSTICE, Mar. 23, 2012, at <http://www.balkaninsight.com/en/article/jury-out-on-serbia-s-botched-reform-of-judges> (last visited on September 4, 2015). For an extensive critique of the current judiciary structure, authored by the Judges Association of Serbia itself, see, Ratko Markovic, Judiciary—The Achilles Heel of the State of Serbia, originally published in the PECAAT WEEKLY (Jul. 15, 2010), available at <http://www.sudije.rs/en/actuals/news-articles/judiciary-the-achilles-heel-of-the-state-of-serbia> (last visited on September 4, 2015).



The Practice of Law

Education, Licensure and Legal Regulation of Lawyers

The Legal Professional Act (the “**LRA**”) serves as the code of professional conduct for Serbian lawyers.¹³ The LRA regulates the subject, conditions for the practice of law and forms of attorneys work, rights, duties and responsibilities of attorneys and law trainees and the organization and operation of bar associations. The right to practice law is acquired by registering in the directory of attorneys and by taking the oath. Prerequisites include familiar requirements, such as passing the Serbian bar exam, a legal diploma and establishment of good character, as well as some less traditional requirements, such as the provision of convenient workspace, three years of independence from public office, and good general health and full working capacity. A foreign national practicing law in his state of origin may be registered in the directory of attorneys; provided that he meets certain requirements, as discussed below.¹⁴

A Serbian attorney may practice law throughout all of Serbia and owes four basic duties: that he “(1) really and constantly practice law; (2) provides legal aid professionally and conscientiously in accordance with the law, the statute, and the code; (3) keeps a professional secret; and (4) in his professional work and private life that is available to the public[,] he will protect the reputation of the legal profession.”¹⁵ An attorney is free to provide legal services in most situations, is obliged to refuse to provide legal services in some situations, must maintain client confidentiality, and is expected to continuously acquire and improve the knowledge and skills to effectively practice law – rules familiar to lawyers in most jurisdictions.¹⁶

An attorney may be held liable for breaching the basic duties of the profession. A serious breach includes “any violation of duty and honor of legal profession under law, statute and the Code, and particularly evident bad faith in the work within legal profession; providing legal aid in cases where attorney-at-law is obliged to refuse to provide legal aid; business activities that are contrary to the honor and independence of attorneys; injury of duty to keep a secret; lack of continuous professional education and training in accordance with the adopted program; and asking for compensation greater than the fees prescribed and refusing to issue a bill to the client for the amount received.”¹⁷ Discipline for misconduct is initiated by the bar association, administered by the disciplinary prosecutor and disciplinary court, and can result in a warning, fine or removal from the list of attorneys-at-bar.¹⁸

Demographics

There are approximately 8,500 lawyers in Serbia, which is roughly one lawyer for each 800 citizens.¹⁹ Relative to other countries in Western Europe and worldwide, these figures represent a very low number of lawyers per capita. However, when compared to similarly situated Eastern European countries, the density of lawyers in Serbia is quite high.²⁰ The current view is that the legal market is saturated with

¹³ Final Draft of the Legal Professional Act, accessible at http://www.cbbe.eu/fileadmin/user_upload/NTCdocument/zakon_o_advokaturi_1_1302677159.pdf (last visited on September 4, 2015).

¹⁴ Id. at art. 1, 5(1), 6, 14.

¹⁵ Id. at art. 15, 16(1).

¹⁶ Id. at arts. 17-20.

¹⁷ Id. at art. 75(3).

¹⁸ Id. at arts. 76-77.

¹⁹ Dobrić, *supra* n. 11.

²⁰ The United States has roughly one licensed lawyer per 250 citizens. See Legal Profession Statistics – Total National Lawyer Counts 1878-2014, AMERICAN BAR ASSOCIATION (2015),” available at http://www.americanbar.org/resources_for_lawyers/profession_statistics.html (last visited on September 4, 2015). While Serbia’s ratio is on par with the overall statistics for lawyers per capita in Europe (approximately one lawyer per 833 citizens), the numbers are buoyed by a high density of lawyers in Western Europe, while Eastern European countries fall well below the average European ratio. See The European Commission for the



lawyers and that the majority of them cannot claim the appropriate business/client levels, as a consequence of the current economic climate.²¹

The vast majority of attorneys work out of Belgrade, the capital and most populous city in the country. A recent search revealed approximately 50 law firms operating in Serbia, with nearly all of those headquartered in Belgrade.²² The Bar Association of Serbia, which sets and enforces the standards for professional conduct, is also headquartered in Belgrade.²³ Despite the number of law firms in Belgrade, the majority of lawyers in Serbia are sole practitioners.²⁴

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The rules concerning the concept of state-sponsored legal aid are scattered throughout the Serbian legal system. The current lack of a single body of rules on the subject results in a legal aid mechanism lacking coherency. A draft Law on Free Legal Aid has been prepared by the Serbian Government and it is expected to be adopted by the Serbian Parliament, which should hopefully result in some progress in this area, though the adoption of the law is still delayed (despite originally being anticipated in 2012).²⁵ A 2012 Serbian Constitutional Court decision striking down a law requiring that only bar-certified attorneys may provide legal aid in Serbia has also encouraged reforms.²⁶

The Right to Legal Assistance

As a general matter, the right to legal aid is guaranteed by the Constitution, even without the proposed draft law on free legal aid.²⁷ Every natural person, regardless of need, is entitled to up to 30 minutes of primary legal aid (general legal information and initial legal advice) per matter.²⁸ The right to secondary legal aid (legal advice, drafting of documents, and representation before the courts) is realized by a gradual or partial exemption from payment of procedure-related expenses.²⁹ In practice, this concept of legal aid is achieved through the assistance of the legal profession (lawyers) and the network of local

Efficiency of Justice, Report on "European judicial systems-Edition 2014 (2012 data): efficiency and quality of justice" COUNCIL OF EUROPE at Table 12.1 and accompanying text, available at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf (last visited on September 4, 2015).

²¹ Vlatkovic, supra n. 5.

²² HG.ORG GLOBAL LEGAL RESOURCES, Serbia Lawyers, Law Firms, <http://www.hg.org/attorneys/Serbia.html> (last visited on September 4, 2015). The other law firms are located in Novi Sad (6) and Nis (2). Generally, the bulk of these firms focus on international business, finance, and intellectual property.

²³ HG.ORG GLOBAL LEGAL RESOURCES, Serbia Bar Associations, <http://www.hg.org/attorneys/Serbia.html> (last visited on September 4, 2015). The official website for the Serbian Bar Association is accessible at <http://www.advokatska-komora.co.rs/> (last visited on September 4, 2015), but the Serbian Bar Association of America, accessible at <http://www.serbbar.org/> (last visited on September 4, 2015), may prove to be a more helpful resource, particularly for non-native speakers.

²⁴ PILNET: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW, Against the Tide: Mira Vucetic Prsic Launches Pro Bono in Serbia, (May 20, 2009), <http://www.pilnet.org/project-updates/47-against-the-tide.html> (last visited on September 4, 2015). Ms. Prsic notes that these sole practitioners have little or no resources for pro bono work, placing the onus on firms and NGOs to provide free assistance.

²⁵ Vlatkovic supra n.5.; Country Report Serbia: Belgrade 2013, TRIPLE A FOR CITIZENS: ACCESS TO INFORMATION, ADVICE AND ACTIVE HELP, available at http://triplecitizens.eu/app/uploads/publications/Country_report_Serbia.pdf (last visited on September 4, 2015).

²⁶ Id.

²⁷ Vlatkovic supra n.5.

²⁸ Status Analysis for the Purpose of Introduction of Legal Aid System in Montenegro, (Sep. 2008).

²⁹ Id.



bodies which specialize in the provision of legal aid.³⁰ Should the draft of the Law on Free Legal Aid become law, both primary and secondary legal aid would be provided free of charge to individuals and households receiving social benefits.³¹

Civil Law Proceedings

The Serbian Civil Procedure Code (the “CPC”) contains provisions which allow for the exemption from payment of litigation costs under certain circumstances.³² The party requesting the exemption must first submit a written motion to the acting judge that is accompanied by the relevant evidence of economic hardship. A party that has been granted an exemption is also entitled to request to be represented by a lawyer free of charge. If the court grants such a request, an attorney will be appointed from the list of attorneys who are members of the relevant local bar association and the costs of such attorney’s services and expenses will be advanced from the court budget.³³

The above CPC rules are applicable also to a number of other proceedings, including enforcement proceedings and administrative disputes, which, although governed by separate codes, apply by reference the CPC rules on legal aid.

Criminal Law Proceedings

The Serbian Criminal Procedure Code (the “CC”) provides for situations in which a defendant *must* have a defense lawyer (i.e., mandatory defense). This includes, among others, situations in which a defendant is mute, deaf, blind or incapable of successfully defending himself, or if the criminal proceeding is conducted in relation to a criminal offense which is punishable with a prison sentence of eight years or longer. If the defendant has no means of paying for a defense lawyer, one will be appointed and paid for by the court.³⁴

Also, the CC provides that a court will appoint and bear the costs of a defense lawyer to a defendant who – although there are no grounds for mandatory defense – cannot pay his defense costs due to his overall financial position, *provided that* the defendant makes a written request and that the proceeding is for a criminal offense punishable with a prison sentence longer than three years or if the reasons of “righteousness” exist.³⁵

Additionally, the CC provides for a possibility of the provision of legal aid to a *victim* of a criminal offense who is acting in the capacity of a private prosecutor within a criminal proceeding in which the offense is punishable with a prison sentence longer than five years. As in the case of the CPC, the decision of whether to grant legal aid must be based on a written motion that will provide sufficient proof of the overall inability to cover the costs of an attorney.³⁶

³⁰ Vlatkovic supra n.5. Legal aid offices are established by the Ministry of Justice. Citizens’ associations and legal clinics can provide legal aid if they are entered in the register of the National Committee. Status Analysis for Montenegro.

³¹ World Bank Multi-Donor Trust Fund for Justice Sector Support, SERBIAN FREE LEGAL AID FISCAL IMPACT ANALYSIS: VOLUME, COSTS AND ALTERNATIVES, (2013), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/25/000333037_20140325152745/Rendered/PDF/861870WP0P11020t0Free0Legal0Aid0Law.pdf (last visited on September 4, 2015).

³² Vlatkovic supra n.5; Country Report Serbia: Belgrade 2013, supra n. 25.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.



Administrative Law Proceedings

The Law on General Administrative Procedure provides for an exemption (in whole or in part) from payment of the costs of an administrative proceeding for a party in such proceeding, *provided that* the relevant authority conducting the proceeding determines that the party in question cannot bear the cost of such proceeding without damage to his or her own essential support or that of his or her family.³⁷

State-Subsidized Legal Aid

A system of Free Legal Aid is a requirement for European Union Accession – providing further motivation for the implementation of such a system – and supports the attainment of international human rights standards in Serbia.³⁸ Third parties have encouraged the Ministry of Justice (the “**MoJ**”) to establish a working group to conduct ascertainment research and develop a strategy on free legal aid.³⁹ This has resulted in the development of a draft Strategy on free legal aid, a draft law on free legal aid, and has created a framework for the establishment of a national free legal aid system in Serbia. The draft strategy includes recommendations and financial forecasts for the eventual establishment of the system on FLA, and is even endorsed by the Council of Europe.⁴⁰

The legal aid system proposed by the draft law on free legal aid, like the legal systems of most countries in the European Union, envisions two levels of legal aid.⁴¹ The first is primary legal aid (general legal information, initial legal advice, and drafting of legal documents), which would be provided by lawyers, public notaries, mediators, law faculties (law schools), bar associations, legal aid services established by local governments and other public bodies. The second is secondary legal aid (legal representation, drafting of motions, defense and implementation of mediation procedures), which would be provided by legally registered and regulated providers.⁴² The draft law on free legal aid proposes to pay the full cost of all those services related to Basic Court and Higher Court cases for households or individuals receiving social benefits.⁴³

Yet, the fact remains that, as of yet, free legal aid is not yet established in Serbia, despite having a draft law which has been available since 2012.⁴⁴ Until the draft or a new law is finally passed by the Parliament and a framework for implementing the law is in place, with significant funding allocated by the Serbian government for this purpose, a truly comprehensive system of free legal aid cannot be achieved.

³⁷ Id.

³⁸ See, e.g., European Commission Proposal on Legal Aid, (May 16, 2006); EC progress reports citing lack of FLA in Serbia; European Human Rights directives; EU Treaty of Rome.

³⁹ UNDP, *supra* n.18, at 37. This project was considered groundbreaking, as it was the first time that NGOs had been represented at Working Group level for any strategy in Serbia.

⁴⁰ Id. The project is unique because different models of legal aid were actually tested on the ground via the establishment of a Legal Aid Fund that distributed 60 different “micro-grants” to CSOs to obtain data. The results of these pilots lead to a consensus among the Working Group as to the most appropriate model. Out of some 40+ strategies that have been drafted over the years for FLA in Serbia, this is the only one based upon consensus. Id. at n.75. 76.

⁴¹ Dobrić, *supra* n. 15.

⁴² Id.

⁴³ World Bank Multi-Donor Trust Fund for Justice Sector Support, *supra* n. 41.

⁴⁴ Vlatkovic, *supra* n.5.



Assignments to Legal Aid Matters

The Constitution and Serbian law, in its current form, places the obligation of providing legal aid on local governments and bar associations, which have begun to establish such systems.⁴⁵ Those systems have not required lawyers to provide legal aid, but allow lawyers to register and offer their services for a fee, if the client meets the requirements created by the local government and the bar association.⁴⁶

Anti-Discrimination Law

Working with third parties, Serbia drafted and enacted a new Law on Prohibition of Discrimination (often referred to as the “**Anti-Discrimination Law**”).⁴⁷ This established the Commissioner for the Protection of Equality and created a new legislative vehicle for advancing anti-discrimination in Serbia and improving compliance with international Human Rights treaties, Serbian Constitutional Law and European norms. The Anti-Discrimination Law has also produced derivatives such as the Belgrade Law Faculty’s Anti-Discrimination Clinic.⁴⁸

War Crimes Trials

Additionally, the Special Chamber for War Crimes Prosecutions was formed in Serbia on July 1, 2003. The Special Chamber is now self-sustainable with very strong outreach.⁴⁹ In fact, with third party support and encouragement, the first case ever was transferred from the International Criminal Tribunal for the Former Yugoslavia (the “**ICTY**”) to Serbia domestic court in 2007.⁵⁰ According to the European Commission in a recent progress report on Serbia, cooperation with the ICTY has improved.⁵¹

PRO BONO ASSISTANCE

Pro Bono Opportunities

The concept of pro bono is not explicitly regulated by any set of rules in Serbia, including the legislation governing advocacy and previously discussed code of conduct for lawyers. Similarly, the provision of pro bono services by Serbian lawyers is not very well developed. The Serbia Bar Association has discussed mandating 50 hours of pro bono work a year as one of the ways to ease the burden of Serbia’s attempt to provide legal representation to all who require it,⁵² but has not acted on that discussion yet.

A select few firms are attempting to develop a pro bono culture in Serbia. Some international entities with strong pro bono backgrounds in other countries have a presence in Serbia, with some explicitly working on pro bono projects in the country.⁵³ The Kinstellar law firm, for example, has been involved in the “pro bono network for civil society organizations in Serbia.”⁵⁴ To the best of Kinstellar’s knowledge, this initiative was the first initiative in Serbia aimed at assembling large domestic and international law firms in

⁴⁵ Country Report Serbia: Belgrade 2013, supra n. 25.

⁴⁶ UNDP, supra n.18, at 98.

⁴⁷ Id. at 3.

⁴⁸ Id.

⁴⁹ Id. at 38-39 and accompanying footnotes.

⁵⁰ UNICTY, Status of Transferred Cases, ICTY, accessible at <http://www.icty.org/sid/8934> (last visited on September 4, 2015).

⁵¹ Id.

⁵² World Bank Multi-Donor Trust Fund for Justice Sector Support, supra n. 41.

⁵³ Additionally, DLA Piper, Wolf Theiss, and other international firms have branches in Serbia and a strong international dedication to pro bono work.

⁵⁴ Vlatkovic, supra n. 5.



the provision of pro bono legal services to civil organizations in selected cases. The process was organized by a local NGO and was initially relatively successful.⁵⁵ However, perhaps a by-product of the legal system in flux, a number of logistical issues arose and many of the participants are now contemplating continuing the provision of pro bono services independently.⁵⁶

Law faculty legal clinics in Serbia have become a major source of pro bono work and opportunities.⁵⁷ Many of these clinics grew from an American Bar Association/Central East European Law Initiative Program in the early 2000's.⁵⁸ The programs first began as simulations, but many have since moved to providing pro bono services to indigent clients.⁵⁹ Some of the schools offer specialized clinics, in contract, family, and anti-discrimination law.⁶⁰

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

As detailed above, the provision of pro bono services by Serbian lawyers is neither very developed nor regulated. Serbia lacks a clearinghouse, and as discussed in further detail below, local referral organizations often lack an understanding of legal rights and issues. With only a few law firms offering and driving pro bono practices, the need for pro bono assistance – whether from international law firms or NGOs – remains substantial, as do the opportunities.

While the proposed Free Legal Aid system and the current “boots on the ground” may be best equipped to handle the more routine smaller cases, some larger cases would benefit from greater contributions. Such opportunities are particularly prevalent in the area of human rights.

Establishing Human Rights Institutions

Serbia acceded to the Council of Europe on April 3, 2003, and has ratified all major human rights instruments, including the European Convention on Human Rights.⁶¹ There is a general consensus that with democratic reforms and Serbia's orientation towards EU accession, human rights are gaining a place on the policy agenda. Recent areas of improvement include: human rights training programs led by the Ministry for Minority and Human Rights, the introduction of a new strategy and action plan for the correctional system and the passage of three laws providing protections for the freedom of expression.⁶²

Yet while awareness among judges of international human rights obligations is perceived to have recently improved, courts are still not adhering to those principles.⁶³ Furthermore, human rights abuses,

⁵⁵ Id.

⁵⁶ Id. In another example of an effort to stimulate the Serbian pro bono culture, Mira Vucetic Prsic pioneered a pro bono program at her firm after attending a European Pro Bono Forum. Prsic cited a long tradition of volunteer legal work—such as aid to family and friends – but had always seen formal pro bono as a concept that existed only in other countries, particularly the United States. Prsic now dedicates all of her working hours to pro bono work, and to date has taken on more than 50 pro bono cases. See *Against the Tide: Mira Vucetic Prsic Launches Pro Bono in Serbia*, supra n.34.

⁵⁷ Vlatkovic supra n.5.

⁵⁸ Emilija Stankovic Karajovic, *ABA/CEELI's clinical legal education programme in Serbia*, 4 *Int'l J. of Clinical Legal Educ.* 81 (2004).

⁵⁹ The Legal Clinic, FACULTY OF LAW UNIVERSITY OF NIS, http://www.prafak.ni.ac.rs/index.php?option=com_content&view=article&id=166&Itemid=241&lang=en (last visited on September 4, 2015).

⁶⁰ Willem C. Vis International Commercial Arbitration Moot: Team, UNIVERZITET U BEOGRADU: PRAVNI FAKULTAT, <http://www.ius.bg.ac.rs/moot/VISteam.htm> (last visited on September 4, 2015).

⁶¹ See European Convention on Human Rights, signed Apr. 3, 2003 (ratified Mar. 3, 2004).

⁶² European Commission, supra note 10, at 40-41.

⁶³ Id. at 45-46.



discrimination against minorities, attacks on journalists, hate speech, attacks on foreigners and intimidation of sexual minorities by extremist groups continue in Serbia largely unabated, though publically condemned.⁶⁴ International nongovernmental organizations such as the European Commission, and Serbia's Office of the Ombudsman *all* report continuing human rights violations in Serbia.⁶⁵

Citizens also lack awareness and information on their rights and remedies (basic legal forms, procedures, offices, legal aid). For example, nearly one-quarter of all complaints filed with the Ombudsman in 2014 related to activities of the ministries or concerned the Ministry of the Interior (and most of these involved the right to identity documents, including identification cards and passports).⁶⁶

Among the general human rights abuses, certain groups are especially afflicted, particularly refugees and victims of human trafficking, and as such are in dire need of assistance.

Refugees & Human Trafficking

Due to the wars in former Yugoslav republics, there has been an influx of large numbers of refugees and Internally Displaced Persons (“IDPs”) into Serbia. According to UNHCR statistics in 2015, Serbia had 223,139 IDPs and 43,751 refugees and individuals in refugee-like situations.⁶⁷ A handful of groups, particularly NGOs such as Fahamu and those listed later, have been working to assist the refugees, but ample opportunities for further pro bono assistance exist.

Human trafficking of all forms persists in Serbia – for men, women, and children. The trafficking concerns both victims trafficked into and others trafficked out of Serbia. While the police have made progress in deterring or intervening in such practices, the judiciary still remains a weak point in the implementation of anti-trafficking legislation.⁶⁸ Thus, help is needed in a number of areas, including assisting known victims of human trafficking, working to prevent trafficking at points of origin or destination outside the borders of Serbia, and raising awareness of the issue.

Current State of Pro Bono Including Barriers To Pro Bono Work and Other Considerations

Many barriers to providing pro bono assistance exist in Serbia, from basic impediments to greater institutionalized obstacles. From a logistical standpoint, the lack of a clearinghouse hampers even the initial process of connecting client with counsel, while societal traditions and biases present more general roadblocks.⁶⁹

Laws and Regulations Impacting Pro Bono

Serbia has legal and regulatory barriers in its legal system to the provision of pro bono services. Serbia has a “loser pays” statute in the Code of Civil Litigation. If the court rules that the victory is only partial,

⁶⁴ See *Id.*; SERBIAN OMBUDSMAN REPORT 2014.

⁶⁵ *Id.*

⁶⁶ SERBIAN OMBUDSMAN REPORT 2014.

⁶⁷ UNHCR, Serbia: 2015 UNHCR subregional operations profile- South-Eastern Europe, <http://www.unhcr.org/pages/49e48d9f6.html> (last visited on September 4, 2015). Additionally, during the 1999-2006 time periods, around 226,000 Serbs and other non-Albanians were forced to leave Kosovo, almost all situated in Central Serbia. See *Project Fiche for Phare – Pre-accession Instrument [IPA] 2005*, “IPA Support to IDPs and Refugee,” http://ec.europa.eu/enlargement/pdf/serbia/ipa/support_to_refugees_and_idps_en.pdf (last visited on September 4, 2015). The declaration of Kosovo independence in February 2008, marked a new wave of uncertainty for these IDPs, especially with Serbia failing to acknowledge Kosovo's independence. Even though “new displacement was avoided, the rate of return decreased significantly in 2008 from an already low level, as most IDPs waited to evaluate the approach of Kosovo authorities towards Kosovo Serbs and other non-Albanian communities.” INTERNAL DISPLACEMENT MONITORING CENTRE, Serbia: Final Status for Kosovo – Towards Durable Solutions and New Displacement.

⁶⁸ CENTRE FOR PROTECTION OF WOMEN AND CHILDREN AND LAWYERS COMMITTEE FOR HUMAN RIGHTS (“YUCOM”), Report on Serbia, at 189-192, ARIADNET, available at www.riadnet.net/pdfs/10.Serbia.pdf (last visited on September 4, 2015).

⁶⁹ As a plus, however, a VAT or a tariff is not imposed on services offered free of charge.



then the victors shall only receive the allocable portion.⁷⁰ Additionally, Serbian law allows the Serbia Bar Association to enact a fixed-fee schedule, which they have done.⁷¹ The Serbia Bar Association bans advertising or self-promotion by Serbian attorneys via its bylaws, as required by Serbian law, though that does not include electronic communication, basic contact information, or printed material provided to clients.⁷² Foreign attorneys seeking to practice in Serbia must register, and are restricted in their practices. To register, they must show that they are a member of the bar in their state of origin and meet the other applicable bar requirements.⁷³ If the lawyer does not take Serbia's bar exam and attorney-at-law exam, they are placed in Register A, where they can only provide oral and written advice on international law and the laws of their state of origin. If the lawyer did take the bar exam and the attorney-at-law exam in Serbia, they may practice law in Serbia, but for three years must act in conjunction with local counsel.⁷⁴

Lack of a Clearinghouse

Without a clearinghouse or centralized national call center, it is difficult for those interested in offering pro bono services to receive requests from citizens in need in an efficient manner.⁷⁵ Further, without a clearinghouse, legal clinics send private practitioners clients with no prior screening. Since the clinics are not familiar with legal terminology, they often cannot explain the issue over the phone. Counsel must therefore screen every potential client through an in-person meeting.⁷⁶ NGOs have started to help with this effort by acting as impromptu clearinghouses.⁷⁷

Socio-Cultural Barriers to Pro Bono and Institutional Mistrust

At a more abstract level, there is a fundamental public mistrust of the judiciary and government in Serbia. Lengthy civil and criminal proceedings and difficulties in enforcing final judgments continue to erode the public's trust in the judiciary. The legal profession in Serbia is not well regulated; there exists no mandatory CLE requirement (including basic ethics training) for lawyers, and senior judges complain that lawyers and the judiciary lack knowledge of new laws.⁷⁸

Furthermore, the rulings and decisions of courts are often ignored by the administration – especially in the most relevant cases of public interest – and the cooperation of state institutions is extremely limited.⁷⁹ Additionally, there is no mechanism to enforce the decisions of the Commissioner for Free Access to Information of Public Importance or to sanction violations of the Law on Free Access to Information of

⁷⁰ Civil Procedure Code, Official Gazette RS no. 72/2011, (Sept. 28, 2011), Article 153, available at <http://www.migliorisiabogados.com/wp-content/uploads/2014/07/Codigo-procesal-civil.pdf> (last visited on September 4, 2015).

⁷¹ The Legal Profession Act, May 5, 2011, First Regular Session. Article 23, available at http://www.advokatska-komora.rs/propisi_lat/LEGAL_PROFESSION_ACT.pdf (last visited on September 4, 2015). The law also permits the Serbia Bar Association to develop rules for providing free legal aid.

⁷² Id., Article 24; Mrakovic & Partners, Advertising Law in Serbia, HG.ORG LEGAL RESOURCES, available at <http://www.hg.org/article.asp?id=31383> (last visited on September 4, 2015).

⁷³ The Legal Profession Act, supra note 92, at Articles 13-14 ;PECO Committee, Comments on the Final Draft of "The Legal Profession Act"- Serbia, CONSEIL DES BARREAUX EUROPEENS (CCBE) available at http://www.ccbe.eu/fileadmin/user_upload/document/PECO_Portal/PECO_Com_comments_Serbian_draft_law_02032011.pdf (last visited on September 4, 2015).

⁷⁴ Id.

⁷⁵ See generally, Against the Tide, supra n.34. It has fallen upon NGOs to try to act as a clearinghouse, to varying levels of effectiveness.

⁷⁶ Id. Prsic even reports that some individuals who are turned down (for one reason or another) nevertheless persist in coming by the office, even becoming violent after her firm refuses to take their case.

⁷⁷ Pilnet, Where We Work: Europe, PILNET, accessible at <http://www.pilnet.org/public-interest-lawyers/europe.html> (last visited on September 4, 2015).

⁷⁸ Evaluation Team interview with the Vice President of the Belgrade Bar Association.

⁷⁹ Evaluation Team interview with Director of the Belgrade Law Faculty Anti-Discrimination Law Clinic.



Public Importance by government bodies.⁸⁰ Accordingly, though such laws may be adopted on paper the state does not have the teeth to enforce them. State administration institutions in Serbia lack adequate dispute resolution mechanisms and courts still fall short of guaranteeing citizens their right to a fair trial.⁸¹

Lack of Pro Bono Culture

Traditionally, many lawyers in Serbia have had a somewhat rigid view of the practice of law and have not been willing to introduce any changes.⁸² The Bar Association does not impose any pro bono requirement. In fact, some lawyers offering pro bono services are resented by other lawyers, who perceive providing legal services free of charge as unfair competition.⁸³ Plus, as referenced throughout, many lawyers – particularly sole practitioners – are struggling for paid work, leaving little capacity to offer their services at no charge.

Pro Bono Resources

With no national clearinghouse, pro bono opportunities are limited in Serbia. Thus, contacting either the Kinstellar law firm or one of the following NGOs (most of which specialize in refugee work), would be the best avenue to pursue further information about pro bono opportunities in Serbia.

- ASTRA: Website: www.astra.org.rs
- Asylum Protection Center/Center for Protection and Asylum: Website: <http://www.apc-cza.org/sr-YU/>
- Autonomous Women's Center: Website: <http://www.womenngo.org.rs/english/>
- Belgrade Center for Human Rights: Website: <http://www.bgcentar.org.rs/bgcentar/eng-lat/>
- Child's Rights Center: Website: <http://www.cpd.org.rs/en/home.html>
- Civic Initiatives: Website: www.gradjanske.org/page/about/en.html
- Group 484: Website: www.grupa484.org.rs
- Initiative for Development and Cooperation (IDC) Serbia Website: www.idcserbia.org
- International Aid Network: Website: www.ian.org.rs
- MPDL SE EUROPE: Website: www.mpdl.org/serbia
- Novi Sad Humanitarian Centre Website: www.nshc.org.rs
- Praxis: Website: www.praxis.org.rs

CONCLUSION

While Serbia does not have a legacy of pro bono culture in the traditional sense, Serbs do have a tradition of helping friends, family, and neighbors in need. Combined with a few pioneer law firms and the assistance of NGOs, the prospect for a legal community that accepts pro bono as part of a lawyer's role could develop. The government is also taking new steps to carry some responsibility, commissioning the draft law on Free Legal Aid. Adoption and funding of this legislation would serve as a major boon to

⁸⁰ EC Comm HR (Mar. 11, 2008). For a more in-depth look at the problems enforcing the rights to access information, see AMERICAN BAR ASSOCIATION, Serbia Programs: Rule of Law Initiative, Anti-Corruption and Public Integrity, available at http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia/programs.html (last visited on September 4, 2015).

⁸¹ SERBIAN OMBUDSMAN REPORT 2014. The Serbian Constitution provides for the right to a fair trial within a reasonable time (art. 32) and the 2005 Civil Procedure Act prescribes that a court should decide on claims and motions of the parties within a reasonable time (art. 10). Yet, of complaints filed with the Serbian Ombudsman in 2008, 4% involved violation of the right to a fair trial, while 1.5% involved rights of persons deprived of liberty and 4% involved complains of violation of the right on legal protection before administrative authorities.

⁸² See generally, *Against the Tide* supra n.34. The Belgrade Bar Association led a nation-wide legal strike from 2014 through early 2015 to oppose new laws and regulations imposed by the Justice Ministry on the legal community. See Tanjug, Lawyers continue strike, demand Selakovic to resign, B92, http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=09&dd=26&nav_id=91719 (last visited on September 4, 2015).

⁸³ *Against the Tide* supra n.34.



support citizens unable to otherwise afford legal assistance. There is still much work to be accomplished in terms of developing the legal infrastructure in Serbia – particularly restoring faith in the judiciary and continuing the stalled efforts to establish a Free Legal Aid program– and transforming how the local legal community thinks about pro bono. Nonetheless, there is a growing number of pro bono opportunities in various disciplines available in Serbia. Critical, however, will be the establishment of a pro bono clearinghouse to screen potential clients and, even more importantly, connect those in need of pro bono assistance with the appropriate person or entity to provide such aid. Nevertheless, for a country still enjoying its first decade of independence, Serbia is headed in the right direction. With time and effort, as well as support from the government and civilians alike, a robust pro bono culture can be in Serbia's future.

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Pro Bono Practices and Opportunities in Serbia

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